



BILLING CODE: 4510-FP-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Condition Application for H-1B, H-1B1, and E-3 Nonimmigrants

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL or Department) is submitting the Employment and Training Administration (ETA) sponsored Information Collection Request (ICR) revision, titled, “Labor Condition Application for H-1B, H-1B1, and E-3 Nonimmigrants,” to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free of charge from the RegInfo.gov web site at: http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201805-1205-001 (this link

will only become active on the day following publication of this notice); by contacting Michel Smyth at 202-693-4129/TTY 202-693-8064 (these are not toll-free numbers); or by sending an email to: DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street, N.W., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov.

Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064 (these are not toll-free numbers); or by sending an email to: DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Labor Condition Application for H-1B, H-1B1, and E-3 Nonimmigrants information collection. More specifically, the Department is proposing changes to Form ETA-9035, *Labor Condition Application for Nonimmigrant Workers*, the Labor Condition Application (LCA) for H-1B, H-1B1, and E-3 Nonimmigrants; Form WH-4, *Nonimmigrant Worker Information Form*; and all applicable instructions and electronic versions. The LCA is used in the DOL employment-based temporary immigration program by employers to request permission to bring foreign workers to the United States

as nonimmigrants to perform certain work in specialty occupations or as fashion models of distinguished merit and ability. The information collected on Form ETA-9035/9035E is required by sections 212(n) and (t) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(n) and (t), and 1184(c)). The Department has promulgated regulations to implement the INA. Specifically for this collection, regulations 20 CFR 655 subparts H and I are applicable. The INA mandates that no foreign worker may enter the United States for the purpose of performing professional work on a temporary basis unless the employer makes certain attestations to the Secretary of Labor (Secretary). 8 U.S.C. 1182(n)(1). Those attestations are as follows: (1) the employer will offer a wage that is at least the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, whichever is greater; (2) the working conditions for the nonimmigrant worker will not adversely affect the working conditions of similarly employed U.S. workers; (3) there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and (4) the employer has provided notice of the filing of the LCA. *Id.* In addition, further attestations are generally required for H-1B dependent employers and employers who have been found to have willfully violated the statute. *Id.* Form WH-4 is used to request that the Wage and Hour Division (WHD) initiate an investigation related to alleged violations of H-1B, H-1B1, and E-3 program requirements. This ICR has been classified as a revision, because of changes to Forms ETA-9035/9035E and WH-4. The Department has determined that additional information is required to be collected through Form ETA-9035/9035E; this enhanced data collection will allow the Department to better

track employer usage of the program and provide greater transparency to the public with respect to the employment of H-1B, H-1B1, and E-3 nonimmigrant workers in the United States. With respect to Form WH-4, the Department is modifying naming conventions for certain data fields, to align them better with current Departmental data systems, and reformatting the form to enhance usability and understanding. In addition, the forms have been made more accessible for persons with disabilities.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205-0310. The current approval is scheduled to expire on May 31, 2018; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the *Federal Register* on August 3, 2017, 82 FR 36158.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs, at the address shown in the ADDRESSES section within thirty (30) days of the publication of this notice in the *Federal Register*. In order to help ensure

appropriate consideration, comments should mention OMB Control Number 1205-0310.

The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This ICR may be summarized as follows:

Agency: DOL-ETA.

Title of Collection: Labor Condition Application for H-1B, H-1B1, and E-3

Nonimmigrants.

OMB Control Number: 1205-0310.

Affected Public: Private Sector—business or other for-profits and not-for-profit institutions; State, Local, and Tribal Governments; and Individuals or Households.

Total Estimated Number of Annual Respondents: 680,411.

Total Estimated Number of Annual Responses: 694,215.

Total Estimated Annual Time Burden: 898,212 hours.

Total Estimated Annual Other Costs Burden: \$906,960.

AUTHORITY: 44 U.S.C. 3507(a)(1)(D).

Dated: May 18, 2018.

Michel Smyth,

Departmental Clearance Officer.

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