

**SUPPORTING STATEMENT
APPLICATION FOR PREVAILING WAGE DETERMINATION
(OMB Control Number 1205-0508)**

This Information Collection Request (ICR) seeks a Revision of the ICR.

Introduction: *This information collection request (ICR) proposes to revise the information collection for prevailing wage determinations (PWDs) for the Department of Labor's (Department or DOL) employment-based foreign labor certification and labor condition programs which includes Form ETA-9141, Application for Prevailing Wage Determination ("Form ETA-9141"); Form ETA-9141, General Instructions ("General Instructions"); and Form ETA-9141, Appendix A, Request for Additional Worksite(s) ("Appendix A"). The Department respectfully seeks approval for both the current forms (approved in ICR Reference No. 201905-1205-005) and the revised forms contained in this ICR submission.*

This supporting statement, along with its accompanying Paperwork Reduction Act package (i.e., updated documents illustrating changes), will be submitted to the Office of Management and Budget (OMB) for final review and approval. As part of the Department's larger regulatory action, the Department is planning to publish an accompanying Notice of Proposed Rulemaking (NPRM), Employer-Provided Survey Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program. The regulatory changes the Department has announced through the NPRM, and submitted under OMB Control Number 1205-0508 ("OMB 1205-0508"), will eventually prompt the following revisions to the currently approved ICR, covered under OMB 1205-0508:

- *Minor changes to the General Instructions to include additional instructions for documents to be submitted when employers want to use an employer-provided survey as the wage source for a PWD for their job opportunity; and the*
- *Elimination of Form ETA-9165, Employer Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OEWS Survey ("Form ETA-9165"), and its instructions, as one information collection within OMB 1205-0508, due to OFLC instead requiring applicable employers to submit documentation of the survey instrument along with their Form ETA-9141 at the time the H-2B survey wage is being requested.*

A. Justification

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.

The Immigration and Nationality Act (INA), as amended, assigns responsibilities to the Secretary of Labor (Secretary) relating to the employment of certain categories of immigrant and nonimmigrant foreign workers under the permanent (PERM), H-2B, H-1B, H-1B1, and E-3 employment certification programs. The Office of Foreign Labor Certification (OFLC) within the Employment and Training Administration (ETA) is responsible for processing PWD applications from employers who seek to employ PERM, H-2B, H-1B, H-1B1, and E-3 workers. As explained further below, the INA requires the

Secretary to certify that the employment of foreign workers under certain visa classifications will not adversely affect the wages and working conditions of similarly employed workers in the United States. To render this certification, the Secretary determines the prevailing wage for the occupational classification and area of intended employment and ensures the employer offers a wage to the foreign worker that equals at least the prevailing wage. OFLC's National Prevailing Wage Center (NPWC) uses Forms ETA-9141 to collect information necessary to determine the prevailing wage for the applicable occupation and area of intended employment. For labor certification applications and, as employers choose to do so, for labor condition applications (LCAs), employers request and are issued a PWD from the Department for the job opportunity; the PWD is based on the occupational classification and area of intended employment. Employers file the Form ETA-9141 with the Department to receive a PWD. Currently, OFLC requires H-2B employers to also file the Form ETA-9165 with the Department if they are requesting a PWD based on a non-Occupational and Employment Wage Statistics (OEWS) survey. OFLC is proposing to eliminate the requirement and use of Form ETA-9165, and its instructions, and instead require applicable H-2B employers to submit, or otherwise attach, only the employer-provided survey instrument to the Form ETA-9141 at the time the applicant submits PWD request.

The INA prohibits the admission and employment of foreign workers under the PERM and H-2B programs unless the Secretary has certified that the employment of the foreign worker will not adversely affect the wages and working conditions of workers in the United States similarly employed. *See* 8 U.S.C. § 1182(a)(5)(A)(i)(II); 8 CFR 204.5(k)(4)(i), 214.2(h)(4)(i)(B)(1), (h)(6)(iii)(A), and (h)(6)(iv)(A). Similarly, the INA prohibits the employment of foreign workers under the H-1B, H-1B1, and E-3 programs unless the Secretary has approved an LCA in which the employer attests to pay the foreign worker at least the prevailing wage level for the occupational classification in the area of employment or the actual wage level paid by the employer to workers with similar experience and qualifications for the specific employment in question, whichever is greater. *See* 8 U.S.C. §§ 1182(n)(1)(A)(i)(I) and (II) and (t)(1)(A)(i)(I) and (II).

Prior to filing a PERM or H-2B labor certification application, the employer must obtain a PWD from OFLC's NPWC. Employers seeking to employ foreign workers under the H-1B, H-1B1, and E-3 programs are not required to obtain a PWD from the NPWC but may choose to do so. When a PERM, H-1B, H-1B1, or E-3 employer obtains a PWD from the NPWC based on the OEWS survey, the INA requires the Department to determine the appropriate wage level for the occupational classification, "commensurate with experience, education, and the level of supervision." 8 U.S.C. § 1182(p)(4). When determining a prevailing wage for nonprofit and Governmental research organizations, institutions of higher education, and non-profit entities related to or affiliated with institutions of higher education, the INA requires the Department to determine the prevailing wage based only on wage data from "employees at such institutions and organizations in the area of employment." 8 U.S.C. § 1182(p)(1).

PERM PWDs: In the absence of a prevailing wage rate derived from an applicable collective bargaining agreement (CBA), the employer may elect to use an applicable wage determination under the Davis-Bacon Act or Service Contract Act, or provide a wage survey that complies with the Department's standards governing employer-provided wage data. *See* 20 CFR 656.40(b) and (g). In the absence of any of the above sources, the NPWC will use the Bureau of Labor Statistics (BLS) OEWS survey to determine the prevailing wage for the employer's job opportunity. *See* 20 CFR 656.40(b)(2). If the employer requests a PWD based on an employer-provided survey, the employer must provide the NPWC with enough information about the survey methodology—including sample size and source, sample

selection procedures, and survey job descriptions—to allow the NPWC to determine the adequacy of the data and validity of the statistical methodology. See 20 CFR 656.40(g)(2).

H-2B PWDs: In the absence of a prevailing wage rate derived from an applicable CBA, the employer must receive an OEWS-based PWD from the NPWC or provide a wage survey that complies with the criteria in the Department’s H-2B regulations. See 20 CFR 655.10(b)(2) and (f). Under the Department’s proposal, if the employer requests a PWD based on an employer-provided survey, the survey must be based upon recently collected data: The survey must be the most current edition of the survey and must be based on wages paid not more than 24 months before the date the PWD request is submitted to the NPWC. See 20 CFR 655.10(f)(5).

H-1B, H-1B1, and E-3 PWDs: In the absence of a prevailing wage rate derived from an applicable CBA, the employer may base the prevailing wage on one of several sources: a PWD from the NPWC; an independent authoritative source that satisfies the requirements in 20 CFR 655.731(b)(3)(iii)(B); or another legitimate source of wage data that satisfies the requirements in 20 CFR 655.731(b)(3)(iii)(C). See 20 CFR 655.731(a)(2)(ii)(A)-(C).

Statutory Authority: Sections 103(a)(6); 203(b)(3); 212(a)(5)(A); 212(m), (n), (p), (t); and 214(c) of the INA [8 U.S.C. §§ 1103(a)(6); 1153(b)(3); 1182(a)(5)(A), (m), (n), (p), (t); and 1184(c)]

Regulatory Authority: 20 CFR 656.40, 655.10, and 655.731; 8 CFR 204.5(k)(4) and 214.2(h)(4) and (h)(6).

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.

The Department uses the information collected through this ICR to determine the prevailing wage, which is the minimum wage that an employer may offer, advertise in recruitment, and pay to a worker in connection with the PERM, H-2B, H-1B, H-1B1, and E-3 programs. When determining a prevailing wage using OEWS data, the NPWC refers to the Form ETA-9141 to determine the appropriate occupational classification and prevailing wage rate for that occupation based on information about the nature of the job offer, the area of intended employment, and description of job duties. Currently, when an employer provides a wage survey to determine the prevailing wage in the H-2B program, the NPWC reviews Form ETA-9165 to determine if the survey complies with regulatory requirements governing the use of employer-provided wage surveys. The Department is proposing to eliminate Form ETA-9165, and its instructions, and instead only require applicable H-2B employers to attach the employer-provided survey instrument to the Form ETA-9141. The NPWC would review the survey instrument to determine if the survey complies with regulatory requirements governing the use of employer-provided surveys.

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.

An employer must request a PWD from the NPWC, in the manner prescribed by OFLC, either by electronic filing or by mail. See 20 CFR 656.40(a) and 655.10. Filers submitted the Form ETA-9141 electronically at a rate of 100 percent in FYs 2021, 2022, and 2023. The electronic filing of the Form ETA-9141 and its appendix is supported by the Department's FLAG system at <https://flag.dol.gov/>. In circumstances where the application is filed using the traditional paper-based method, filers mail applications to OFLC, OFLC staff manually enters the data and information contained on the paper application into the FLAG system for processing in a similar manner as those filed electronically.

The FLAG system permits an employer or, if applicable, its authorized attorney or agent, to efficiently prepare and submit PWD applications to OFLC. The FLAG system provides employers with a series of electronic data checks and prompts to ensure each required field is completed and values entered on the form are valid and consistent with regulatory requirements. The OFLC website and the FLAG system include detailed instructions designed to help employers understand the form collection items and the kinds of entries that are required. Where it is not practical to collect supporting documentation using a standard OMB-approved appendix, the FLAG system permits an employer to upload documentation supporting the application in an acceptable digitized format (e.g., Adobe .PDF, Microsoft Word, .TXT). In compliance with the Government Paperwork Elimination Act, OFLC will continue to make Form ETA-9141 easily accessible on the FLAG System and will maintain all forms and appendices approved under this ICR on the OFLC website (<https://www.dol.gov/agencies/eta/foreign-labor>) so that employers may complete and file applications electronically or by mail.

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 information and any supporting documentation requested through the Form ETA-9141 are sufficiently unique to avoid duplication of activities within the Department in the context of the PERM, H-2B, and LCA programs. Employers filing their requests electronically can save their contact information and other pertinent general information for the Form ETA-9141, and its appendix, in the FLAG system for use while filing another Form ETA-9141. Once this general information is entered, the system repopulates it as the employer files additional Form ETA-9141 requests, which results in time savings to the employer.

The elimination of the Form ETA-9165 will not affect how employers complete the Form ETA-9141 because the Department would not need to make any major changes to the Form ETA-9141. Employers will continue to complete the Form ETA-9141 as they have been doing. However, the Department will clarify the Wage Source Information section of the General Instructions to the Form ETA-9141 to include additional instructions for survey submission when employers want to use an employer-provided survey as the wage source for prevailing wage determination for their job opportunity. The Department will clarify that employers must submit the employer-provided survey with their prevailing wage determination request, Form ETA-9141. This is consistent with current practice. Under current practice, when employers request an H-2B survey wage for their prevailing wage determination request on Form ETA-9141, employers must provide the Form ETA-9165 in addition to the employer-provided survey.

The Form ETA-9165 was intended to be used as a means of collecting key survey information without the need to provide the survey. When employer responses to the Form ETA-9165 are reviewed, if the NPWC identified that it had any incomplete or inconsistent information, or other concerns regarding the accuracy of the content of the Form ETA-9165, the NPWC issues a request for information to the employer. NPWC's experience has been that the information provided on the Form ETA-9165 has not been sufficient and necessitated requesting the full survey instrument. Upon review of the survey instrument, the NPWC has consistently found errors between the actual survey and the information inputted on the Form ETA-9165, indicating that the Form ETA-9165 is not a reliable tool. Based on this experience, in recent years, NPWC modified the requirements of the Forms ETA-9141 and ETA-9165 to request the full survey instrument at the time of filing to determine whether a survey met the applicable requirements. Accordingly, upon extensive analysis, it has been determined that the form is not an effective tool. The continued collection of both the Form ETA-9165 and subsequent requests for the survey instrument would be duplicative; therefore, OFLC is seeking to eliminate the Form ETA-9165. Instead, employers will now be required to submit the complete survey instrument when submitting the Form ETA-9141 and requesting assignment of a survey wage as the prevailing wage.

In addition, the Department will clarify that employers must submit all documentation related to the employer-provided survey, and such documentation must have been published by the surveyor, and demonstrates the employer-provided survey meets all the regulatory requirements set forth in this proposed rule. The Department makes clear in the instructions to the Form ETA-9141 that any documentation that is summarized by the employer or other representative's summary of the survey will not be accepted.

The proposed revision to the Form ETA-9141 instructions and the proposed elimination of Form ETA-9165 and its instructions will align information collection requirements with the Department's proposed regulatory framework and continue the ongoing efforts to provide greater clarity to employers on regulatory requirements, while standardizing and streamlining information collection activities to reduce employer time and burden preparing PWD applications. The proposed changes will also promote greater efficiency and transparency in the review and issuance of prevailing wage determinations for the Department's employment-based foreign labor certification and LCA programs, which includes the Form ETA-9141, *Application for Prevailing Wage Determination*, as well as its General Instructions and Appendix A.

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

The information collected under this ICR is required of small entities who seek to employ foreign workers under the PERM and H-2B programs and small entities that request a PWD from the Department for use in the LCA programs. The Department will not make any exemptions or eliminate forms for small businesses because all employers seeking a PWD from the Department must provide the information necessary to determine the appropriate prevailing wage. This collection is not disproportionately burdensome for small entities than large ones because the forms and accompanying appendix are easy-to-understand and provide all the necessary instructions so that the employer does not need to find the appropriate law or regulation to know how to request a PWD. It is not possible to reduce the burden on small entities by shortening the forms because the forms collect from all employers the minimum

information needed to determine the appropriate prevailing wage for the occupational classification and area of intended employment. The use of electronic filing and automated system prompts serves to minimize the burdens on respondents by increasing the completeness and quality of applications received and enhancing electronic communications during the application review process. Any recordkeeping requirements largely involve information that already exists in human resources records kept by most employers for other purposes.

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.

Employers choose the frequency with which they apply for PWDs. Employers file requests for PWDs and obtain PWDs in support of PERM, H-2B, and LCA (H-1B, H-1B1, and E-3) applications when seeking to employ foreign workers through these visa programs. The Department would be in direct violation of its statutory and regulatory mandates if this information were not collected. The information must be collected to enable the Department to meet its obligation to determine that the employment of foreign workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. The Department cannot issue PWDs without collecting basic information on the employer, worksite(s), and job opportunity being offered to foreign workers. The documentation covered by this ICR is, therefore, essential to the administration of the PERM and H-2B labor certification programs and LCA programs.

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(d)(2).

There are no special circumstances that would require the information to be collected or kept in a manner that requires further explanation pursuant to the regulations set forth at 5 CFR 1320.5(d)(2).

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 will offer the public 60 days to comment on the proposed changes to this information collection via a notice included in the NPRM published in the *Federal Register*.

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

No payments or gifts will be made to respondents in exchange for the information provided through these information collection tools.

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

The documents provided are subject to the provisions of the Freedom of Information Act (FOIA) and, if requested, could be disclosed under that statute if not found to be exempt from disclosure under one of the nine FOIA exemptions.

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. § 552a), the information provided is protected under the Privacy Act.

The collection of data and information under this ICR are incorporated into the Department's System of Records Notice Foreign Labor Certification System and Employer Application Case Files, DOL/ETA-7. See 87 FR 8292. The categories of records in this collection include information such as the names and addresses of employers and their authorized attorneys and agents; employer-provided wage source documents and surveys. The laws authorizing this program and collection of information provides for compliance with the Privacy Act in all its aspects.

OFLC files associated with PWDs are retained for a period of five years after closure. OFLC digitizes or converts paper records into OFLC archive and scan database(s), which are destroyed once converted to an electronic medium and verified, or when no longer needed for legal or audit purposes in accordance with the records schedule. Paper copies of case files that are not scanned are retained on-site for six months from the date of the final determination and then transferred to the Federal Records Center for the duration of the five-year retention period.

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.

The information collections do not involve sensitive matters.

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

Based on recent program experience, the Department estimates it will receive each year approximately 21,459 prevailing wage requests for the H-2B program; 4,053 prevailing wage requests for the H-1B program; and 195,390 prevailing wage requests for the PERM program, totaling 220,902 requests.¹ The total estimated annual burden is 211,424.56 (211,425 rounded in ROCIS) hours. The estimated time reporting burden per Form ETA-9141 application is 0.78 hours, excluding appendix and recordkeeping requirements. While actions associated with the form collection vary depending on the nature and complexity of the employer's job opportunity, the estimated average hourly reporting burden includes those elements that are common to the majority of applications.

OMB Control Number 1205-0508	Estimated Burden Hours (for proposed form)
Form ETA-9141 and Appendix A	1 hour total ETA-9141: 0.78 hours Appendix A: 0.05 hours Recordkeeping: 0.17 hours

The hourly burden estimates provided below are separated by program and are based on filings submitted to the NPWC.

I. Form ETA-9141

A. H-2B PWDs

To recruit U.S. workers, an employer must first obtain a PWD from the Department prior to completing the H-2B application, which is Form ETA-9142B. 20 CFR 655.10(c). The regulations require employers to obtain the PWD by submitting a completed Form ETA-9141 to the NPWC. The Department receives an average of 21,459 H-2B prevailing wage requests each year. The Department estimates that employers will spend 0.78 hours preparing and submitting the Form ETA-9141 to the NPWC. The total annual burden estimate is 13,335.66 reporting hours (21,459 filings x 0.78 hours = 16,738.02 reporting hours).

An employer may request Center Director Review (CDR) or appeal PWDs issued by the NPWC for an H-2B job opportunity. The Department estimates that employers will submit an average of 73 CDR requests each year. The Department estimates it takes an employer 0.78 hours to prepare CDR requests. The Department estimates that employers will submit an average of zero prevailing wage appeals to the Department's Board of Alien Labor Certification Appeals each year. The Department estimates it takes an employer one hour to prepare an appeal. The annual burden estimate for H-2B CDR requests and H-2B appeals is 56.94 reporting hours ((73 CDR requests x 0.78 hours = 56.94 hours) + (0 appeal x 1 hour = 0 hour) = 56.94 hours).

¹ Unless otherwise stated, in all cases where DOL's estimates are averages, the averages are based on prevailing wage data for three FYs: 2021, 2022, and 2023.

B. Retention of H-2B PWD Supporting Documentation

The Department estimates that employers will spend about 0.17 hours per year per application to retain the application and required supporting documentation, as required in 20 CFR 655.10(j). This results in an annual burden estimate of 3,648.03 recordkeeping hours (21,459 applications x 0.17 hours = 3,648.03 hours).

Total Estimated Annual Burden Hours for the H-2B Program:

16,794.96	Form ETA-9141 reporting hours
+ 3,648.03	Form ETA-9141 recordkeeping hours
20,442.99	Total Hours

Total Estimated H-2B Responses (Applications): 21,459
Total Estimated H-2B Respondents (Filers): 9,696

C. H-1B, H-1B1, and E-3 (LCA) PWDs.

To complete the Form ETA-9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (OMB Control Number 1205-0310), an employer must determine the appropriate wage to pay the foreign worker. The regulations require employers to determine the appropriate wage prior to submitting the LCA. See 20 CFR 655.731(a)(2). Unlike the H-2B and PERM programs, in which the employer must obtain a PWD from the Department, under the Department's regulations at 20 CFR 655.731, an H-1B, H-1B1, or E-3 employer has the option of requesting a PWD from the NPWC using the Form ETA-9141, but may choose to rely instead on the wage information available through the Department's FLAG system or Online Wage Library, or another source of wage information meeting the requirements of 20 CFR 655.731. Obtaining a PWD from the Department, however, affords the employer safe harbor in the event of an investigation by WHD. Where the employer chooses to request a PWD from the NPWC using the Form ETA-9141, it will take the employer approximately 0.78 hours to complete and file the prevailing wage request with the NPWC using the Form ETA-9141. The Department receives an average of 4,053 prevailing wage requests each year with the NPWC using the Form ETA-9141. The annual burden estimate for H-1B PWDs is 3,161.34 reporting hours (4,053 filings x 0.78 hours = 3,161.34 hours).

An employer may request NPWC redetermination, CDR, or formal appeal of PWDs issued by the NPWC for an H-1B job opportunity. The Department estimates that employers will submit an average of 26 redetermination requests each year. The Department estimates it takes an employer 0.78 hours to prepare redetermination requests. The Department estimates that employers will submit an average of zero CDR requests each year. The Department estimates it takes an employer 0.78 hours to prepare CDR requests. The Department estimates that employers will submit an average of zero prevailing wage appeals each year. The Department estimates it takes an employer 1 hour to prepare an appeal. The annual burden estimate for H-1B redeterminations, CDR requests, and appeals is 20.28 reporting hours ((26 redetermination filings x 0.78 hours = 20.28 hours) + (0 CDR requests x 0.78 hours = 0 hours) + (0 appeals x 1 hour = 0 hour) = 20.28 hours).

D. Retention of LCA Supporting Documentation

The Department estimates that employers will spend about 0.17 hours per year per application to retain the documentation of its compliance with the required wage rate under 20 CFR 655.731, including, if applicable, the PWD and any required supporting documentation during the requisite retention period. This results in an annual burden estimate of 689.01 recordkeeping hours (4,053 filings applicants x 0.17 hours = 689.01 hours).²

Total estimated annual burden hours for the LCA Program:

3,181.62	Reporting hours
+ 689.01	Recordkeeping hours
3,926.83	Total hours

Total Estimated H-1B Responses (Applications):	4,053
Total Estimated H-1B Respondents (Filers):	1,285

E. PERM PWDs

To recruit U.S. workers and complete the Form ETA-9089, *Application for Permanent Employment Certification* (“Form ETA-9089”) (OMB Control Number 1205-0451), an employer must obtain the prevailing wage prior to filing the Form ETA-9089 by submitting the Form ETA-9141 to the NPWC and receiving a PWD. See 20 CFR 656.40. It is estimated that employers will spend 0.78 hours preparing and submitting the Form ETA-9141. The Department receives an average of 195,390 PERM program prevailing wage requests each year. The annual burden estimate for PERM PWDs is 152,404.20 reporting hours (195,390 x 0.78 hours = 152,404.20 hours).

An employer may request NPWC redetermination, CDR, or formal appeal of PWDs issued by the NPWC for a PERM job opportunity. The Department estimates that employers will submit an average of 617 redetermination requests each year. The Department estimates it takes an employer 0.78 hours to prepare redetermination requests. The Department estimates that employers will submit an average of 16 CDR requests each year. The Department estimates it takes an employer 0.78 hours to prepare CDR requests. The Department estimates that employers will submit an average of zero prevailing wage appeals each year. The Department estimates it takes an employer 1 hour to prepare an appeal. The annual burden estimate for PERM redeterminations, CDR requests, and appeals is 493.74 reporting hours ((617 redetermination filings x 0.78 hours = 481.26 hours) + (16 Center Director Review requests x 0.78 hours = 12.48 hours) + (0 appeals x 1 hour = 0 hour) = 493.74 hours).

F. Retention of PERM Supporting Documentation

The Department estimates that employers will spend about 0.17 hours per year per PERM application to retain a PWD application and required supporting documentation. This results in an

² While the retention requirement applies only when an LCA is filed (20 CFR 655.731 and 655.760(c)), the Department is being over-inclusive by including the recordkeeping burden on employers to retain the PWD as “documentation regarding its determination of the prevailing wage” for their LCA.

annual burden estimate of 33,216.30 recordkeeping hours (195,390 applications x 0.17 hours = 33,216.30 hours).³

Total time burden for the PERM Program:

135,192.16	Reporting hours
+ 29,340.13	<u>Recordkeeping hours</u>
164,532.29	Total hours

Total Estimated PERM Responses (Applications):	172,589
Total Estimated PERM Respondents (Filers):	40,060

G. Form ETA-9141, Appendix A

Some employers filing the Form ETA-9141 will also need to file an Appendix A, which employers use to identify additional worksites for which PWDs are requested. Across the labor certification and LCA programs, the Department estimates that approximately 8,156 employers will file approximately 19,934 PWDs requesting additional worksites, requiring the completion of Appendix A. The Department estimates that employers will spend an average of 0.05 hours preparing Appendix A for submission with Form ETA-9141 filings. The total annual burden estimate is 996.80 reporting hours (19,934 filings x 0.05 hours = 996.80 hours).

Total Annual Burden Hours for the Form ETA-9141, Appendix A:

996.80	Reporting hours
+ 0	<u>Recordkeeping hours</u>
996.80	Total Hours

H. Combined Form ETA-9141 Totals

Total Annual Burden Hours for the Form ETA-9141 and Form ETA-9141, Appendix A:

16,794.96	H-2B Form ETA-9141 reporting hours
3,181.62	LCA Form ETA-9141 reporting hours
152,897.94	PERM Form ETA-9141 reporting hours
996.80	Form ETA-9141, Appendix A reporting hours
3,648.03	H-2B Form ETA-9141 recordkeeping hours
689.01	LCA Form ETA-9141 recordkeeping hours
+ 33,216.30	<u>PERM Form ETA-9141 recordkeeping hours</u>
211,424.56	Total Hours

(rounded to 211,425 in ROCIS)

³ While the retention requirement derives from 20 CFR 656.10(f), which relates to the *Application for Permanent Employment Certification*, and not from 20 CFR 656.40, which relates to PWDs, the Department is being over-inclusive by including the recordkeeping burden on employers to retain the PWD as “supporting documentation” for their *Application for Permanent Employment Certification*.

IV. Time Burden Monetization

The Department receives PWD requests from employers operating across a wide spectrum of industry sectors in the U.S. economy. Salaries for employees who perform the reporting and recordkeeping functions required by this regulation may vary, including payment in hourly or annual rates, and may include instances where the corporate executive office of a large company performs some or all these functions itself. However, the Department believes that in most companies, a Human Resources Specialist will perform these activities. Thus, to calculate the full cost to the employer, we need to combine the mean hourly wage of human resource specialists with the benefits and other compensation received by such employees. The national mean hourly wage for a human resource specialist (SOC code 13-1071) is \$36.57.⁴ The average percentage of benefits in total is 41.5 percent.⁵ The total compensation is therefore \$51.75 ($\36.57×1.415) for a Human Resources Specialist. The Department estimates that a Human Resources Specialist will take time to complete and retain the forms and supporting documentation in the amount of 211,424.56 hours.

Tables of Estimated Burdens⁶

Information Collection Activity for ETA-9141 ⁷	Total Annual Respondents	Frequency ⁸	Total Annual Responses	Time Per Response (in hours)	Total Annual Burden (in hours)	Hourly Rate ⁹	Total Annual Cost (in dollars)
H-2B Filings	9,696	2.2132	21,459	0.78	16,738.02	\$51.75	\$866,193
H-2B Center Director Reviews	53	1.3776	73	0.78	56.94	\$51.75	\$2,947
H-2B Appeals	0	0.0000	0	1.00	0.00	\$51.75	\$0
H-2B Retention	9,696	2.2132	21,459	0.17	3,648.03	\$51.75	\$188,786
H-1B Filings	1,285	3.1541	4,053	0.78	3,161.34	\$51.75	\$163,599

⁴ *Occupational Employment and Wages, May 2023: 13-1701 Human Resources Specialist*, DOL, BLS, <https://www.bls.gov/oes/current/oes131071.htm>.

⁵ As the Department receives the overwhelming majority of its PWD requests from the private sector, ETA/OFLC determines the employer costs for employee compensation by using the figures for private industry workers. The average percentage benefits as a percentage of wages and salaries is determined by dividing the total employer costs for private industry workers (\$41.53) by the wages and salaries cost (\$29.34). Accordingly, $\$41.53 / \$29.34 = 1.415$, or 41.5%. See *Employer Costs for Employee Compensation – September 2023*, DOL, BLS, available at https://www.bls.gov/news.release/archives/ecec_12152023.pdf (Dec. 15, 2023).

⁶ For the burden estimates, the Department has used H-2B, H-1B, and PERM programs data averages for FYs 2021, 2022, and 2023.

⁷ The “Activity for ETA-9141” column and the burden estimates in the table reflect PWD activity by program. The data provided in the table is for PWD requests by program and does not include the filings of the subsequent LCAs or applications for temporary or permanent employment certification.

⁸ The Department derived the frequency by dividing the column for FY data for “Total Annual Responses” by the column for “Total Annual Respondents.” The data for the “Total Annual Responses” and “Total Annual Respondents” are averages from the prevailing wage program data for FYs 2021-2023. The frequency is displayed with three or more decimal places to retain the value of the calculation to the extent possible.

⁹ The Department believes that in most companies, a Human Resources Specialist 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 Specialist (\$36.57), as determined by the Department’s OEWS survey, and increased it by a factor of 1.415 to account for employee benefits and other compensation, for a total hourly cost of \$51.75. See *Occupational Employment and Wages, May 2023: 13-1701 Human Resources Specialist*, DOL, BLS, <https://www.bls.gov/oes/current/oes131071.htm>.

H-1B Redeterminations	15	1.7333	26	0.78	20.28	\$51.75	\$1,049
H-1B Center Director Reviews	0	0.0000	0	0.78	0.00	\$51.75	\$0
H-1B Appeals	0	0.0000	0	1.00	0.00	\$51.75	\$0
H-1B Retention	1,285	3.1541	4,053	0.17	689.01	\$51.75	\$35,656
PERM Filings	44,698	4.3713	195,390	0.78	152,404.20	\$51.75	\$7,886,917
PERM Redeterminations	446	1.3834	617	0.78	481.26	\$51.75	\$24,905
PERM Center Director Reviews	14	1.1429	16	0.78	12.48	\$51.75	\$646
PERM Appeals	0	0.0000	0	1.00	0.00	\$51.75	\$0.00
PERM Retention	44,698	4.3713	195,390	0.17	33,216.30	\$51.75	\$1,718,944
Form ETA-9141 Appendix A (for all programs)	8,156	2.4441	19,934	0.05	996.80	\$51.75	\$51,579
Unduplicated Totals	120,042	N/A	462,470	N/A	211,425 (rounded in ROCIS)	N/A	\$10,941,221¹⁰ (rounded in ROCIS)

NOTE: Although certain entries above are listed as having zero responses and zero burden hours, based on data from FY 2021 through FY 2023, these entries remain part of the information collection.

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).

a) Start-up/capital costs: There are no start-up costs. There is no obligation to own a computer to participate in the programs. Anyone without computer access can request the forms from OFLC. However, to participate in the programs, employers are required to generate records and retain them. The only necessary supplies needed to store and maintain the records are filing cabinets and filing folders. The Department estimates that the initial cost to employers to store and maintain records is minimal because it is a customary and usual business practice for businesses to have storage space.

b) Annual costs: There are no annual costs involved with operation and maintenance because ETA will be responsible for the annual maintenance costs for the free downloadable forms and the web-based data collection and reporting system. However, there are circumstances that may require H-2B employers to expend funds beyond their normal and usual business expenses if they choose to commission a private wage survey. ETA estimates that the average annual cost of commissioning such surveys is \$191,769.26 (rounded to \$191,769), which is a reduction of \$22,183.78 (\$213,953.04 (previous cost from last Supporting Statement) - \$191, 769.26).

Form ETA-9165 Survey Costs

As the Department will require submission of the survey instrument for H-2B employers requesting a survey wage, employers who choose to commission private wage surveys will incur costs. The cost

¹⁰ The Department's estimated total cost is \$10,941,221. The change reflects estimates based on the average of prevailing wage data for FYs 2021, 2022, and 2023.

associated with a wage survey conducted by a third party can vary widely and will depend on various factors, such as the scope of the survey, the methodology used, the number of respondents, and the nature of the sample. The Department estimates that it would take a management specialist (SOC code 11-0000) 8 hours to review the survey. At the mean hourly rate of \$66.23,¹¹ and accounting for benefits averaging 41.5 percent of total employee compensation,¹² the total estimated compensation is \$93.72 per hour to review the survey (66.237×1.415).

The Department estimates that it would take a survey researcher (SOC code 19-3022) a total of 40 hours at \$45.35 per hour ($\$32.05 \text{ per hour} \times 1.415$) to randomly select at least 3 employers and 30 employees (8 hours), collect their wage data (16 hours), calculate the hourly average wage (8 hours), and write a report and provide it to the employer (8 hours). Therefore, the cost for a wage survey is estimated at \$2,563.76 ($(\$93.72 \times 8) + (\$45.35 \times 40)$). The Department's estimate also adds 10 percent to \$2,563.762 to account for a profit for the third-party surveyor. The estimated cost of conducting a wage survey is \$2,820.136 ($\$2,563.762 \times 1.1$). Because surveys can be valid for two years and some employers will use state-produced surveys, the Department estimates that one-third (0.333) of the 205 employers that previously filed the Form ETA-9165, or 68 employers ($205 \times 0.333 = 68.27$) will conduct a private wage survey by a third-party each year that is valid for two years. The cost to employers is estimated to be \$191,769.26 ($\$2,820.1362 \times 68$).

Previously, the Department anticipated costs that the employer would need to request information from surveyors to complete the Form ETA-9165. As the Form ETA-9165 is being eliminated in favor of submission of the survey instrument at the time of filing of the Form ETA-9141, this cost, which in the previous information collection, was \$6,808.56, has been eliminated.

The total cost for the survey process is estimated to be \$191,768.84 (or \$191,769, rounded).

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.

The Department estimates that the annual costs to administer the PWD program are \$5,578,740. Federal administrative costs include IT systems that support application filing and case processing operations, rent, supplies, equipment, and agency indirect costs, which include support for human resources, financial and administrative oversight, and grants and contracts management. Based on past obligations and expenditures, the table below provides a detailed breakdown of the annualized costs associated with federal administration of the PWD program by major cost category.

Major Cost Category	Cost Activities	Annualized Costs
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¹¹ Occupational Employment and Wages, May 2023: 11-0000 Management Occupations, DOL, BLS, <https://www.bls.gov/oes/current/oes110000.htm>.

¹² See Employer Costs for Employee Compensation – September 2023, DOL, BLS, available at https://www.bls.gov/news.release/archives/ecec_12152023.pdf (Dec. 15, 2023).

		(estimated)
Contracts for Services (not technology related)	▪ Mail, data entry, and other clerical support services; ▪ Case processing and administrative support for operations	\$174,060
Technology Contracts for Services (O&M)	▪ Application development services & network infrastructure support ▪ Hardware & software updates	\$1,552,735
GSA & DHS Services	▪ Rent payments for office space ▪ Security services	\$248,934
DOL Working Capital Assessment	▪ Indirect costs associated with ETA and DOL administrative and executive management services	\$3,586,281
Supplies & Equipment	▪ General office supplies ▪ Computers, printers, and other office related equipment	\$3,689
Mail & Telecommunications	▪ Mail or overnight delivery services ▪ Phone and other telecommunication related charges	\$0
Other Costs ¹³	▪ Travel ▪ Printing and other Government Agency Services	\$13,041
TOTAL COSTS - FEDERAL ADMINISTRATION		\$5,578,740

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

The total number of responses, burden hours, and monetized costs associated with all collections under this ICR differ from previous estimates. The answer provided in A.12 provides more information regarding this burden increase. The chart below shows the changes being requested under this ICR. All estimates have been rounded up to the nearest dollar.

OMB Control Number (1205-0508)	Previous Estimates	Current Estimates	Change
Annual Responses	331,339	462,470	+ 131,131
Burden Hours	148,628	211,425	+ 62,797
Cost of Time	\$12,649,760	\$10,941,221	- \$1,708,539

The estimated number of annual responses and burden hours associated with this ICR have increased from previous estimates. The annual responses increased by 131,131, an increase of 39.5% between 2022 and 2024. To estimate the annual burden hours more accurately under this ICR, the Department utilized a three-year average of the total number of respondents that file the Form ETA-9141 during the three precedent FYs (211,425, compared to the previous estimate of 148,628 during the last renewal cycle). The burden hours increased by 62,797, an increase of 42.3% between 2022 and 2024. The Department's

¹³ Based on direct NPWC obligations and a pro-rated portion of OFLC shared and support costs.

estimated total monetized cost has been reduced to \$1,708,539. The change reflects estimates based on the average of prevailing wage data for FYs 2021, 2022, and 2023. This monetized cost decreased by \$1,708,539, a decrease of 13.5% from the previous ICR submission using data from FYs 2019, 2020, and 2021. This significant change in the overall cost of time is explained below.

Although the number of responses and burden hours substantially increased, OFLC decided to standardize its ICs, as the job duties required for the burdens identified in the IC more appropriately fall under the Standard Occupational Classification (SOC) Code 13-1071, Human Resources (HR) Specialist, rather than SOC Code 11-3121, HR Manager. As the difference in the mean hourly wages between the two occupations is substantial, the change in the hourly rate between the two occupations has resulted in a substantial decrease in total burden costs compared to previous years, despite the hourly program burdens increasing over the years, as it is entirely based on the volume of program applications. In addition, ETA is also standardizing the applicable benefits factor that applies for its ICs. The benefits factor is determined by dividing the most recent BLS Employer Costs for Employee Compensation (ECEC) by the wages and salary costs for a worker population. BLS provides three ECEC rates based on the worker population: (1) civilian workers; (2) private sector workers; and (3) state and local (*i.e.*, certain public sector) workers. OFLC has determined that the private sector worker ECEC is correct, as the burdens listed in A.12 being performed by HR Specialists are almost exclusively performed by employers in the private sector. Accordingly, as it relates to this rulemaking, the ECEC has been adjusted in our calculations. (*See* Section A.12 above.) Accordingly, for this PRA package, as explained above, the hourly rate changed from \$85.11 in the previous Supporting Statement for HR Directors to the new rate of \$51.75 for HR Specialists. This reduction in the hourly rate of \$33.36 (\$85.11 - \$51.75) per burden hour for human resources activities is responsible for the substantial decrease in total burden costs, which is reduced \$1,708,539, despite the increase in responses and burden hours, under this IC. ETA will ensure that the HR Specialist SOC is the basis for calculating all of its future burden costs in all future ICs requiring human resources functions.

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.

OFLC discloses information about employer applicants to the public through its website at <https://www.dol.gov/agencies/eta/foreign-labor>. Information provided in PWD applications, including determinations, the employer's name and address, work locations, occupation, and the PWD issued by the Department, is publicly accessible in easy-to-download Microsoft Excel formats on the OFLC website.

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.

The Department will display the expiration date for OMB approval.

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

The Department is not seeking any exception to the certification requirements.

B. Collection of Information Employing Statistical Methods

This information collection does not employ statistical methods.