

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

This Information Collection Request (ICR) seeks approval under the Paperwork Reduction Act of 1995 (PRA) for revisions to Office of Management and Budget (OMB) Control Number 1205-0508, *Application for Prevailing Wage Determination*. This information collection for prevailing wage determinations (PWDs) for the Department of Labor's (Department or DOL) employment-based foreign labor certification and labor condition programs includes Form ETA-9141, *Application for Prevailing Wage Determination*; Form ETA-9141, *General Instructions*; and Form ETA-9141, Appendix A, *Request for Additional Worksite(s)*. The Department respectfully requests OMB grant a delayed implementation period for the Department to perform updates to the electronic filing system, the Foreign Labor Application Gateway (FLAG), resulting from the proposed changes to the ICR. During the period of delayed implementation, the Department requests that the current forms remain valid for public use.

The Department is proposing minor changes to the Form ETA-9141 and corresponding general instructions to clarify several questions on the form. The Department's proposed minor changes to the instructions accompanying the form provide clearer explanations of terminology to ensure the form is properly completed. The Department revised Section E to clarify when and how an employer should respond to questions related to requests for PWDs based on the Davis-Bacon Act (DBA), McNamara-O'Hara Service Contract Act (SCA), and employer-provided prevailing wage surveys. Specifically, the Department revised Item E.4 so that it asks only if the employer is requesting a DBA or SCA wage and moved the questions related to employer-provided survey requests into a new Item E.5. The Department revised Item F.2 to explain more clearly that an employer may submit a separate addendum in response to the question only if the employer filed its application by mail. The Department revised Items G.4.c and G.5.c to delete the unnecessary phrase "does not apply to H-2B." The Department made other minor changes to the Form ETA-9141, *General Instructions*, including adding instructions for mailing applications and making minor changes to several items to clarify when the employer must respond with not applicable (or "N/A") and when the employer must include country information.

The Department also is proposing to incorporate into this ICR the Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey*, and its accompanying burden.¹ The Form ETA-9165 is currently approved under the ICR titled "H-2B Foreign Labor Certification Program" (OMB Control Number 1205-0509). The Department is incorporating the Form ETA-9165 into this ICR because the form is submitted with the Form ETA-9141 in instances in which employers seek H-2B prevailing wages that are based on employer-provided wage surveys; the form is reviewed by the Department's National Prevailing Wage Center (NPWC), like other forms in this package, not the Chicago National Processing Center; and the inclusion of this form in the H-2B ICR adds unnecessary burden to the PRA process and this burden is both more appropriate and less burdensome to address in this prevailing wage determination ICR.

The Department is proposing minor changes to the Form ETA-9165, including revising the form to replace references to Occupational Employment Statistics (OES) with references to Occupational Employment and Wage Statistics (OEWS), to reflect that the Bureau of Labor Statistics (BLS) retitled the

¹ The Department plans to remove the associated burden for Form ETA-9165 from 1205-0509 once the proposed revision to 1205-0508 is approved.

program on March 31, 2021.² Additionally, the Department revised Item E.9.b in the Form ETA-9165 so that it requests the number of workers included in the survey data set, instead of asking only if the survey reflects wages from at least 30 workers in the occupation and area of intended employment. The Department has determined this change imposes no additional substantive burden because the information requested for Item E.9.b is readily available for completion of Item E.9.a and other fields on the Form ETA-9165.

The Department seeks OMB approval of this ICR for an additional three years. As explained below, the information collected through this ICR is necessary for the Department to determine prevailing wages and is critical to the Department's administration of the permanent (PERM) labor certification program, H-2B temporary non-agricultural labor certification program, and H-1B, H-1B1, and E-3 labor condition application (LCA) programs.

A. Justification

A.1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Immigration and Nationality Act (INA), as amended, assigns responsibilities to the Secretary of Labor (Secretary) relating to the entry and employment of certain categories of immigrant and nonimmigrant foreign workers under the PERM, H-2B, H-1B, H-1B1, and E-3 programs. The Office of Foreign Labor Certification (OFLC) within the Employment and Training Administration (ETA) is responsible for processing PWD applications from employers who seek to employ PERM, H-2B, H-1B, H-1B1, and E-3 workers. As explained further below, the INA requires the Secretary to certify that the employment of foreign workers under certain visa classifications will not adversely affect the wages and working conditions of similarly employed workers in the U.S. In order to render this certification, the Secretary determines the prevailing wage for the occupational classification and area of intended employment and ensures the employer offers a wage to the foreign worker that equals at least the prevailing wage. OFLC uses Forms ETA-9141 and ETA-9165 to collect information necessary to determine the prevailing wage for the applicable occupation and area of intended employment. For labor certification applications and, as requested, for LCAs, employers request and are issued a PWD from the Department for the job opportunity; the PWD is based on the occupational classification and area of intended employment. Employers file the Form ETA-9141 with the Department to receive a PWD. H-2B employers also file the Form ETA-9165 with the Department if they are requesting a PWD based on a non-OEWS survey.

The INA prohibits the admission and employment of foreign workers under the H-2B and PERM programs unless the Secretary has certified that the employment of the foreign worker will not adversely affect the wages and working conditions of workers in the United States similarly employed. *See* 8 U.S.C. § 1182(a)(5)(A)(i)(II); 8 CFR 204(k)(4)(i), 214.2(h)(4)(i)(B)(1), (h)(6)(iii)(A), (h)(6)(iv)(A). Similarly, the INA prohibits the employment of foreign workers under the H-1B, H-1B1, and E-3 programs unless the Secretary has approved an LCA in which the employer attests to pay the foreign worker at least the prevailing wage level for the occupational classification in the area of employment or

² BLS's OEWS survey was named the OES survey prior to March 31, 2021. *See* <https://www.bls.gov/news.release/pdf/ocwage.pdf>

the actual wage level paid by the employer to workers with similar experience and qualifications for the specific employment in question, whichever is greater. *See* 8 U.S.C. §§ 1182(n)(1)(A)(i)(I)-(II), (t)(1)(A)(i)(I)-(II).

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

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

H-2B PWDs: In the absence of a prevailing wage rate derived from an applicable CBA, the employer must receive an OEWS-based PWD from the NPWC or provide a wage survey that complies with the criteria in the Department's H-2B regulations. *See* 20 CFR 655.10(b)(2). If the employer requests a PWD based on an employer-provided survey, the employer must provide the NPWC sufficient information to determine whether the survey satisfies the methodological requirements. *See* 20 CFR 655.10(f).

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

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

Regulatory Authority: 20 CFR 655.10, 655.731, and 656.40; 8 CFR 204(k)(4) and 214.2(h)(4) and (h)(6).

A.2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The Department uses the information collected through this ICR to determine the prevailing wage that an employer must pay to a foreign worker in connection with the PERM, H-2B, H-1B, H-1B1, and E-3 programs. When determining a prevailing wage using OEWS data, the NPWC refers to the Form ETA-9141 to determine the appropriate occupational classification and prevailing wage rate for that occupation based on information about the nature of the job offer, the area of intended employment, and description of job duties. When an employer provides a wage survey to determine the prevailing wage in the H-2B program, the NPWC reviews the Form ETA-9165 to determine if the survey complies with regulatory requirements governing the use of employer-provided wage surveys.

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

The filing of the Form ETA-9141, *Application for Prevailing Wage Determination*, and its appendix is supported by the Department's Foreign Labor Application Gateway (FLAG) system at <https://flag.dol.gov/>. In circumstances where the application is filed using the traditional paper-based method, OFLC staff manually enters the data and information contained on the paper application into the FLAG system for processing in a similar manner as those filed electronically.

The FLAG system permits an employer or, if applicable, its authorized attorney or agent to efficiently prepare and submit PWD applications to OFLC. The FLAG system provides employers with a series of electronic data checks and prompts to ensure each required field is completed and values entered on the form are valid and consistent with regulatory requirements. The OFLC website and the FLAG system include detailed instructions designed to help employers understand the form collection items and the kinds of entries that are required. Where it is not practical to collect supporting documentation using a standard OMB-approved appendix, the FLAG system permits an employer to upload documentation supporting the application in an acceptable digitized format (e.g., Adobe .PDF, Microsoft Word, .TXT). The Form ETA-9165 is accessible on the OFLC website as a fillable Adobe .PDF form that can be uploaded with an electronic Form ETA-9141 file in the FLAG system or printed and attached to a mailed application. In compliance with the Government Paperwork Elimination Act, OFLC will continue to make Form ETA-9141 easily accessible on the FLAG System and will maintain all forms and appendices approved under this ICR on the OFLC website (<https://www.dol.gov/agencies/eta/foreign-labor>) so that employers may complete and file applications electronically.

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

The information and any supporting documentation requested through the Forms ETA-9141 and ETA-9165 are sufficiently unique to avoid duplication of activities within the Department in the context of the

H-2B, PERM, and LCA programs. Employers filing their requests electronically can save their contact information and other pertinent general information for the Form ETA-9141, and its appendix, in the FLAG system for use while filing another Form ETA-9141, *Application for Prevailing Wage Determination*. Once this general information is entered, the system repopulates it as the employer files additional Form ETA-9141 requests, which results in time savings to an employer. For the Form ETA-9165, any duplicative information like the name(s), address(es), and contact information of the employer and, if applicable, its authorized attorney or agent will be eliminated once all of the form revisions are incorporated into the electronic filing system. The Department has not yet incorporated Form ETA-9165 into the electronic filing system at this time due to technical challenges doing so. Finally, the procedures and documentation requirements are sufficiently specific to avoid duplication of activities. The information collection in the Form ETA-9165 only applies to entities seeking H-2B workers and a prevailing wage determination based on an employer-provided survey.

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

The information collected under this ICR is required of small entities who seek to employ foreign workers under the PERM and H-2B programs and small entities that request a PWD from the Department for use in the LCA programs. The Department cannot make any exemptions or eliminate forms for small businesses because the regulations require all employers seeking a PWD from the Department to provide the information necessary to determine the appropriate prevailing wage. This collection is not disproportionately more burdensome for small entities than large ones because the forms and accompanying appendix are easy-to-understand and provide all of the necessary instructions so that the employer does not need to find the appropriate law or regulation to know how to request a PWD. It is not possible to reduce the burden on small entities by shortening the forms because the forms collect from all employers the minimum information needed to determine the appropriate prevailing wage for the occupational classification and area of intended employment. The use of electronic filing and automated system prompts serves to minimize the burdens on respondents by increasing the completeness and quality of applications received and enhancing electronic communications during the application review process. Any recordkeeping requirements largely involve information that already exists in human resources records kept by most employers for other purposes.

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

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

therefore, essential to the administration of the PERM and H-2B labor certification programs and LCA programs.

A.7. Explain any special circumstances that would cause an information collection to be conducted in a manner that requires further explanation pursuant to regulations 5 CFR 1320.5(d)(2).

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

A.8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

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

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

In accordance with the PRA, the Department is giving the public 60 days to comment on this ICR. 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. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

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

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

The collection of data and information under this ICR is incorporated into the Department's System of Records Notice DOL/ETA-7. The categories of records in this collection include information such as the names and addresses of employers and their authorized attorneys and agents and employer-provided wage source documents and surveys. The laws authorizing this program and collection of information provides for compliance with the Privacy Act in all its aspects.

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

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

The information collections do not involve sensitive matters.

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

Based on recent program experience, the Department estimates it will receive each year approximately 12,660 prevailing wage requests for the H-2B program; 3,723 prevailing wage requests for the H-1B program; and 138,056 prevailing wage requests for the PERM program, totaling 154,439 requests.³ The total estimated hourly annual burden is 148,511.6 hours. The estimated time reporting burden per Form ETA-9141 application is 0.78 hours, excluding appendix and recordkeeping requirements, and for Form ETA-9165 is 0.42 hours. While actions associated with the form collection vary depending on the nature and complexity of the employer’s job opportunity, the estimated average hourly reporting burden includes those elements that are common to the majority of applications.

OMB Control Number 1205-0508	Estimated Burden Hours (for proposed form)
Form ETA-9141 and Appendix A	1 hour ** ETA-9141: 0.78 hours Appendix A: 0.05 hours Recordkeeping: 0.17 hours
Form ETA-9165	0.42 hours

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

³ Unless otherwise stated, in all cases where DOL’s estimates are averages, the averages are based on prevailing wage data for three fiscal years (FYs): 2019, 2020, and 2021.

I. Form ETA-9141

A. H-2B PWDs

In order to recruit U.S. workers and complete the Form ETA-9142B, *H-2B Application for Temporary Employment Certification* (OMB Control Number 1205-0509), an H-2B employer must first obtain a PWD from the Department. 20 CFR 655.10(c). The regulations require employers to obtain the PWD in advance of recruitment or filing by submitting a completed Form ETA-9141 to the NPWC. The Department receives an average of 12,660 H-2B prevailing wage requests each year. The Department estimates that employers will spend 0.78 hours preparing and submitting the Form ETA-9141 to the NPWC. The total annual burden estimate is 9,874.80 reporting hours (12,660 filings x 0.78 hours = 9,874.80 reporting hours).

An employer may request Center Director Review (CDR) or appeal PWDs issued by the NPWC for an H-2B job opportunity. The Department estimates that employers will submit an average of 49 CDR requests each year. The Department estimates it takes an employer 0.78 hours to prepare CDR requests. The Department estimates that employers will submit an average of one prevailing wage appeal to the Department's Board of Alien Labor Certification Appeals each year. The Department estimates it takes an employer one hour to prepare an appeal. The annual burden estimate for H-2B CDR requests and H-2B appeals is 39.22 reporting hours (49 CDR requests x 0.78 hours = 38.22 hours) + (1 appeal x 1 hour = 1 hour) = 39.22.

B. Retention of H-2B PWD Supporting Documentation

The Department estimates that employers will spend about 0.17 hours per year per application to retain the application and required supporting documentation, as required in 20 CFR 655.10(j). This results in an annual burden estimate of 2,152.20 recordkeeping hours (12,660 applications x 0.17 hours = 2,152.20 hours).

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

9,914.02	Form ETA-9141 reporting hours
+ 2,152.20	Form ETA-9141 recordkeeping hours
<u>12,066.22</u>	Total Hours

Total Estimated H-2B Responses (Applications):	12,660
Total Estimated H-2B Respondents (Filers):	7,215

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

To complete the Form ETA-9035 & 9035E, *Labor Condition Application for Nonimmigrant Workers* (OMB Control Number 1205-0310), an employer must determine the appropriate wage to pay the foreign worker. The regulations require employers to determine the appropriate wage prior to submitting the LCA. See 20 CFR 655.731(a)(2). Unlike the H-2B and PERM programs, in which the employer must obtain a PWD from the Department, under the Department's regulations at 20 CFR 655.731, an H-1B, H-1B1, or E-3 employer has the option of requesting a

PWD from the NPWC using the Form ETA-9141, but may choose to rely instead on the wage information available through the Department’s FLAG System or Online Wage Library, or another source of wage information meeting the requirements of 20 CFR 655.731. Obtaining a PWD from the Department, however, affords the employer safe harbor in the event of an investigation by WHD. Where the employer chooses to request a PWD from the NPWC using the Form ETA-9141, it will take the employer approximately 0.78 hours to complete and file the prevailing wage request with the NPWC using the Form ETA-9141. The Department receives an average of 3,723 prevailing wage requests each year with the NPWC using the Form ETA-9141. The annual burden estimate for H-1B PWDs is 2,903.94 reporting hours (3,723 filings x 0.78 hours = 2,903.94 hours).

An employer may request NPWC redetermination, CDR, or formal appeal of PWDs issued by the NPWC for an H-1B job opportunity. The Department estimates that employers will submit an average of 40 redetermination requests each year. The Department estimates it takes an employer 0.78 hours to prepare redetermination requests. The Department estimates that employers will submit an average of 2 CDR requests each year. The Department estimates it takes an employer 0.78 hours to prepare CDR requests. The Department estimates that employers will submit an average of one prevailing wage appeal each year. The Department estimates it takes an employer 1 hour to prepare an appeal. The annual burden estimate for H-1B redeterminations, CDR requests, and appeals is 33.76 reporting hours (40 redetermination filings x 0.78 hours = 31.20 hours) + (2 CDR requests x 0.78 hours = 1.56 hours) + (1 appeal x 1 hour = 1 hour) = 33.76.

D. Retention of LCA Supporting Documentation

The Department estimates that employers will spend about 0.17 hours per year per application to retain the documentation of its compliance with the required wage rate under 20 CFR 655.731, including, if applicable, the PWD and any required supporting documentation during the requisite retention period. This results in an annual burden estimate of 632.91 recordkeeping hours (3,723 filings applicants x 0.17 hours = 632.91 hours).⁴

Total estimated annual burden hours for the LCA Program:

2,937.70 Reporting hours
+ 632.91 Recordkeeping hours
3,570.61 Total hours

Total Estimated H-1B Responses (Applications): 3,723
Total Estimated H-1B Respondents (Filers): 1,051

E. PERM PWDs

To recruit U.S. workers and complete the Form ETA-9089, *Application for Permanent Employment Certification* (OMB Control Number 1205-0451), an employer must obtain the

⁴ While the retention requirement applies only when an LCA is filed (20 CFR 655.731 and 655.760(c)), the Department is being over-inclusive by including the recordkeeping burden on employers to retain the PWD as “documentation regarding its determination of the prevailing wage” for their LCA.

prevailing wage prior to filing the Form ETA-9089 by submitting the Form ETA-9141 to the NPWC and receiving a PWD. See 20 CFR 656.40. It is estimated that employers will spend 0.78 hours preparing and submitting the Form ETA-9141. The Department receives an average of 138,056 PERM program prevailing wage requests each year. The annual burden estimate for PERM PWDs is 107,683.68 reporting hours (138,056 x 0.78 hours = 107,683.68 hours).

An employer may request NPWC redetermination, CDR, or formal appeal of PWDs issued by the NPWC for a PERM job opportunity. The Department estimates that employers will submit an average of 812 redetermination requests each year. The Department estimates it takes an employer 0.78 hours to prepare redetermination requests. The Department estimates that employers will submit an average of 32 CDR requests each year. The Department estimates it takes an employer 0.78 hours to prepare CDR requests. The Department estimates that employers will submit an average of one prevailing wage appeal each year. The Department estimates it takes an employer 1 hour to prepare an appeal. The annual burden estimate for PERM redeterminations, CDR requests, and appeals is 659.32 reporting hours (812 redetermination filings x 0.78 hours = 633.36 hours) + (32 Center Director Review requests x 0.78 hours = 24.96 hours) + (1 appeals x 1 hour = 1 hour) = 659.32.

F. Retention of PERM Supporting Documentation

The Department estimates that employers will spend about 0.17 hours per year per application to retain an application and required supporting documentation. This results in an annual burden estimate of 23,469.52 recordkeeping hours (138,056 applications x 0.17 hours = 23,469.52 hours).⁵

Total time burden for the PERM Program:

108,343.00 Reporting hours
+ 23,469.52 Recordkeeping hours
131,812.52 Total hours

Total Estimated PERM Responses (Applications): 138,056
Total Estimated PERM Respondents (Filers): 38,315

G. Form ETA-9141, Appendix A

Some employers filing the ETA-9141 will also need to file a Form ETA-9141 Appendix A, which employers use to identify additional worksites for which PWDs are requested. Across the labor certification and LCA programs, the Department estimates that approximately 8,222 employers will file approximately 21,245 PWDs requesting additional worksites, requiring the completion of Appendix A. The Department estimates that employers will spend an average of 0.05 hours preparing Appendix A for submission with Form ETA-9141 filings. The total annual burden estimate is 1,062.25 reporting hours (21,245 filings x 0.05 hours = 1,062.25 hours).

⁵ While the retention requirement derives from 20 CFR 656.10(f), which relates to the *Application for Permanent Employment Certification*, and not from 20 CFR 656.40, which relates to PWDs, the Department is being over-inclusive by including the recordkeeping burden on employers to retain the PWD as “supporting documentation” for their *Application for Permanent Employment Certification*.

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

1,062.25	Reporting hours
+ 0	Recordkeeping hours
1,062.25	Total Hours

H. *Combined Form ETA-9141 Totals*

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

9,914.02	H-2B Form ETA-9141 reporting hours
2,937.70	LCA Form ETA-9141 reporting hours
108,343.00	PERM Form ETA-9141 reporting hours
1,062.25	Form ETA-9141, Appendix A reporting hours
2,152.20	H-2B Form ETA-9141 recordkeeping hours
632.91	LCA Form ETA-9141 recordkeeping hours
+ 23,469.52	PERM Form ETA-9141 recordkeeping hours
148,511.60	Total Hours

II. Form ETA-9165

An H-2B employer may request a PWD based on an employer-provided survey if the employer files a Form ETA-9165 and submits documentation demonstrating the employer-provided survey meets all of the methodological standards in the Department’s H-2B regulations. The Form ETA-9165 takes approximately 0.42 hours to complete. Based on program experience, the Department estimates it will receive 278 Form ETA-9165 submissions from employers seeking to use an employer-provided wage survey.⁶ The total hourly reporting burden for the filing of the Form ETA-9165 is 116.76 hours (278 applications x 0.42 hours = 116.76 reporting hours). The employer is not required to retain the survey or the Form ETA-9165.

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

116.76	Form ETA-9165 Reporting hours
+ 0	Form ETA-9165 Recordkeeping hours
116.76	Total Hours

III. Estimated Total Hourly Burden for All Programs

148,511.60	Total Form ETA-9141 burden hours
+ 116.76	Total Form ETA-9165 burden hours
148,628.36	Total estimated burden hours

⁶ The Form ETA-9165 estimates are the estimated data from OMB 1205-0509 and the transferred burden from that ICR.

	12,660	H-2B responses
	3,723	H-1B responses
+	<u>138,056</u>	PERM responses
	154,439	Total responses for the H-2B, H-1B, PERM programs ⁷

	7,215	H-2B respondents
	1,051	H-1B respondents
+	<u>38,315</u>	PERM respondents
	46,581	Total respondents for the H-2B, H-1B, PERM programs ⁸

IV. Time Burden Monetization

The Department receives PWD requests from employers operating across a wide spectrum of industry sectors in the U.S. economy. Salaries for employees who perform the reporting and recordkeeping functions required by this regulation may vary, including payment in hourly or annual rates, and may include instances where the corporate executive office of a large company performs some or all of these functions itself. However, the Department believes that in most companies, a Human Resources Manager will perform these activities. Thus, to calculate the full cost to the employer, we need to combine the mean hourly wage of human resource managers with the benefits and other compensation received by such employees. The national mean hourly wage for a human resource manager (SOC code 11-3121) is \$64.70.⁹ The average percentage of benefits in total is 29.2 percent.¹⁰ The total compensation is therefore \$83.59 ($\64.70×1.292) for a Human Resources manager. The Department estimates that a Human Resources manager will take time to complete and retain the forms and supporting documentation in the amount of 148,628.36 hours.

Tables of Estimated Burdens¹¹

⁷ The total responses in this section reflect PWD filings by program.

⁸ The total respondents in this section reflect respondents for PWD filings by program.

⁹ *Occupational Employment and Wages, May 2020: 11-3121 Human Resources Managers*, DOL, BLS, <https://www.bls.gov/oes/current/oes113121.htm>.

¹⁰ *Employer Costs for Employee Compensation – September 2021*, DOL, BLS, <https://www.bls.gov/news.release/archives/ecec12162021.pdf>.

¹¹ For the burden estimates, the Department has used H-2B, H-1B, and PERM programs data averages for fiscal years (FYs): 2019, 2020, and 2021, with the exception of Appendix A data, which is based on FY 2021 data after implementation of the current form from May-September 2021.

Information Collection Activity for ETA-9141 ¹²	Total Annual Respondents	Frequency ¹³	Total Annual Responses	Time Per Response (in hours)	Total Annual Burden (in hours)	Hourly Rate ¹⁴	Total Annual Cost (in dollars)
H-2B Filings	7,215	1.7547	12,660	0.78	9,874.80	\$83.59	\$824,435
H-2B Center Director Reviews	43	1.1395	49	0.78	38.22	\$83.59	\$3,195
H-2B Appeals	1	1.000	1	1.00	1.00	\$83.59	\$84
H-2B Retention	7,215	1.7547	12,660	0.17	2,152.20	\$83.59	\$179,902
H-1B Filings	1,051	3.5423	3,723	0.78	2,903.94	\$83.59	\$242,740
H-1B Redeterminations	27	1.4815	40	0.78	31.20	\$83.59	\$2,608
H-1B Center Director Reviews	2	1.000	2	0.78	1.56	\$83.59	\$130
H-1B Appeals	1	1.000	1	1.00	1.00	\$83.59	\$84
H-1B Retention	1,051	3.5423	3,723	0.17	632.91	\$83.59	\$52,905
PERM Filings	38,315	3.60318	138,056	0.78	107,683.68	\$83.59	\$9,001,279
PERM Redeterminations	652	1.2454	812	0.78	633.36	\$83.59	\$52,943
PERM Center Director Reviews	29	1.1034	32	0.78	24.96	\$83.59	\$2,086
PERM Appeals	1	1.000	1	1.00	1	\$83.59	\$84
PERM Retention	38,315	3.60318	138,056	0.17	23,469.52	\$83.59	\$1,961,817
Form ETA-9141 Appendix A (for all programs)	8,222	2.5839	21,245	0.05	1,062.25	\$83.59	\$88,793
Unduplicated Totals	102,140	N/A	331,061	N/A	148,511.60	\$83.59	\$12,413,085¹⁵

Information Collection Activity for ETA-9165	Total Annual Respondents	Frequency ¹⁶	Total Annual Responses	Time Per Response (in hours)	Total Annual Burden (in hours)	Hourly Rate ¹⁷	Total Annual Cost (in dollars)
Filings	278	1	278	0.42	116.76	\$83.59	\$9,760
Unduplicated Totals	278	N/A	278	N/A	116.76	\$83.59	\$9,760

Information Collection Activity Grand Total for ETA-9141 and ETA-9165	Total Annual Respondents	Frequency	Total Annual Responses	Time Per Response (in hours)	Total Annual Burden (in hours)	Hourly Rate ¹⁸	Total Annual Cost (in dollars)
Form ETA-9141 and Related Requirements	102,140	Varies	331,061	Varies	148,511.60	\$83.59	\$12,413,085
Form ETA-9165 Requirements	278	Varies	278	Varies	116.76	\$83.59	\$9,760
Grand Total	102,418	N/A	331,339	N/A	148,628.36	\$83.59	\$12,422,845

¹⁸ The Department believes that in most companies, a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$64.70), as determined by the Department's OEWS survey, and increased it by a factor of 1.292 to account for

A.13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

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

b) Annual costs: There are no annual costs involved with operation and maintenance because ETA will be responsible for the annual maintenance costs for the free downloadable forms and the web-based data collection and reporting system. However, there are circumstances that may require H-2B employers to expend funds beyond their normal and usual business expenses, if they choose to commission a private wage survey. ETA estimates that the average annual cost of commissioning such surveys is \$241,513.09.

Form ETA-9165 Survey Costs

For the Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey*, employers who choose to commission private wage surveys will incur costs. The cost associated with a wage survey conducted by a third party can vary widely and will depend on various factors, such as the scope of the survey, the methodology used, the number of respondents, and the nature of the sample. The Department estimates that it would take a

employee benefits and other compensation, for a total hourly cost of \$83.59. *See* <https://www.bls.gov/news.release/archives/ecec12162021.pdf>.

¹³ The Department derived the frequency by dividing the column for fiscal year data for “Total Annual Responses” by the “Total Annual Respondents.” The data for the “Total Annual Responses” and “Total Annual Respondents” are averages from the prevailing wage program data for FYs 2019-2021. The frequency is displayed with three decimal or more places to retain the value of the calculation to the extent possible.

¹⁴ The Department believes that in most companies, a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$64.70), as determined by the Department’s OEWS survey, and increased it by a factor of 1.292 to account for employee benefits and other compensation, for a total hourly cost of \$83.59. *See* <https://www.bls.gov/news.release/archives/ecec12162021.pdf>.

¹⁵ The Department’s estimated total cost is \$12,413,085. The change reflects estimates based on the average of prevailing wage data for FYs 2019, 2020, and 2021.

¹⁶ The Form ETA-9165 estimates are the estimated data from OMB 1205-0509 and the transferred burden from that ICR.

¹⁷ The Department believes that in most companies, a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$64.70), as determined by the Department’s OEWS survey, and increased it by a factor of 1.292 to account for employee benefits and other compensation, for a total hourly cost of \$83.59. *See* <https://www.bls.gov/news.release/archives/ecec12162021.pdf>.

¹⁸ The Department believes that in most companies, a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$64.70), as determined by the Department’s OEWS survey, and increased it by a factor of 1.292 to account for employee benefits and other compensation, for a total hourly cost of \$83.59. *See* <https://www.bls.gov/news.release/archives/ecec12162021.pdf>.

manager (SOC code 11-0000) 8 hours to review the survey. At the mean hourly rate of \$60.81,¹⁹ and accounting for benefits averaging 29.2 percent of total employee compensation,²⁰ the total estimated compensation is \$78.57 per hour to review the survey ($\$60.81 \times 1.292$).

The Department estimates that it would take a survey researcher (SOC code 19-3022) a total of 40 hours at \$41.59 per hour ($\$32.19 \text{ per hour} \times 1.292$) to randomly select at least 3 employers and 30 employees (8 hours), collect their wage data (16 hours), calculate the hourly average wage (8 hours), and write a report and provide it to the employer (8 hours). Therefore, the cost for a wage survey is estimated at \$2,292.16 ($(\$78.57 \times 8) + (\$41.59 \times 40)$).²¹ The Department's estimate also adds 10 percent to \$2,292.16 to account for a profit for the third-party surveyor. The estimated cost of conducting a wage survey is \$2,521.38 ($\$2,292.16 \times 1.1$). Because surveys are valid for two years and some employers will use state-produced surveys, the Department estimates that one-third (0.333) of the 278 employers that file the Form ETA-9165 or 93 employers ($278 \times 0.333 = 92.57$) will conduct a private wage survey by a third-party each year that is valid for two years. The cost to employers is estimated to be \$234,488.34 ($\$2,521.38 \times 93$).

In addition, the employer will request the information from surveyors needed to complete the Form ETA-9165. The Department estimates that this will cost employers \$6,491.10. This is based on an estimate that a Survey Researcher (SOC code 19-3022) will spend, on average, 0.83 hours to compile the information necessary to complete the new form and transmit it to the employer. In estimating employer costs, the Department used the national cross-industry mean hourly wage rate for a Survey Researcher (\$32.19) and multiplied these wages by 1.292 to account for employee benefits and other non-wage compensation. The total hourly cost of a Survey Researcher is thus \$41.59 ($\32.19×1.292). However, the Department estimates that one-third (0.333) of the 278 employers that will file the Form ETA-9165 and provide surveys will utilize state-provided surveys and will incur no cost, or 93 employers (278×0.333). Therefore, it is estimated that 185 employers will incur costs ($278 - 93$). Thus, this cost to employers is calculated as follows: $\$41.59 \times 0.83 \text{ hours} \times 185 \text{ employers} = \$6,386.14$. The Department's estimate also adds 10 percent to \$6,386.14 to account for a profit for the third-party surveyor. The estimated cost of conducting a wage survey is \$7,024.75 ($\$6,386.14 \times 1.1$).

The total cost for the Form ETA-9165 survey process is estimated to be \$241,513.09 ($\$234,488.34 + \$7,024.75$).

A.14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

¹⁹ *Occupational Employment and Wages, May 2020: 11-0000 Management Occupations*, DOL, BLS, <https://www.bls.gov/oes/current/oes110000.htm>.

²⁰ *Employer Costs for Employee Compensation – September 2021*, DOL, BLS, <https://www.bls.gov/news.release/archives/eccc12162021.pdf>.

²¹ *Occupational Employment and Wages, May 2020: 19-3022 Survey Researchers*, DOL, BLS, <https://www.bls.gov/oes/current/oes193022.htm>.

The Department estimates that the annual costs to administer the PWD program are \$7,715,088. Federal administrative costs include IT systems that support application filing and case processing operations, rent, supplies, equipment, and agency indirect costs, which include support for human resources, financial and administrative oversight, and grants and contracts management. Based on past obligations and expenditures, the table below provides a detailed breakdown of the annualized costs associated with federal administration of the PWD program by major cost category.

Major Cost Category	Cost Activities	Annualized Costs (estimated)
Contracts for Services (not technology related)	<ul style="list-style-type: none"> ▪ Mail, data entry, and other clerical support services; ▪ Case processing and administrative support for operations 	\$3,296,147
Technology Contracts for Services (O&M)	<ul style="list-style-type: none"> ▪ Application development services & network infrastructure support ▪ Hardware & software updates 	\$930,403
GSA & DHS Services	<ul style="list-style-type: none"> ▪ Rent payments for office space ▪ Security services 	\$500,016
DOL Working Capital Assessment	<ul style="list-style-type: none"> ▪ Indirect costs associated with ETA and DOL administrative and executive management services 	\$2,917,100
Supplies & Equipment	<ul style="list-style-type: none"> ▪ General office supplies ▪ Computers, printers, and other office related equipment 	\$65,239
Mail & Telecommunications	<ul style="list-style-type: none"> ▪ Mail or overnight delivery services ▪ Phone and other telecommunication related charges 	\$6,183
Other Costs ²²	<ul style="list-style-type: none"> ▪ Travel ▪ Printing and other Government Agency Services 	\$0
TOTAL COSTS - FEDERAL ADMINISTRATION		\$7,715,088

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

The Department proposes minor modifications to the Form ETA-9141, its appendix, the Form ETA-9165, and the accompanying form instructions to improve the collection for the Department’s PWDs. The Department has determined that the proposed minor revisions to the Form ETA-9141 and Form ETA-9141, *General Instructions*, will not have a significant impact on the time burden for completion of the Form ETA-9141 because these changes do not require employers to provide additional information, but merely clarify how and when employers should respond to existing information collections. However, the Department is inviting comments regarding the estimated burden hours in a 60-day *Federal Register* notice. The incorporation of the Form ETA-9165 into this ICR transfers the number of responses (278) and hourly burden (116.76) imposed by the Form ETA-9165 from OMB Control Number 1205-0509 into this ICR, OMB Control Number 1205-0508. The Department has determined that the minor change to Item E.9.b and the update of references to the OEWS in the Form ETA-9165 will not have a significant impact on the time burden for completion of the Form ETA-9165 because the number of workers surveyed in an employer-provided survey should be readily available to the employer.

²² Based on direct NPWC obligations and a pro-rated portion of OFLC shared and support costs.

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

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

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

The Department will display the expiration date for OMB approval.

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

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

B. Collection of Information Employing Statistical Methods

This information collection does not employ statistical methods.