

MEMORANDUM FOR: BRENDA AGUILAR
Acting Branch Chief; Food, Health, and Labor Branch
Office of Management and Budget, OIRA

FROM: MICHEL SMYTH
Department of Labor Clearance Officer

SUBJECT: Emergency Paperwork Reduction Act Clearance of PEPR
Questionnaire for Agency Applications Affected by Public
Employee Pension Reform Act (PEPRA), ICR Reference
Number 201308-1245-002

The Department of Labor (Department), at the request of the Office of Labor-Management Standards (OLMS), seeks emergency review and clearance of the subject Information Collection Request, in accordance with 5 CFR 1320.13. Under Federal Transit Act section 13(c), 49 U.S.C. § 5333(b), as a condition precedent to a transit agency's or transit operator's (applicant's) receipt of Federal Transit Act grant funds, the Department of Labor must certify to the Department of Transportation's Federal Transit Agency that "fair and equitable," employee protective arrangements are in place with respect to relevant transit employees. This emergency clearance is needed in order to facilitate OLMS's legal responsibility under section 13(c), and thereby more timely provide grant applicants with the Department's determination.

The State of California enacted the Public Employee Pension Reform Act (PEPRA) in January of 2012. PEPRA may limit a public transit authority's ability to bargain with employees over certain issues, potentially limiting a public transit authority's ability to enter into fair and equitable protective agreements or arrangements to satisfy section 13(c). If OLMS cannot obtain the necessary information to make certification determinations for the appropriate agencies before the end of the fiscal year, the grantees will be delayed from receiving funding. As a result, the transit agencies will not receive (or timely receive) hundreds of millions of dollars of transit grant funds. The result may be transit service interruptions, reduced service, and employment reductions or layoffs. In addition, a large population of workers and users of public transit will be adversely affected by this delay in funding.

In order to obtain information from the applicants and unions representing the affected transit employees, OLMS recommends sending the applicants and unions a PEPR Questionnaire. Answers provided will assist OLMS in processing applications and permit certification and the immediate release of transit funds or allow applicants more time to address the Department's concerns prompting denial of certification. OLMS will use the information collected to confirm whether the required employee protections are in place and whether the recipient of the funds has entered into agreements or arrangements to protect the rights of affected transit employees.

The circumstances that necessitate this request are as follows:

- The collection of this data is essential to the responsibility of OLMS, Division of Statutory Programs, to ensure the rights of affected transit employees under 49 U.S.C. 5333(b) are in place prior to the release of federal transit assistance. [See 5 CFR 1320.13(a)(1)(ii)].
- OLMS needs to begin the process of collecting information before the dates possible for regular clearance procedure to ensure that OLMS can make determinations for funding before the end of the fiscal year. Indeed, a normal procedure will take over 90 days, with the current fiscal year having less than 60 days remaining. With this short time frame remaining in the fiscal year, OLMS needs to begin the process of collecting information to make the determinations to approve agency funding. If determinations are not made before the end of the fiscal year, it would cause a serious delay in the disbursements of funds to the receiving agencies. Without the funding, it is likely that agencies will take actions that adversely affect their workers [See 5 CFR 1320.13(a)(1)(i)].
- The event giving rise to this information collection request is an unanticipated event. OLMS could not foresee this issue or take action to rectify the issue of PEPRA causing funds to be delayed until the near completion of an adjudication concerning a grant application by the Los Angeles County Metropolitan Transit Authority (LACMTA), a California agency also affected by PEPRA. [See 5 CFR 1320.13(a)(2)(ii)]. The PEPRA questionnaire was formatted using the information for PEPRA issues affecting represented employees of the LACMTA. Interim legal conclusions relating to the determination of this administrative action will form the legal precedent upon which subsequent situations will be evaluated.
- It is reasonable to assume the public will be harmed if OLMS is not able expeditiously to obtain the required information as soon as possible through use of a questionnaire. Delays in collecting the required information could cause a delay in certification and funding which delay will negatively affect members of the public who rely on public transportation, especially the elderly or low-income wage earners, who use public transportation in getting to and from work. It is also likely that the delay in funding will cause transit agencies to lay off employees or reduce their hours; as a result, workers will be precluded from working due to lack of transportation or will be laid off. [See 5 CFR 1320.13(a)(2)(i)].
- The PEPRA Questionnaire adds minimal new requirements to existing forms and collection apparatus that are already familiar to the affected parties. [5 CFR 1320.13(c)].

OLMS urges that this emergency request be approved by September 3, 2013, [5 CFR 1320.13(b)] so that OLMS can issue a timely decision on certification, and the parties may have adequate time to prepare and understand the new collection requirements and forms.

Thank you very much for your consideration. We look forward to doing what we can to assist OMB in completing its review by the requested date.