

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

This ICR seeks to extend this information 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.

The Division of Federal Employees', Longshore and Harbor Workers' Compensation (DFELHWC) administers the Federal Employees' Compensation Act (FECA). A Federal employee who sustains a work-related injury is entitled to receive compensation under the 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 prosecute the action in his or her own name. *See* 5 U.S.C. § 8131.

After identifying third-party claims through the claims process, OWCP refers them to the Solicitor of Labor (SOL). 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, employees must provide the amount of the settlement they received, 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.

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<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.

<https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=c131552afa82be329e42e2c9d62a41c8&rgn=div5&view=text&node=20:1.0.1.2.2&idno=20#se20.1.101707>.

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 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.

In accordance with the Government Paperwork Elimination Act (GPEA), the DFELHWC seeks to allow individuals and entities that deal with the FECA the option to submit information or

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transact with the agency electronically, where practicable, and to maintain records electronically where appropriate.

Reference: <https://www.doi.gov/ocio/policy-mgmt-support/govt-paperwork-elimination-act>

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. An estimated 97 percent of the forms are returned electronically and scanned directly into a claimant's file.

Alternatively, forms may be downloaded, completed, and emailed to SOL, or printed and mailed to SOL. These forms are located on the DOL/DFELHWC 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 A.2 above.

The financial information requested in these collections is not duplicative of any information available elsewhere in OWCP, SOL or 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 of 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 small businesses or 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 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 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 C.F.R. § 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 September 09, 2021 (86 FR 50559). Comments were not received.

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 forms is maintained in FECA claim files, which are fully protected under the Privacy Act. The applicable Privacy Act system of records is DOL/GOV-1 [81 Fed. Reg. 47418 (July 21, 2016)].

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. 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. General, 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.**

The following chart shows the projected burden hours for this collection. The number of respondents per year is estimated to be 1,164. There are approximately 1,154 business respondents and 10 individual respondents (who are no longer federal employees). This figure is derived from the average number of respondents per year for FY2018–FY2020. Each estimate represents the average time it takes one respondent to complete one response. Note: The total burden hours/ costs have been rounded up or down, as applicable.

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	Total Burden Cost
CA-1108 Business Respondent	1,154	1	1,154	.50	577	\$71.59	\$41, 307
CA-1122 Individual Respondent	10	1	10	.3	3	\$25.51	77
Total	1,164		1,164		580		\$41, 384

The requirements have a total respondent burden hour estimate of 580. The estimated cost of the burden hours for completion of the Form CA-1108 by attorney business respondents has been calculated using the National Average Weekly Wage for lawyers as computed by the Bureau of Labor Statistics, May 2020 Occupational Employment Statistics (OES), or mean hourly wage rate of \$71.59 for lawyers. <https://www.bls.gov/oes/current/oes231011.htm>. The estimated burden hour cost for the completion of the CA-1122 by the claimant, an individual respondent, has been calculated at \$25.51 (mean hourly wage) using the Bureau of Labor Statistics, August 2020 Current Employment Statistics (CES). [Table B-8. Average hourly and weekly earnings of production and nonsupervisory employees on private nonfarm payrolls by industry sector, seasonally adjusted \(bls.gov\)](#).

$$\begin{array}{r} 577 \times \$71.59 = \$41,307 \text{ (Attorney business respondents)} \\ + 3 \times \$25.51 = \quad 77 \text{ (Individual respondents)} \\ \hline = \quad \quad \quad \$41,384 \end{array}$$

13. Provide an estimate of the total annual cost burden to respondents or record keepers 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 startup 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**

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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.

Because the information requested is kept as a usual and customary business practice by the attorney for the completion of the Form 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:

It is assumed that approximately 97% of respondents will submit the form electronically, therefore, only 3% will be mailing the forms.

Respondent Cost

Total attorney costs - Form CA-1108:
[\$0.58 (postage) + \$0.03 (envelopes)] = \$0.61
3% of 1,154 respondents = 34.62
Total cost is \$0.61 x 34.62 = \$21.1182 or \$21.12 rounded up.

Total claimant costs - Form CA-1122:
[\$0.58 (postage) + \$0.03 (envelopes)] = \$0.61
3 % of 10 respondents = 0.3
Total cost is \$0.61 x 0.3 = 0.183 or 0.18 rounded down

Combined costs (\$21.12 + 0.18) = \$21.30 or \$21 rounded down

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 estimated costs to the Federal government of collecting these forms are noted as follows:

Mailing Costs:

[34.92 requests x \$0.58 (postage) + \$0.03 (envelope)] = \$21.303 or \$21 rounded down.

Total Federal Costs: + Mailing Costs (\$21). + Annual ECOMP Contract Pricing Hosting (\$7,714)¹ = \$7,735

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

There has been an increase in the number of respondents, FY2018–FY2020, due to an increase in the number of third-party claims. Accordingly, the previously approved number of annual

¹ The ECOMP cost is \$270,000 for FY 2019. There are 35 forms which require OMB approval which can be downloaded through ECOMP. These forms are CA-2a, CA-5, CA-5b, CA-7, CA-12, CA-15, CA-16, CA-17, CA-20, CA-40, CA-41, CA-42, CA-155, CA-278, CA-721, CA-722, CA-1027, CA-1031, CA-1032, CA-1074, CA-1087, CA-1090, CA-1108, CA-1122, CA-1143, CA-1305, CA-1331, CA-2231, OWCP-5a, OWCP-5b, OWCP-5c, OWCP-16, OWCP-17, OWCP-20, and OWCP-44. The ECOMP figure used was based on the averaged cost for each of those collections, or 1/35 of \$270,000, which is \$7,714.29, \$7,714, rounded down.

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responses, 938 is being increased to 1,164, which represents a difference of 226. The adjustments in burden hours are due to the increase in the number of third-party claims. The currently approved number of hours is 467 and the requested number of hours is 580 , an increase of 113.

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.

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.

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.

This collection does not employ statistical methods.