

SUPPORTING STATEMENT

Application for Approval of a Representative's Fee in Black Lung Claim Proceedings Conducted by the U.S. Department of Labor

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.

Individuals filing with the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP) and Division of Coal Mine Workers' Compensation (DCMWC) for benefits under the Black Lung Benefits Act (BLBA), 30 U.S.C. § 901 et seq., may elect to be represented or assisted by an attorney or other representative. BLBA sections 422 and 426 (30 U.S.C. §§ 932, 936) authorize the Secretary to promulgate regulations to implement the BLBA. For those cases that are approved, the BLBA regulations at 20 CFR 725.366 and 20 CFR 725.365 establishes standards for the information and documentation that must be submitted to the Program for review so that the representative may be paid for services rendered to the claimant. Upon receipt of that evidence the adjudicating official is required by regulation to evaluate the application, and based on the supporting information in the claim file, approve a fee for services rendered. To assist the representatives participating in the Black Lung Benefits Program, a form, CM-972, was devised to provide a standardized format for submitting information required by regulation.

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 CM-972 is sent to and completed by the authorized representative of a black lung claimant whose claim has been approved for benefits. The completed form is then returned to and evaluated by the district director, administrative law judge, or appropriate appellate tribunal before whom the claimed services were performed, and a fee amount is determined. The regulations (20 CFR 725.366) set forth specific requirements for

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the items of information that must be included on fee applications. The CM-972 was designed to collect this information.

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.

It continues to be our experience that most attorneys would rather use their letterhead paper to send their bill and only use the CM-972 as a guide for required items. On occasion, the attorney's office will use our form as a cover to their letterhead bill. Since attorneys are required to bill by line item and by the quarter-hour, the bill may be many pages long.

As explained in Item 2, we send a copy of the form to the attorney's office at the appropriate time. The form is fillable on-screen and available for downloading by respondents at <https://www.dol.gov/owcp/regs/compliance/cm-972.pdf>. The form can also be completed and submitted online through the COAL Mine Portal at <https://eclaimant.dol-esa.gov/bl>.

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.

There are four programs within OWCP that require attorney fee applications. However, after an attempt to consolidate the reporting formats, it was determined that a universal format would not be feasible because each program has different regulatory requirements and the information collected is unique to each program.

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

The collection affects small businesses and is required so that the adjudicating officer may authorize payment of a representative's fee. The form need only be completed once per claim, but may include multiple services over a long period of time. Only information concerning the validity of a

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representative's fee is requested. However, this collection of information does not impose a significant impact on 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.

A representative who wishes to collect a fee for services rendered on behalf of a black lung claimant is required to furnish the information to DCMWC or other adjudicator only once per claim. If the information were requested and furnished less frequently, fees would not be paid and the intent of the law (to pay representatives of eligible claimants) would not be achieved.

7. Explain any special circumstance required in the conduct of this information collection:

- * 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 no special circumstances for conducting this information collection.

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.

A Federal Register Notice inviting public comment was published on January 28, 2020, 5044-5046 (85 FR 5044). No comments were received.

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

There are no payments or gifts to respondents to furnish the information.

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

When filed with DCMWC, the completed form is maintained in the beneficiary's case file. This information is covered by the Privacy Act System of Records, DOL/OWCP-2, published at 81 Federal Register 25765, 25858 (April 29, 2016), or as updated and republished.

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 questions of a sensitive nature on this form.

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 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.

This burden is based on the submission of approximately 944 CM-972's during FY 18. The number of forms is based on the estimated number of finally approved claims that had a representative at the District Director's level (729), plus the number of attorney fee awards issued by the Office of Administrative Law Judges, and the Benefits Review Board). It is estimated that it takes about 42 minutes (.70) for a representative to retrieve existing information, complete and mail the form. The public annual burden estimate of this information collection totals approximately 661 hours for the respondents to read the instructions, retrieve the information, complete and mail the form.

$$944 \times .70 = 661 \text{ hours (660.8 rounded up)}$$

The estimated annualized cost to respondents to provide this information is \$22,699.00. The national mean hourly wage for a legal support worker, the person most likely to complete this form and the fee petition, is \$34.34 per hour. This hourly wage is from the May 2018 report Occupational Employment and Wages, published by the Bureau of Labor Statistics (BLS) and available on the web at <https://www.bls.gov/oes/current/oes232099.htm>.

$$661 \text{ hours} \times \$34.34 = \$22,699.00 \text{ (22,698.74 rounded up)}$$

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

Total capital and start-up costs: None.

Total operation and maintenance:

Estimated mailing costs: \$548.00 (547.52 rounded up)
(55¢ stamp + 3¢ envelope) 58¢ X 944 = \$548.00

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

The estimated total cost to the Federal Government for development, printing, mailing and processing of 944 forms is approximately \$19,108.00 (19,108.30 rounded down). The cost is computed as follows:

- (a) Estimated printing cost: \$ 0.00
- (b) Estimated mailing cost: \$549.00 (549.26 rounded down)
 - Postage: 944 x \$0.55 = \$519.20
 - Envelopes: 944 x \$0.03 = \$ 28.32
- (c) Estimated processing cost = \$18,559.04

The claims examiner (GS-12/4) reviews each of the forms before the District Director (729 forms). Legal staff at OALJ and BRB (also GS 12/4) review the forms when work is before their respective offices. In each instance the review takes about 30 minutes. The 2019 hourly rate for a GS 12 step 4 is \$39.32. https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/RUS_h.pdf

(944 fee petitions x .5 hour = 472 hours X \$39.32 = \$18,559.04)

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

Public burden hours increased from 236.6 hours to 661 burden hours due to the increased number of attorney fee awards issued by all offices (District Director, Administrative Law Judge, Benefits Review Board, and Court of Appeals). Likewise the public burden estimated annualized cost increased from \$7,339.33 to \$22,699.00.

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

There are no plans to publish data collected on this form.

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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.

This information collection request does not seek a waiver from the requirement to display the expiration date.

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

There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods.

Statistical methods are not used in these collections of information.