

SUPPORTING STATEMENT FOR

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

OMB CONTROL NO. 1240-0011

This ICR seeks a revision to the currently approved collection.

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 the Black Lung Benefits Act (BLBA), 30 U.S.C. § 901 et seq., individuals filing claims for benefits with the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP) and Division of Coal Mine Workers' Compensation (DCMWC), 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. The BLBA regulation at 20 CFR 725.365 authorizes an award of a representative's fee in approved claims, and 20 CFR 725.366 establishes standards for the information and documentation that a representative must submit to the Program in requesting a fee for services rendered to the claimant. Upon receipt of a representative's fee application, 20 CFR 725.366(d) requires the adjudicating official to evaluate it and issue a fee award. 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, in determining the amount of fees to award. The regulations (20 CFR 725.366) set forth specific requirements for 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 to adopt 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.gov/portal/?program_name=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 A.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 of 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 representative's fee is requested. However, this collection of information does not impose 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.

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 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 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. 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.

A Federal Register Notice inviting public comment was published on May 8, 2023. (88 FR 29697). Comments were not received.

OWCP has not consulted with the public for this specific ICR during the last 3-year period. We are in the process of reviewing all our ICR requirements and implementing procedures to comply with M-22-10 for any ICR's submitted to OMB after Oct. 1, 2023, and will continue consultations thereafter.

9. Explain any decision to provide any payments or gifts 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, regulation, 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 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.¹

- **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 13.**

Estimated Annualized Respondent Cost and Hour Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Monetized Value of Respondent Time (Rounded)
OWCP Form CM-972	590	1	590	.70	413	\$37.11	\$15,326

This burden is based on the submission of approximately 590 CM 972's during FY 22. The number of forms is based on the estimated number of finally approved claims that had a representative at the District Director's level (547), 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 hour) for a representative to retrieve existing information, complete and mail the form. The public annual burden estimate of this information collection totals approximately 413 hours for the respondents to read the instructions, retrieve the information, complete and mail the form.

$$590 \times .70 = 413 \text{ hours}$$

The estimated annualized cost to respondents to provide this information is \$14,496. The national mean hourly wage for a legal support worker, the person most likely to complete this form and the fee petition, is \$37.11 per hour. This hourly wage is from the May 2022 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>.

$$413 \text{ hours} \times \$37.11 = \$15,326 (\$15,326.43 \text{ rounded down})$$

¹ Indicate the retention period for any recordkeeping requirements that pertain to the ICR.

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 and start up cost component (annualized over its expected useful life); and (b) a total operation, 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.**

Respondent's cost to mail each response is estimated at 69¢ (66¢ stamp plus 03¢ for the envelope). Responses mailed will have a respondent cost of \$407.10 ($590 \times 69¢ = \407.10). This would be the total cost if we did not have any electronic submissions.

However, of the 590 responses that will be sent to DCMWC, it is estimated that 50% (0.5) will be submitted electronically through the COAL Mine Portal ($590 \times 0.5 = 295$). The estimated savings of the forms submitted through the COAL mine portal is \$203.55 ($295 \times 69¢ = \203.55). The remaining 295 responses will be mailed to DCMWC with a respondent cost of \$203.55 ($295 \times 69¢ = \203.55).

Therefore, the total respondent cost is \$204.00 (rounded up) ($\$407.10 - \$203.55 = \203.55).

There are no other known operating or maintenance costs associated with this collection.

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), and 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 estimated total cost to the Federal Government for the 590 forms is approximately \$13,269.00 (\$13,269.10 rounded down). The cost is figured as follows:

a. Estimated mailing cost: \$389.40 ($\0.63 metered postage plus $\$0.03$ per envelope = $\$0.66$) 590 forms $\times$ $\$0.66$ = \$389.40.

b. The claims examiner (GS 12/4) reviews each of the forms before the District Director (547 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 2023 hourly rate for a GS 12 step 4 is \$43.66. https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/RUS_h.pdf (The Salary Table 2023-GS was used for the hourly wages.)

(590 fee petitions $\times$.5 hour = 295 hours $\times$ \$43.66 = \$12,879.70)

\$389.40 mailing costs + \$12,879.70 review cost = \$13,269.10

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

EXPLANATION OF CHANGE TOTALS

Respondents: The number of respondents decreased from 944 to 590. The number of respondents decreased due to a decreased number of attorney fee awards issued.

The following also decreased due to a decrease in number of forms received/responses.

Responses: Responses have decreased from 944 to 590.

Burden Hours: Burden hours have decreased from 661 to 413.

Costs: Annual burden costs have decreased from \$548.00 to \$204.00.

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 plans to publish data collected on this form.

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.

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.