

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

**PROTECTIONS FOR TRANSIT WORKERS UNDER SECTION 5333(b) URBAN
PROGRAM
OMB Number: 1245-0006**

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) grants for Over-the-Road Bus Accessibility Programs; 2) the grant is for routine replacement items; 3) the grant is for a Job Access project serving populations less than 200,000. **(29 C.F.R. § 215.3)**. Grants where employees in the service area are not represented by a union, will be certified without referral based on protective terms and conditions set forth by DOL.

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 and circumstances do not exist inconsistent with the statute, 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 or the terms and conditions are not inconsistent with the statute.

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 establish a briefing schedule, usually allowing no more than twenty (20) days for opening briefs and no more than ten (10) days for reply briefs, when the Department deems reply briefs to be beneficial. *Id.* In either event, the Department will issue a final certification to the Federal Transit Administration no later than thirty (30) days after the last briefs are due.

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.

- 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.

- 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 limited to issues defined by DOL. 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. This process allows release of transit funds where adequate protective arrangements are in place. If this information is not collected, DOL will be unable to fulfill its statutory responsibility 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 special circumstances which require interested parties, such as transit agencies and labor organizations, to prepare a written response to a collection of information in few than 30 days after receipt of it. As explained in Item 1, the Department must receive objections to the recommended terms within 15 days of referral to the parties. Additionally, also as explained in Item 1, if the parties are unable to reach agreement following the interim certification, the Department must receive briefs from the parties pursuant to the briefing schedule, usually allowing no more than twenty (20) days for opening briefs and no more than ten (10) days for reply briefs, when the Department deems reply briefs to be beneficial. See 29 C.F.R. § 215.3. There are no other 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 Department published a proposed information collection extension renewal for OMB Number 1245-0006 (current expiration date March 31, 2017) on January 30, 2017. See 82 FR 8766. Public comments were not received.

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.

While no express assurance of privacy is offered, 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.”**

For purposes of this estimate, DOL assumes all responses come from unique respondent grant applicants. DOL estimates the burden for producing briefs to issues in dispute to be 8 hours per response, with 1,873 responses (the five-year average for grant applicants for the period FY 2012-16, as shown on the OLMS website at: <https://www.dol.gov/olms/regs/compliance/compltransit.htm>).

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 lawyers, \$65.51, from the Occupational Employment and Wages Survey for May 2015 (3-30-16), Table 1 on page 12, from the Bureau of Labor Statistics (BLS) at <http://www.bls.gov/news.release/pdf/ocwage.pdf>. The Department increased this figure by 58% to account for total compensation to reach the average hourly compensation for attorneys for the purposes of this analysis: \$103.51. See Employer Costs for Employee Compensation Summary for September 2016 (12-08-16), 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

Estimated Annualized Respondent Hour and Cost Burdens

Form	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Time Per Response (in hours)	Total Burden Hours	Hourly Wage Rate*	Total Cost Burden
Procedural Guidance	1,873	1	1,873	8	14,984	\$103.51	\$1,550,994

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 \$45.93 in total compensation, with 63.3% (or \$29.07) for wages and 36.7% (or \$16.86) for benefits. This \$16.86 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 approximately 58% (\$16.86/\$29.07) to account for total compensation for state and local government attorneys, for purposes of this analysis (\$65.51 x 1.58 = \$103.51).

- 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 record-keepers 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.

For purposes of this ICR, the DOL assumes respondents will use in-house attorneys; the associated burden is captured in item 12.

- 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 costs largely include personnel. OLMS used the average grade and step of a fulltime employee, GS-12, step 7 (\$97,130), as used in the [OLMS FY 2017 Congressional Budget Justification](#), and multiplied by the five employees in DSP, for a total of \$485,650.

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

In comparison to the previous submission (2,294 responses and 18,352 burden hours), this request of 1,873 responses and 14,984 burden hours which represents a decrease of 421 responses and 3,368 burden hours attributable as an adjustment is noted.

- 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.

