

**SUPPORTING STATEMENT FOR
Equal Access to Justice Act
OMB CONTROL NUMBER: 1225-0013**

This ICR requests a three-year extension of the information collection under OMB Control No. 1225-0077. The information collection requirements are contained in various locations within 29 Code of Federal Regulations (CFR) Sections 16.201 and 16.202.

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:

- An identification of the applicant and the proceeding for which an award is sought;
- A statement that the applicant has prevailed and identification of the position of the agency that the applicant alleges was not substantially justified;
- 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, 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, 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;
- 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). 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;

- A statement of the amount of fees and expenses for which an award is sought;
- 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;
- 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; and
- 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.

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 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.

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.

The use of improved information technology would not serve to reduce the burden since:

- the number of applicants is a low in quantity;
- the frequency of responses per respondent is low;
- not all applicants provide the same data;
- signatures of the applicant and signature of an attorney are required; and
- the burden on applicants is minimized by allowing an open format within which they can provide the information.

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 A.2 above.

Applicants provide the data on a one-time basis in a specific proceeding. Further, applicants

submit the data only to the agency from which fees and expenses are sought. Therefore, 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:

- allowing applicants to provide information in an open format rather than prescribing a format which might request information not needed of all applicants; and
- limiting the information requested to only 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.

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 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.**

There are no special circumstances regarding 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. 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 Federal Register notice on 12/15/2021 (85 FR 81222) to solicit comments regarding to this information collection. No comments were received. However, [regulations.gov](https://www.regulations.gov) indicates that two comments/attachments were filed in response to the aforementioned Federal Register Notice. No comments germane to this information collection have been identified.

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

Neither payments nor gifts are provided to 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.

There is no assurance of confidentiality 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.

The Department is not and will not request data of a sensitive nature.

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.**
- **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.**

Burden Summary					
Activity	Number of Respondents (1)	Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden Hrs. & Cost Per Response¹ (4)	Total Burden Hours & Total Cost (3)*(4)=(5)
Applications	10	1	10	5 hrs.; \$37.78	50 hrs.; \$1,889

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital**

¹ The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for a Paralegal and/or Legal Assistant (<https://www.bls.gov/oes/current/oes232011.htm>). The mean hourly wage (including benefits) for this career is \$37.78/hour.

and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service 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 collection 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.**

The Department presumes that each eligible party would spend \$2.25 on postage and related mailing costs per application. The total burden would be \$23 (rounded up from \$22.50)

14. Provide estimates of the 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), 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 into a single table.

The Department estimates that the average filing will require 15 hours of staff time to process and analyze. Typically, staff wages applied to these activities would be at the GS-14 grade (Step 4) resulting in an annual salary of \$134,782 and an hourly wage of \$64.58.

15 hours/application * 10 applications * \$64.58 = \$9,687

An additional \$3,000 is estimated for incidental costs (e.g. travel, paper).

Total Federal Cost: \$12,687

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

There are no changes to reporting in this information collection request.

16. For collections of information whose results will be published, outline plans for tabulations, 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.

There are no tabulating, statistical, tabulating analysis, or publication plans for the collection of information.

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.

Not applicable. There are no forms associated with this information collection, thus, no opportunity to display an expiration date.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.