

**Associated RIN: 1240-AA16**

**SUPPORTING STATEMENT FOR  
APPLICATION FOR SELF-INSURANCE UNDER THE BLACK LUNG BENEFITS  
ACT**

**OMB CONTROL NO. 1240-0057**

This is a previously approved Information Collection. The Department is submitting this Information Collection Request (ICR) to revise the burden estimates to accompany the Final Rule – Black Lung Benefits Act: Authorization of Self-Insurers, RIN 1240-AA16. On January 19, 2023, the Department published a Notice of Proposed Rulemaking (NPRM) to revise the regulations governing authorization of self-insurers (88 FR 3349). The Department invited public comment as part of the NPRM and submitted this collection to OMB for review. The OMB issued a Notice of Action on February 23, 2023, asking that the Department address any comments received during the public comment period and resubmit at the final rule stage.

This ICR is being submitted as a revision.

**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 Office of Workers' Compensation (OWCP) administers the Black Lung Benefits Act (BLBA), which provides both disability and medical benefits to coal miners who are totally disabled due to pneumoconiosis (commonly called black lung disease) arising out of coal mine employment, and survivor's benefits to certain miners' dependent survivors. These benefits are generally paid by a coal mine operator who employed the miner.

To secure benefit payments, the BLBA requires covered coal mine operators to purchase insurance from a carrier authorized under state law to write workers' compensation insurance, or to become an authorized self-insured operator in accordance with the Secretary's regulations. 30 U.S.C. § 933. OWCP determines whether a coal mine operator should be authorized to self-insure and, if so, the amount of any security the operator must post to guarantee payment of its BLBA liabilities. To make these determinations, OWCP currently evaluates the operator's financial capacity and potential claims liability. This involves analyzing the nature of the operator's business, the business' structure, detailed financial information, actuarial predictions, historic rates of payments, and current claims information. The regulations implementing the self-insurance provision allow OWCP to collect this information from operators applying for (or renewing) authorization to self-insure their BLBA liabilities. (20 CFR 726.102, 726.112). Under

the final rule, OWCP will no longer collect information about assets, debt, and income because it will cease using a financial scoring method to determine security amounts.

All of the information sought with this collection is in the control of the coal mine operator and, for new self-insurance applicants, its commercial insurance carriers.

On January 19, 2023, the Department published a Notice of Proposed Rulemaking (NPRM) – Black Lung Benefits Act: Authorization of Self-Insurers, RIN 1240-AA16. The Department’s NPRM proposed to revise the regulations governing authorization of self-insurers (88 FR 3349) and the 60-day comment period ended on April 19, 2023, after an extension of the original March 20, 2023, deadline.

The final rule includes changes that have no impact on burden, have only a de minimis impact on burden, reduce burden overall, and increase burden for operators currently using section 501(c) (21) trusts as security to self-insure. For example, proposed section 726.102 requires self-insured operators to submit a new actuarial report every three years. This is not an additional burden, however, because under Form CM-2017, self-insured operators are already required to submit an actuarial report if they haven’t in the past three years. Likewise, OWCP is already performing the function of reviewing those reports under the preexisting guidelines.

Additionally, under section 726.108, if a self-insurer wishes to withdraw securities, it must submit a written request, which must include (1) an updated actuarial report using OWCP-mandated actuarial assumptions to support why the existing security levels are no longer applicable; or (2) replacement securities in the amount and form approved by OWCP. OWCP expects this to be very rare and therefore add only a de minimis burden.

Similarly, section 726.110 requires any operator authorized to self-insure to notify OWCP of any changes to its business structure, including the purchase, sale, or lease of any coal mining operations, that could affect the operator’s liability for benefits under the Act. We expect such changes to be infrequent, and notifying OWCP by email as part of the operator’s process to notify all interested parties of such changes therefore adds only a de minimis burden.

The final rule also reduces burden associated with this ICR as it removes the collection associated with form CM-2017a.

Under 20 CFR 726.104(b)(4), operators electing to maintain existing Section 501(c)(21) trust accounts will be required to submit quarterly bank statements for such trusts. This requirement will allow OWCP to validate that the par amount of such account is being maintained at or above the security requirement established by OWCP to be an authorized self-insurer.

**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 will be used by OWCP staff to determine whether a coal mine operator should be authorized (or continue to be authorized) to self-insure its BLBA liabilities and to determine the amount of security an authorized self-insurer must deposit. Form CM-2017 (Application or Renewal of Self-Insurance Authority) requests basic information about the applicant's business including subsidiaries it wants to cover under its self-insurance authority, basic historical claims information, how it intends to administer claims as a self-insurer, and an actuarial analysis of projected BLBA liabilities. This information allows OWCP to evaluate the operator's qualifications to self-insure and estimate its future liabilities. If this information were not collected, self-insurance authorizations could not be granted (or renewed) as required by the statute.

Form CM-2017b (Report of Claims Information for Self-Insured Operators) requests a report showing all outstanding claims against the applicant and its subsidiaries, and the particulars of each case. OWCP sets the operator's security deposit amount relative to its outstanding liabilities. If the information were not collected, there would be no way to set a new self-insurer's security deposit amount or determine whether a current self-insurer's security deposit was adequate to provide for the continued payment of benefits if the self-insurer were to become insolvent or bankrupt.

**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.**

In accordance with the Government Paperwork Elimination Act, Forms CM-2017 and CM-2017b will be available in an electronically interactive format on OWCP's website. Once completed and executed, the operator will e-mail the forms and required attachments to OWCP. The instructions for each form specify the electronic submission process.

**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.**

The information requested in this ICR is not duplicative of any information available elsewhere.

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

This information collection contains only that information required for OWCP to make a self-insurer or security-deposit decision. Generally, the respondents are large coal mine operators. In any event, this collection does not impose additional burdens on small businesses or other small entities because coal mine operators routinely maintain the information requested in the normal course of business as part of their usual business practices or as part of self-insuring their liabilities.

**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.**

Please refer to No's. 1 and 2 (see pages 1 & 2). If this information were not collected, OWCP would be unable to determine whether a coal mine operator should qualify as a self-insurer or to determine the amount of security an operator must deposit to assure prompt payment of its BLBA obligations if the operator defaults or becomes insolvent. Because a coal mine operator's BLBA obligations change from year-to-year (e.g., new claims are filed, previously filed claims are paid in full), annual evaluation of the required security deposit amount is necessary.

**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 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 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.**

On January 19, 2023, the Department published a Notice of Proposed Rulemaking (NPRM): Black Lung Benefits Act: Authorization of Self-Insurers, RIN 1240-AA16. The Department's NPRM proposed to revise the regulations governing authorization of self-insurers (88 FR 3349) and the 60-day comment period ended on April 19, 2023, after an extension of the original March 20, 2023, deadline. Burdens associated with this rulemaking impact this collection.

This final rule removes the collection associated with form CM-2017a and does not change the information collected on forms CM-2017 and 2017b, nor change the requirement that they be completed.<sup>1</sup> Thus the Department's NPRM estimated that overall burden for this ICR would be reduced by the amount of burden related to CM-2017a and that the rulemaking did not impact the burden associated with forms CM-2017 and 2017b. The Department received one comment related to this burden estimate.

The commenter argued that an operator's information collection burden would increase under the new regulation's requirement to submit actuarial reports with OWCP-mandated actuarial assumptions. The Department disagrees with this contention. OWCP has required applicants to submit actuarial reports with OWCP-mandated actuarial assumptions for years. Further, OWCP already considered, and OMB already approved, the information collection burden of producing these actuarial reports. With the last renewal package for 1240-0057, OWCP submitted to OMB a Supporting Statement, explaining that applicants would need to submit actuarial reports along with the self-insurance applications forms and estimating that twenty operators would have to submit actuarial reports they did not otherwise prepare in the course of business. OMB also reviewed the instructions for the main application form, CM-2017, which provide that applicants' actuarial reports "must comply with the standards specified by OWCP, which are posted on the black lung program's website:

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<sup>1</sup> The minimal changes made to the instructions for applying or renewing self-insurance authority under the BLBA do not impact the burden estimates for forms CM-2017 and 2017b.

<https://www.dol.gov/agencies/owcp/dcmwc/operators-insurers>.” The website, in turn, provides OWCP’s current actuarial assumptions. Because applicants’ burden associated with forms CM-2017 and CM-2017b remains unchanged under this regulation, OWCP will move forward with its burden estimates.

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

No payments or gifts are made to respondents.

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

The information collected from respondents is exempt from public disclosure to the extent provided in 5 U.S.C. § 552(b) and the Department of Labor’s implementing regulations. 20 CFR 726.113. OWCP may share the information with contractors it employs to manage data or analyze the information collected for purposes of determining whether a coal mine operator should be authorized to self-insure or the amount of the required security deposit. The information collected 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 in this information collection.

**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 13.**

### Estimated Annualized Respondent Cost and Hour Burden

Collection	Number of Respondents*	Number of Responses per Respondent	Number of Responses	Avg. Burden per Response (In Hrs.)	Burden Hours	Hourly Wage Rate**	Monetized Value of Time
CM-2017 Application/Renewal	61	1	61	2	122	\$40.37	\$4,925.14
CM-2017b Report of Claims Information	61	1	61	2	122	\$73.78	\$9,001.16
Quarterly Financial Reports on Section 501(c) (21) Trusts	5	4	20	0.0833	1.67	\$73.78	\$123.21
<b>Unduplicated Total</b>	<b>61</b>		<b>142</b>	<b>5</b>	<b>246</b>		<b>\$14,049.51</b>

\* To calculate the burdens for forms CM-2017 and CM-2017b, OWCP has used a number of respondents that is larger than the expected number of applicants. While OWCP has records for 61 self-insured operators, only 18 are currently engaged in coal production. Others have left the mining business (but still exist and would be expected to apply for renewal of their self-insurance authorization) or have gone out of business entirely. OWCP does not expect those companies that have gone out of business to respond. OWCP has used this number only to be sure the burdens are not underestimated.

\*\*For the CM-2017, the hourly wage of \$40.37 for accountants is taken from the May 2021 National Occupational Employment and Wage Estimates, published by the Bureau of Labor Statistics at <https://www.bls.gov/oes/current/oes132011.htm>.

\*\*For the CM-2017b and the quarterly financial reports, the hourly wage of \$73.78 for Financial Managers is taken from the May 2021 National Occupational Employment and Wage Estimates, published by the Bureau of Labor Statistics at <https://www.bls.gov/oes/current/oes113031.htm>.

**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.**

Under the final rule, OWCP would continue to require that the operator submit with the form CM-2017 an actuarial report on their projected BLBA liabilities once every three years (unless special circumstances require a report sooner).<sup>2</sup>

As explained above in the response to question 12, to calculate the burdens, OWCP has used a number of respondents that is larger than the expected number of applicants. Fewer than a third of self-insured operators are currently engaged in coal production. Some have gone out of

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<sup>2</sup> In an earlier Supporting Statement, OWCP associated this cost with form CM-2017a, which the proposed rule would eliminate. However, it is a separate requirement and operators would still be required to produce an actuarial report every three years under the final rule, so OWCP continues to account for this cost here.



business entirely while others still exist but have left the mining business. Some already prepare these actuarial reports in the normal course of business. OWCP therefore estimates that of the 61 self-insured operators, approximately one third, or 20 respondents, will incur the cost burden of obtaining an actuarial report.

OWCP estimates, based on the charges it has recently incurred for actuarial reports (which range from approximately \$4,000 to \$6,000), that a coal-mine operator would pay an average of \$5,000 per report. Since submission of a report would only be required once every three years, the annual cost is an average of \$1,667. Thus, OWCP estimates the annual burden at \$34,000 (20 x \$1,667 = \$34,000).

No mailing cost associated with the submission of the forms has been accounted for, since the final rule requires the operators to electronically file their responses.

**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 total Federal cost estimate for the two forms is estimated at \$15,695.00.

**CM-2017 Form**

The Federal cost estimate of \$9,365.94 was determined for an average annual usage of 61 forms as follows:

processing	A GS-13/1 (\$51.18 per hour) spends 180 minutes processing each of the 61 forms. <a href="https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf">https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf</a> 61 X 180 = 183 hours x \$51.18 = \$9,365.94
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**CM-2017b Form**

The Federal cost estimate of \$6,243.96 was determined for an average annual usage of 61 forms as follows:

processing	A GS-13/1 (\$51.18 per hour) spends 120 minutes processing each of the 61 forms. <a href="https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf">https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf</a> 61 X 120 = 122 hours x \$51.18 = \$6,243.96
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## Quarterly Financial Statements for Section 501(c)(21) Trusts

The Federal cost estimate of \$85.47 was determined for 20 quarterly financial reports potentially submitted as follows:

processing                      A GS-13/1 (\$51.18 per hour) spends 5 minutes processing each of the 20 quarterly financial reports.  
[https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf)  
 $20 \times 0.0833 = 1.67 \text{ hours} \times \$51.18 = \$85.47$

**Total Federal Cost:** \$15,695 (\$9,365.94<sub>CM-2017</sub> + \$6,243.96<sub>CM-2017b</sub> + \$85.47<sub>Quarterly Statements</sub> = \$15,695.37 or \$15,695 rounded)

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

The final rule contains information collections within the meaning of the PRA, but the collections in forms CM-2017 and CM-2017b are not new. Aside from the removal of the collection associated with submitting form CM-2017a to OWCP, the requirements for completion of the forms and the information collected on the forms have not changed with this final rule.

The final rule requires that operators continuing to use Section 501(c)(21) trusts as security must submit quarterly financial statements to OWCP documenting the value of the trusts. The value of such trusts may decrease between annual reviews. Receiving quarterly reports on the trust values will allow OWCP to ensure that operators are continuing to meet their security requirements.

### EXPLANATION OF CHANGE TOTALS

**Respondents:** The estimated number of self-insured operators has increased from 49 to 61. This is because OWCP has records for 61 self-insured operators and, even though it does not expect all to apply for authorization, OWCP wants to avoid underestimating the burdens.

Despite the estimated increase in CM-2017 and CM-2017b responses, and the new responses for quarterly-financial-report filings on Section 501(c)(21) trusts, the estimated annualized number of responses and burden hours have decreased due to the removal of the CM-2017a form.

**Responses:** Responses have decreased from 294 to 142.

**Burden Hours:** Burden hours have decreased from 261 to 246.

**Costs:** Annual burden costs have decreased from \$34,080 to \$34,000 due to the removal of the associated mailing costs.

**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 under this request.

**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.