SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT OF 1995
OMB Control No. 1205-0310

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SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

LABOR CONDITION APPLICATION FOR H-1B, H-1B1, and E-3 NONIMMIGRANTS and the NONIMMIGRANT WORKER INFORMATION FORM

OMB Control No. 1205-0310

A. Justification

A.1 Circumstances Necessitating Data Collection and Retention

Under the Immigration and Nationality Act of 1990 (INA), an employer seeking to employ a foreign worker in a specialty occupation 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, and receive certification from, the Department of Labor (DOL or the Department) before the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) may approve a petition for a foreign worker authorizing admission of the foreign worker under the H-1B visa classification. The LCA process is administered by the Office of Foreign Labor Certification (OFLC) within the DOL's Employment and Training Administration (ETA).

Congress amended the INA and created the H-1B1 visa classification as part of its approval of the United States-Chile Free Trade Agreement and United States-Singapore Free Trade Agreement, which took effect January 1, 2004. On May 11, 2005, Congress enacted Section 501 of title V of the REAL ID Act of 2005 (Division B) in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Pub. L. 109–13, § 501, 119 Stat. 231, 278 (2005)), amending section 101(a)(15)(E) of the INA by establishing the E-3 visa classification for Australian nationals who enter solely to perform services in specialty occupations in the United States. Under these INA amendments, DOL is required to implement the H–1B1 and E-3 visa programs using a similar LCA process to that administered for the H-1B visa program.

The Wage and Hour Division (WHD) enforces employer compliance with the LCA. It may conduct investigations in four circumstances: (1) when it receives a complaint from an aggrieved party that is adversely affected by the employer's alleged non-compliance that provides reasonable cause to believe an H-1B program violation has occurred; (2) when it receives information from a known credible source that is likely to have knowledge of the employer's employment practices or its compliance with H-1B requirements that provides reasonable cause to believe specified H-1B program violations have occurred; (3) when the Secretary of Labor (Secretary), personally certifies that there is reasonable cause to believe that the employer is not in compliance (Secretary-certified); and (4) when it identifies certain willful violators for random investigations. *See* 8 U.S.C. 1182(n)(2)(A), 8 U.S.C. 1182(n)(2)(F) & 8 U.S.C. 1182(n)(2)(G). Virtually all WHD investigations to date

have originated from aggrieved party complaints. WHD has never conducted a Secretary-certified investigation and has rarely conducted credible source investigations.

To administer these programs, ETA and WHD rely on the following forms: ETA-9035 *Labor Condition Application for Nonimmigrant Workers* (a pdf fillable and printable form); ETA-9035E *Labor Condition Application for Nonimmigrant Workers* (an electronic fillable and fillable ETA 9035 form); ETA-9089CP *General Instructions for the 9035 & 9035E*; and the WH-4 *Nonimmigrant Worker Information* form.

Statutory Authority: 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), and 1184(c).

Regulatory Authority:

A. Labor Condition Application (LCA) -- 20 CFR 655.700, 655.705, 655.720, 655.730, 655.731, 655.732, 655.733, 655.734, 655.735, 655.736, 655.737, 655.738, 655.739, and 655.760

Under the INA, 8 U.S.C. 1182(n), an employer must submit to DOL an LCA (Form ETA 9035) stating that it agrees to certain conditions related to the employment of a foreign worker. The employer must provide a copy of the LCA to the foreign worker beneficiary. Employers must include on the LCA basic information, including information about their business and, if applicable, authorized representation; the number of foreign workers sought in the visa classification; position details; the occupational classification in which the workers will be employed; the prevailing wage rate and rate of pay to the nonimmigrant worker(s); the intended place(s) of employment; and the conditions under which the nonimmigrant worker(s) will be employed. Employers who meet the statutory criteria for H-1B dependency or willful violators must generally make additional attestations that U.S. workers will not be displaced and that the employer will make good faith recruitment efforts of U.S. workers prior to filing the LCA.[1] Through the LCA, the employer attests that it has met the statutory requirements in 8 U.S.C. 1182(n)(1)(A), (B), and (C), as well as the special requirements for willful violators and dependent employers (if applicable), as those requirements are explained in the Department's regulations.

B. Documentation of Corporate Identity -- 20 CFR 655.730(e)(3)

DOL's regulation at 20 CFR 655.730(e)(3) provides that where an employer undergoes a change in corporate structure, the employer must make and maintain a sworn statement by a responsible official of the new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCA and its date of certification, and a description of the actual wage system and Federal Employer Identification Number (FEIN)

[1] The special requirements for willful violators and H-1B dependent employers apply unless those employers are hiring only exempt H-1B nonimmigrants. Throughout this supporting statement, where we refer to general requirements for willful violators and dependent employers, we refer to those employers who are not hiring only exempt H-1B non-immigrants and claiming that exemption on the LCA.

of the new employing entity. 20 CFR 655.730(e)(1). These documents are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the labor condition application expired or was withdrawn.

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

INA provisions for H-1B employers generally make additional recruitment and non-displacement requirements applicable to willful violators and H-1B dependent employers. H-1B dependency is based on the ratio between the employer's total work force employed in the U.S. (including both U.S. workers and nonimmigrant workers, and measured according to full-time equivalent employees) and the employer's H-1B nonimmigrant employees (a "head count" including both full-time and part-time H-1B employees).

DOL's regulations at 20 CFR 655.736(c)(1) note that most employers need not calculate their dependency status as it is readily apparent. Employers with borderline H-1B dependency status are permitted to use a "snap shot" test to determine whether a calculation of dependency is necessary and must retain a copy of the documents that allow the WHD to verify the snapshot test. 20 CFR 655.736(c)(2). The employer must retain a copy of the full computation in specified circumstances that the Department believes will very rarely occur. 20 CFR 655.736 (d)(4). The full computation must be maintained if the employer changes status from dependent to non-dependent. 20 CFR 655.736(d)(5)(ii). If the employer uses the Internal Revenue Service Code's single-employer test to determine dependency, it must maintain records documenting which 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. 20 CFR 655.736(d)(7). Finally, if the employer includes workers who do not appear on the payroll, a record of computation must be kept. 20 CFR 655.736(a)(2)(ii)(B).

All records supporting the employer's H-1B dependency status at the time of filing the LCA are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the labor condition application expired or was withdrawn. 20 CFR 655.760.

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

An employer that is H-1B-dependent or a willful violator, an employer found to be in willful violation of H-1B program requirements in the prior five years (as described at 20 CFR 655.736(f)), may designate on the LCA that it will only be used to support H-1B petitions and/or requests for extension of status for "exempt" H-1B nonimmigrants. Employers are required to include in their public access file a list of the H-1B nonimmigrants whose petitions and/or requests are supported by LCAs that the employer

has attested will be used only for exempt H-1B nonimmigrants. These records are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the labor condition application expired or was withdrawn. 20 CFR 655.760(c).

In accordance with statutory and regulatory requirements, the Form ETA-9035 permits an H-1B dependent and/or willful violator employer to designate that the LCA will be used only to support "exempt" H-1B nonimmigrant workers and identify the statutory basis (e.g., $60,000 or higher in annual wages, attainment of Master's degree or higher) of the exemption. For those employers seeking an exemption based on attainment of a Master's degree or higher, the employer must identify on the Form ETA-9035, Appendix A, the academic and degree information for the exempt H-1B nonimmigrant worker(s) and provide a copy of the educational credential or alternative permissible documentation to the Department. This information is being collected pursuant to 20 CFR 655.737(d), and provides greater transparency to the public, and particularly to U.S. workers who may be displaced, about the basis of the employer's exemption.

E. H-1B Employers Only- Record of Assurance of Non-displacement of U.S Workers at Second Employer's Worksite -- 20 CFR 655.738(e)

The INA generally prohibits an H-1B dependent employer or willful violator from direct displacement of U.S. workers in the employer's own workforce 90 days before and 90 days after the filing of an H-1B visa petition and from placement of an H-1B worker with a secondary employer unless it has first inquired of the second employer whether it will displace a U.S. worker in the period of 90 days before to 90 days after the date of the H-1B worker's placement with the other employer (secondary displacement). 8 U.S.C. 1182(n)(1)(E) and (F). DOL's regulations, 20 CFR 655.738(e), require such employers that seek 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 of displacement in the contract between the H-1B employer and the secondary employer. 20 CFR 655.738(e)(2), 655.738(d)(5)(i). These records are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the labor condition application expired or was withdrawn. 20 CFR 655.760.

F. H-1B Employers Only- Offers of Employment to Displaced U.S. Workers -- 20 CFR 655.738(e)

The INA generally prohibits H-1B dependent employers and willful violators from hiring an H-1B nonimmigrant if doing so would displace a U.S. worker from an essentially equivalent job in the same area of employment. 8 U.S.C. 1182(n)(1)(E) and 1182(n)(1)(F). DOL's regulations, 20 CFR 655.738(e), generally 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. The employer must maintain the name, last-known mailing address, occupational title and job description, any documentation concerning the employee's experience and qualifications, and principal assignments; as well as all documents concerning the departure of such employee, and evaluations of his/her job performance. The employer is also required to maintain a record of the terms of any offers of similar employment to such U.S. workers and the 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 nonimmigrant workers. These records are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the labor condition application expired or was withdrawn. 20 CFR 655.760.

G. H-1B Employers Only- Documentation of U.S Worker Recruitment -- 20 CFR 655.739(i)

The INA establishes that H-1B dependent employers and willful violator employers are generally required to make good faith efforts to recruit U.S. workers before hiring H-1B workers. 8 U.S.C. 1182(n)(1)(G). Under 20 CFR 655.739(i)(1), those H-1B dependent employers are required to retain documentation of the recruiting methods used, including the places and dates of the advertisements and postings or other recruitment method used, the content of the advertisements and postings, and the compensation terms. Further, the employer must retain documentation or a simple summary of the principal recruitment methods used and the timeframe of the recruitment in the public access file. 20 CFR 655.739(i)(4). In addition, the employer must retain any documentation concerning consideration of applications of U.S. workers, such as copies of applications and related documents, rating forms, job offers, etc. 20 CFR 655.739(i)(2). This documentation is necessary for the Department to determine in an investigation whether the employer has made a good faith effort to recruit U.S. workers and for the public to be aware of the recruitment methods used.

With the exception of the list to be included in the public access file (where employers have the option of putting the actual records in the file), DOL is not requiring employers to create any documents related to U.S. worker recruitment, but rather to preserve those documents, which are created or received. The only additional recordkeeping burden required by the regulations is that the public disclosure files contain a summary of the principal recruitment methods used and the timeframes in which they were used. Creating a memorandum to the file or the filing of pertinent documents may satisfy this recordkeeping requirement. All records under this section are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the labor condition application expired or was withdrawn. 20 CFR 655.760.

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

Pursuant to the INA, 8 U.S.C. 1182(n)(2)(C)(viii) and 8 USC 1182(t)(1)(C)(viii), all employers of H-1B, H-1B1, and E-3 nonimmigrant workers are required to offer benefits to these workers on the same basis and under the same terms as offered to similarly employed U.S. workers. 20 CFR 655.731(c)(3). Employers are required to make and retain copies of all benefit plans and any summary plan descriptions. 20 CFR 655.731(b). 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 to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the labor condition application expired or was withdrawn. 20 CFR 655.760.

I. Employer Wage Record Keeping Requirements -- 20 CFR 655.731

As part of the LCA, the employer attests that for the entire period of authorized employment of the H-1B, H-1B1, or E-3 nonimmigrant worker(s), the required wage rate will be paid to the nonimmigrant workers; that is, that the wage paid shall be the greater of the actual wage rate or the prevailing wage. 20 CFR 655.731(a).

The regulations require that all H-1B, H-1B1, and E-3 employers document the basis used to establish the actual wages for their U.S. workers and how it relates to the H-1B nonimmigrant worker'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. 20 CFR 655.731(b).

Employers are required to keep records of the hours worked by employees not paid on a salary basis and for part-time nonimmigrant workers, regardless of how they are paid. The additional recordkeeping burden over and above those required by the FLSA, and approved under OMB Approval No.1235-0008, is for keeping records of hours worked by part-time, salaried nonimmigrant workers who are exempt from FLSA. Required payroll records for the H-1B employees and other employees in the occupational classification shall be retained at the employer's principal place of business in the U.S. or at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if an enforcement action is commenced, all payroll records shall be retained until the enforcement proceeding is completed through the procedures set forth in 20 CFR 655 Subpart I. 20 CFR 655.760.

Employers are required to keep records for the determination of the prevailing wage. 20 CFR 655.731(b)(3). The prevailing wage documentation shall be retained at the employer's place of business for a period of one year beyond the last date on which any

H-1B employee is employed under the LCA, or one year from the date the LCA expired or was withdrawn if H-1B nonimmigrant workers were not employed. 20 CFR 655.760.

J. Nonimmigrant Worker Information Form (WH-4)

The INA requires DOL to establish processes to allow individuals or entities to provide information alleging H-1B program violations. 8 U.S.C. 1182(n)(2)(A), 8 U.S.C. 1182(n)(2)(G)(iii) & 8 U.S.C. 1182(t)(3)(A). DOL uses Form WH-4 to meet these statutory requirements.

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

DOL's OFLC relies on Forms ETA-9035, ETA-9035E and ETA-9089CP to collect the necessary information from employers to adjudicate LCAs.

The INA, 8 U.S.C. 1182(n)(1)(G), provides that unless the LCA is incomplete or appears obviously inaccurate, the Secretary shall certify the application and return it to the employer within seven 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. *Id.* 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 a form anyone may use to allege violations of the INA provisions enforced by the WHD. WHD uses the information listed on the form to determine whether it has reasonable cause to commence an investigation.

A.3 Use of Technology to Reduce Burden

Since December 2005, the Department has mandated that the LCA (Form ETA 9035E) be filed electronically unless the employer has a disability or lacks internet access. Employers with a disability that prevents them from filing electronic applications or employers without Internet access can file the LCA by U.S. mail. The electronic filing of the Form ETA 9035E is supported by the Department's iCERT Visa Portal System (iCERT System), which is accessible at http://icert.doleta.gov.

The iCERT System permits an employer or, if applicable, it's authorized attorney or agent to efficiently prepare and submit LCAs for processing by the OFLC. Since the Department's review of LCAs under the INA sections 212(n)(1)(G) and 212(t)(2)(c) is limited to only completeness and obvious inaccuracies, the iCERT System provides employers with a series of electronic data checks and prompts to provide that each required field on the Form 9035E is completed and values entered on the form are consistent with regulatory requirements. The OFLC website and the iCERT System's Form 9035E Case Preparation Module include detailed instructions designed to help

employers understand what each form collection item means and what kind of entries are required. When the employer or, if applicable, its authorized attorney or agent, initially enter contact information and establish an iCERT System Account, the Form 9035E Case Preparation Module automatically pre-populates all contact information on the draft application, significantly reducing the time and burden for repeated online data entry. Additionally, the Form 9035E Case Preparation Module provides employers with an option to "reuse" previously filed LCAs, which automatically copies information into a new draft application. Under this option, employers only have to change a limited set of information on the new LCA to accommodate the job opportunity such as the number of workers being requested for certification, period of employment, and the intended place(s) of employment. This option significantly reduces the time and burden for online data entry, particularly those employers who need to access the program to hire nonimmigrant workers in a common set of occupational classifications. This process is designed to help employers enter the H-1B, H-1B1, or E-3 program based on accurate LCA information and with explicit, immediate notice of the obligations. This collection is in full compliance with the Government Paperwork Elimination Act (GPEA).

The Department previously considered developing an automated complaint system for H-1B, H-1B1, and E-3 complaints, and determined at the time that it was not feasible. However, due to technological advances and customer preference, the Department is currently reviewing options for electronic submission of the information collection. The Department recognizes the value of technology in reducing burden on respondents in completing these forms and is seeking to provide better customer service in the H-1B program.

The substance of the electronic forms will be substantially the same with minor word changes to accommodate the type of submission (electronic versus paper). The Department intends to submit a non-material change request for this collection upon completion of the electronic submission platform.

A.4 Efforts to Identify Duplication

The information required on the Form ETA-9035 is not identified from any other source at the time of filing. The information collected on the Form ETA-9035, Appendix A, for the degree-based exemption is based on the Department's regulatory requirements under 20 CFR 655.737 and is not available from any other source at the time of LCA filing. Collection of the prevailing wage tracking number is necessary to identify the prevailing wage determination, if any, and associate the prevailing wage determination with the LCA.

DOL's regulations require the employer to place in its public access file a list of "exempt" H-1B nonimmigrants within one working day of filing the LCA if the employer is claiming the exemption. 20 CFR 655.760(a). This means that the employer must have identified and verified the basis for claiming the exemption at the time of filing. Although H-1B dependent and/or willful violator employers submit copies of educational credential documents at the time of filing the petition with the USCIS, the Department is proposing to

require submission of these educational credential documents at the time of LCA filing in order to provide greater transparency with respect to the employer's exemption attestation entered on the Form ETA-9035, Appendix A.

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, Pension Welfare Benefits 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. The Department is not aware of any duplication of data collection for the WH-4 form. Further, efficient electronic processing reduces the need for duplicate filings of LCAs by employers.

A.5 Methods to Minimize Burden on Small Businesses

The burden on small business concerns is minimal. Even though the information collection is required of small businesses who want to hire foreign workers, the recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes.

A.6 Consequences of Less Frequent Data Collection

This data collection is only conducted at the time an employer seeks an H-1B, H-1B1, or E-3 visa to employ a foreign workers. The Department would be in direct violation of Federal law and regulations without this information collection.

With respect to the WH-4 form, the consequences of less frequent collection would undermine the Department's ability to identify possible violations, such as whether the employee is being paid the proper wage and whether the employee is working in the intended area of employment. Further, the WH-4 form is the form that initiates the compliance review of a specific employer and facilitates aggrieved parties' ability to complete the process in order to file a complaint. Less frequent collection of information through form WH-4 would undermine the Department's ability to identify possible violations, such as whether an employee is being paid the proper wage and working in the intended area of employment.

A.7 Special Circumstances for Data Collection

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 C.F.R. 1320.5(d)(2).

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, and describe the actions taken by the Department in response to these comments.

A.9 Payment of Gifts to Respondents

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

A.10 Confidentiality Assurances

There are no assurances of keeping information provided by respondents covered under this information collection tools private except for the WH-4 form. With respect to the WH-4 form, WHD 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 involve sensitive matters.

A.12 Estimates of the Burden of Data Collection[2]

BURDEN HOURS AND ANNUAL COST TO RESPONDENTS ESTIMATES

FORM ETA 9035 BURDEN HOURS AND ANNUAL COST TO RESPONDENTS ESTIMATES

[2] *A detailed explanation concerning the type of collection that generates burden hours estimates is provided in an Appendix to the Supporting Statement.*

Type of Respondent	Form Name (Form Number)	No. of Respondents	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate[3]	Total Annual Respondent Cost
Business or other for-profit; Not-for-profit organizations	Labor Condition Application (ETA 9035)	569,260	1	1.25[4]	711,575	$57.79 ~	$41,121,919.25

ADDITIONAL BURDEN HOURS AND ANNUAL COST TO RESPONDENTS ESTIMATES RELATED TO FORM ETA 9035- BREAKDOWN

Type of Respondent	Labor Condition Application Form Provision	No. of Respondents	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate[5]	Total Annual Respondent Cost
Business or other for-profit; Not-for-profit organizations	Documentation of Corporate Identity*	1000	1	1	1000	$57.79	$57,790
Business or other for-profit; Not-for-profit organizations	H-1B Employer's Only- Determination of H-1B Dependency*	7,644	2	0.5	7,644	$57.79	$441,746.76

[3] DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross- industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey, and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78.

[4] ETA estimates that the completion and submission of an LCA takes 45 minutes for most employers due to the reduced burden for completion of the prevailing wage section of the form with an additional 20 minutes estimated for H-1B dependent employers or willful violator employers claiming degree based exemptions; complying with recordkeeping requirements of creating a PRA file takes five minutes; and posting the LCA in a conspicuous place and providing a copy to each nonimmigrant worker takes five minutes for a total of 75 minutes per application.

[5] DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross- industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey,[5] and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78.

Business or other for-profit; Not-for-profit organizations	H-1B Employer's Only-Determination of H-1B Dependency-Document Retention*	3,077	1	0.05	153.85	$57.79	$8,890.99
Business or other for-profit; Not-for-profit organizations	List of Exempt H-1B Employees in Public Access File*	3259	1	0.25	815	$57.79	$47,098.85
Business or other for-profit; Not-for-profit organizations	Appendix A Completion and Documentation: Educational Degree Attainment for Exempt H-1B Nonimmigrants	50,000[6]	1	0.33	16,500	$57.79	$953,535
Business or other for-profit; Not-for-profit organizations	Record of Assurances of Non-displacement of U.S. Workers at Second Employer's Worksite*	200	1	0.166 (x5 times annually)	167	$57.79	$9,650.93
Business or other for-profit; Not-for-profit organizations	Offers of Employment to Displaced U.S. Workers*	665	1	0.33	1108	$57.79	$64,031.32
Business or other for-profit; Not-for-profit organizations	Documentation of U.S. Worker Recruitment*	665	1	0.33	1108	$57.79	$64,031.32
Business or other for-profit; Not-for-profit organizations	Documentation of Fringe Benefits*	6,154	1	1.5	9,231	$57.79	$533,459.49
Business or other for-profit; Not-for-profit organizations	Documentation of Fringe Benefits for Multinational Employers*	15,385	1	0.5	7,692.5	$57.79	$444,549.58
Business or other for-	Wage Recordkeeping	61,540	1	2.5	153,850	$57.79	$8,890,991.50

[6] *DOL believes that of the average 569,260 total filings, approximately 50,000 LCAs are estimated to be degree based exemptions requiring completion of Appendix A and provision of educational degree information.*

profit; Not-for-profit organizations	requirements Applicable to Employers of H-1B Nonimmigrants						

FORM WH-4 BURDEN HOURS AND ANNUAL COST TO RESPONDENTS ESTIMATES

Type of Respondent	Form Name (Form Number)	No. of Respondents	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate[7]	Total Annual Respondent Cost
Individuals or Households	Information Form Alleging H-1B Violations (WH-4)**	225	1	0.333	74.93	$57.79	$4,330.20

** This type of burden is not incurred by all employers. This specific burden hours estimate has been added to the total burden hours estimate. The total burden hours estimate reflects the burden incurred by all employers that file requests for labor certification applications.*

*** This burden estimate is not associated with the employers' filings of labor certification applications. Aggrieved parties who choose to file complaints incur in this type of burden. This estimate, however, is part of the total burden hours estimate associated with this program.*

~ It is difficult to estimate the costs involved in completing and maintaining the attestation form. Each individual employer that files an attestation may have a salary range that could be from several hundred dollars to several hundred thousand dollars for a CEO of a business. However, DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross- industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey,[8] and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78.

TOTAL BURDEN HOURS AND ANNUAL COST TO RESPONDENTS ESTIMATES

Type of Respondent	No. of Respondents	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Total Annual Respondent Cost

[7] *DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross- industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey,*[7] *and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78.*

[8] Source: Bureau of Labor Statistics May 2016 National Occupational Employment and Wage Estimates; Management Occupations

Business or other for-profit; Not-for-profit organizations; and Individuals and Households	(See tables above showing number of respondents per information collection tool)	(See burden hours estimate in tables above)	910,919.28	$53,175,484.68

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. There is also no filing fee involved with filing an ETA 9035. However, there are other costs involved with preparation of the form, such as the preparation, translation, and provision of educational credentials for the exempt H-1B nonimmigrant worker(s), as well as filing fees charged by DHS for the principal application to which the ETA 9035 is attached as supporting documentation, but that those annualized costs are already accounted for by DHS[9].

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). The index is derived by using the Bureau 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.

DOL is currently evaluating the government cost to be incurred by OFLC and WHD in connection with this collection of information. A full updated summary will be provided at the time the 30-day notice is published, and before the request for approval is submitted to OMB.

A.15 Changes in Burden

[9] For further reference of USCIS petition fees: https://www.uscis.gov/sites/default/files/files/form/g-1055.pdf

The Department projects that the annual burden for LCA information collections will increase from 310,005 burden hours to 910,919 burden hours. The Department makes this projection based on the steady surge of H-1B, H-1B1, and E-3 requests received during the economic upturn of the past three years and the new requirements of information from employers to improve program transparency. The increase is also a result of improvement on the methodology for reporting the burden in connection with this collection of information. (See the response to A12 for details). The number of responses increased from 340,425 to 677,774 due to better accounting methods in compliance with OMB requirements.

The Department is currently proposing revisions to Form ETA 9035 and WH-4.

Proposed revisions to Form ETA 9035:

The Department has determined that additional information is required to be collected through the ETA Form 9035/9035E. This enhanced data collection and collection of educational information in Appendix A will allow the Department to better track employer usage of the program and provide greater transparency to the public with respect to the employment of H-1B, H-1B1, and E-3 nonimmigrant workers in the United States. The Department has determined that the following major changes in information collection are necessary for the administration of the program and will promote compliance by clarifying existing statutory and regulatory requirements:

A. *Employment and Wage Information*: The Department is proposing four revisions to clarify regulatory requirements and change the collection of employment and wage information by respondents. First, the Department is clarifying the existing regulatory requirement that the employer must identify all intended places of employment on the LCA. 20 CFR 655.730(c)(5). A worksite location must be identified as an "intended place of employment" if the employer knows at the time of filing the LCA that it will place workers at the worksite, or should reasonably expect that it will place workers at the worksite based on: 1) an extant contract with a secondary employer or client, 2) past business experience, or 3) future business plans. If the employer has more than three (3) intended places of employment at the time of filing this application, the employer must file as many additional LCAs as are necessary to list all intended places of employment.

Second, the Department intends to merge *Section F. Rate of Pay* and *Section G. Employment and Prevailing Wage Information* on the current form into a new *Section F. Employment and Wage Information* in order to better align the collection of the wage rate paid to nonimmigrant workers with each intended place of employment on the LCA. Third, the Department is proposing to expand information collection by requiring that employers estimate the number of workers that will perform work at the intended place of employment; whether the nonimmigrant worker(s) will be placed with a secondary employer at the intended place of employment; and, where placement with a secondary employer occurs, disclose the

legal business name of the secondary employer. These additions will improve transparency about the number of H-1B workers being sent to worksites and the locations and employers where H-1B workers will be placed, including transparency for U.S. workers who may be displaced. And finally, the Department is proposing to standardize and streamline the collection of prevailing wage information on the LCA. Specifically, the Department has reorganized this section of the information collection into a set of three prevailing wage disclosure options, which is easier for employers and workers to understand.

B. *Information Related to Statutory Exemptions for H-1B Nonimmigrant Workers*: The Department is proposing to clarify and expand the collection of information for only those H-1B dependent and/or willful violator employers seeking to use the LCA to support H-1B petitions or extensions of status for exempt H-1B nonimmigrant workers. Specifically, under subsection 1 of the newly labeled *Section H. Additional Employer Labor Condition Statements – H-1B Employers ONLY*, H-1B dependent and willful violator employers claiming the exemption for hiring only exempt H-1B workers must identify (1) the specific statutory basis for the exemption request (e.g., $60,000 or higher annual wage, Master's Degree or higher in related specialty, or both); and (2) where the exemption will be based upon educational attainment, complete a new Appendix A by disclosing the name of the accredited or recognized institution that awarded the degree, the field of study, the date the academic degree was awarded, and the number of H-1B nonimmigrant workers associated with the educational attainment information. Employers will be required to complete as many sections of educational attainment as necessary in order to cover all such exempt H-1B nonimmigrant workers who will be employed under the LCA. Employers will also be required to provide the Department with a copy of the educational credential documentation of the foreign beneficiary's degree or alternative permissible documentation at the time of LCA filing to provide greater transparency with respect to the employer's exemption attestation on the Form ETA-9035E and Appendix A. The Department will not conduct a substantive review of the degree information but will rather review these new submissions only for completeness and obvious inaccuracies, consistent with 8 USC 1182(n)(1)(G).

C. *Notice of Employer Obligations*: The Department is proposing to eliminate the current cover page completed by employers for each electronically filed LCA and integrate the regulatory obligation statements on that cover page into a new *Section J. Notice of Obligation*, which employers will continue to sign and date upon receipt of the certified LCA. These existing obligation statements include (1) the requirement to maintain the original signed and certified LCA and to make a copy of the LCA, as well as all necessary supporting documentation, available for public examination in a public access file; (2) the requirement to develop sufficient documentation demonstrating the validity of statements made in the certified LCA and the accuracy of information provided; and (3) the requirement to make all supporting documentation available to officials of the Department.

Proposed revisions to Form WH-4:

DOL is proposing to revise the WH-4 instrument to fully comply with Section 508 requirements and add additional fields to better facilitate communication and contact with the complainant.

The form has been recreated from a Microsoft WORD document to an Adobe LIVECYCLE document to improve accessibility. The software improves the ability of screen reader software to navigate through the form. Additionally, naming conventions for certain data fields have been modified to align with the Department's current data systems.

DOL is proposing general formatting changes and line edits to allow for better usability and understanding. General data field instructions are expanded, offering clearer explanation about the information that is being requested. The WH-4 form instructions now include information on how to submit the form to DOL when the form is completed. Edits are being proposed to the list of violations involving the displacement of U.S. workers in section 4 to help the complainant better understand the possible violations. The Department is also proposing the insertion of a note regarding the Department of Justice's enforcement jurisdiction and updating its contact information, as well as the inclusion of other fields to collect personal information from the complainant to facilitate communication between the investigator and the complainant.

Lastly, DOL is proposing: an additional space to identify dates of employment and Job/Title Occupation; data field to identify the LCA associated with the complaint; and language to help identify if a class of workers is affected as well as whether the complaint involves the placement of nonimmigrant workers with a secondary employer.

A.16 Publication of Results

No collection of information will be published.

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.