

**Appendix: SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSIONS
LABOR CONDITION APPLICATION FOR H-1B, H-1B1, and E-3 NONIMMIGRANTS and
the NONIMMIGRANT WORKER INFORMATION FORM**

A. Labor Condition Applications¹-- 20 CFR 655.760

Employers submit LCAs when they desire to employ an H-1B, H-1B1 or E-3 nonimmigrant worker. One hundred percent of employers currently file LCAs using the online system. Based on program experience, ETA estimates that it will receive approximately 569,260 LCAs each year from approximately 61,540 employers over the next three years.

ETA estimates that the completion and submission of an LCA takes 65 minutes; complying with recordkeeping requirements of creating a PRA file takes 5 minutes; posting notice of the LCA filing in a conspicuous place or providing such notice to the collective bargaining representative and providing a copy of the LCA to each nonimmigrant worker takes 5 minutes for a total of 75 minutes per application. **The total estimated burden hours for this item is to be 711,575 burden hours** (569,260 x 75 minutes ÷ 60) apportioned among 616,698 reporting hours (569,260 x 65 minutes ÷ 60), 47,438 recordkeeping hours (569,260 x 5 minutes ÷ 60), and 47,438 third party disclosure hours (569,260 x 5 minutes ÷ 60).²

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

Pursuant to 20 CFR 655.730(e)(3), prior to the continued employment of the nonimmigrant worker when there is a corporate change and the new corporation agrees to assume the predecessor entity's obligations and liabilities under the LCA, the agreement to comply with the LCA for the future and to any liability of the predecessor under the LCA must be documented with a sworn statement in the public access file.

¹ Estimates based on data for three Fiscal Years, FY2014- 2016

² ETA estimates that the completion and submission of an LCA takes 45 minutes for most employers due to the reduced burden for completion of the prevailing wage section of the form with an additional 20 minutes estimated for H-1B dependent employers or willful violator employers claiming degree based exemptions; complying with recordkeeping requirements of creating a PRA file takes 5 minutes; and posting the LCA in a conspicuous place and providing a copy to each nonimmigrant worker takes 5 minutes for a total of 75 minutes per application.

It is estimated that approximately 1,000 LCA employers will be required to file the documentation annually and that the recording and filing of each such document will take approximately 1 hour for a **total annual burden of 1,000 recordkeeping hours**.

C. H-1B Employer's Only- Determination of H-1B Dependency -- 20 CFR 655.736

The Department estimates an average burden of 30 minutes, twice annually, for each employer that must document the dependency determination as outlined in 20 CFR 655.736. The Department estimates that 7644 employers will make this determination for an annual burden of 7644 recordkeeping hours ($7644 \times 30 \text{ minutes} \div 60$) ($\times 2$ times annually).

The Department also estimates that no more than 5 percent of the total estimated 61,540 (3077 H-1B employers) will be required to retain copies of H-1B petitions and extensions that do not currently retain these documents for other purposes, for an average of 3 minutes per petition, for a total of 154 hours ($3077 \times 3 \text{ minutes} \div 60$).

The total burden for this item is estimated to be 7798 recordkeeping hours ($7644 + 154 = 7798$).

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

Under 20 CFR 655.737(e)(1), employers are required to include in their public access file a list of the H-1B nonimmigrants supported by any LCA attesting that it will be used only for exempt workers. DOL estimates that each list will take approximately 15 minutes to prepare and that 3259 H-1B employers will prepare such a list annually for a **total burden of 815 recordkeeping hours** ($3259 \times 15 \text{ minutes} \div 60$).

For those employers seeking an exemption based on attainment of a Master's degree or higher, the employer must identify on the Form ETA-9035, Appendix A, the academic and degree information for the exempt H-1B nonimmigrant worker(s) and provide a copy of the educational credential or alternative permissible documentation to the Department. This information is being collected pursuant to 20 CFR 655.737(d), and provides greater transparency to the public, and particularly to U.S. workers who may be displaced, about the basis of the employer's exemption. The Department estimates that the information collection of the Appendix A information and documentation will take approximately 20 minutes to prepare and that an estimated 50,000 LCAs prepared annually will include this information for a **total burden of 16,500 hours** ($50,000 \times 20 \text{ minutes} \div 60$).

E. Record of Assurances of Non-displacement of U.S. Workers at Second Employer's Worksite

Generally, willful violators and H-1B dependent employers must attest that they will not place H-1B employees with other employers unless these employers have inquired about the displacement of U.S. workers at the second employer's place of business as described in 8 USC 1182(n)(1)(F).³ DOL estimates an average burden of 10 minutes per attestation or statement, and that 200 H-1B employers will document such assurance 5 times annually, for a **total annual burden of 167 recordkeeping hours** (200 x 10 minutes ÷ 60) (x 5 times annually).

F. Offers of Employment to Displaced U.S. Workers -- 20 CFR 655.738(e)

It is estimated that 150 H-1B employers who are willful violators or H-1B dependent will make offers of employment 5 times annually (750) and that 75 of those offers and responses would not otherwise be committed to writing without the paperwork requirement in 20 CFR 655.738(e). Each such document is estimated to take 30 minutes for a **total annual burden of 38 recordkeeping hours** (75 x 0.5 hours = 38).

G. Documentation of U.S. Worker Recruitment -- 20 CFR 655.739(i)

Pursuant to the INA at 8 U.S.C. 1182(n)(1)(G), H-1B dependent employers and willful violators are generally required to make good faith efforts to recruit U.S. workers before hiring H-1B workers. Under the regulations, those employers are required to retain documentation of U.S. worker recruitment. Under 20 CFR 655.739(i)(1), those employers are required to retain documentation of the recruiting methods used, including the places and dates of the advertisements and postings or other recruitment method used, the content of the advertisements and postings, and the compensation terms. Further, the employer must retain documentation or a simple summary of the principal recruitment methods used and the timeframe of the recruitment in the public access file. 20 CFR 655.739(i)(4) In addition, the employer must retain any documentation concerning consideration of applications of U.S. workers, such as copies of applications and related documents, rating forms, job offers, etc. It is estimated that 665 H-1B employers will file such documents or memoranda 5 times annually and that each recordkeeping will take 20 minutes, for an **annual burden of approximately 1108 recordkeeping hours** (665 x 20 minutes ÷ 60) (x 5 times annually).

H. Documentation of Fringe Benefits -- 20 CFR 655.731(b)(1)(viii)

There are an estimated 10 percent of LCA employers (6154) that provide fringe benefits, such as bonuses, vacations and holidays, not required by ERISA regulations to

³ The special requirements for willful violators and H-1B dependent employers apply unless those employers are hiring only exempt H-1B nonimmigrants. Throughout this supporting statement, where we refer to general requirements for willful violators and dependent employers, we refer to those employers who are not hiring only exempt H-1B non-immigrants and claiming that exemption on the LCA.

be documented. It is estimated to document these benefits as outlined in 20 CFR 655.731(b) would take 1.5 hours per employer, for an **annual burden of 9231 hours** (6154 employers x 90 minutes ÷ 60 = 9231). It is further estimated that 25 percent of H-1B employers (15,385) are multinational employers and that a note to the file that these workers receive home country benefits would take 30 minutes per employer for an **annual burden of 7693 hours** (15,385 x 30 minutes ÷ 60= 7693 hours).

The total estimated burden for this item is 16,924 recordkeeping hours (9231 + 7693 =16,924).

I. Wage Recordkeeping requirements Applicable to Employers of H-1B Nonimmigrants -- 20 CFR 655.731

The additional burden of keeping records documenting the determination of the actual wage and prevailing wage as defined in 20 CFR 655.731 is estimated at 2.5 hours per employer for 61,540 employers for a **total annual burden of 153,850 recordkeeping hours** (61,540 x 150 minutes ÷ 60= 153,850).

J. Information Form Alleging H-1B Violations (WH-4)

Based on program experience the number of Forms WH-4 filed is estimated to be 225 annually and that each response will take approximately 20 minutes, for a **total burden of 75 reporting hours, rounded** (225 x 20 minutes ÷ 60 = 75 hours).

Important Note: Burden hours are estimated based on historical program data and the Department's experience administering the program.

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