



BILLING CODE: 4510-FP-P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor’s (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, “ETA Form 9089, Application for Permanent Employment Certification.” This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by **[INSERT DATE 60 DAYS AFTER DATE OF 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 for free by contacting Brian Pasternak by telephone at 202-513-7350 (this is not a toll-free number), TTY 1-877-889-5627 (this is not a toll-free number), or by email at ETA.OFLC.Forms@dol.gov.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, 200 Constitution Avenue, NW, Box PPII 12-200, Washington, D.C. 20210; by email: ETA.OFLC.Forms@dol.gov; or by fax: 202-513-

7395.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak by telephone at 202-513-7350 (this is not a toll-free number) or by email at ETA.OFLC.Forms@dol.gov.

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

In accordance with the PRA, ETA is providing the public notice and opportunity to comment on proposed revisions to the ETA Form-9089, *Application for Permanent Employment Certification*; Appendix A: *Foreign Worker Information*; Appendix B: *Additional Worksite Information*; Appendix C: *Supplemental Information*; Appendix D: *Special Recruitment for College and University Teachers*; and the general instructions to these forms. ETA is also seeking public comment on a proposal to eliminate the issuance of paper-based labor certification decisions through the creation of a two-page Form ETA-9089, *Final Determination: Permanent Employment Certification Approval*, which will be issued electronically to employers granted permanent labor certifications by DOL.

ETA is also seeking public comment on a proposal to revise the form to allow employers seeking to employ professional athletes or coaches, as well as those claiming National Interest Waivers (NIW), to use the proposed form and discontinue the collection

of this information on the Forms ETA-750A, *Application for Alien Employment Certification – Offer of Employment*, and/or ETA-750B, *Application for Alien Employment Certification – Statement of Qualifications of Alien* (OMB Control Number 1205-0515).

Under the Immigration and Nationality Act (INA), sections 203(b)(2) and (b)(3) and 212(a)(5)(A), and 8 U.S.C. 1153(b)(2) and (b)(3) and 1182(a)(5)(A), DOL and the U.S. Department of Homeland Security (DHS) have promulgated regulations to implement provisions of the INA at 20 CFR Part 656 and 8 CFR 204.5. Consequently, the Secretary of Labor must certify that any foreign worker seeking to enter the United States for the purpose of performing skilled or unskilled labor is not adversely affecting wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, qualified, and available to perform such skilled or unskilled labor. In addition, before an employer may employ any skilled or unskilled foreign labor, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the regulations or, in limited circumstances, where a foreign national without an employer sponsor may apply for a NIW with DHS.

DOL is proposing to use the proposed Form ETA-9089, *Application for Permanent Employment Certification* (OMB Control Number 1205-0451), and its appendices to adjudicate permanent (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 a foreign worker must submit the proposed form to DOL, including all required appendices. Once submitted, DOL 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 DOL Certifying Officer's 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. DOL 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 Forms ETA-750A and ETA-750B under OMB Control Number 1205-0515, Workforce Innovation Funds Grants Reporting and Recordkeeping Requirements.

DHS will also use Form ETA-9089 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 U.S. 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 Form ETA-9089 and submit an uncertified form directly to DHS. Similarly, under 20 CFR 656.16, employers of foreign workers who are shepherders must apply for an employment certification using Form ETA-9089 and submit an uncertified form directly to DHS. When Form ETA-9089 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 shepherders.

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 OMB, under the PRA, approves it and the

collection tool 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the ADDRESSES section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0451.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL 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).

Agency: DOL-ETA.

Type of Review: Revision of a Currently Approved Information Collection.

Title of Collection: Form ETA-9089, Application for Permanent Employment Certification.

Forms: ETA-9089, Application for Permanent Employment Certification; ETA-9089 – Final Determination: Permanent Employment Certification Approval; ETA-9089 – Appendix A; ETA-9089 – Appendix B; ETA-9089 – Appendix C; ETA-9089 – Appendix D.

OMB Control Number: 1205-0451.

Affected Public: Individuals or Households; Private Sector (businesses or other for profits); Not-for-profit Institutions; Government, State, Local and Tribal Governments.

Number of Respondents: 80,495.6.

Frequency: Varies by form.

Estimated Number of Annual Responses: 675,122.5.

Estimated Average Time per Response: Varies by form.

Estimated Total Annual Burden Hours: 234,231.93.

Total Estimated Annual Other Costs Burden: \$132,150.

(Authority: 44 U.S.C. 3506(c)(2)(A))

John Pallasch,

Assistant Secretary for Employment and Training.

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