SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL UNDER THE PAPERWORK REDUCTION ACT OF 1995: 1205-0310

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A. Justification

A.1 Circumstances Necessitating Data Collection

The Employment and Training Administration (ETA) and the Wage Hour Division (WHD) of the Department of Labor (Department) are responsible for administering the H-1B, H-1B1, and E-3 programs which provide for the filing and enforcement of labor condition applications by employers who seek to use foreign workers in specialty occupations and as fashion models of distinguished merit and ability.

Under the Immigration and Nationality Act (INA) an employer seeking to employ a temporary foreign worker in a specialty occupation on an H-1B, H-1B1, or E-3 visa or as a fashion model of distinguished merit and ability on an H-1B visa is required to file a labor condition application (LCA) with the Department and receive certification from the Department as the first step in the visa process. The LCA process is administered by ETA; complaints and investigations about labor condition applications are the responsibility of the WHD. 8 U.S.C. §§ 1101(a)(15)(H)(I)(B), 1101(a)(15)(H)(i)(B)(1), 1101(a)(15)(E)(iii), 1182(n) and (t), 1184(c).

As a result of recommendations from both the Government Accountability Office (GAO) and the Department's Office of the Inspector General (OIG), the Department seeks to revise the scope of information collected in the context of H-1B, H-1B1 and E-3 applications in order to enhance its integrity review for obvious errors, omissions and inaccuracies under 20 CFR 655.730(b). The revised collection will allow the Department to improve its integrity review and ensure the accuracy and completeness of the information.

Specifically, the INA requires that an employer desiring to import a foreign worker in the H-1B, H-1B1, and E-3 category submit certain information, including information about the occupation, to the Secretary of Labor. The INA also requires the Secretary to provide a form that will include clear statements explaining the employer's liability under the law. Therefore, information collected such as prevailing and actual wages and strike or lockout conditions are dictated by statute at 8 U.S.C. § 1182(n) and (t). Other information collected is required to comply with the enforcement provisions of the same statutes such as willful violations and H-1B dependency. Other information is required by regulation, such as whether the employment is full-time or part-time and the start and end dates of employment. Moreover, program experience has shown that the information collected in the past has been insufficient for enforcement purposes. Therefore, based on the

Department's own program experience and that of the Departments of Homeland Security and State, DOL has amended the form to include more specific information about the workers that will be employed pursuant to a particular LCA. Linking a particular LCA to a set of foreign workers may create more burden hours; however, the collection of this information appears to be necessary to prevent the abuse of that LCA.

The Department also seeks to collect additional information to cure operational issues that are better served by this frequency and level of data collection. Collecting the new information regarding the intended beneficiaries, for example, will enable better tracking of the LCA through the petition process for both employer and the agencies charged with its oversight, and will allow the Departments of Labor and Homeland Security to exchange the LCA in a secure environment. The additional information will also more effectively ensure compliance with the employer's obligations contained in the LCA. The Department will be able to more efficiently gather information during its enforcement activities to reconstruct the necessary beneficiary information. This information will also enable the Department to find other beneficiaries who may be entitled to back wages or other remuneration after an investigation. The statutory timeframe of 7 days for completion of an LCA certification negates the need for employers to obtain LCAs for hundreds of workers to be named in the future. Employers also benefit from this revised collection, as it will enable employers to obtain more benefit from a full three-year LCA filed and approved more closely in time to a petition for a new or existing worker.

A. Labor Condition Application (LCA) -- 20 CFR §§ 655.700, 655.705, 655.720, 655.730, 655.731, 655.732, 655.733, 655.734, and 655.760

The process of employing a foreign worker under an H-1B visa begins with a requirement that employers file an LCA (Form ETA 9035) with the Department. In this application the employer is required to attest that: (1) it will pay foreign workers prevailing wages or actual wages whichever are greater (including, pursuant to the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), the requirement to pay for certain nonproductive time), and to provide benefits on the same basis as they are provided to U. S. workers; (2) it will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed; (3) there is no strike or lockout at the place of employment; and (4) it has publicly notified the bargaining representative or, if there is no bargaining representative, the employees, by posting at the place of employment or by electronic notification the information contained in the LCA, and will provide copies of the LCA to each nonimmigrant employed under the LCA. In addition, the employer must provide the information required on the application about nonimmigrant workers sought, the occupational classification, the wage rate, the prevailing wage rate and the source of the wage rate, and the period of employment so that the Secretary of Labor (Secretary) can meet her statutory obligations. Under the INA, additional recruitment and non-displacement

requirements are applicable to H-1B-dependent employers and those who have been found to have committed certain willful violations.

B. Documentation of Job Opportunity Information including Nonimmigrant Worker Information -- 20 CFR § 655.760

Under 20 CFR § 655.700 an employer may seek entry into the U.S. of nonimmigrant professionals in specialty occupations after the filing of a labor attestation with the Department of Labor. An LCA may be filed for multiple positions and multiple workers in a single named occupation. Employers are required to maintain documentation in public access files supporting their LCAs. In accordance with 20 CFR § 655.760, the documentation must be kept either at the employer's principal place of business in the U.S. or at the place of employment for a period of one year beyond the last date on which any H-1B, H-1B1 or E-3 nonimmigrant is employed under the LCA. The collection of certain job opportunity information enables the Department to enhance integrity review efforts between LCA applications and the Department's PERM program applications, a majority of which are filed on behalf of H-1B visa holders.

C. Documentation of Employer Labor Condition Statements—20 CFR § §655.731, 655.732, 655.733, 655.734

An H-1B employer must attest and agree to four Labor Condition Statements about wages, working conditions, no strike or lockout and notice. The employer must attest that: nonimmigrant workers will be paid the required wage rate that is the higher of the prevailing wage or the employer's actual wage paid to similarly employed U.S. workers; working conditions for nonimmigrant workers will not adversely affect the working conditions of similarly employed U.S workers; there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and the employer has provided and will provide notice of filing of the LCA and maintain such notice in its public access file

D. Documentation of Corporate Identity -- 20 CFR § 655.760

The regulation at 20 CFR § 655.760 provides that a new LCA is not required merely because a corporate reorganization results in a change of corporate identity, regardless of whether there is a change in the Federal Employer Identification Number (FEIN) and regardless of whether the Internal Revenue Service (IRS) definition of single employer is satisfied, provided that the successor entity, before the continued employment of the nonimmigrant, agrees to assume the predecessor entity's obligations and liabilities under the LCA. The agreement to comply with the LCA for the future and to any liability of the predecessor under the LCA must be documented with a sworn statement in the public access file.

E. Determination of H-1B Dependency -- 20 CFR § 655.736

An H-1B employer must calculate the ratio between the number of H-1B workers it employs and the number of full-time equivalent employees (FTEs) to determine whether it meets the statutory definition of an H-1B-dependent employer unless it is readily apparent that the employer is H-1B-dependent. (8 U.S.C. § 1182(n)(3)(A).) All employers must keep copies of the I-129 petitions or requests for extension of status filed with the U.S. Citizenship and Immigration Service (USCIS). Additional documentation is required only in limited circumstances.

The regulations at 20 CFR § 655.736(c)(2) permit employers to use a snapshot test to determine if dependency status is readily apparent and requires a full computation only if the number of H-1B workers exceeds 15 percent of the total number of full-time workers of the employer. If the employer is unable to use a snapshot test due to the nature of its business, the employer performs a full calculation of H-1B dependency status. In such instances, which are believed to occur infrequently, the employer must retain a copy of the full computation under the regulations. The employer must maintain the documentation of the full computation if the employer changes status from H-1B-dependent to non-dependent. If the employer uses the Internal Revenue Service Code's single-employer test to determine dependency, it must maintain records documenting what entities are included in the single employer, as well as the computation performed, showing the number of workers employed by each entity that is included in the calculation. Information collected about the approximate number of H-1B nonimmigrant workers in the U.S. and the approximate number of total U.S. workforce, should already exist in the records kept by the employer when the H-1B dependency determination is made.

F. List of Exempt H-1B Employees in Public Access File -- 20 CFR § 655.737(e)(1)

Employers must include in their public access file a list of the H-1B nonimmigrant workers employed under an LCA, which the employer has attested will be used only for exempt H-1B nonimmigrant workers. H-1B nonimmigrant workers are considered exempt from H-1B dependency calculations and willful violator status if the H-1B worker possesses a Master's Degree or higher or the worker will earn $60,000 or more in annual wages.

G. Record of Assurance of Non-displacement of U.S Workers at Second Employer's Worksite -- 20 CFR § 655.738(e)

The INA at 8 U.S.C § 1182(n)(1)(F)(ii) generally prohibits an H-1B-dependent employer from placing an H-1B nonimmigrant with another employer unless it has first inquired as to whether the other employer will displace a U.S. worker. The regulations require an employer seeking to place an H-1B nonimmigrant with another employer to secure and retain either a written assurance from the second

employer, a contemporaneous written record of the second employer's oral statements regarding non-displacement, or a prohibition in the contract between the H-1B employer and the second employer. The collection asks the employer whether placement is with a secondary employer and, if so, the name of the secondary employer's business.

H. Offers of Employment to Displaced U.S. Workers -- 20 CFR § 655.738(e)

The INA at 8 U.S.C. § 1182(n)(1)(E) prohibits H-1B-dependent employers and willful violators from hiring an H-1B nonimmigrant if their doing so would displace a U.S. worker form an essentially equivalent job in the same area of employment. The regulations under 20 CFR § 655.738(e) require H-1B-dependent employers to keep certain documentation with respect to each former worker in the same locality and same occupation as any H-1B worker, who left its employ 90 days before or after an employer's petition for an H-1B worker. For all such employees, the Department requires that covered H-1B employers maintain the name, last-known mailing address, occupational title and job description, and any documentation concerning the employee's experience and qualifications, and principal assignments. Further, the employer is required to keep all documents concerning the departure of such employees and the terms of any offers of similar employment to such U.S. workers and responses to those offers. These records are necessary for the Department to determine whether the H-1B employer has displaced similar U.S. workers with H-1B nonimmigrants and are already required, for the most part, by Equal Employment Opportunity Commission (EEOC) regulations.

The Department does not require employers to create any documents other than basic payroll information, with one exception. If the employer offers the U.S. worker another employment opportunity, but does not so in writing the employer must, under 20 CFR 655.738(e)(1), document and retain the offer and the response to such an offer.

I. Documentation of U.S Worker Recruitment -- 20 CFR § 655.739(i)

Under 8 U.S.C. § 1182(n)(1)(G), H-1B-dependent employers must make good faith efforts to recruit U.S. workers before hiring H-1B workers. Under 20 CFR § 655.739(i), H-1B-dependent employers must retain documentation of the recruiting methods used, including the places and dates of the advertisements and postings or other recruitment methods used, the content of the advertisements or postings, and the compensation terms. In addition, the employer must retain any documentation about its consideration of applications of U.S. workers, such as copies of applications and related documents, rating forms, job offers, etc. This documentation is necessary for the Department to determine whether the employer has made a good faith effort to recruit U.S. workers and for the public to be aware of the recruiting methods used. Retention of the records about consideration of applications from U.S. workers is already required by EEOC regulations.

Employers have a choice of whether to keep actual recruitment documents such as advertisements and postings or to draft and retain a list of all the recruitment activities performed and the date and place it was published or posted. The summary or copies of the actual recruitment must be placed in the public access file. The Department does not collect or require documentation from the employer about recruitment efforts unless it has reason to investigate the employer.

J. Documentation of Fringe Benefits -- 20 CFR § 655.731(b)

Under 8 U.S.C. § 1182(n)(2)(C)(viii), all employers of H-1B, H-1B1, and E-3 nonimmigrants must offer benefits to these workers on the same basis and under the same terms as offered to similarly employed U.S. workers. Under 20 CFR § 655.731(b), employers must retain copies of all fringe benefit plans and any summary plan descriptions, including all rules on eligibility and benefits, evidence of what benefits are actually provided to individual workers and how costs are shared between employers and employees. The public access file must contain a summary of the benefits offered, usually set forth in the employee handbook or summary plan description. If the employer is providing home country benefits, the public access file need only contain a notation to that effect. These records are necessary for the Department to determine whether the nonimmigrant is offered the same fringe benefits as similarly employed U.S. workers.

K. Wage Record Keeping Requirements Applicable to Employers of H-1B Nonimmigrants -- 20 CFR § 655.731

As part of the LCA, the employer attests that it will pay the required wage rate to the nonimmigrants for the entire period of authorized employment of the H-1B, H-1B1, or E-3 nonimmigrants,; that is, that the wage paid is the greater of the actual wage rate or the prevailing wage, as defined in 20 CFR § 655.731(a).

The regulations require all H-1B, H-1B1, and E-3 employers to document the basis used to establish the actual wages for their U.S. workers and how it relates to the H-1B nonimmigrant's wage and to keep payroll records for workers that are not exempt under the Fair Labor Standards Act (FLSA), whether nonimmigrant workers or employees for the specific employment in question.

Employers must keep records of the hours worked for employees not paid on a salary basis and for part-time nonimmigrant workers, regardless of how they are paid. The only additional recordkeeping burden over and above those required by the FLSA, and approved under OMB Approval No. 1215-0017, is for keeping records of hours worked by part-time, salaried nonimmigrant workers who are exempt from FLSA.

L. Nonimmigrant Worker Information Form (WH-4)

ACWIA amended the INA to require the Department to develop a procedure so that any individual can provide information alleging H-1B program violations in writing on a form developed by the Department. 8 U.S.C. § 1182(n)(2)(G)(iii). Later INA amendments applied the same requirement to the H-1B1, and E-3 visa programs. The Department uses Form WH-4 to meet the statutory requirement. 8 U.S.C. § 1182(t)(3)(A).

A.2 How, by Whom, and For What Purpose the Information is to be Used

The INA provides that unless an LCA is incomplete or appears obviously inaccurate on its face, the Secretary must certify the application and return it to the employer within 7 working days. The INA further requires the Department to make available for public examination on a current basis a list (by employer and by occupational classification) of LCAs filed by employers. The records and information supporting the LCA attestations are reviewed by the WHD to determine employer compliance. The public access file is required by the INA so that the public has access to information to file complaints about violations.

Form WH-4 is an optional form anyone may use to allege violations of the INA provisions enforced by the Wage and Hour Division (WHD) of the U.S. Department of Labor. WHD uses the information listed on the form in deciding whether to commence an investigation of the employer.

A.3 Use of Technology to Reduce Burden

The Department now mandates all employers, except those with disabilities or lack of internet access (but only upon prior approval), to use its iCERT System which permits employers to fill out their LCAs via the Department's Web site and submit them electronically to the ETA. The iCert System is convenient and less burdensome for employers since, unlike the previous system based on filing applications by FAX or by mail, the new system allows the filing of an application without the submission of a hard copy version. As the scope of the Department's review of LCAs under §§ 212(n)(1)(G) and 212(t)(2)(C) of the INA is limited to completeness and obvious inaccuracies, the filing and processing of LCAs is particularly amenable to an electronic filing system.

The LCA form is available at (http://icert.doleta.gov/) and can be accessed by employers to electronically fill out and submit the Form ETA 9035E (the electronic version of the Form ETA 9035). The Web site includes detailed instructions, prompts and checks to help employers fill out the form. This process is designed to help ensure that employers enter the H-1B, H-1B1, or E-3 program based on accurate LCA information and with explicit, immediate notice of the obligations.

Additionally, the Department's Web site provides an option to permit employers that frequently file LCAs to set up secure files within the ETA electronic filing system containing information which is common to any LCA they may wish to file. Under this option, each time an employer files an LCA, the information common to all its LCAs would be entered automatically by the electronic filing system and the employer would only have to enter the data specific to the new LCA it wishes to file.

In compliance with the Government Paperwork Elimination Act (GPEA), WHD makes Form WH-4 available on its Web site at http://www.dol.gov/whd/forms/wh-4.pdf . The Department previously considered also developing an automated complaint system and determined it would have a negative effect on the ability of WHD to provide quality, timely service to potential complainants and be impractical to implement.

As a general matter, the ability to screen complaints during the intake process is critical to effectively meeting the potential complainants' needs. Long experience has shown that well over half of the potential complainants contacting WHD complain of problems that the agency cannot resolve for a variety of reasons. Specifically with respect to this information collection, it is necessary that WHD be able to assure that complaints under the H-1B and related programs are within the agency's authority to investigate. For this purpose, WHD must determine if the complainant is an aggrieved party, and if so, whether there is reason to believe that a violation has occurred. If the complainant is not an aggrieved party, WHD must determine whether the person likely has knowledge of the employer's practices, whether the information submitted is credible, and whether there is reason to believe that the employer has committed a violation that meets the specific INA criteria. Complainants are typically not familiar with the nuances of the INA or with the specific requirements that must be satisfied. Consequently, it is important that Form WH-4 be completed with the assistance of WHD staff, so the complainant provides the information necessary for WHD to determine whether the complaint can be investigated. Furthermore, if WHD staff speaks to the complainant before he or she completes Form WH-4, WHD will frequently be able to determine immediately whether the matter that is the subject of the alleged complaint is not within the enforcement jurisdiction of WHD and the agency may make a referral as appropriate. Otherwise, the public will submit information in many situations where the enforcement program staff can provide no assistance. Thus allowing for electronic submission would create unnecessary burdens and increase the total burden hours imposed on the public, as in many cases insufficient information could be provided, and WHD would then need to contact the complainant to obtain additional information. In other instances, information could be provided unnecessarily if WHD lacks jurisdiction or an actionable cause to address a particular complaint. Therefore we have determined that it would be poor customer service and inefficient use of public time, inconsistent with GPEA principles, to allow for the submission of insufficient information, or unactionable complaints.

A.4 Efforts to Identify Duplication

The information required on the LCA is not available to the Department from any other source. The more efficient electronic processing with the Department will substantially reduce or eliminate the duplicate filings of LCAs by employers.

Many of the records required to be kept by the regulations are also required under the Fair Labor Standards Act, administered by WHD, and by the EEOC, Employment Benefits Security Administration and the Internal Revenue Service. In order not to duplicate burden, the Department accepts applicable records normally maintained for other purposes to document compliance during an investigation conducted under the H-1B and related programs.

A.5 Methods to Minimize Burden on Small Businesses

The burden on small business concerns is minimal.

A.6 Consequences of Less Frequent Data Collection

Employers choose how frequently they apply for benefits. The data must be collected in support of each LCA to support the petition under which an H-1B, H-1B1 or E-3 worker is sought.

A.7 Special Circumstances for Data Collection

The Department is proposing changes to this collection. The Department has determined that additional information is required to be collected through the ETA Form 9035. This enhanced data collection will allow the Department to better track the usage of LCAs, to ensure the integrity of the data collection, and to better inform the public of the H-1B employment. The Department has determined that this data is necessary for the full administration of the program and will reduce cost to both the Department and its sister agencies, by enabling more efficient operations both in processing the applications and in enforcing the obligations, as explained in detail below.

Previous Section #	**New Section #**	**Information Sought**	**Change**
Preamble	Preamble	Attestation for electronic filing	None
A.1	A.1	Type of visa	None
B.1	B.1	Job title	None

B.2	B.2	SOC code	None
B.3	B.3	SOC title	None
B.4	B.4	Full-time status	None
B.5/6	B.5/6	Period of Employment	None
B.7	B.7	Number and type of employment	Now seeks to limit to 10 per LCA because the Department, through its WHD, has found enforcement of the LCA obligations to be far more difficult when an LCA is for 50 or 100 job opportunities. It will also be a more significant expenditure of time and resources to build an electronic form to accept more than 10 names. This limit will also permit easier access to the LCA by USCIS in any electronic sharing of data as well as enable that agency to better track LCA usage, thus reducing time spent in collecting this information from the employer.
None	B.8	Nonimmigrant worker information	Now collects information on the nonimmigrant(s) that will be subject to the LCA including name, date of birth, country of birth, visa status, PERM number if applicable, etc. to better track the LCA at the Department and Department of Homeland Security. The Department's WHD will be able to more efficiently gather information during its enforcement activities and no longer need to reconstruct the necessary beneficiary information, thereby reducing the use of government resources to conduct such investigations. This information will also enable the WHD to find other beneficiaries who may be entitled to back wages or other remuneration after an investigation. At the same time, this should cause employers little extra burden because employers generally know who the beneficiaries are before filing the

			LCA except possibly for the 2.6 percent of employers who file LCAs for more than 10 employees. These employers will have to file more than one LCA, but their burden will not be greatly increased because the electronic filing system allows them to save much of the information on an LCA and use it to fill out later LCAs. Congress ensured a relatively quick turnaround on LCA approval by requiring the Department to approve LCAs within 7 days, therefore, there is no reason for employers to obtain LCAs for large numbers of workers to be named in the future. Obtaining LCAs only for known beneficiaries also allows an employer to use the LCA for the full three years. Finally, employers who apply for and receive certification for large numbers of workers and use the same LCA over the course of a year or more violate the spirit of section 212(n)(1)(c) of the INA by posting the LCA only once thereby depriving U.S. workers of the opportunity to know when new H-1B workers are being hired.
C.1	C.1	Employer name	None
C.2	C.2	DBA	None
C.3 – 7	C.3 – 7	Employer address	None
C.8	C.8	Country	None
C.9	C-12	Province	Section number changed
C.10	C.9	Telephone	Section number changed
C.11	C.10	Extension	Section number changed
C.12	C.11	FEIN	Section number changed
C.13	C.12	NAICS Code	Section number changed
None	C.13	NAICS industry name	Provides additional information about the employer's industry
None	C.14	Year business established	New; needed for statistical purposes and integrity measures
None	C.15	Number of employees	New; needed for statistical purposes and integrity measures
None	C.16	Gross annual	New; needed for statistical

		income	purposes and integrity measures
None	C.17	Net annual income	New; needed for statistical purposes and integrity measures
None	C.18	Country of headquarters	New; needed for statistical purposes and integrity measures
None	D.1	Type of employer contact	Clarification as to whether or not the employer contact is an attorney
C.1 – 13	C.2 – 14	Employer point of contact information	Section numbers changed
C.14	C.15	Employer email	Section number changed and clarification was added to indicate that the email should be a business email and not a personal email.
E.1	E.1 – 2	Attorney/agent designation	Section number changed in order to separate the question into attorney and agent designations
E.2 – 13	E.3 – 14	Attorney/agent name and contact information	Section numbers changed
E.14	E.15	Email	Section number changed and clarification was added to indicate that the email should be a business email and not a personal email.
E.15/16	E.16/17	Law firm name and FEIN	Section numbers changed
E.17 – 19	E.18 – 20	Attorney Bar information	Section number changed
F.1 – 2	F-12	Rate of Pay	Section number changed
None	F1 – 11	Employment & wage information	New; requests more specific information on where the employee will be working. Needed for clarification on actual worksite to enable employer to demonstrate regulatory compliance regarding changes in worksite
G.9 – 10	F.13a –b	Prevailing wage	Section number changed
G.11a – b	F.14 – 17	Source of prevailing wage	Requests more detailed information about the prevailing wage to enable employer to demonstrate regulatory compliance
H	G	Employer Labor Condition Statements	The same four statements are restated in more detail on the new form for clarity. New question added about similarly employed U.S. workers
I	H	Additional	Same questions about whether or

		Employer Labor Condition Statements for H-1B Employers only	not employer is H-1B-dependent, willful violator, and exempt workers. Additional questions are added for H-1B-dependent employers and willful violators to ensure their compliance with statutory requirements.
J	I	Public Disclosure Information	Section number changed and a request for the actual address of the files was added.
K	J	Declaration of Employer	Section number changed and attestation that were previously found in the instructions are moved to the actual form.
L	K	LCA Preparer	Section number changed
M	L	U.S. Government Agency Use	Section number changed
N – O	M – N	Notices	Section number changed

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act.

A.8 Summary of Public Comments

In accordance with the Paperwork Reduction Act of 1995, the public is being given 60 days to comment on this information collection. The Department will provide a summary of the public comments after receipt.

A.9 Payment of Gifts to Respondents

No payments or gifts are made to respondents.

A.10 Confidentiality Assurances

There are no assurances to keep information provided by respondents private, except for Form WH-4. With respect to Form WH-4, WHD states that it will keep the respondent's identity private to the maximum extent possible under existing law. Information gathered during the course of an investigation of a complaint is disclosed 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 related regulations, 29 CFR parts 70 and 71. Among other exclusions, the FOIA provides agencies an

exemption from disclosing records or information compiled for law enforcement purposes, to the extent that the production of such enforcement records or information could reasonably be expected to disclose the identity of a confidential source. 5 U.S.C. § 552(b)(7)(D).

A.11 Additional Justification for Sensitive Questions

These information collections do not involved sensitive matters as defined in OMB guidance.

A.12 Estimates of the Burden of Data Collection

A. Labor Condition Applications -- 20 CFR § 655.760

Employers submit LCAs when they wish to employ an H-1B nonimmigrant worker. Ninety nine percent of employers file LCAs using the online system. Based on program experience, ETA estimates that it will receive approximately 340,000 LCAs each year from approximately 77,000 employers.

All H-1B employers must attest to four labor condition statements concerning wages, working conditions, no strike or lockout, and notice. These attestations, along with other information about the employer and the job opportunity, are collected on either the ETA Form 9035 or the ETA Form 9035E, known as the Labor Condition Application (LCA). The regulations at 20 CFR § 655.760 provide that copies of the LCAs and supporting documentation are to be kept for a period of one year beyond the end of the period of employment specified on the LCA or one year from the date the LCA was withdrawn, except that if an enforcement action is commenced, these records must be kept until the enforcement procedure is completed as set forth in 20 CFR Part 655, subpart I. The payroll records for the H-1B employees and other employees in the same occupational classification must be retained for a period of three years from the date(s) of the creation of the record(s), except that if an enforcement proceeding is commenced, all payroll records shall be retained until the enforcement proceeding is completed.

ETA estimates that the completion and submission of an LCA takes 1 hour; instead of the 35 minutes previously estimated for the old form;1 complying with recordkeeping requirements takes 5 minutes; and posting the LCA in a conspicuous place and providing a copy to each H-1B nonimmigrant takes 5 minutes for a total of 1 hour and 10 minutes per application. The total burden for

1 The form has, for several years, indicated the entire burden for all of the different components of this information collection, which is an average of one hour. However, the previous supporting statements have clearly indicated that the time for completing the actual form was 35 minutes. The Department estimates it will take one hour to complete the newly redesigned form.

this item is estimated to be 396,666 hours (340,000 x 1 hour = 340,000 reporting hours, 340,000 x 5 minutes ÷ 60 = 28,333 recordkeeping hours, and 340,000 x 5 minutes ÷ 60 = 28,333 third party disclosure hours).

The new form is limited to ten foreign workers who must now be named. A small percentage of employers will be required to submit several applications instead of one as in the past. Based on program experience, 2.6 percent of all LCAs filed will be for more than ten foreign workers. With some employers asking for as few as 15 and others asking for as many as 100, the average is three additional applications for those employers seeking more than 10 foreign workers for a total of 27,994 hours (340,000 x 2.6% x 3 applications x 1 hours = 26,520 reporting hours, 340,000 x 2.6% x 5 minutes ÷ 60 = 737 recordkeeping hours, and 340,000 x 2.6% x 5 minutes ÷ 60 = 737 third party disclosure hours).

B. Documentation of Corporate Identity -- 20 CFR 655.760

Under 20 CFR § 655.760, before the continued employment of the H-1B nonimmigrant when there is a corporate change and the new corporation must agree to assume the predecessor entity's obligations and liabilities under the LCA, the agreement to comply with the LCA for the future and to any liability of the predecessor under the LCA must be documented with a sworn statement in the public access file.

It is estimated that 1,000 H-1B employers will be required to prepare this documentation annually and that the preparation of each such document will take approximately 1 hour for a total annual burden of 1,000 recordkeeping hours.

C. Determination of H-1B Dependency -- 20 CFR § 655.736

The Department estimates an average burden of 30 minutes, twice each year, for each employer that must document the dependency determination as outlined in 20 CFR § 655.736. The Department estimates that 1,000 employers will make this determination for an annual burden of 1,000 recordkeeping hours. (1000 x 0.50 hrs x 2 times each year = 1000).

The Department also estimates that no more than 5 percent of the total estimated 77,000 H-1B employers will be required to retain copies of H-1B petitions and extensions who do not currently retain these documents in compliance with other laws, for an average of 3 minutes per petition, for a total of 193 recordkeeping hours (3,850 x 3 minutes ÷ 60 = 193).

D. List of Exempt H-1B Employees in Public Access File -- 20 CFR § 655.737(e)(1)

Under 20 CFR § 655.737(e)(1), employers who designate exempt H-1B nonimmigrants on the LCA must include in their public access file a list of the H-1B

nonimmigrants supported by an LCA that attests it will be used only for exempt workers, or in the alternative, a statement that the employer employs only exempt H-1B workers. The Department estimates that each list or statement will take approximately 15 minutes to prepare and that 2,500 H-1B employers will prepare such a list or statement annually for a total burden of 625 recordkeeping hours (2,500 x 0.25 hrs. = 625).

E. Record of Assurances of Non-displacement of U.S. Workers at Second Employer's Worksite

Willful violators, as described in 8 U.S.C. § 1182(n)(1)(F), must attest that they will not place H-1B employees with other employers unless the willful violators have inquired about the displacement of U.S. workers at the second employer's place of business. The Department estimates an average burden of 10 minutes per attestation or statement, and that 1,500 H-1B employers will document such assurance 5 times annually, for a total annual burden of 1,250 recordkeeping hours (1,500 x 10 minutes ÷ 60 x 5 times annually = 1,250).

F. Offers of Employment to Displaced U.S. Workers -- 20 CFR § 655.738(e)

We estimate that 150 H-1B employers will make offers of employment as prescribed by 20 CFR § 655.738(e) 5 times annually (750) and that 75 of those offers and responses would not otherwise be committed to writing without this paperwork requirement. Each such document is estimated to take 30 minutes for a total annual burden of 38 recordkeeping hours (75 x 0.5 hrs = 38).

G. Documentation of U.S. Worker Recruitment -- 20 CFR § 655.739(i)

Under 8 U.S.C. 1182(n)(1)(G), H-1B-dependent employers must make good faith efforts to recruit U.S. workers before hiring H-1B workers. Under the regulations, H-1B-dependent employers must retain documentation of U.S. worker recruitment. This recordkeeping requirement under 20 CFR 655.739(i) may be satisfied by creating a memorandum to the file or by filing the actual pertinent documents. It is estimated that 2,000 H-1B employers will file such documents or memoranda 5 times annually and that each recordkeeping will take 20 minutes, for an annual burden of approximately 3,333 recordkeeping hours (2,000 x 20 minutes ÷ 60 x 5 times annually = 3,333).

In addition, the employer must retain any documentation about consideration of applications of U.S. workers, such as copies of applications and related documents, rating forms, job offers, etc. This documentation is necessary for the Department to determine whether the employer has made a good faith effort to recruit U.S. workers and for the public to be aware of the recruiting methods used. Retention of the records on consideration of applications from U.S. workers is already required by EEOC regulations and thus the employer is not required to create or retain any

new records. Therefore, no additional burden is assessed for this portion of the requirement.

H. Documentation of Fringe Benefits -- 20 CFR § 655.731(b)

There are an estimated 10 percent of H-1B employers (7,700) that provide fringe benefits, such as bonuses, vacations and holidays, not required by ERISA regulations to be documented. We estimate that documenting these plans outlined in 20 CFR § 655.731(b) would take 1.5 hours per employer, for an annual burden of 11,550 recordkeeping hours (7,700 employers x 1.5 hours = 11,550). We further estimate that 25 percent of H-1B employers (19,250) are multinational employers and that a note to the file that these workers receive home country benefits would take 30 minutes per employer for an annual burden of 9,625 recordkeeping hours (19,250 x 0.5 hrs = 9,625 hours).

I. Wage Recordkeeping requirements Applicable to Employers of H-1B Nonimmigrants -- 20 CFR § 655.731(b)

The additional burden of keeping records for salaried H-1B workers who are exempt from the FLSA under 20 CFR § 655.731(b) is estimated at 2.5 hours per worker for 10,500 workers for a total annual burden of 26,250 recordkeeping hours (10,500 x 2.5 hours = 26,250).

J. Information Form Alleging H-1B Violations (WH-4)

For WH-4 forms filed, we estimate that 425 responses will be received annually and that each response will take approximately 20 minutes, for a total burden of 142 reporting hours (425 x 20 minutes ÷ 60 = 142 hours).

Burden hours are estimated based on workload data and program experience.

Annual Burden Hours for LCA Information Collections:

366,662 Reporting Hours;
83,934 Recordkeeping Hours
29,070 Third Party Disclosure Hours

TOTAL **479,666 Hours**

Average Time Per Application Process

ETA Form 9035 – 1 hour 10 minutes
WH-4 - 20 minutes
Other H-1B ICs – 10 minutes

Total number of responses	1,129,000
Total number of respondents	77,425

TOTAL ANNUAL HOURS BURDEN FOR ALL INFORMATION COLLECTIONS – 479,666 HOURS

H-1B employers may be from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation may range from several hundred dollars to several hundred thousand dollars where the corporate executive office of a large company performs some or all of these functions themselves. Absent specific wage data regarding such employers and employees, respondent costs were estimated at $25 an hour. Total annual respondent hour costs for all information collections are estimated at $11,991,650 ($25.00 x 479,666 = 11,991,650)

Type of Collection	Hourly Burden	Cost Burden
Reporting	366,662	$9,166,550
Record Keeping	83,934	$2,098,350
Third Party Disclosure	29,070	$726,750

A.13 Estimated Cost to Respondents

1. Start-up/capital costs: There are no start-up costs, as ETA provides a free, web-based data collection and reporting system to collect and maintain participant data.
2. Annual costs: There are no annual costs to respondents, as ETA is responsible for the annual maintenance costs for the free, web-based, data collection and reporting system.

A.14 Estimates of Annualized Costs to Federal Government

The average Federal Government cost for a year of operation, where salaries are involved, is estimated on an hourly basis multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent (FLFTE)[2]. The index is derived by using the Bureau

[2] The Federal Government cost estimate for the staff adjudication of LCAs is based on the U.S. Office of Personnel Management 2012 locality hourly pay schedule for the Chicago-Naperville-Michigan City, IL-IN-WI area to reflect the locations of Chicago National Processing Center which carries the responsibility for the

of Labor Statistics' index for salary plus benefits and the Department's internal analysis of overhead costs averaged over all employees of OFLC and WHD. The total cost to the Federal Government is estimated at $2,519,590, calculated as follows:

Network costs

Application Modification	$1,200,000
Application Support	$356,000
Configuration Management and Quality Assurance	$160,000
Program Support	$60,000
Technical Operations	$106,000
Subtotal	$1,882,000

OFLC Staff Time

Adjudication of ETA Forms 9035 and 9035E not automatically certified $630,877
[40,000 applications a year x 15 minutes per LCA ÷ 60 x
(Analyst $37.33 (GS-12, Step 2) x 1.69)]

Form WH-4

Printing - We estimate WHD will annually print approximately 425 Forms WH-4. (425 forms x $0.05). $21

Mailing - Of this number, WHD mails approximately 30 percent to complainants. It also provides a preaddressed, postage paid envelope for returning the completed Form WH-4 to the WHD. We estimate mailing costs to be $138, rounded. [128 forms x ($0.44 postage + $.10 per envelope) x 2 directions] $138

Staff - We estimate a Wage-Hour Compliance Specialist needs about 15 minutes to analyze each form submitted by mail. [$38.92 (GS 13, Step 5) x 1.69 x 0.25 hours x 128 forms] $2,105

processing of LCAs. .Please see: http://www.opm.gov/oca/12tables/pdf/chi_h.pdf . The Federal Government estimate for the staff processing of the WH-4 form is based on the 2012 hourly general schedule base. Please see: http://www.opm.gov/oca/12tables/pdf/gs_h.pdf.

We further estimate WHD staff complete Form WH-4 about 70 percent of the time and each form takes approximately 20 minutes to complete and review. [298 forms x 20 minutes ÷ 60 x $26.50 (GS-11, Step 4) x 1.69]	$4,449	
	Subtotal	$637,590
		=========
Total annual cost		**$2,519,590**

A.15 Changes in Burden

This ICR requests a change of 788,575 responses (from 340,425 to 1,129,000) and 169,661 burden hours (from 310,005 to 479,666). There is no change in other burden costs, which continues to be $0.

The increase in responses is due to inadvertent error by ETA in calculating responses. The annual public hourly burden for these information collections reflects an overall increase due to the changes proposed to the ETA Form 9035, which are necessary to enhance overall program integrity.

The Federal Government burden reflects an increased cost due to a need for increased program integrity by having more applications reviewed by analysts prior to certification.

A.16 Publication of Results

OFLC discloses information about employer applicants to the public on its public access webpage at http://www.flcdatacenter.com/CaseData.aspx. For the H-1B, H-1B1, and E-3 programs, the employer name and address, work locations, the number of foreign workers requested; the occupation; the salary proposed; and the prevailing wage, the dates or need, along with final determination by the Department are all disclosed on the website. The Department is also contemplating creating an LCA registry to allow all the data we collect to be made available online and in downloadable formats – while protecting any personally identifiable information as well as any governing legal constraints such as the Privacy Act, the Trade Secrets Act and the Confidential Information Protection and Statistical Efficiency Act.

A.17 Approval Not to Display OMB Expiration Date

The Department will display the expiration date for OMB approval on the form and instructions or opening page of the website for electronic filing.

A.18 Exceptions to OMB Form 83-I

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

B. Collection of Information Employment Statistical Methods

There are no statistical methods employed.