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**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT  
SUBMISSIONS  
EQUAL ACCESS TO JUSTICE ACT  
OMB No. 1225-0013**

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**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.**

The Equal Access to Justice Act provides for the award of fees and expenses to certain parties involved in administrative proceedings with the United States. The statute, at 5 U.S.C. sec. 504 (a)(2), requires that a party seeking an award of fees and other expenses in a covered administrative proceeding must submit to the agency "an application which shows that the party is a prevailing party and is eligible to receive an award" under the Act. The statute further specifies these additional components of the application: the amount sought, including an itemized statement from an attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees or other expenses were computed. Finally, the statute requires the applicant to allege that the position of the agency was not substantially justified.

The Department of Labor's regulations implementing the Equal Access to Justice Act contain a subpart which specifies the contents of applications of an award. 29 CFR Part 16, Subpart B. Specifically, section 16.201 requires that the application contain the following information:

(a) An identification of the application [sec. 16.201 (a)];

(b) A statement that the applicant has prevailed and identification of the position of the agency that the applicant alleges was not substantially justified [section 16.201(a)];

(c) A statement of the number of employees of the applicant at the time the proceeding was instituted and a brief description of the type and purpose of its organization or business. If the applicant is a partnership, corporation, association, unit of local government<sup>1</sup>, or organization, or sole owner of an unincorporated business, the regulations require that the applicant must certify that it did not have more than 500 employees at the time the formal proceedings were initiated. This requirement would not,

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<sup>1</sup> The EAJA was amended August 5, 1985. Among other things, units of "local government" were added as possible, eligible parties. See 5 U.S.C. 504 (b)(1)(B). Although title regulations do not yet reflect this change, the statutory provisions govern. See note 2, below.

of course, apply to an individual filing an award. The information is necessary to ensure compliance with the statutory requirement that applicants must either be individuals or households or organizations employing 500 or fewer employees. 5 U.S.C. §504 (b)(1)(B). [§ 16.201(a),(c)];

(d) A statement that the applicant's net worth at the time the formal proceedings were instituted did not exceed \$2 million (if an individual) or \$7 million (for all other applicants including their affiliates).<sup>2</sup> This information is also needed to ensure that the applicant meets statutory requirements of eligibility. Applicants need not make this statement if they meet certain statutorily-authorized exemptions [§ 16.201 (b)];

(e) A statement of the amount of fees and expenses for which an award is sought [ §§ 16.201(d), 16.203];

(f) A statement of any other matters that the applicant wishes the adjudicative officer to consider in determining whether and in what amount an award should be made [§ 16.201 (e)];

(g) The signature of the applicant with respect to its eligibility and the signature of the attorney of the applicant with respect to fees and expenses sought. The application must be filed under oath. [§ 16.201(f)];

(b) A net worth exhibit showing the net worth of the applicant and any affiliates. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the statute. [§16.202].

Copies of the relevant statutory provision and regulations are attached.

**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 or the information received from the current collection.**

The information is used by agency adjudicative officers to determine whether an applicant is eligible for an award of fees and expenses under the Act, and whether the applicant is entitled to the amount claimed in the application. Since this is a "benefit" program, elimination of the information collection would much more directly harm the individual and small business applicants, rather than any government programs. Applicants would have to find some means of demonstrating eligibility. The consequence to the government is that, absent this information, the adjudicative officer would be unable to determine whether an applicant for an award against the government is eligible for such an award in accordance with the standards set forth in the statute.

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<sup>2</sup> As already noted, the EAJA was amended August 5, 1985. One amendment raised the net worth amount from \$1 million to \$2 million for individuals and from \$5 million to \$7 million for all other applicants [see 5 U.S.C. 504 (b)(1)(B)]. Although the regulations continue to reflect the earlier threshold figures, the statutory provisions govern.

**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 or using information technology to reduce burdens.**

The use of improved information technology would not serve to reduce the burden since: (1) the number of applicants are relatively few; (2) the information provided by applicants is generally provided on a one-time basis; (3) not all applicants provide the same information; (4) signatures of the applicant and signature of an attorney are required; and (5) the burden on applicants is minimized by allowing them to provide the information in a format convenient to them.

**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 is provided by applicants on a one-time basis in a specific proceeding and is made only to the agency from which fees and expenses are sought. Hence, the information requested of applicants does not duplicate any existing information collection.

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

The Department has minimized burden in two ways: (1) it has allowed applicants to provide information in a format convenient to them rather than prescribing format which might request information not absolutely needed of all applicants; and (2) it has limited the information requested to that required by the statute. This information collection does not pose a significant impact on 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.**

If the Department did not collect this information, it would not be in compliance with the Equal Access to Justice Act. Further, this is not a recurring collection of information – respondents usually only provide the information one time.

**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 respondent 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 secret, 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.**

No special circumstances apply.

**8. If applicable, provide a copy and identify the data 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 comment 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.**

As required by the Paperwork Reduction Act of 1995, the Department solicited comments from the public on the burden hour estimates and the need for the collection of information through an announcement in the *Federal Register* published on August 18, 2014 (79 FR 48770). 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 will be provided to the respondents. Payments of fees and expenses to eligible parties who have prevailed against the Department in certain administrative proceedings are not considered "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.**

No assurance of confidentiality is provided to respondents.

**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.**

No questions of a sensitive nature are asked.

**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, explain the reasons for the variance. Generally, estimates should not include burden hour 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 in Item 14.**

Based upon past experience with the Equal Access to Justice Act, we expect as many as 10 applications will be filed annually with the Department. As described in the response to Item 4, these applications are filed on a one-time basis. Our review of the documentation accompanying the applications indicates that the average completion time for an application is five hours. Accordingly, we estimate the annual burden as follows:

$$10 \text{ respondents} \times 1 \text{ response} \times 5 \text{ hours} = 50 \text{ total burden hours.}$$

The burden hour cost to respondents is calculated using the mean hourly wage rate from the May 2013 BLS National Occupational Employment and Wage Estimates for category

23-2011, Paralegals and Legal Assistants, of \$24.60 per hour<sup>3</sup>, multiplied by 50 total burden hours or \$1,230.  $\$24.60 \times 50 \text{ hours} = 1,230$ .

**13. Provide an estimate of 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 shown in Items 12 and 14).**

For the purposes of this information collection request, it is assumed that each eligible party would expend \$2.25 on postage and associated mailing material. The cost to the 10 respondents is estimated to be \$23.00 (rounded).

**14. Provide estimates of annualized cost 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 also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

Estimating the costs to the government is a speculative venture for two reasons:

(a) The amount of time necessary to respond to and defend the application varies greatly, depending upon the number and difficulty of the issues involved, and whether the application must itself be resolved at trial; and

(b) The amount and level of resources depend on the factors described above. Certain cases can be disposed by two hours work from a mid-level attorney; other cases may require twenty or more hours by a staff attorney, five from supervisory-level attorney, and ten hours of secretarial help. The most recent Administrative Conference of the United States EAJA Report<sup>4</sup> on agency activity under the Act, reporting on activity in FY2010 (published January 9, 2013), revealed a total of four administrative or court EAJA cases in a 12 month period. For purposes of estimating Federal costs, the Department assumes 10 applications may be filed in a 12 month period (the minimum triggering the Paperwork Reduction Act). The Department estimates the average filing would require 15 hours of staff time to process and a mid-range for the hourly rate would be \$51.47 (2014 RUS rate for GS-14, step 4). See Pay Table 2014. U.S. Office of Personnel Management, <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/salhr1.pdf>, at 33.  $15 \text{ hours} \times 10 \text{ requests} \times \$51.47 = \$7,720$ . The DOL further assumes costs incidental to processing these requests (e.g., travel and paper costs) would be about \$2,280; for a total Federal cost of \$10,000. .

**15. Explain the reasons for any program changes or adjustments reporting in Items 12 or 13.**

<sup>3</sup> <http://www.bls.gov/oes/current/oes232011.htm>

<sup>4</sup> <http://www.acus.gov/sites/default/files/documents/FY%202010%20EAJA%20Report.pdf>, page 8.

There has been an increase in the cost per response from \$2.00 to \$2.25 due to an increase in postage costs. The Annual Cost Burden has increased from \$20.00 to \$23.00.

**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.**

This is not a collection of information 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.**

The Department is not seeking such approval. There are, however, no forms associated with this information collection on which to display expiration date.

**18. Explain each exception to the certification statement identified in the "Certification for Paperwork Reduction Act Submission."**

The Department is not seeking exceptions to the certification statement in Item 19.

#### **B. Collection of Information Employment Statistical Methods**

This collection of information does not employ statistical methods.