

## **OMB Passback/Questions & DOL Answers**

OMB No. 1215-0171 (CM-972)

November-December 2007

OMB Question 1: Is this form necessary? In the supporting statement, DOL notes that the form is generally used by attorneys as a guideline for submitting the information on their letterhead. Do lay representatives use the form? Are there accurate figures for the number of cases for which the CM-972 was not correctly filled out and submitted (e.g., bills sent on letterhead paper)? What is the additional cost and time requirement to process attorney fee petitions that do not use the CM-972?

DOL Answer: The form is necessary because it provides a framework and summary for an attorney's fee request. It also allows for a certification by the attorney that the hours and fees claimed are accurate. Lay representatives also use this form. Because attorneys use the form to request the full amount, it increases the accuracy and speed by DCMWC in calculating the correct amount due the attorney. Without the form, claims examiners may not know the full amount of the fee requested until the plain paper fee request is reviewed and analyzed. I estimate that DCMWC would spend 5-10 minutes more analyzing a fee petition without the form, and the attorneys would spend 10-20 minutes more per fee petition if they needed to prepare a cover letter that covered what is printed on the form.

OMB Q 2: Why is the form mailed out to the representatives? As noted in the supporting statement, the form is available online.

DOL A: Our correspondence system preprints the claimant's name on the form when it is prepared for mailing to reduce the chances of misidentification. It is not usually mailed separately, but included in a mailing that includes an acknowledgment of the representative's involvement and other documents relating to the case.

OMB Q 3: Which other OWCP programs have attorney fee petition forms? How long ago did DOL investigate consolidating the forms, as noted in supporting statement response A-4? Please indicate the differences between the forms for different programs that made consolidation unfeasible. Are the FTE and processing costs for the CM-972 similar to those for the other three OWCP programs?

DOL A: Black Lung has a fee petition instead of requiring the attorney to use a pleading. Black Lung is also the only OWCP program in which there is a likelihood of multiple and potentially offsetting awards by state workers' compensation agencies, and Questions 8 and 9 help the program ensure that the correct amounts are awarded to petitioners on a timely basis. Without those questions answered on the form, claims examiners may have to spend additional time querying the attorneys for that information, which would add more burden on the attorneys and could delay an Award and subsequent payment.

OMB Q 4: Regarding response A-5 on the supporting statement, isn't it possible that the claim would need to be filled out more than once per successful claim? Doesn't the form have to be

submitted once for each body that adjudicated the claim (District Director, OALJ, BRB, Court of Appeals, etc.)? Does that change the burden on small business?

DOL A: The form may be filled out for each body that adjudicated a successful claim, but it is also common for attorneys to submit a single claim for all work in a claim and the individual adjudicatory levels respond to the relevant portion of the fee petition. We don't think this form has much effect on small business because of the small number involved, and because the small number of attorneys who handle black lung claims have been using this form for decades.

OMB Q 5: The estimated processing cost uses an hourly wage using a GS 12/4 FTE. Why are the FTE at step 4, are they capped somehow? Does this amount take into account reviews done by administrative law judges and others who fall above a GS 12/4 salary? How many FTEs at GS 12/4 process these forms?

DOL A: We chose a GS-12/step 4 because several years ago our journey-level claims examiners were upgraded from GS-11 to GS-12. We have hired new people since then, so we have some examiners at the GS-9 and 11 levels, while others are 12/step 10. We estimate that the average pay for a CE is 12/4, possibly 12/5. Administrative law judges and the Benefits Review Board rarely review petitions. They are done by law clerks.

OMB Q 6: In item 2 and 3 of the form, the labels are "Miner's Name" and "Miner's Claim Number." Is this form used by those who seek fees for survivors' claims?

DOL A: Yes, but all benefits paid are paid under the miner's name and claim number.

OMB Follow-Up Question: How is this handled in a situation when there is a survivor's claim but no miner's claim?

DOL A: Since entitlement in the Federal black lung program is based on disability or death resulting from the miner's work exposures, even in the case of a claim filed by a dependent survivor of a miner where no claim had previously been filed by the miner, the deceased miner's name and Social Security number are used as identifiers for the claim. The same form is used as an application for approval of representative's fee when the successful claimant is a dependent survivor of a deceased miner.

OMB Q 7: How does DOL use the information gathered from items 8 and 9?

DOL A: The answer to 8 is used to determine if payment has already been made by a state workers' compensation agency for similar services and to determine if there should be any offset in cases in which the miner is entitled to concurrent benefits under both state and federal laws. Benefits paid in state claims are frequently subtracted from benefits payable to the claimant. The answer to 9 is used to determine if the fee award should include a finding ordering the release of some or all escrowed funds.

OMB Q 8: The dates in item 1 ("19\_\_ to \_\_\_\_ 19\_\_") should be updated.

DOL A: Thanks. We'll take care of that.

OMB Q 9: Although the representative's SSN or TIN are not required, form item 14 still requests them. If a representative provides this information, how does DOL use it?

DOL A: They are used to prepare a 1099 miscellaneous income statement for the IRS each year. The attorney may choose the number s/he prefers, and that is the number we use to pay the fee and report the payment.

OMB Q 10: How stable is the estimate of 285 submissions per year? How has the number of submissions fluctuated over the past 5 years, and how does DOL project this to fluctuate in the future?

DOL A: The number is relatively stable. The previous submission was 255, and we estimate the numbers will go up somewhat as the Office of Administrative Law Judges acts on pending claims.

OMB Q 11: How did DOL determine the 42 minute burden estimate?

DOL A: 7/10 of an hour was estimated because an attorney fee petition typically includes a printout (from Word or other software) of billable hours and services that is kept on an ongoing basis during the processing of the claim. That list of hours is accompanied by a completed and signed CM-972. As we do not reimburse representatives for time spent preparing fee petitions, attorneys do not record that time, so our estimate is based on time spent by a legal clerk or paralegal preparing the CM-972, verifying that the total amount, the hourly rate, and billable hours match, and that the petition is properly prepared for the attorney's signature.