

**SUPPORTING STATEMENT**  
**APPLICATION FOR PERMANENT EMPLOYMENT CERTIFICATION**  
**OMB Control Number 1205-0451**

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**Introduction:** *The Department Labor's (Department or DOL) Employment and Training Administration (ETA) seeks approval of this Information Collection Request (ICR) under the Paperwork Reduction Act (PRA) for revisions to the Permanent (PERM) Employment Certification Program information collection. The Department proposes the following changes to the ICR for the PERM employment certification program:*

- *Revision to the existing Form ETA-9089, Application for Permanent Employment Certification to reorganize data collection into a series of appendices to provide greater clarity on program requirements, reduce overall reporting burden, facilitate better quality applications for government review, and promote greater efficiency in the issuance of labor certification decisions under the PERM employment visa program. The aforementioned appendices are as follows:*
  - *Appendix A: Foreign Worker Information – This document allows the employer to provide information on the foreign worker's qualifications, education, skills, and abilities.*
  - *Appendix B: Additional Worksite Information – This document will be used to identify all places of employment.*
  - *Appendix C: Supplemental Information – This document allows the employer additional space to provide explanations based on its responses to Section G on the Form ETA-9089.*
  - *Appendix D: Special Recruitment for College and University Teachers – This document allows the employer to provide additional recruitment information under 20 CFR 656.18.*
- *Revision to the Form ETA-9089 to leverage key information from the Form ETA-9141, Application for Prevailing Wage Determination (hereinafter referred to as the Form ETA-9141), to minimize customer entering duplicate job opportunity information on the ETA-9089.*
- *Revision to the current form to allow employers seeking to employ professional athletes or coaches, as well as those claiming National Interest Waivers (NIW), to submit the proposed form to the Department of Homeland Security (DHS), which will result in the subsequent discontinuation of OMB Control Number 1205-0515, under which these employers currently file Forms ETA-750A, Application for Alien Employment – Offer of Employment, and/or ETA-750B, Application for Alien Employment Certification – Statement of Qualifications of Alien (hereinafter, Forms ETA-750A and ETA-750B).*



The Department collects the information necessary to make the certification on the ETA Form 9089. The form can be found online at <http://www.foreignlaborcert.doleta.gov/pdf/9089form.pdf>.

**Regulatory Authority:** 20 CFR Part 656, subpart C, Labor Certification Process, and 8 CFR 204.5(k)(4)(ii)

**Statutory Authority:** INA, Section 203(b)(2)(B)(i) (8 U.S.C. 1153)

*A2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

By the Federal Government

The proposed form collects this information and is used not only by the Department, but also by other federal agencies to meet INA requirements.

The Department will use the information collected through the proposed form and its appendices to adjudicate PERM employment certification applications for foreign workers filed by employers seeking to employ individuals on a permanent basis. An employer seeking a PERM employment certification to employ an intending immigrant must submit the proposed form to the Department, including all required appendices. Once submitted, the Department will determine whether the employer adequately sought available and willing U.S. workers qualified for the opportunity as required under the regulations, and whether U.S. workers who applied were rejected for lawful, job-related reasons. 20 CFR 656.24. If the Certifying Officer's (CO) Final Determination denies certification of the application, the regulations provide the employer with the ability to request reconsideration of the decision or appeal the denial. 20 CFR 656.24 and 656.26. The Department will also use the information collected through the proposed form and Appendix A to adjudicate PERM applications for professional athletes and coaches that currently apply using the Forms ETA-750A and ETA-750B under OMB Control Number 1205-0515.

DHS will also use the proposed form for the Job Offer Requirement of the NIW process, which exempts foreign workers from the job offer requirement if their expertise is in the national interest of the United States. In addition, under 20 CFR 656.15, employers of foreign workers who are in occupations that meet DOL regulatory requirements for being designated as "Schedule A – Shortage Occupations" must apply for an employment certification using the proposed form and submit an uncertified form directly to DHS. Similarly, under 20 CFR 656.16, employers of foreign workers who are sheepherders must apply for an employment certification using the proposed form and submit an uncertified form directly to DHS. When the proposed form is submitted to DHS directly, DHS will use the form to analyze the foreign worker's background and experience for NIWs, Schedule A occupations, and sheepherders.

Changes from the previous information collection as used by the Department for the current form are described below:

Form ETA-9089 – Application for Permanent Employment Certification

Employers must submit a Form ETA-9089 when they wish to employ a foreign worker. The Department seeks to change sections of the current form to provide uniformity and clarity.

Major changes to the current form include the following:

- Eliminating two sections of the form to streamline the application;<sup>1</sup>
- Streamlining the application process for employers by removing information on the foreign worker to a separate appendix, which will allow employers to reuse applications that relate to similar job opportunities;
- Adding a new section on the Area of Intended Employment to allow the employer an opportunity to clarify information for potential roving employees and to ensure and verify that the worksite location is the same as the location noted on the Form ETA-9141;
- Eliminating duplicative fields related to prevailing wage information to those collected on the Form ETA-9141 to streamline the application, such as eliminating time-consuming free-text fields describing the job duties and special skills;
- Reorganizing sections on recruitment to allow the agency to streamline the data collection and processing based on circumstances that have widely varying recruitment requirements; and
- Changing the name of the Employer Declaration section to Employer Labor Condition Statements on the proposed form to increase continuity of the form and to ensure the employer attests and acknowledges that the application submitted was filed in accordance to 20 CFR 656.10(c).

Form ETA-9089 – Appendix A: Foreign Worker Information

The Department's regulations require an employer to demonstrate that it is seeking to employ a foreign worker in the United States for the purpose of performing skilled or unskilled labor because there are not sufficient U.S. workers able, willing, qualified, and available to perform such skilled or unskilled labor. The Department is proposing new Appendix A by moving information from Sections D, J, and K on the current form to consolidate relevant information about the foreign worker and to resolve the issue of not having a space to list special skills, certifications, etc. This change will allow the Department to better assess that the employer did not reject U.S. workers who applied for the position for lawful, job-related reasons. Filing the proposed form along with Appendix A will expand the information collection fields to allow the employer to provide more extensive information as to the foreign worker's qualifications, education, skills, and abilities.

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<sup>1</sup> Sections A and B of the current form are being deleted and/or incorporated into other sections. Sections of the proposed Form ETA-9089 are being renumbered, such that Sections C, D, and E of the current form will be Sections A, B, and C of the proposed form.

Form ETA-9089 – Appendix B: Additional Worksite Information

The Department is proposing new Appendix B to ensure all places of employment are identified and to ensure the work will not be performed in the geographic areas other than those the employer identified. In addition, the creation of this new appendix will allow it to align with Form ETA-9141, Appendix A, to account for variability in prevailing wages between different worksites.

Form ETA-9089 – Appendix C: Supplemental Information

The Department is proposing new Appendix C to provide the employer the opportunity to affirmatively provide additional information for determining whether the foreign worker's qualifications meet those required for the job being offered by allowing employers to explain their specific need for special requirements not considered normal for the occupation in which the offered job is classified. Appendix C provides employers additional space to provide a more extensive explanation of its responses in Section G on the proposed form as it is a free text field that supplements what the employer is able put in other free-text fields on the current form, which have a maximum cap for the number of characters that can be entered. Appendix C will provide a generic space, not specific to any question, which will eliminate fields created for each individual free-text section.

Form ETA-9089 – Appendix D: Special Recruitment for College and University Teachers

To comply with its obligation under 20 CFR 656.18(b), an employer may recruit for college and university teachers under 20 CFR 656.17 or must be able to document the foreign worker was selected for the job opportunity in a competitive recruitment and selection process through which the foreign worker was found to be more qualified than any of the U.S. workers who applied for the job. The addition of a new Appendix D expands the fields to allow the employer an opportunity to provide more detailed information as to why the foreign worker was more qualified than the U.S. worker who applied for the job. Appendix D is comprised of fields located in Section I.B of the current form.

Form ETA-9089 – Final Determination: Permanent Employment Certification Approval

Where the employer's application has met all the regulatory requirements, including the criteria for certification at 20 CFR 656.24, the Department will complete and electronically send the new Final Determination to the employer and, if applicable, the employer's authorized attorney or agent. This two-page electronic Final Determination provides the official determination that a qualified U.S. worker has not been identified as being available at the time and place needed to fill the job opportunity for which certification is sought, and the employment of the permanent foreign worker in such labor or services will not adversely affect the wages and working conditions of U.S. workers similarly employed. The Final Determination also contains all of the declarations that must be signed and dated by the employer, attorney, or agent (if applicable) that are on the current form. The employer will then use the Final Determination, as well as any













Under routine uses for this system of records notice, case files developed in processing employment certification applications, labor condition applications, and prevailing wage determination, are released to the employers that filed such applications and their representatives; to review Department actions in connection with appeals of denials or other wage-related final determinations before the Office of Administrative Law Judges or Federal Courts; and to participating agencies such as the DOL Office of Inspector General, DOL Wage and Hour Division, DHS, USCIS, and Department of State in connection with administering and enforcing related immigration laws and regulations. Records may also be released to named alien beneficiaries or their representatives, and third party requests under the Freedom of Information Act.

*A11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

The information collections do not involve sensitive matters.

*A12. Provide estimates of the hour burden of the collection of information.*

The Department is adjusting the hourly burden estimates for this information collection. The following table can be used as a guide to calculate the total information collection burden:

Activity	Number of Respondents	Frequency	Total Annual Responses	Time per Response (in hours)	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Completion and Submission of Form ETA-9089	63,851	1.70447	108,832	0.167	18,174.96	\$ 81.85	\$1,487,620.48
Appendix A	63,851	1.70447	108,832	0.2	21,766.42	\$ 81.85	\$1,781,581.48
Appendix B	5,542	3.656	20,262	0.05	1,013.07	\$ 81.85	\$82,919.78
Appendix C	57,951	1.41935	82,253	0.1	8,225.29	\$ 81.85	\$673,239.99
Appendix D	914	2.918	2,667	0.05	133.35	\$ 81.85	\$10,914.70
Gathering and Submission of Evidence	65	1	65	1.0	65	\$ 81.85	\$5,320.25
Recruitment	63,851	1.70447	108,832	1.0	108,832	\$ 81.85	\$8,907,899.20
Retention of Supporting Documentation	63,851	1.70447	108,832	.0833	9,065.71	\$ 81.85	\$742,028.36

Supervised Recruitment	130	2.033	264	4.0	1,057.16	\$ 81.85	\$86,528.55
Requests for Reconsideration and BALCA Appeals	3,334	0.516	1,720.3	2	3,340.69	\$ 81.85	\$273,435.48
Professional Athlete Application	86.6	1	86.6	1.367	118.38	\$ 81.85	\$9,689.40
National Interest Waiver Qualifications	9,558	1	9,558	0.2	1,911.6	\$ 81.85	\$156,464.46
Schedule A and Shepherdher Applications	7,000	1	7,000	0.367	2,569.0	\$ 81.85	\$210,272.65
Notice Requirements	70,937.6*	1.634092	115,918.6	0.5	57,959.3	\$ 81.85	\$4,743,968.71
<b>Unduplicated Totals</b>	<b>80,495.6**</b>	<b>N/A</b>	<b>675,122.5</b>	<b>1.867***</b>	<b>234,231.93</b>	<b>N/A</b>	<b>\$19,171,883.47</b>

\* This figure represents the total respondents required for notice, which includes respondents using the basic filing process, Schedule A, and Shepherders. 656.10(d). It does not include NIWs.

\*\* This figure represents the total number of filings, which have been individually reported in connection with each activity above, in the same column. This figure is not an aggregated total of all of the figures in this column. This total includes unique filers for applications filed with the Department as well as those submitted to DHS, including NIWs.

\*\*\* This estimate of 1.867 hours (or 1 hour and 52 minutes) is the average total estimated time burden incurred by respondents while performing the mandatory steps (e.g., submission, recruitment, document retention, notice, etc.) associated with this information collection for the basic labor certification process. 20 CFR 656.17. This figure is not an aggregated total of all of the figures in this column. Not all respondents must execute every step associated with this IC.

The Department receives PERM applications from a wide spectrum of U.S. employers. While compensation rates for the employees performing the reporting and recordkeeping functions related to the Form ETA-9089 vary, the Department believes that in most companies a human resources manager will perform these activities. The national mean hourly wage for a human resource manager (SOC code 11-3121) is \$62.29,<sup>2</sup> while benefits averaged 31.4 percent of total employee compensation.<sup>3</sup> The estimated average hourly compensation for a human resources manager, including wages and benefits, is thus \$81.85 ( $\$62.29 + (\$62.29 \times .314)$ ).

#### 1. Form ETA-9089 – Application for Permanent Employment Certification

Employers submit a Form ETA-9089 when they seek to employ immigrant workers. Burden calculations have been split to provide an estimate of the annual burden hours associated with the

<sup>2</sup> *Occupational Employment and Wages, May 2019: 11-3121 Human Resources Managers*, U.S. Department of Labor, Bureau of Labor Statistics, <https://www.bls.gov/oes/current/oes113121.htm>.

<sup>3</sup> *Employer Costs for Employee Compensation – June 2019*, U.S. Department of Labor, Bureau of Labor Statistics, [https://www.bls.gov/news.release/archives/ecec\\_09172019.pdf](https://www.bls.gov/news.release/archives/ecec_09172019.pdf).

proposed form and each of its appendices, instead of a single figure estimating the burden for the current form as a whole.

Over a period of three and one-quarter years (i.e., Fiscal Years 2017, 2018, 2019, and Quarter 1 of Fiscal Year 2020), the Department received 353,704 PERM applications.<sup>4</sup> These 353,704 applications were filed by 63,851 unique employers as identified by the Federal Employer Identification Number (FEIN), indicating that each employer submitted an average of 5.54 applications during that three and one-quarter year period. Accordingly, this data indicates that on average, the Department projects to receive 108,832 applications (353,704 / 3.25) each year. Similarly, these 63,851 unique employers filed on average 1.70447 applications per year (108,832 / 63,851).<sup>5</sup>

➤ Completion & Submission of Form ETA-9089 – Application for Permanent Employment Certification

The Department estimates that it will take applicants 10 minutes to complete and submit the proposed form once program requirements have been completed. The total annual burden for completing Form ETA-9089 is estimated to be 18,174.96 hours (1.70447 applications per respondent x 63,851 respondents x 0.167 hours per application). This estimate is associated solely with the completion and submission of the Form ETA-9089 as the system will allow employers to electronically file their applications and to upload their responsive documents directly to their application. This estimate is based on the premise that the majority of the information that will be placed on the proposed form will be auto-populated from the employer's profile in CMS and the Form ETA-9141 to include the Employer Information, Employer Point of Contact, and Employer Worksite Information among other pertinent data associated with the proposed form once the employer inputs their prevailing wage determination (PWD) tracking number for the job opportunity. This time estimate does not encompass the time estimate incurred by respondents in connection with other steps associated with this information collection. Separating Appendix A from the Form ETA-9089 will also allow employers who file applications frequently for similar job opportunities to effectively reuse the same data, while only having to complete Appendix A for each foreign worker.

➤ Form ETA-9089 – Appendix A: Foreign Worker Information

The Department estimates that it will take employers an additional 12 minutes along with the completion of the proposed form to complete Appendix A. The total annual burden for completing Appendix A is also estimated to be 21,766.42 hours (1.70447 applications per respondent x 63,851 respondents x 0.2 hours per application). Appendix A moves information

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<sup>4</sup> Figures for submissions of Form ETA-9089 applications to DHS or in support of NIWs, are addressed in Section A.12.8, below.

<sup>5</sup> As the number of respondents in each year includes numerous duplicates, the total number of unique respondents should be used to determine how frequently on average a respondent submits a Form ETA-9089. Alternatively, the calculation can also be determined by determining the average number of unique applicants in a year and multiplying it by their full application volume over the period (i.e., 63,854 applicants / 3.25 years \* 5.54 = 108,832 (disregarding rounding)).

from Sections D, J, and K on the current application and resolves the issue of not having a space to list special skills, certifications, etc.

➤ Form ETA-9089 – Appendix B: Additional Worksite Information

In circumstances where the employer needs workers to perform the services or labor at more than one specific worksite address or geographical area, the employer must complete the Appendix B. Employers already submit information disclosing all worksites and this Appendix B will establish a standardized process and provide an electronic format for collecting this existing information.

In the supporting statement to OMB Control Number 1205-0508, *Application for Prevailing Wage Determination*, the Department estimates that the Appendix A for Form ETA-9141 (which is structured exactly the same as the proposed Appendix B for proposed Form ETA-9089) would have, across all programs requiring a PWD (including H-1B, H-2B, and PERM), on average respondents would complete the appendix on average 3.656 times each year. As this estimate crosses all programs requiring a PWD, the Department projects that the number of Appendix B applications will be equivalent to the relative filing frequency of PERM PWDs out of all PWD applications.<sup>6</sup> The relative filing frequency of PERM PWDs is 0.878 (129,899 PERM application / (129,899 PERM PWDs + 5,139 H-1B PWDs + 12,873 H-2B PWD) = 129,899 / 147,911 = 0.878). The Department anticipates that it will take 0.05 hours to complete Appendix A. Extrapolating these figures to the overall frequency of filings, the Department estimates that 5,542 respondents (6,312 x 0.878) will complete Appendix B, which when multiplied by the frequency of 3.656 times per year, will result in an estimated 20,262 responses and at 0.05 hours to complete, results in a total burden of 1,013.07 hours.

➤ Form ETA-9089 – Appendix C: Supplemental Information

The Department will use the information on Appendix C as additional information for determining the job requirements and the qualifications of the foreign worker where the employer does not believe it has enough space to do so in the body of Form ETA-9089. The form allows this additional information to be provided for fields G.6 through G.12.

As described in the methodology above for determining the estimated burden with the Form ETA-9089, 57,951 respondents filed 267,322 responses over the three and one quarter year period from Fiscal Year 2017 through the first quarter of Fiscal Year 2020, that would require the submission of an Appendix C, submitting on average 4.613 applications during that time period. Similarly, over a single year, the Department estimates that it would receive 82,253 responses (267,322 / 3.25) requiring the submission of an Appendix C, and that each unique

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<sup>6</sup> Such an information collection is not duplicative, as an employer may submit an Appendix A with a Form ETA-9141 for hundreds of worksites to obtaining unique prevailing wages based on the area of intended employment; however, only those worksites that relate to the specific job opportunity being offered are relevant to the adjudication of the Form ETA-9089.

employer will send each year, on average, 1.41935 applications (82,253 / 57,951) requiring completion of Appendix C. The Department estimates that Appendix C should take on average 0.1 hours to complete for each application. This yields a total burden of 8,225.29 hours (57,951 respondents x 1.41935 applications per respondent per year x 0.1 hours per application).

➤ Form ETA-9089 – Appendix D: Special Recruitment for College and University Teachers

As described in the methodology above for determining the estimated burden with the Form ETA-9089, 914 respondents filed 8,668 applications over the three and one quarter year period from Fiscal Year 2017 through the first quarter of Fiscal Year 2020, submitting on average 9.48 applications during that time period. Similarly, over a single year, the Department estimates that it would receive 2,667 applications (8,668 / 3.25) requiring Appendix D, and that each unique employer will send, on average, 2.918 applications (2,667 / 914) requiring completion of Appendix D each year. The Department estimates that Appendix D should take on average 0.05 hours to complete for each application. This yields a total burden of 133.35 hours (914 respondents x 2.918 applications per respondent per year x 0.05 hours per application).

2. Gathering and Submission of Evidence – 20 CFR 656.10(e)

The regulations allow any person to submit to the CO documentary evidence bearing on a PERM application that is filed with DOL. The Department estimates that 50 individuals or organizations will avail themselves of the opportunity to provide such evidence and each filing of documentary evidence will take approximately one hour for a total annual burden of 50 hours.

Individuals or organizations may provide to the appropriate DHS office documentary evidence of fraud or willful misrepresentation in a Schedule A application filed under 20 CFR 656.15 or a shepherd application filed under 20 CFR 656.16. The Department estimates 15 individuals or organizations will avail themselves of the opportunity to provide such evidence and each filing of documentary evidence will take approximately 1 hour for a total annual burden of 15 hours.

The total annual burden for submission of evidence to DOL and DHS offices would come to 65 reporting hours.<sup>7</sup>

3. Recruitment – 20 CFR 656.17(e), (f) and (g)

*Job advertisements.* Recruitment activities, including advertising for workers and placing job orders, is a usual and customary activity of employers. Therefore, under OMB regulations at 5 CFR 1320.3(b)(2), the resources expended by employers to comply with the recruitment provisions at 20 CFR 656.17(e) and (f) are excluded from the paperwork burden estimates for this ICR.

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<sup>7</sup> Neither the Form ETA-9089 application nor its accompanying instructions refers to the voluntary submission of evidence under 20 CFR 656.10(e). However, the PRA and its burden estimate requirements apply to information collections that are voluntary, as well as mandatory. 5 CFR 1320(c)(3) and 1320.8(a)(4) and (b)(4).

*Employer's recruitment report.* All employers that file applications under the basic process at 20 CFR 656.17 must prepare a summary report under section 656.17(g) signed by the employer describing the recruitment steps undertaken and the results achieved, including the number of hires, and if applicable the number of U.S. workers rejected, summarized by the lawful job-related reasons. Further, the CO, after reviewing the employer's recruitment report, may request the resumes or applications of U.S. workers sorted by the reasons they were rejected.

The Department estimates that it will take an employer an average of one hour to prepare a recruitment report for each application it files, and, if requested by the CO, there should be no additional burden as an employer would already have reviewed and sorted the resumes it received for the application as part of completing the recruitment report. Since the Department anticipates that 108,832 applications for PERM employment certification will be filed under the basic process, which requires advertising, the total annual burden for preparing recruitment reports is estimated to amount to 108,832 recordkeeping hours (108,832 applications x 1 hour).

#### 4. Retention of Supporting Documentation – 20 CFR 656.10(f)

The regulations require employers to retain records demonstrating their compliance with the advertising requirements, as well as records they used to prepare the required recruitment report. Employers already have an obligation to maintain such records.<sup>8</sup>

The records that employers must maintain pursuant to 29 CFR 1627.3(b) that are promulgated pursuant to the Age Discrimination in Employment Act, include but are not limited to the following:

- Job applications, resumes or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual;
- Promotion, demotion, transfer, selection for training, layoff, recall or discharge of any employee;
- Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; and
- Any advertisement or notice to the public or to employees relating to job openings, promotions, training programs, or to opportunities for overtime work.

As noted, employers are already required to keep recruitment and hiring documents for one-year under various equal opportunity federal laws, and the Department's regulations require that they

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<sup>8</sup>The burden to maintain such records can be excluded in compiling the burden under this ICR. See, e.g., Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1602.14 (OMB Control No. 3046-0040), promulgated pursuant to Title VII of the Civil Rights Act, the American With Disabilities Act, and the Genetic Information Nondisclosure Act; and at 29 CFR 1627.3(b) (OMB Control No. 3046-0018), promulgated pursuant to the Age Discrimination in Employment Act.



be kept for five years. Therefore, the Department estimates that employers will spend .0833 hours per application per year to retain an application and required supporting documentation in the four years PERM regulations require for retention beyond the one-year retention period mandated under Title VII and other equal employment opportunity laws noted above. This results in an annual burden of 9,065.71 recordkeeping hours (108,832 applications x .0833 hours per application).

#### 5. Supervised Recruitment – 20 CFR 656.21

In a case where the CO determines it to be appropriate, post-filing recruitment may be required of the employer. As described in the methodology above for determining the estimated burden with the Form ETA-9089, 130 respondents filed 859 applications over the three and one quarter year period from Fiscal Year 2017 through the first quarter of Fiscal Year 2020 under supervised recruitment procedures, submitting on average 6.61 applications during that time period. Similarly, over a single year, the Department estimates that it would receive 264.3 applications (859 / 3.25) requiring supervised recruitment, and that each unique employer will send, on average, 2.033 applications (264.3 / 130) requiring an employer to undergo supervised recruitment each year.

The Department estimates that the time to complete all requirements necessary for supervised recruitment is four hours. Accordingly, the total burden is 1,057.16 hours (130 respondents x 2.033 applications per respondent x 4 hours per application). Of that time period, the time required to conduct such recruitment will average three hours per application (or 75percent of the required total hours) to place the advertisement, receive and analyze resumes and interview candidates for an annual burden of 792.87 third-party disclosure hours (1057.16 hours x 0.75). Employers will also be required to provide a recruitment report to the CO that on average will take about 1 hour (or 25 percent of the required total hours) to prepare for an annual burden of 264.29 reporting hours (1057.16 hours x 0.25).

This burden is included in the estimate of the total paperwork burden for this ICR.

#### 6. Requests for Reconsideration and BALCA Appeals – 20 CFR 656.24

Employers may request reconsideration of a denial by the CO of a PERM application. If the reconsideration is denied, they may appeal to BALCA. Employers may also choose to forego a request for reconsideration and appeal directly to BALCA if an application is denied. The employer is expected to retain all evidence relating to the submitted form and is not allowed to submit new evidence while going through this process.

As described in the methodology above for determining the estimated burden with the Form ETA-9089, 3,344 respondents filed 5,591 requests for reconsideration or appeals over the three and one quarter year period from Fiscal Year 2017 through the first quarter of Fiscal Year 2020, submitting on average 1.672 appeals during that time period. Similarly, over a single year, the Department estimates that it will receive 1,720.3 appeals each year (5,591 / 3.25), and that each unique employer will send, on average, 0.516 appeals (1,720.3 / 3,334) each year.

The Department estimates that the time to complete all requirements necessary to file an appeal to take, on average, 2.0 hours. Accordingly, the total annual burden is 3,440.69 hours (3,334 respondents x 0.516 appeals per respondent x 2 hours per appeal).

#### 7. Professional Athlete Applications

In the supporting statement for OMB Control Number 1205-0015, regarding Forms ETA-750A and ETA-750B, the Department estimated that it would process 86.6 applications per year for professional athletes and coaches and that it would take 2.8 hours for each application to be completed. Currently, when submitting one of these applications to the Department, both forms are required. This time included both: (1) the public reporting burden for the collection of information, which includes the supporting documentation such as press clippings of the athletes, sports team contracts, off-season employment letter, and notice of filing, and (2) the time for reviewing instructions, searching existing information/data sources, gathering and maintaining information, completing and reviewing the application, and providing notice of the filing.

However, the Department has made changes to the Form ETA-9089 that would allow Forms ETA-750A and ETA-750B to be discontinued, such that the Department could take advantage of the improved efficiencies that the changes to the Form ETA-9089 and CMS will offer. Most importantly, applications using the Forms ETA-750A and 750B will no longer rely solely on manual entry for each application. An employer needing to complete an application for a professional athlete or coach would only need to complete the Form ETA-9089 and Appendix A. Accordingly, the Department estimates this burden to be 31.78 hours (86.6 respondents x 1 application per year x (0.167 hours for Form ETA-9089 + 0.2 hours for Appendix A)); however, the Department is estimating that there will be no change to the public reporting burden, which will remain 86.6 hours (86.6 respondents x 1 application per year x 1 hour). This will result in total burden of 118.38 total hours.

#### 8. National Interest Waivers

In the supporting statement for OMB Control Number 1205-0015, regarding Form ETA-750, the Department estimated that 9,558 respondents would complete the Form ETA-750B and that it would take 1.8 hours for each application to be completed. When submitted to DHS, only Form ETA-750B is required. However, the Department has made minimal changes to the Form ETA-9089 that would allow Form ETA-750B to be discontinued, such that the Department could take advantage of the improved efficiencies that the changes to the Form ETA-9089 and CMS will offer. Most importantly, unlike the Form ETA-750B, employers will no longer have to rely on manual entry for each application as the Form ETA-750B is unsupported by a system. An employer needing to complete an application for a NIW would only need to complete Appendix A. Accordingly, the Department estimates this burden to be 1,911.6 total hours (9,558 respondents x 1 application per year x 0.2 hours).

#### 9. Schedule A and Shepherders – 20 CFR 656.15 and 20 CFR 656.16

Form ETA-9089 is used by employers under Schedule A and for sheepherding positions, who submit the application directly to DHS. The Department estimates 7,000 respondents completing one application annually and submitting it to DHS for these positions, and the time it will take to complete the application is the combined time to complete Form ETA-9089 (0.167 hours) and Appendix A (0.2 hours), or 0.367 hours. Accordingly, the Department estimates the total burden to be 2,569.0 total hours (7,000 respondents x 0.367 hours per respondent).

#### 10. Notice Requirements – 20 CFR 656.10(d)

Employers must provide notice of the filing of the Form ETA-9089 to either their employees directly or to their employees' bargaining representative in a manner specified in 20 CFR 656.10(d). This requirement does not apply to individuals using the form to apply for a NIW, but will for every other application, or for 70,937.6 respondents (63,851 PERM respondents + 86.6 professional athlete respondents + 7,000 Schedule A and shepherder respondents), who will file 115,918.6 applications (108,832 basic process applications + 86.6 professional athlete applications + 7,000 Schedule A and shepherder applications), or on average 1.634092 responses per year (115,918.6 applications / 70,937.6 respondents). For employers covered by the requirement, the notice must be posted in a conspicuous place for 10 business days. Producing a notice, posting it, and documenting the dates of posting takes approximately 0.5 hours for a total of 57,959.3 third party disclosure hours (115,918.6 applications x 0.5 hours).

*A13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).*

a) Start-up/capital costs: There are no start-up costs. There is no obligation to own a computer to participate in the program. Anyone without computer access can request the form and appendices from DOL.

b) Annual costs: There are no annual costs involved with operation and maintenance of the forms because the Department will be responsible for the annual maintenance costs for the free downloadable forms. There is also no filing fee involved with filing a Form ETA-9089 or associated forms. The Department assumes that employers would incur preliminary costs, such as advertising, even if they were not filing applications for employment certification because they are required to make good faith efforts to recruit U.S. workers and it is assumed that advertising their job openings is a normal cost of doing business. Therefore, the Department is not including any out-of-pocket expenses as part of its burden estimates for the majority of cases. However, as indicated in the above response to A.12.5, the Department estimates that 130 employers will file an annual average of 264.3 applications to conduct supervised recruitment. The Department estimates that the cost of an advertisement over all types of publications and geographic locations will average \$500.00 for a total annual burden of \$132,150.

*A14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff),*

*and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.*

The Department estimates that the annual costs to the Federal government associated with the ICR are \$26,837,494. This total is comprised of \$20,401,423 in OFLC federal administration costs, \$6,203,136 in state-level costs funded by Wagner-Peyser grants, and \$232,935 in USCIS case-review costs.

Federal administrative costs include salaries and expenses for the staff who process applications for permanent employment certification; IT systems that support application-filing and case-processing operations; rent; supplies; equipment; and agency indirect costs, which include support for human resources, financial and administrative oversight, and contracts management. The table below provides a detailed breakdown by major cost category of OFLC’s annualized costs to administer the permanent employment certification program.

Major Cost Category	Cost Activities	Annualized Costs (estimated)
Federal Salaries & Benefits	<u>National Processing Centers</u> <ul style="list-style-type: none"> <li>▪ GS-12/13 staff processing applications</li> <li>▪ GS-14/15 operations management</li> <li>▪ Other federal administrative support</li> </ul> <u>OFLC Headquarters</u> <ul style="list-style-type: none"> <li>▪ Management support, policy development, and stakeholder training</li> <li>▪ Budget, contract and procurement management</li> </ul>	\$9,380,385
Contracts for Services (not technology related)	<ul style="list-style-type: none"> <li>▪ Mail, data entry, and other clerical support services</li> <li>▪ Case processing and administrative support for operations</li> </ul>	\$4,079,216
Technology (IT) Contracts	<ul style="list-style-type: none"> <li>▪ Application development services &amp; network infrastructure support</li> <li>▪ Hardware &amp; software updates</li> </ul>	\$1,183,310
GSA & DHS Services	<ul style="list-style-type: none"> <li>▪ Rent payments for office space</li> <li>▪ Security services</li> </ul>	\$1,035,834
DOL Working Capital Assessment	<ul style="list-style-type: none"> <li>▪ Indirect costs associated with DOL administrative and executive management services</li> </ul>	\$4,169,470
Supplies & Equipment	<ul style="list-style-type: none"> <li>▪ General office supplies</li> <li>▪ Computers, printers, and other office related equipment</li> </ul>	\$41,948
Mail, Printing and Telecommunications	<ul style="list-style-type: none"> <li>▪ Mail services</li> <li>▪ Phone and telecommunication charges</li> <li>▪ Security Paper for transmission of approved applications</li> </ul>	\$411,367
Other Costs	<ul style="list-style-type: none"> <li>▪ Travel</li> <li>▪ Training and other Government Agency Services</li> </ul>	\$99,893
<b>TOTAL COSTS – OFLC FEDERAL ADMINISTRATION</b>		<b>\$20,401,423</b>

The Department estimates that staff in the State Workforce Agencies (SWAs) spend one hour on average to process job orders associated with Form ETA-9089. States’ costs related to these job orders are funded through Wagner-Peyser grants. The Department also estimates that USCIS staff spend twelve minutes (0.2 hours) on average to read and analyze the information contained

in Form ETA-9089, which is attached to applications to USCIS for permanent residency. The table below summarizes the estimated state and USCIS costs associated with Form ETA-9089.

<u>Description (GS-Level/Step)</u>	<u>Applications</u>	<u>Activity</u>	<u>Hourly Rate<sup>9</sup></u>	<u>Hours/App</u>	<u>Total Cost</u>
SWA Staff <sup>10</sup>	106,165 <sup>11</sup>	Job Orders	\$33.58 x 1.74	1	\$6,203,136
USCIS (GS 12/5) <sup>12</sup>	14,278	ETA-9089 Review	\$46.88 x 1.74	0.2	\$232,935

*A15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.*

The estimated burden hours and associated costs have changed due to updated projections based on more recent programmatic experience and expected processing efficiencies due to technology improvements, as well as adjustments to anticipated annual application volumes and the average reporting time per application. The answer provided to A.12 provides more information regarding this burden increase.

The Department reported during the last renewal cycle that it would receive 113,304 applications per year in connection with the PERM program and that DHS would receive 1,300 Form ETA-9089 applications in lieu of the Form ETA-750B for its NIW application process, and 4,620 for Schedule A and Shepherdder applications combined.

The Department now estimates that applications will increase to 125,476.6 on average per year. For purposes of a similar comparison to the last cycle, Form ETA-9089 applications are projected to remain relatively flat at 108,832. The remaining difference in application volume, and therefore burden, corresponds to an increase in applications to DHS for Schedule A and Shepherders from 4,620 to 7,000, and adjustments being made to incorporate additional Form ETA-9089 applications that will be filed as a result of the planned discontinuance of Forms ETA-750A and ETA-750B (OMB Control Number 1205-0015), which will result in 86.6 additional Form ETA-9089 applications completed for professional athletes and coaches, and 9,558 additional Form ETA-9089 applications for NIW qualifications.

The edits to the form and instructions do not cause the burden increase reported by DOL. The new projections are made based on past filings, current filing trends, and the general improvement of the Department's methodology for arriving at these estimates.

<sup>9</sup> The hourly rate is multiplied by a factor of 1.74 to account for employee benefits and proportional operating costs.

<sup>10</sup> *Occupational Employment and Wages, May 2019: 13-1141 Compensation, Benefits, and Job Analysis Specialists*, U.S. Department of Labor, Bureau of Labor Statistics, [www.bls.gov/oes/current/oes131141.htm](http://www.bls.gov/oes/current/oes131141.htm).

<sup>11</sup> A job order is required of every PERM application using the basic labor certification process with the exception of college and university professors. 20 CFR 656.17(e)(1)(i). Subtracting the annual average of college and university professor filings from the annual average of total filings results in 106,165 job orders (108,832 – 2,667 = 106,165).

<sup>12</sup> Federal rates are based on the FY 2020 General Schedule for Washington, DC. *2020 General Schedule (GS) Locality Pay Tables*, U.S. Office of Personnel Management, [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf).

*A16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

No collection of information will be published.

*A17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

The Department displays the expiration date for OMB approval on the form and instructions.

*A18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."*

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

**B. Collections of Information Employing Statistical Methods**

This information collection does not employ statistical methods.