

**EMERGENCY REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT OF 1995
SUPPORTING STATEMENT**

**PROTECTIONS FOR TRANSIT WORKERS UNDER SECTION 5333(b) URBAN
PROGRAM**

A. Justification

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

Under 49 U.S.C. 5333(b), when Federal funds are used to acquire, improve, or operate a transit system, the Department must ensure that the recipient of those funds establishes arrangements to protect the rights of affected transit employees. Federal law requires such arrangements to be "fair and equitable," and the Department of Labor (DOL or "the Department") must certify the arrangements before the U.S. Department of Transportation's Federal Transit Administration (FTA) can award certain funds to grantees. These employee protective arrangements must include provisions preserving the rights, privileges, and benefits under existing collective bargaining agreements, ensure the continuation of collective bargaining rights; protect individual employees against a worsening of their positions related to employment; assure employment to employees of acquired transportation systems; assure priority of reemployment of employees whose employment is ended or who are laid off; and paid training or retraining programs. 49 U.S.C. 5333(b)(2).

Pursuant to 29 CFR Part 215, upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b) from the FTA, together with a request for the certification of employee protective arrangements from the Department of Labor, DOL will process those applications, which must be in final form. The FTA will provide the Department with the information necessary to enable the Department to process employee protections for certification of the project.

DOL Procedural Guidelines (29 CFR Part 215), encourage the development of employee protections through local negotiations, but establish time frames for certification to expedite the process and make it more predictable, while assuring that the required protections are in place. Under the guidelines, a DOL certification permitting the release of transit funds will occur within 60 days from the date the DOL begins processing a grant application. This may be a final certification or an interim certification.

Pursuant to the Guidelines, DOL refers for review the grant application and the proposed terms and conditions to unions representing transit employees in the service

area of the project and to the applicant and/or sub-recipient. No referral is made if the application falls under one of the following exceptions: 1) employees in the service area are not represented by a union; 2) the grant is for routine replacement items; 3) the grant is for a Job Access project serving populations less than 200,000.

When a grant application is referred to the parties, DOL recommends the terms and conditions to serve as the basis for certification. The parties have 15 days to inform DOL of any objections to the recommended terms including reasons for such objections. If no objections are registered, or if objections are found not sufficient, DOL certifies the project on the basis of the recommended terms.

If DOL determines that the objections are sufficient, the parties are directed to negotiate for up to 30 days, limited to issues defined by DOL.

If the parties are unable to reach agreement within 30 days, DOL will review the final proposals and issue an interim certification permitting FTA to release funds, provided that no action is taken relating to the issues in dispute that would irreparably harm employees.

Following the interim certification, the parties may continue negotiations. If they are unable to reach agreement, DOL sets the terms for Final Certification within 60 days. DOL may request briefs on the issues in dispute before issuing the final certification.

Notwithstanding the above, the Department retains the right to withhold certification where circumstances inconsistent with the statute so warrant until such circumstances have been resolved.

Justification for Seeking Emergency Approval: OLMS seeks emergency clearance from OMB for approval of the information collection from numerous California public transit agencies and the unions representing their employees, because the State of California implemented the Public Employee Pension Reform Act (PEPRA), which may limit a local transit authority's ability to bargain or to enter into fair and equitable protective agreements or arrangements that satisfy Section 13(c). OLMS seeks emergency clearance by September 3, 2013, so that review of applications and arrangements can be approved prior to the end of the fiscal year 2013. Failure to be able to collect the information would jeopardize certification and release of funds to grantees.

While the agency originally believed that it was not asking identical questions of 10 or more respondents in a year, the agency acknowledges that PRA approval may have been needed for the information collections in the underlying regulation (see 5 CRF 1320.5(c)(3)(I)); however, this ICR would still have needed emergency approval due to PEPRA enactment.

Regarding applications affected by PEPRA, the Department seeks additional information in order to make a determination concerning employee protections. The

Department has therefore established a PEPRA Questionnaire, to be distributed to the transit agencies and unions, and found to be necessary to the Department's determination with respect to certification. DOL has also modified the terms and conditions to serve as the basis for certification:

(1) Parties will be given fifteen (15) days from the date of the referral and notification letters to submit objections, if any, to the referred terms. The parties are encouraged to contact each other within the 15-day review period regarding any PEPRA issues and notifying them that the Department will order a formal negotiating period only on joint request of all parties to any objections. If no objections are registered, or if objections are found not sufficient, DOL typically certifies the project on the basis of the recommended terms.

(2) If DOL determines that the objections are sufficient, the Department will establish a briefing schedule, usually allowing no more than ten (10) days for opening briefs, with no reply briefs. Briefs will contain discrete points and will require the following:

- (a) Provide the start date and expiration date of collective bargaining agreement, including extensions, as well as the expiration date of your pension agreement.
- (b) For each negotiated pension plan, describe its organization (CalPERS, 1937 County Act, Independent System, other); type (defined benefit, defined contribution, jointly administered "Taft-Hartley," deferred compensation/savings, primary or supplemental); and participation (union employees, all employees, multi-employer, etc.).
- (c) Describe, separately for "new employees" (those hired on or after January 1, 2013) and "classic employees" (those hired before January 1, 2013), all pension benefit requirements that will be affected by PEPRA. Be specific in terms of participation in the plan, vesting schedule, employee contribution levels, pensionable compensation, minimum retirement age, minimum years of service, special circumstance retirement (early, disability, x-years-and-out), pension benefit formulas, and any other requirement or computation for a pension benefit of any kind.
- (d) Describe whether PEPRA will require the negotiation or unilateral imposition of a new level of pension contributions by classic employees on or before January 1, 2018.
- (e) Describe, separately for new employees and classic employees the effects of PEPRA on the pension benefit levels of each pension plan. Be specific and show by list or chart the "before and after" dollar amounts of benefits at threshold retirement ages and years of service (those points at which the benefit level

would change under the pension plan). Assume a final compensation figure of \$5,000 per month, for sake of illustration.

- (f) Enclosed for reference is the Department's determination regarding PEPRA issues affecting represented employees of the LACMTA. This determination forms the legal precedent upon which subsequent situations will be evaluated. Provide any information or analysis of your specific situation which you believe distinguishes it from, or illustrates its similarity to, the LACMTA precedent.

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.

Pursuant to the Department's regulations, 29 CFR Part 215, upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, permitting the FTA to release transit funds after the Department determines that fair and equitable employee protections are in place. The Department will use the additional information collected from the PEPRA Questionnaires to determine if the required employee protections are in place.

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.

As stated in Item 1, the DOL Guidelines requires respondents to submit objections and briefs in writing, and briefs must contain certain points regarding any PEPRA issues. To reduce burdens, the Department will allow for submissions via email or facsimile.

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.

Information reported pursuant to this information collection is not available from other government agencies and no duplication is possible, as only the Department can issue certification of employee protective arrangements associated with applications for Federal assistance subject to 49 U.S.C. 5333(b).

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information collection does not have a significant economic impact on a substantial number of small entities.

6. Describe the consequence to 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.

As provided in the Department's regulations, 29 CFR Part 215, upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, permitting the release of transit funds. If this information is not collected, DOL will be unable to determine that arrangements are "fair and equitable" concerning the rights of affected transit employees. If the Department cannot certify, then the funds will not reach the applying transit agencies, which could result in reduced services for the public and work for employees.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * requiring respondents to report information to the agency more often than quarterly;
- * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- * requiring respondents to submit more than an original and two copies of any document;
- * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- * in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- * requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act.

- 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. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The emergency nature of this request precludes seeking public input. Upon approval of this emergency request, OLMS intends to publish a 60-day FRN in support of an extension ICR to be submitted within six months of the initial ICR approval.

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

The Department does not provide any payment or gift to respondents.

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

OLMS is responsible for protecting the confidentiality of any data and will maintain the data in accordance with all applicable Federal laws, with particular emphasis upon compliance with the provisions of the Privacy and Freedom of Information Acts.

- 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 sensitive questions pertaining to sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private..

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 conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices. * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under “Annual Cost to Federal Government.”**

DOL estimates the burden for answering the PEPRA Questionnaire to be 6 hours per respondent, with 89 affected respondents for a total burden estimate of 534 hours.

DOL estimates the cost burden to parties for responding to these briefing questions using the current average hourly compensation for attorneys. The Department utilized the average hourly wage for attorneys, \$62.93, from the Occupational Employment and Wages Survey for May 2012, Table 1 on page 13, from the Bureau of Labor Statistics (BLS) at <http://www.bls.gov/news.release/pdf/ocwage.pdf>. The Department increased this figure by 54.34% to account for total compensation to reach the average hourly compensation for attorneys for the purposes of this analysis: \$97.13. See Employer Costs for Employee Compensation Summary (06-12-13), page one and Table A (Relative importance of employer costs for employee compensation), from the BLS, at <http://www.bls.gov/news.release/ecec.nr0.htm>.¹

¹ Most of the respondents are state or local public transit agencies employing state or local government employees. Thus, in order to increase the average attorney wage to account for benefits and reach the total hourly attorney compensation cost for purposes of this analysis, the Department utilized the average hourly wage and benefit compensation for state and local government workers, as found in page one and Table A of the BLS Employer costs for Employee Compensation Summary. This summary states that the average state and local government worker makes \$42.12 in total compensation, with 64.8% (or \$27.29) for wages and 35.2% (or \$14.83) for benefits. This \$14.83 figure for hourly benefits represents approximately 54.34% of the average wages for such employees. The Department therefore increased the average wage for attorneys by 54.34% to account for total compensation for state and local government attorneys, for purposes of this analysis ($\$62.93 \times 1.5434 = \97.13).

The cost per respondent is \$582.78 (6 x \$97.13 = \$582.78), with the total cost approximately \$51,867.42 (\$582.78x 89 respondents = \$51,867.42).

- 13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).**
- * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
 - * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
 - * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There are no operation and maintenance costs to respondents or recordkeepers resulting from the collection of information beyond the cost of the burden hours addressed in Item 12. Any capital investments including computers and software that are usual and customary expenses incurred by persons in the normal course of their business are excluded from the regulatory definition of burden as capital investments.

- 14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment,**

overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The federal costs associated with the information collections are those of the OLMS Division of Statutory Programs (DSP), which administers the Department's program under 49 U.S.C. 5333(b). DSP's annual budget is \$1,015, 013.00. Federal estimated costs were derived from the OLMS operating budget, and they include DSP costs for operational expenses such as equipment, overhead, office space, supplies, and printing as well as salaries and benefits for the DSP staff.

- 15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.**

This is a new information collection request.

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

OLMS will not publish the results of this information collection, although it will use the information in determining whether to certify the transit grants.

- 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.**

The Department is not seeking an exemption from the display of the expiration date of the OMB approval of the information collection.

- 18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

The Department is not seeking any exception to the certification requirements.

B. Collections of Information Employing Statistical Methods

This information collection request employs no statistical methods.