

Title: Employment Information Form
OMB Control Number 1235-0021
OMB Expiration Date: January 31, 2027

SUPPORTING STATEMENT FOR EMPLOYMENT INFORMATION FORM

OMB CONTROL NO. 1235-0021 (Forms WH-3 and WH-3 Sp)

This ICR is being submitted as a revision. This revision proposes to add a Wage and Hour Division (WHD) contact form to this collection to better streamline Department responsiveness to child labor issues. Should this new contact form be approved, it would replace any existing contact form on the WHD website.

A. Justification

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

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

Other Federal laws WHD administers provide similar authority. These Acts include the Walsh-Healey Public Contracts Act (41 U.S.C. 38); McNamara-O'Hara Service Contract Act (41 U.S.C. 6707(a)); Davis-Bacon and Related Acts (40 U.S.C. 3141 *et seq.*, pursuant to Reorganization Plan No. 14 of 1950); Consumer Credit Protection Act (15 U.S.C. 1676); Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1862(a)); Employee Polygraph Protection Act (29 U.S.C. 2004(a)(3)); Family and Medical Leave Act (29 U.S.C. 2616(a)); Immigration and Nationality Act H-2A program (8 U.S.C. 1188(g)); the Immigration and Nationality Act H-2B program (8 U.S.C. 1184(c)(14)(B) and the Immigration and Nationality Act H-1C program (8 U.S.C. 1182(m)(2)(E)(ii)). The regulatory provisions authorizing the filing of complaints under these laws and how the agency acts upon the concerns can be found at 29 CFR 4.191, 5.6, 10.41, 500.1(e), 501.1(c), 501.6, 801.7(a)(3), 825.401; 41 CFR 50-201.1202; and 20 CFR 655.1200(b). The Department also takes complaints and enforces regulations promulgated in relation to Executive Order 13658, Establishing a Minimum Wage for Federal Contractors (see 29 CFR part 10) and Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors (see 29 CFR part 13). The Department also takes complaints and enforces regulations promulgated in relation to Executive Order 14026 "Increasing the Minimum Wage for Federal Contractors" (see 29 CFR part 23). The Department also takes complaints in relation to EO 14055, "Nondisplacement of Qualified Workers Under Service Contracts" (See 29 CFR part 9).

Title: Employment Information Form
OMB Control Number 1235-0021
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In FY 2023, WHD concluded 955 investigations that found child labor violations, a 14% increase from the previous year. WHD found nearly 5,800 children employed in violation of the law, an 88% increase since 2019, and assessed more than \$8 million in penalties, an 83% increase from the previous year. At WHD, safeguarding children at work has always been our top priority. WHD investigations found a significant increase in children being employed illegally and in 2023 launched a National Strategic Enforcement Initiative on Child Labor to put additional emphasis on addressing this critical issue. As part of this initiative, the Department has designed a WHD contact form to better respond to potential child labor issues and potential complaints. This revision proposes to implement the contact form to better streamline Department responsiveness to child labor issues. This contact form will replace any existing contact form on the WHD website.

WHD has prepared a new landing page, a general inquiry form with an option specific to child labor. The respondent will only submit one response as if they click child labor on the general inquiry form, the child labor form will appear.

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

WHD staff use Form WH-3 as a guide for obtaining optional information from complainants (e.g., current and former employees, unions, and competitor employers) about alleged employer violations of the labor standards provisions of the above-cited Acts. Complainants generally provide the optional information requested on the form to WHD staff over the telephone or in-person. Where the information provided does not support a potential WHD enforcement action, complainants are advised and referred to the appropriate agency, if any, for further assistance. When WHD schedules a complaint-based investigation, the agency makes the completed Form WH-3 part of the investigation case file. The form is printed in both English and Spanish.

The contact form is used by members of the public to contact the WHD online. From April 3, 2023 to April 3, 2024, WHD has received 106,793 submissions. The information is used to contact the respondent by phone to assist them in the WHD-related concerns. The submission is assigned to the district office closest to the respondent for telephone response.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The Department has considered developing an automated complaint system or making Form WH-3 available on the Internet and has determined it would have a negative effect on WHD's ability to provide quality, timely service to potential complainants and would be impractical to implement. The ability to screen complaints during the intake process is critical to effectively meeting the potential complainants' needs. Experience shows that well over half of the potential complainants contacting WHD complain of problems that WHD cannot resolve for a variety of

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OMB Control Number 1235-0021
OMB Expiration Date: January 31, 2027

reasons. These reasons include lack of a Federal Wage Hour law covering the complaint, an employer not covered by Federal Wage Hour laws, an employee exempt from otherwise applicable Wage Hour law provisions, violation(s) past the statute of limitations for WHD action, or because the issues involved are better serviced by another Federal or state agency.

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

The contact form will be provided online. Responses by the agency will generally be by telephone or by email if they cannot be contacted via telephone.

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

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

The contact form does request duplicate information from the complaint form, however, only WHD staff has access to the complaint form so any information collected on the contact form would not have to be repeated to WHD staff should it be determined that the respondent has a valid complaint to file. The respondent would only need to submit the information one time.

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

This information collection does not have a significant economic impact on a substantial number of small entities. Form WH-3 provides an easy way for WHD to obtain the information necessary to determine whether it is likely that a violation of the law has occurred and to schedule an investigation.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Title: Employment Information Form
OMB Control Number 1235-0021
OMB Expiration Date: January 31, 2027

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

The contact form information originates with the respondent when they need assistance from the agency.

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

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

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

There are no special circumstances involved in this information collection with respect to the contact form.

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.

Title: Employment Information Form
OMB Control Number 1235-0021
OMB Expiration Date: January 31, 2027

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record-keeping, disclosure, or reporting format (of any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On June 27, 2024, the Department published a Notice in the Federal Register proposing this revision and inviting public comments for a period of 60 days (89 FR 53656). No comments were received.

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

The Department offers no payments or gifts to respondents.

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

The Department gives an assurance of confidentiality on the WH-3 form, which provides that the agency will keep the respondent's identity confidential to the maximum extent possible under existing law. Information gathered during the course of an investigation of a complaint is disclosed only in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; and attendant regulations, 29 CFR parts 70 and 71. The FOIA provides an exemption from its disclosure requirements for records or information compiled for law enforcement purposes to the extent that release of the information could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis. 5 U.S.C. 552(b)(7)(D).

The Department provides no assurance of confidentiality with respect to the contact form. However, information gathered is generally disclosed only in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; and attendant regulations, 29 CFR parts 70 and 71.

11.Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

These information collections ask no sensitive questions.

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

Title: Employment Information Form
OMB Control Number 1235-0021
OMB Expiration Date: January 31, 2027

Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.

The current approved collection notes WHD received 27,010 complaints via the WH-3 form and contains 9,003 burden hours previously approved for this collection. This calculation is:

Respondents: 27,010

Responses: 27,010

Burden Hours: $27,010 \times 20 \text{ minutes each} = 540,200 \text{ minutes} \div 60 \text{ min per hour} = 9,003 \text{ hours}$

With this revision, the Department is making no changes to the WH-3 complaint form collection instrument. Rather, the Department is adding the Contact Us form to the WHD webpages to better respond to child labor complaints. WHD is adding burdens associated with the Contact Us forms.

Any member of the public may use/submit the Contact Us form. From April 3, 2023 to April 3, 2024, the Department received 106,793 Contact Us form submissions for WHD. The Department approximates that it takes ten minutes to complete and submit the Contact Us form.

$106,793 \times 10 \text{ minutes each} = 1,067,930 \text{ minutes}$

$1,067,930 \text{ minutes} \div 60 \text{ minutes per hour} = 17,798.83 \text{ burden hours (17,799 rounded)}$

Total Respondents and Responses: 27,010 complaints + 106,793 Contact Us forms = 133,803 Respondents providing one Response each.

Total burden hours: 9,003 hours for complaints + 17,799 hours Contact Us form = 26,802 burden hours.

13. Provide an estimate for the total annual cost burden to respondents or record-keepers resulting from the collection of information (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a**

total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

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

If a complainant calls WHD, WHD orally obtains the relevant information from the complainant and fills out the Form WH-3. If a complainant emails or writes in, a WHD staff member calls the complainant to complete the Form WH-3. *See* Item 12. Because WHD completes the WH-3 form based on oral communications with complainants, there are no mailing or form-completion costs to respondents.

The WHD contact form is online so there are no mailing costs for the respondent.

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 associates no Federal costs with this collection.

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

Title: Employment Information Form
OMB Control Number 1235-0021
OMB Expiration Date: January 31, 2027

The Department estimates an increase in burden due to the addition of contact forms.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The Department does not publish the results of this information collection.

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

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

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

The Department is not requesting an exception to any of the certification requirements for this information collection.

B. Employing Statistical Methods

Statistical methods are not used in this collection of information.