

## **SUPPORTING STATEMENT**

### **REPRESENTATIVE FEE REQUEST OMB NO. 1215-0078**

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

Under 5 U.S.C. § 8127(a), and in accordance with 20 C.F.R. § 10.700, a claimant may authorize an attorney or other individual to represent his or her interests in any proceeding before the Office of Workers' Compensation Programs (OWCP). Under 5 U.S.C. § 8127(b) and in accordance with 20 C.F.R. § 10.702, fees for representatives' services must first be approved by the Secretary. The representative is entitled to request a fee for services under 20 CFR 10.700-703 (Federal Employees' Compensation Act (FECA)) and 20 CFR 702.132 (Longshore and Harbor Workers' Compensation Act (LHWCA)). The fee must be approved by the OWCP before any demand for payment can be made by the representative.

- 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.**

Under the FECA, the representative is required to submit for review any fees resulting from representing the claimant in filing for benefits. The program does not make payment, but reviews the fee request to ensure that it is consistent with services provided, and with customary local charges for similar services. Generally, only one fee request is received in a compensation claim. A representative is not prohibited from submitting a fee request before the claim is resolved, and then requesting approval of additional services rendered. Fee requests received have been used to approve attorney's fees, allowing the attorney to pursue payment of an appropriate amount from the claimant. If the fee requested is considered excessive, in view of the

criteria outlined in the regulations, the fee approved would be reduced accordingly.

Longshore provisions, found at 20 CFR 702.132, provide similar oversight functions as those provided under FECA. However, in the case where fees are actually authorized under the Longshore provisions, insurance companies and self-insured employers make payment.

If the information were not collected, OWCP would be unable to properly evaluate applications for representatives' fees.

- 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.**

In accordance with the Government Paperwork Elimination Act (GPEA), DOL recognizes the requirement that all Office of Management and Budget (OMB) collections be made electronically interactive by October 2003 and have reviewed the CA-143/CA-155, Attorney Acknowledgement and Instructions with consideration of this goal. There is no form associated with this submission, the acknowledgement letter and instructions are sent in response to receipt of a request for attorney fees. The CA-143/CA-155's are all generated solely by the government agency (OWCP) and not the general public. The attorneys submit fees via their own letterhead in response to our request. Internet address has not been included for Longshore because there is no form specific to this submission for the Longshore program.

Development of a technological system for submitting this information would not be cost effective or reduce burden, because the information is submitted only once. Burden has been minimized to the extent possible by allowing the information to be submitted in whatever format is convenient to the respondent.

This collection of information is not scheduled to be made

electronically interactive because it requires a narrative attachment and due to the low volume of usage.

- 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 requested in this collection is unique to the particular claim in which it is provided, and is not available from any other source.

- 5. If the collection information impacts small businesses or other small entities (Item 5 of 014B Form 83-1), describe any methods used to minimize burden.**

To the extent that some law firms are incorporated and have a small number of attorneys practicing within the firm, the collection affects small businesses. Experience has proved that the amount of information requested is the minimal amount necessary to substantiate the representatives' claim. The respondents are not required to use any particular form and may submit their fee on their own letterhead.

- 6. Describe the consequence of 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.**

The information is provided on an as submitted basis. Representatives submit a fee approval request when they have complied with the applicable statute governing the program under which they are applying. If the information were collected less frequently, fees for services could not be claimed and the intent of the law and regulations, which is to pay representatives of eligible claimants, would not be met.

- 7. Explain any special circumstance required in the conduct of this information collection.**

There are no special circumstances required in the collection of this information.

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.**

Consultations take place periodically on an individual basis between representatives and OWCP staff when addressing requests for interpretation of the regulations.

A Federal Register notification inviting public comment was published on September 8, 2009. No comments were received.

9. **Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are provided to respondents.

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

Records pertaining to compensation cases are covered under the Privacy Act DOL-ESA Notice 15 at <http://www.dol.gov/sol/privacy/dol-esa-15.htm> and DOL/GOVT-1 at <http://www.dol.gov/sol/privacy/dol-govt-1.htm>.

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.

There are no questions of a sensitive nature.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not make special surveys to obtain information on which to base burden estimates. Consultation with a sample of potential respondents is desirable. If the burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden and explain the reason for the variance. Generally, estimates should not include burden hours for customary and usual business practices. Provide estimates of the hour burden of the collection of information.

Longshore: It is estimated based on experience that fee requests will be submitted in approximately 40% of lost-time injuries received each year. During the last three fiscal years, averages of 14,927 lost-time injuries were reported each year. It is therefore estimated that approximately 5,971 fee requests will be submitted each year ( $.40 \times 14,927 = 5,971$ ). Each fee request takes an estimated 30 minutes to assemble, format, prepare, and submit. This estimate should be considered as an average since some fee requests may cover long periods of time and therefore may take more time to prepare and submit while others may cover much shorter periods of time and therefore take less time. Fee requests are submitted on the representatives' own letterhead. Total burden for Longshore is therefore estimated to be 2,986 hours ( $5,971 \times .5/\text{hr} = 2,986$ ).

FECA: Approximately 2,433 fee requests under FECA are received annually. Representative fee requests under FECA are generally much more detailed and lengthy than Longshore. Accordingly, we have estimated the burden for FECA at approximately 60 minutes to assemble, prepare, and submit the required fee request information. Total burden for FECA is therefore estimated at 2,433 hours ( $2,433 \times 1 \text{ hr} =$

2,433).

Total burden hours for FECA (2,433) and Longshore (2,986) equal 5,419.

The annualized cost of the burden hours to the respondents has been estimated to be approximately \$812,850. This estimate was determined by using an hourly rate of \$150.00 for representatives who practice under the Acts. This hourly rate is based on reviews of fees approved under the Acts and is considered an average as some hourly fees for very complex cases may be greater and some hourly fees for certain routine cases may be smaller. The computation is therefore as follows: ( $\$150/\text{hr} \times 5,419 \text{ hrs} = \$812,850$ ).

**13. Annual Costs to Respondents (capital/start-up & operation and maintenance).**

This information collection does not require the use of systems or technology for generating, maintaining or disclosing the data above that which would already be kept as a customary business practice. Therefore, for Longshore, a mailing cost of \$1.41 covering the mailing of copies to the district office, claimant, and the responsible employer or carrier at \$.47 per copy (\$.44 postage and \$.03 envelope charge) is applied as an operation cost and amounts to \$8,419 ( $\$1.41 \times 5,971 = \$8,419$ ). For FECA, a mailing cost of \$.94 covering the mailing of a copy to the FECA District Office and a copy to the employee is applied as an operation cost and amounts to \$2,287 ( $\$.94 \times 2,433 = \$2,287$ .) A purchase cost for letterhead stationary of \$25 per 100 sheets is also applied and amounts to \$2,100 ( $8,404$  [total of FECA and Longshore responses] divided by 100 = 84 x \$25 = \$2,100). The total operation and maintenance cost is therefore approximately \$12,806 ( $\$8,419 + \$2,287 + \$2,100 = \$12,806$ ).

**14. Provide estimates of annualized cost to the Federal government.**

Longshore: Approximately 5,971 fee petitions are reviewed annually. The fees are approved by a GS-13 District Director at an hourly rate of \$38.53. The average time for review is approximately 30 minutes depending on the

complexity of the case and the hours reflected on the petition. In addition, a mailing cost of \$1.41 covering the mailing of an original and two copies at \$.47 per copy (\$.44 postage + \$.03 envelope charge) is associated with each approved fee. The computations are as follows:

Review Cost:	5,971 x .5 = 2,986 hrs x \$38.53/hr =	\$115,051
Mailing Cost:	5,971 x \$1.41	= <u>8,419</u>
Total Longshore		\$123,470

FECA: Approximately 2,433 requests are reviewed on an annual basis. The request is reviewed by a Claims Examiner with an average grade of GS 11/4, at an hourly rate of \$29.73. Review of these fee requests averages about a 1/2 hour. In addition, a mailing cost of \$.94 covering the mailing of an original and one copy at \$.47 per copy (\$.44 postage + \$.03 envelope charge) is associated with each approved fee. The computations are as follows:

Review Cost:	2,433 X \$29.73 x ½ hour =	\$ 36,166
Mailing Cost:	2,433 X \$ .94 =	\$ 2,287
Total FECA:		<u>\$ 38,453</u>
TOTAL, BOTH PROGRAMS		\$161,923

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

The reduction in burden hours from 4,675 to 2,986 (-1,689) for Longshore is due to a reduction in reporting of lost time injuries under the Longshore Act. The adjustment in burden hours for FECA is due to a decrease in the number of actual requests for approval of attorney fees. Formal decisions are issued by district offices (in response to attorney fee requests) and can be internally tracked via the computer database. The previous number of annual responses, 3000, is being reduced to 2433, which represents a reduction of 567 requests.

**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 information,**

**completion of report, publication dates, and other actions.**

The information collected will not be published for statistical use.

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

There are no specific forms used to submit fee requests. The parties submit the fee requests on their own letterhead. The OMB number and expiration date appear on the FECA cover letter for the instructions.

- 18. Explain each exception to the certification statement identified in Item "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.**

There are no exceptions to the certification statement.