

Statement of Recovery, Forms CA-1108 and CA-1122
1240-0001
November 2018

SUPPORTING STATEMENT
Statement of Recovery Forms
CA-1108 and CA-1122
OMB No. 1240-0001

A. Justification

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

A Federal employee who sustains a work-related injury is entitled to receive compensation under the Federal Employees' Compensation Act (FECA). If that injury is caused under circumstances that create a legal liability in a third party to pay damages, the FECA authorizes the Secretary of Labor to require the employee to assign his or her right of action to the United States or to prosecute the action in his or her own name. See 5 U.S.C. § 8131.

Once OWCP has identified third party claims through the claims process, referral to the Solicitor of Labor (SOL) is made. SOL initiates Forms CA-1108 and CA-1122 to determine the amount of the refund due to the United States out of the proceeds of an action asserted by an injured Federal employee against a liable third party for a compensable injury.

An injured federal employee who receives money or property from a judgment or a settlement of the action, must reimburse the United States for past compensation payments. See 5 U.S.C. § 8132. The formula in § 8132 of the FECA must be used to calculate the reimbursement. Section 8132 states that "the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation payable to him for the same injury." Therefore, to calculate the amount of the refund due, the employee must provide the amount of the settlement received by

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him or her, the amount of the costs of the suit, and the fees charged by the attorney.

If the amount of the employee's recovery remaining after certain deductions specified in the statute exceeds the amount of OWCP's disbursements, the surplus must be credited against future payments of compensation, because the FECA mandates that the employee "shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation." 5 U.S.C. § 8132.

<http://www.dol.gov/owcp/dfec/regs/statutes/feca.htm#8131>

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To enforce the United States' statutory right to reimbursement, the Office of Workers' Compensation Programs (OWCP) has promulgated regulations. The regulations require a FECA beneficiary to report these types of payments (20 CFR 10.710) and submit the detailed information necessary to calculate the amount of the refund and surplus, if any, according to the formula in the statute. (20 CFR 10.707(e)).

The information collected by Form CA-1108 and Form CA-1122 from the FECA beneficiary includes this information and is necessary to calculate the amount of the refund and surplus owed to the United States from the FECA beneficiary's settlement or judgment, as required in the statute and the regulations.

[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?
c=ecfr&sid=6fa95d423eaa859a783d78509a7f4860&tpl=/ecfrbrowse/
Title20/20cfr10_main_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=6fa95d423eaa859a783d78509a7f4860&tpl=/ecfrbrowse/Title20/20cfr10_main_02.tpl)

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.

The information collected with Form CA-1108 and Form CA-1122 is used by SOL personnel to determine the amount to be reimbursed to

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the United States out of the proceeds of an action asserted by an injured Federal employee against a liable third party for a compensable injury.

Extensive legal analysis was undertaken in connection with the development of this collection of information by SOL. The wording ensures that a false or fraudulent response can be used as the basis for prosecution for fraud.

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.

Conducting business with claimants and their attorneys through emails has been gradually integrated into SOL's procedures and is now used extensively throughout SOL, including collecting information and delivering the forms. More than fifty percent of the forms distributed are now transmitted and returned electronically.

In addition, 50% of the forms sent by SOL paralegals are returned electronically. In the past, paralegals were routinely required to print and mail large files, but these are now sent as electronic files attached to emails, whenever feasible. Electronic transmission of information is used almost exclusively for intra-office communication. In addition, previously, mail received by SOL relating to OWCP claimants had been copied and mailed to OWCP; now, SOL has the technology to electronically scan correspondence and other documents directly into a claimant's file.

Alternatively, forms may be downloaded, completed on-line, printed, and submitted by mail. These forms are located on the DOL/DFEC website at <http://www.dol.gov/owcp/dfec/regs/compliance/forms.htm>

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 financial information requested in these collections is not duplicative of any information available elsewhere in OWCP, SOL or in any other Federal executive agency. While some State and Federal courts may have information relating to claimants' recoveries in court records, the courts do not have all of the information necessary to calculate the amount of the refund and not all state court files are accessible online. In addition, many cases are settled out of court. The respondent is the only source of all the required information.

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

This information collection has been streamlined to obtain the necessary information while imposing the minimum burden on the respondent. This information collection does not have a significant economic impact on a substantial number of small entities.

6. Describe the consequence of 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 this information were not collected, OWCP and SOL would be unable to enforce the United States' statutory right to reimbursement out of the proceeds of third-party recoveries.

7. Explain any special circumstance.

There are no special circumstances for the collection of this information.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's

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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.

A Federal Register Notice inviting comment was published on September 4, 2018 in Vol. 83, No. 171, Page 44910. The agency did not receive any comments in response to this notice.

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

No payment or gift is provided to a respondent.

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

The information collected by these requests is maintained in FECA claim files and/or SOL files, which are fully protected under the Privacy Act. Records pertaining to compensation cases are covered under the Privacy Act. The Privacy Act Notice is provided on each of the forms. All forms used to initiate a compensation claim contain a statement advising the claimant of the revisions of the Privacy Act. The applicable Privacy Act system of records is called DOL/GOVT-1 (<http://www.dol.gov/sol/privacy/dol-govt-1.htm>).

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 regarding sexual behavior, religious beliefs, etc. are asked by the CA-1108 or CA-1122.

12. 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 make special surveys to obtain information on which to base burden estimates. Consultation with a sample of potential respondents is desirable. If the burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden and explain the reason for the variance. Generally, estimates should not include burden hours for customary and usual business practices. Provide estimates of the hour burden of the collection of information.

The following chart shows the projected burden hours for this collection. The number of respondents per year is estimated to be 938. There are approximately 928 business respondents and 10 individual respondents (who are no longer federal employees). This figure is derived from the average number of respondents for FY2015-FY2017 during a single year. Each estimate represents the average time it takes one respondent to complete one response.

Burden Chart

Form	Time to Complete	Frequency of Response	Number of Respondents	Number of Responses	Hours Burden
CA-1108 Business Respondent	30 min.	1	928	928	464
CA-1122 Individual Respondent	15 min.	1	10	10	3
Totals	NA	NA	938	938	467

The requirements have a total respondent burden hour estimate of 467. The estimated cost of the burden hours for completion of the CA-1108 by attorney business respondents has been calculated using the May 2017 Bureau of Labor Statistics, Occupational Employment Statistics (OES) median wage rate of \$68.22 for lawyers. The estimated burden hour cost for the completion of

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the CA-1122 by the claimant, an individual respondent, has been calculated at \$22.77 (mean hourly earnings) using the Bureau of Labor Statistics, 2010 National Compensation Survey. Therefore, the total respondent cost estimates for this collection is \$31,722.00.

$$\begin{array}{r} 464 \times \$68.22 = \$31,654.00 \text{ (Attorney business respondents)} \\ + 3 \times \$22.77 = \quad \quad \quad \$68.00 \text{ (Individual respondents)} \\ \hline = \quad \quad \quad \quad \quad \quad \quad \$31,722.00 \end{array}$$

<https://www.bls.gov/oes/current/oes231011.htm>

<http://www.bls.gov/ncs/ocs/sp/nctb1476.pdf>

13. Annual Costs to Respondents (capital/start-up & operation and maintenance).

Because the information requested is kept as a usual and customary business practice by the attorney for the completion of the CA-1108, and the information collected from the claimant will be readily known, there are no capital/start-up costs. Therefore, the only actual cost the respondents must bear is the cost of mailing the forms.

The mailing costs are calculated as follows:

Other Costs Table

Total attorney costs - Forms CA-1108	
[\$0.50 (postage) + \$0.03 (envelopes)] x (928) (forms) =	\$492.00
Total claimant costs Form CA-1122	
[\$0.50) (Postage) + \$0.03 (envelopes)] x 10 (forms) =	<u>\$ 5.00</u>
Combined costs (\$492.00 + \$5.00) =	\$ 497.00
Total Combined Costs (Minus 50 percent electronically submitted)	
\$497. X 50% =	\$249.00

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14. Provide estimates of annualized cost to the Federal government:

Federal Cost Estimates:

Printing Cost: There will be no printing cost since the CA-1108, and CA-1122 are electronically stored.

Mailing and Envelope Cost:

$[938 \text{ requests} \times \$0.50(\text{postage})] + [\$0.03 \text{ (envelope)}] = \$497.000.$

Electronically Mailed (50% of Mailing and Envelope Cost): $\$497.00 \times 50\% = \249.00

Review Cost: Time needed to review each form = 30 minutes
Hourly wage SOL reviewer (*GS-11/1) = \$33.60

$(938 \times 30 \text{ minutes}) \div 60 \text{ minutes} = 469 \text{ hours} \times \$33.60 = \$15,758.00.$

Total Federal Cost:

$\$249.00 \text{ (postage)} + \$15,758 \text{ (review cost)} = \$16,007.00$

***As the work is performed by paralegal staff in the U.S. Department of Labor in Washington DC only, the country, the hourly rate was taken from OMB Salary Table https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB_h.pdf**

15. Explain the reasons for any program changes or adjustments.

The previously approved number of annual responses, 842, is being increased to 938, which represents an increase of 96. The adjustments in burden hours are due to an increase in the number of third-party claims. The currently approved number of hours is 419 and the requested number of hours is 467, an increase of 48. Likewise, costs burden is now estimated at \$249 versus the previously approved \$219 which represents an increase of \$30.00. The

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increase in these numbers represent a fluctuation in the number of annual respondents. See the attachment for Summary of Changes.

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

Data collected by the CA-1108 and CA-1122 will not be published.

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.

No exception to the display of the expiration date is sought.

18. Explain each exception to the certification statement identified in ROCIS.

This request is in compliance with 5 CFR 1320.9

B. Collections of Information Employing Statistical Methods

Statistical methods are not used in these collections of information.