



U.S. Department of Justice
Criminal Division

Washington, D.C. 20530

July 7, 2016

VIA EMAIL

Mr. Joseph B. Nye
OMB Policy Analyst
Office of Information and Regulatory Affairs
New Executive Office Building
Washington, D.C. 20530

Dear Mr. Nye:

As the Special Master of the U.S. Victims of State Sponsored Terrorism Fund (USVSST Fund), I am seeking an emergency review and approval of the attached USVSST Fund Application Form (Application) pursuant to the requirements of the Paperwork Reduction Act (PRA). This letter requests emergency approval of the Application by July 8, 2016, in accordance with 44 U.S.C. § 3507(j) and 5 C.F.R. § 1320.13, which permits such expedited approvals when a collection is needed prior to the expiration of time periods established by the PRA, is essential to the mission of the agency, and would cause a statutory deadline to be missed. *See* 44 U.S.C. §§ 3507(j)(1) and 3507(j)(2).

This emergency processing is essential because compliance with normal clearance procedures would cause several statutory deadlines to be missed, and would delay compensation for victims of terrorism, some of whom have been waiting for decades for compensation. Moreover, members of the public have had several opportunities to provide input on the application procedures that require this information collection.

Application is Essential to the Mission of the USVSST Fund

The expedited approval of the USVSST Fund's Application is essential to the mission of the USVSST Fund, because the collection of data from applicants to the USVSST Fund is necessary to determine whether claims are eligible and the amount of compensation. The statute explicitly requires collection of information concerning other sources of compensation. *See* 42 U.S.C. § 10609(b)(2)(B). Pursuant to Division O, Section 404 of the Consolidated Appropriations Act of 2016, Public Law 114-113 (Act) (enacted December 18, 2015), codified at 42 U.S.C. § 10609, the USVSST Fund was established to provide compensation to individuals injured as a result of an international act of terrorism by a state sponsor of terrorism.

Under 42 U.S.C. § 10609(c), an eligible claimant is (1) a U.S. person, as defined in 42 U.S.C. § 10609(j)(8), with a final judgment issued by a United States district court under state or federal law against a state sponsor of terrorism and arising from an act of international terrorism, for which the foreign state was found not immune under provisions of the Foreign Sovereign Immunity Act, codified at 28 U.S.C. § 1605A or 1605(a)(7); (2) a U.S. person, as defined in 42 U.S.C. § 10609(j)(8), who was taken and held hostage from the United States Embassy in Tehran, Iran, from November 4, 1979 through January 20, 1981, or the spouse and child of that U.S. person at that time, and who is also identified as a member of the proposed class in case 1:00-CV-03110 (EGS) of the U.S. District Court for the District of Columbia; or (3) the personal representative of a deceased individual in either of those two categories.

Approval is Necessary to Achieve Compliance with Statutory Deadlines in the Act

Approval of the Application is necessary before the expiration of the 60-day and 30-day notice periods, because it is the only way to achieve compliance with the mandatory statutory deadlines in the Act. After my appointment by the Attorney General as Special Master for the USVSST Fund, the Act imposes several short timelines for compensating eligible victims of international terrorism. I was appointed by the Attorney General and entered on duty on May 16, 2016. Under 42 U.S.C. § 10609(b)(2)(A), I must publish a notice specifying the procedures necessary to apply and establish eligibility for payment within 60 days of my appointment. In accordance with 42 U.S.C. § 10609(c)(3)(A), applicants have 90 days thereafter to file an application. Accordingly, an application form must be available on the same day as the publication of the notice in the Federal Register; otherwise applicants will be prejudiced in filing their claims within the 90-day statutory period. 42 U.S.C. § 10609(b)(4)(A) permits an applicant 30 days to request a hearing after receipt of a decision denying the claim in whole or in part, and allows me, as the Special Master, 90 days after the hearing to make a final written determination. After all of these procedures, all initial payments must be authorized by December 18, 2016, in accordance with 42 U.S.C. § 10609(d)(2).

Adding a 90-day or even a 60-day Office of Management and Budget (OMB) clearance process would prevent me from meeting the statutory deadline to authorize initial payments not later than one year after the enactment of the Act on December 18, 2015, and would cause a failure in an essential mission of the Department, to expeditiously compensate victims of terrorism.

The USVSST Fund has taken Extraordinary Steps to Ensure Public Input into Implementing the Notice Application Procedures

In this instance, the expedited approval of the Application is consistent with the purposes of the PRA, because the USVSST Fund took extraordinary steps to ensure public input into implementing the Notice application procedures, which includes specification of the information to be collected from applicants. Although 42 U.S.C. § 10609(2)(A) explicitly exempted the statutorily-mandated notice establishing eligibility requirements and application procedures from the public notice and comment requirements under 5 U.S.C. § 553, I held two town hall conference calls open to the public; the participants included potential applicants and their attorneys. Further, the USVSST Fund website published a draft version of the notice and frequently asked questions for public input, and I received written input from potential claimants and their attorneys. Thus, interested parties had opportunities to consider and provide input on the draft

procedures, including details of the information that would be collected. The USVSST Fund considered this public input in developing the final version of the notice, which will be published in the Federal Register. Unfortunately, the Application for which expedited approval is requested could not be fully developed until the application procedures were finalized. Consequently, the 60-day and 30-day OMB notice periods cannot be fulfilled without violating the statutory deadlines for acceptance of applications, scheduling of hearings, making final determinations, and authorization of initial payments.

Expedited Approval Provides a Temporary Measure to Allow Claims to be Processed within the Statutory Time Limits While the Application Undergoes the Normal Clearance Procedures

Finally, the USVSST Fund's request for expedited approval should be granted because it is a temporary measure to allow claims to be processed within the statutory time limits, while the Application undergoes the normal clearance procedures. If additional comments are received during the PRA clearance process, the Application can be amended. Moreover, the Application is closely modeled after a claim form that OMB recently cleared for the September 11th Victims Compensation Fund, and should raise few unique concerns for OMB.

Thank you for your prompt consideration of this request. Please contact Alice Dery, Chief, Program Management and Training Unit, Asset Forfeiture and Money Laundering Section by email at alice.dery@usdoj.gov or by phone at (202) 514-1320 if you have any questions or need additional information.

Sincerely,



Kenneth R. Feinberg
Special Master
United States Victims of State Sponsored Terrorism Fund
Criminal Division
U.S. Department of Justice