

SUPPORTING STATEMENT
1235-0003, THE FAMILY AND MEDICAL LEAVE ACT OF 1993, AS AMENDED
EXPIRATION 06/2023

The Department is proposing to extend its information collection request (ICR) related to the Family and Medical Leave Act of 1993 (FMLA). The calculations for information collections required by 29 CFR part 825 have been updated using current data, resulting in a change in the number of responses to certain collections of information as well as to hours and cost burdens covered by the ICR. This ICR is being submitted under OMB Control No. 1235-0003 and expires on June 30, 2023. The Department is submitting this ICR as an extension.

Part 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 FMLA, 29 U.S.C. 2601, *et seq.*, requires private sector employers that employ 50 or more employees, all public and private elementary schools, and all public agencies to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to eligible employees for certain family and medical reasons (i.e., for the birth of a son or daughter and to care for a newborn child; for the placement with the employee of a son or daughter for adoption or foster care; to care for the employee's spouse, son, daughter, or parent with a serious health condition; because of a serious health condition that makes the employee unable to perform the functions of the employee's job; to address qualifying exigencies arising out of the deployment of the employee's spouse, son, daughter, or parent to covered active duty in the military), and up to 26 workweeks of unpaid, job-protected leave during a single 12-month period to an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered current servicemember or veteran for the employee to provide care for the covered servicemember with a serious injury or illness. FMLA section 404 requires the Secretary of Labor to prescribe such regulations as necessary to enforce this Act. 29 U.S.C. 2654.

The Department's authority for the collection of information and the required disclosure of information by employers, employees, and third parties (e.g., health care providers) under the FMLA stems from the statute and implementing regulations. These disclosures ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under the FMLA. The required disclosures are discussed below.

Among other requirements, 29 U.S.C. 2601, *et seq.*, and the regulations at 29 CFR part 825, require employers covered by the FMLA to make and maintain records for notices from employees regarding their need for leave as well as notices to employees regarding the protections of the FMLA generally, employee FMLA eligibility status, employee rights and responsibilities under the FMLA, and designation of FMLA covered leave. Employers must keep records of employee certifications for the serious health condition of an employee or an employee's family member, any recertifications, fitness for duty to return to work, leave for a qualifying exigency, and leave to care for a covered servicemember. In addition, covered employers must post a general FMLA notice and, for covered employers with any eligible employees, include information about the FMLA in their employee handbook or provide a copy

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of such general notice to each new employee upon hire. Employers also must keep records of periodic employee status reports, documentation of family relationships, and notices to employees for pending cancellation of health benefits, key employee status, and change of 12-month period for determining FMLA entitlement.

Covered employers that have eligible employees must maintain basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid. The employer must record dates FMLA leave is taken by FMLA eligible employees. The employer is required to designate in its records all employees' FMLA leave; this includes the hours of leave if FMLA leave is taken in increments of less than one full day; any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding taking paid and unpaid leaves; premium payments of employee benefits; and records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

Covered employers with no eligible employees must maintain the basic payroll and identifying employee data already discussed. Covered employers that jointly employ workers with other employers must keep all the records required by the regulations with respect to any primary employees and must keep the basic payroll and identifying employee data with respect to any secondary employees.

If FMLA-eligible employees are not subject to the Fair Labor Standards Act (FLSA) recordkeeping regulations for purposes of minimum wage or overtime compliance (i.e., not covered by, or exempt from, the FLSA), an employer need not keep a record of actual hours worked (as otherwise required by 29 CFR 516.2(a)(7)), provided that eligibility for FMLA leave is presumed for any employee who has been employed for at least 12 months; and with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written record.

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.

According to the FMLA and the regulations, no particular form for notices or certifications is required. However, the Department has developed optional-use forms which can be used by employers to provide required notices to employees and by employees to provide certification of their need for leave for an FMLA-qualifying reason. The FMLA disclosures ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under the FMLA. The information collected allows employers to properly communicate with employees about their eligibility for FMLA leave and their rights and responsibilities under the FMLA and on the designation of FMLA leave. The information collection also allows employers to verify whether a leave request is FMLA qualifying. The

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recordkeeping requirements are necessary for the Department to carry out its statutory obligation under FMLA section 106 to investigate and ensure employer compliance. WHD uses these records to determine employer compliance.

- 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 regulations prescribe no particular form of records. *See* 29 CFR 825.500(b). The preservation of records in such forms as microfilm or automated word or data processing memory is acceptable, provided the employer maintains the information and provides adequate facilities to the Department for inspection, copying, and transcription of the records. In addition, photocopies of records are also acceptable under the regulations.

Aside from the general requirement that all notifications be in writing, there are no restrictions on the method of transmission. Respondents may meet many of their notification obligations by using Department-prepared publications available on the WHD website, <https://www.dol.gov/agencies/whd/fmla/forms>. These forms are available in PDF, a fillable format for downloading and printing. Employers may maintain records in any format, including electronic, when adhering to the recordkeeping requirements covered by this information collection.

- 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.**

The FMLA information collections do not duplicate other existing information collections. However, to outline all relevant FMLA information in one set place, the FMLA recordkeeping requirements restate a portion of the records employers must maintain under the FLSA. These FLSA recordkeeping requirements, found in 29 CFR part 516, are currently approved under OMB control number 1235-0018 and are restated here for clarity. Employers do not need to duplicate any records provided that these records maintained pursuant to FLSA requirements are available to meet the FMLA requirements. The Department also accepts records kept due to other governmental requirements (e.g., records maintained for tax and payroll purposes).

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

While these information collections may involve some small businesses, the collections do not have a significant impact on small entities. The FMLA applies to all public agencies, public and private elementary and secondary schools, and to private employers if they employ 50 or more employees in any 20 workweeks in the current or preceding calendar year.

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- 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.**

The Department is assigned a statutory responsibility to ensure employer compliance with the FMLA. The Department uses records covered by this information collection to determine compliance, as required of the agency by FMLA section 107(b)(1). 29 U.S.C. 2617(b)(1). Without the information disclosed and collected, employers and employees would have difficulty knowing and carrying out their FMLA rights and obligations.

- 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 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 conditions associated with these information collections.

- 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.**

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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 record-keeping, disclosure, or reporting format (of 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 November 9, 2022, the Department published a notice in the *Federal Register* inviting public comment about this information collection (87 FR 67718). No comments were received.

However, the Department worked with individuals who raised concerns over 508 compliance issues with the WH-380-E and WH-380-F forms. Specifically, these forms could not be read with a particular screen reader. The Department worked with these individuals to develop forms that can be read with that screen reader. OMB approved the updated forms submitted via an ICR Change request in February 2023. No other modifications have been made to the forms associated with this ICR since the last approval.

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

The Department makes no payments or gifts to respondents completing these information collections.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

The Department makes no assurances of confidentiality to respondents. As a practical matter, the Department only discloses information collected under these requests in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552; and the attendant regulations, 29 CFR part 70, and the Privacy Act, 5 U.S.C. 552a; and related regulations, 29 CFR part 71.

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.

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The FMLA authorizes employers to require its employees to submit a medical certification, including a second or third opinion and subsequent recertifications, to substantiate the need for FMLA leave. These records may contain sensitive information because of the personal nature of a request for FMLA leave. However, the regulations specify how employers must limit access to such information.

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 and aggregate the hour burdens.**
- **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 under “Annual Cost to Federal Government.”**

The Department estimates that there are 87.2 million FMLA eligible workers and that 392,127 employers respond to the FMLA collections. Of these 392,127 employers, the Department estimates that 74 percent or 290,304 ($392,127 \times 0.7403317 = 290,304$) are private businesses. The remaining 101,823 ($392,127 - 290,304 = 101,823$) employers are government entities. Of the government entities, 25.9 percent or 101,731 ($392,127 \times 0.2594333 = 101,731$) are assumed to be state, local, or tribal government employers; and 0.02 percent or 92 ($392,127 \times 0.0002348 = 92$) are assumed to be federal government employers.¹ The Department estimates that the number of respondents (in this instance, employees who work for covered employers who are FMLA eligible and actually take FMLA leave) to be approximately 6,889,489.²

Total Respondents: 6,889,489

¹ Within each information collection, the respondents, responses, and burden estimates are rounded to the nearest whole number.

² This number is derived by multiplying 87.2 million FMLA eligible workers by the ratio of 7,182,916 respondents in the 2015 ICR to 91.1 million FMLA eligible workers in the 2015 ICR. That is $87,200,000 \times (7,182,916 \div 91,100,000) = 87,200,000 \times 0.079 = 6,888,800$ respondents. This number was disaggregated by employer type (see footnote 3). Due to rounding, when the disaggregated totals were summed, the result was 6,889,489 ($6,719,336 + 135,020 + 28,244 + 6,889 = 6,889,489$).

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A. Employee Notice of Need for FMLA Leave

While employees normally will provide general information regarding their absences, the regulations may impose requirements for workers to provide their employers with more detailed information indicating that the leave is potentially FMLA qualifying.

The Department estimates that there are 6,889,489 respondents. To determine the number of valid responses the Department applied the average number of responses per type of leave respondent per year. Based on a 2018 survey, the Department estimates that there are 1.6 traditional FMLA leave requests annually per respondent. See *Employee and Worksite Perspectives of the Family and Medical Leave Act: Supplemental Results from the 2018 Surveys*, at p. 20,

https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_Appendices_Aug2020.pdf. In addition, the Department estimates the following leave requests annually per respondent by leave type: 13 for a qualifying exigency, 44 for military caregiver (current servicemember), and 51 for military caregiver (veteran). The Department anticipates the additional submission of 2,200,000 invalid responses where either the employer was not covered or the employee was not eligible for leave.

Traditional FMLA leave responses: $6,719,336^3 \times 1.6 \text{ responses}^4 = 10,750,938 \text{ responses}$

Qualifying Exigency leave responses: $135,020 \times 13 \text{ responses} = 1,755,260 \text{ responses}$

Military Caregiver (current servicemember) leave responses: $28,244 \times 44 \text{ responses} = 1,242,736 \text{ responses}$

Military Caregiver (veteran) leave responses: $6,889 \times 51 \text{ responses} = 351,339 \text{ responses}$

Invalid responses: 2,200,000

Total: $10,750,938 + 1,755,260 + 1,242,736 + 351,339 + 2,200,000 = 16,300,273$
responses

Total Employee Notice Responses: 16,300,273

The Department estimates that it will take an employee approximately 2 minutes per employee to provide notice of the need to take FMLA leave.

³ The disaggregated number of respondents was determined as follows: total respondents \times 2015 percent of respondent type. Accordingly, traditional FMLA: $6,888,800 \times 0.9754 = 6,719,336$; qualifying exigency: $6,888,800 \times 0.0196 = 135,020$; military caregiver current servicemember: $6,888,800 \times 0.0041 = 28,244$; military caregiver veteran: $6,888,800 \times 0.0010 = 6,889$. The 2015 percent of respondent type of total respondents was calculated as follows: traditional FMLA $7,005,950 \div 7,182,916 = 97.54$ percent; qualifying exigency: $140,900 \div 7,182,916 = 1.96$ percent; military caregiver (current servicemember): $29,100 \div 7,182,916 = 0.41$ percent; and military caregiver (veteran) $6,966 \div 7,182,916 = 0.1$ percent.

⁴ The Department used 1.6 traditional FMLA leave requests annually per respondent from a 2018 DOL survey. The Department estimates that there are 13 qualifying exigency leave requests per year per respondent, 44 military caregiver (current servicemember) leaves per year per respondent, and 51 military caregiver (veteran) leaves per year per respondent.

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$16,300,273 \text{ responses} \times 2 \text{ minutes per response} \div 60 \text{ minutes per hour} = 543,342 \text{ hours}$

Total Employee Notice Burden Hours: 543,342

B. Notices to Employee FMLA Eligibility and Rights and Responsibilities

The Department assumes that, in response to each employee notice of need for FMLA leave, all covered employers with eligible employees will notify their employees of their FMLA leave eligibility. Covered employers with eligible employees are in this instance the respondents and are estimated to be 392,127 total (290,304 private; 101,731 state, local, and tribal government; and 92 federal government employers), as explained above.

Total Respondents for Notices to Employees of FMLA Eligibility and Rights and Responsibilities: 392,127

Responses by sector:

Private: 12,067,609 responses ($0.7403317215 \times 16,300,273 = 12,067,609$)

State, Local, Tribal Government: 4,228,835 responses ($0.2594333834 \times 16,300,273 = 4,228,835$)

Federal Government: 3,829 responses ($0.0002348951 \times 16,300,273 \text{ responses} = 3,829$)

Total Responses for Notices to Employees of FMLA Eligibility and Rights and Responsibilities: 16,300,273

The Department estimates that each written notice to an employee of their FMLA eligibility and notice of rights and responsibilities takes an employer approximately 10 minutes.

$16,300,273 \text{ responses} \times 10 \text{ minutes per response} \div 60 \text{ minutes} = 2,716,712 \text{ burden hours}$

Burden hours by sector:

Private: 2,011,268 burden hours ($0.7403317215 \times 2,716,712 = 2,011,268$)

State, Local, Tribal Government: 704,806 burden hours ($0.25943338 \times 2,716,712 = 704,806$)

Federal Government: 638 burden hours ($0.0002348951 \times 2,716,712 = 638$)

Total Burden Hours for Notices to Employees of FMLA Eligibility and Rights and Responsibilities: 2,716,712

C. Employee Certifications

Under the FMLA there are different types of employee certifications: Certification of Health Care Provider for Employee's Serious Health Condition (WH-380-E) and Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380-F); Fitness-for-Duty Certification; Certification of Military Family Leave for Qualifying Exigency (WH-384); as well as Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver

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Leave (WH-385) and Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (WH-385-V).

1. *Certification of Health Care Provider for Serious Health Condition (WH-380-E and WH-380-F)*

Based on a 2018 survey, the Department estimates that there are 1.6 traditional FMLA leave requests annually per respondent. The Department estimates that 72.8 percent of employees who take FMLA leave will do so for a serious health condition of their own or that of a family member. See *Family and Medical Leave in 2012: Technical Report* at pp. 69–70, <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>. The Department estimates that employers will require 92 percent of these employees to provide medical certification of the serious health condition. The Department further estimates that second or third opinions and recertifications add 15 percent to the total number of medical certifications.

6,719,336 traditional FMLA leave respondents × 1.6 average responses per respondent = 10,750,938 responses

10,750,938 responses × 0.728 serious health condition as FMLA leave reason = 7,826,683 responses

7,826,683 responses × 0.92 employees with this leave reason requested to provide medical certification = 7,200,548 responses

7,200,548 responses × 0.15 employees requested to provide second or third opinions and recertifications = 1,080,082 responses

1,080,082 second or third opinions and recertifications + 7,200,548 original certifications = 8,280,630 responses

Total Medical Certification and Recertification Respondents: 6,719,336

Total Medical Certification and Recertification Responses: 8,280,630

The Department estimates that employees spend an average of 15 minutes in obtaining and completing each certification and recertification.

8,280,630 responses × 15 minutes ÷ 60 minutes per hour = 2,070,158 burden hours

Total Medical Certification and Recertification Response Burden Hours: 1,940,773

2. *Fitness-for-Duty Certification*

Based on a 2018 survey, the Department estimates that there are 1.6 traditional FMLA leave requests annually per respondent. The Department estimates that 51 percent of traditional FMLA leave is taken for an employee's own serious health condition. See *Employee and Worksite Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys* at pp. 26-27,

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https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHI_FMLA2018SurveyResults_FinalReport_Aug2020.pdf. The Department further estimates that 10 percent of employees taking non-intermittent FMLA leave for their own serious health condition must submit 1 fitness-for-duty medical certification, 5 percent of intermittent leave users will be asked to present an average of 3 such certifications because of reasonable safety concerns.

Non-intermittent Leave Fitness-for-Duty Responses:

6,719,336 traditional FMLA leave respondents \times 1.6 average responses per respondent =
10,750,938 responses

10,750,938 responses \times 0.51 take leave for oneself = 5,482,978 responses

5,482,978 responses \times 0.10 non-intermittent fitness-for-duty certification response
request rate = 548,298 respondents and responses

548,298 responses \times 1 per year = 548,298 responses

Intermittent Leave Fitness-for-Duty Responses:

6,719,336 traditional FMLA leave respondents \times 1.6 average responses per respondent =
10,750,938 responses

10,750,938 responses \times 0.51 take leave for oneself = 5,482,978 responses

5,482,978 responses \times 0.05 percent intermittent fitness-for-duty certification response
request rate = 274,149 respondents and responses

274,149 responses \times 3 per year = 822,447 responses

Combined Non-intermittent Leave and Intermittent Leave Fitness-for-Duty Respondents and Responses:

548,298 non-intermittent leave respondents + 274,149 intermittent leave respondents =
822,447

548,298 non-intermittent leave responses + 822,447 intermittent leave responses =
1,370,745

Total Fitness-for-Duty Certification Respondents: 822,447

Total Fitness-for-Duty Certification Responses: 1,370,745

The Department estimates that employees spend an average of 10 minutes completing the fitness-for-duty certification. The Department does not associate an employer paperwork burden with the portion of this information collection that employers complete since—even absent the FMLA—similar information would customarily appear in their internal instructions requesting a medical certification or recertification.

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1,370,745 responses × 10 minutes = ÷ 60 minutes per hour = 228,458 burden hours

Total Fitness-for-Duty Certification Response Burden Hours: 228,458

3. *Certification of Military Family Leave for a Qualifying Exigency (WH-384)*

The Department estimates there are 135,020 respondents for a qualifying exigency, and 1.6 responses per year per respondent. Of those respondents it is estimated that 92 percent will be asked for a certification.

135,020 respondents × 1.6 average response per respondent = 216,032 responses

216,032 responses × 92 percent of employees requested to provide a certification =
198,749 responses

Total Qualifying Exigency Certification Respondents: 135,020

Total Qualifying Exigency Certification Responses: 198,749

The Department further estimates it will take approximately 15 minutes for a Human Resources Assistant to request, review, and verify the employee's certification papers.

198,749 responses × 15 minutes ÷ 60 minutes per hour = 49,687 burden hours

Total Qualifying Exigency Certification Burden Hours: 49,687

4. *Certification for Serious Injury or Illness of a Current Servicemember and Veteran for Military Caregiver for Leave (WH-385 and WH-385-V).*

The Department estimates there are 28,244 respondents to care for a current servicemember and 6,889 respondents to care for a veteran. The Department estimates 1.6 leave requests (responses) per respondent per year for current servicemember and 1.6 leave requests (responses) per respondent per year for veterans. Of those respondents it is estimated that 92 percent will be requested to provide a certification.

28,244 respondents (current servicemember) + 6,889 respondents (veteran) = 35,133 respondents

35,133 respondents × 1.6 = 56,213 responses

56,213 responses × 0.92 of employees requested to provide a certification = 51,716 responses.

Total Care for a Current Servicemember and Veteran Certification Respondents: 35,133

Total Care for a Current Servicemember and Veteran Certification Responses: 51,716

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The Department estimates that it will take a Human Resources Assistant 15 minutes to request, review, and verify the employee's certification papers.

$$51,716 \text{ responses} \times 15 \text{ minutes} \div 60 \text{ minutes per hour} = 12,929 \text{ burden hours}$$

Total Care for a Current Servicemember and Veteran Certification Burden Hours: 12,929

D. Notice to Employee of FMLA Leave Designation

The Department estimates that all covered employers with eligible employees—392,127 employers—are respondents. The Department estimates there are 16,300,273 total responses for notices to employees of FMLA leave designation (as explained above).

Responses by sector:

Private: 12,067,609 responses ($0.7403317215 \times 16,300,273 = 12,067,609$)

State, Local, Tribal Government: 4,228,835 responses ($0.259433380 \times 16,300,273 = 4,228,835$)

Federal Government: 3,829 responses ($0.0002348951 \times 16,300,273 \text{ responses} = 3,829$)

Total Employee FMLA Designation Notice Respondents: 392,127

Total Employee FMLA Designation Notice Responses: 16,300,273

The Department estimates that each FMLA designation notice takes employers approximately 10 minutes to complete.

$$16,300,273 \text{ responses} \times 10 \text{ minutes} \div 60 \text{ minutes per hour} = 2,716,712 \text{ burden hours}$$

Burden hours by sector:

Private: 2,011,268 hours ($0.7403317215 \times 2,716,712 = 2,011,268$)

State, Local, Tribal Government: 704,806 hours ($0.259433380 \times 2,716,712 = 704,806$)

Federal Government: 638 hours ($0.0002348951 \times 2,716,712 = 638$)

Total Employee FMLA Designation Notice Burden Hours: 2,716,712

E. Notice to Employees of Change of 12-month Period for Determining FMLA Eligibility

The Department estimates that annually 10 percent of FMLA-covered employers choose to change their 12-month period for determining FMLA eligibility and must notify their employees of the change. The total number of covered employers is estimated to be 392,127, of which, 290,304 are private; 101,731 are state, local, and tribal government; and 92 are federal government employers, as outlined above. Also, the Department assumes that 10 percent of FMLA covered employers with eligible employees change their 12-month period for determining FMLA eligibility. These notifications can be accomplished via one e-mail sent to all employees or by posting hard copies.

$$392,127 \times 0.10 = 39,213 \text{ respondents}$$

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$39,213 \times 1$ notice per respondent = 39,213 responses

Responses by sector:

Private: 29,030 responses ($0.7403317215 \times 39,213 = 29,030$)

State, Local, Tribal Government: 10,173 responses ($0.259433380 \times 39,213 = 10,173$)

Federal Government: 9 responses ($0.0002348951 \times 39,213 = 9$)

Total Notice to Employees of Change of 12-month Period for Determining FMLA Eligibility Respondents: 39,213

Total Notice to Employees of Change of 12-month Period for Determining FMLA Eligibility Responses: 39,213

The Department estimates that the notice requires approximately 10 minutes for the employer to notify their entire workforce.

$39,213$ responses \times 10 minutes = 392,130 minutes

$392,130$ minutes \div 60 minutes = 6,537 burden hours

Burden hours by sector:

Private: 4,839 hours ($0.7403317215 \times 6,536 = 4,839$)

State, Local, Tribal Government: 1,696 hours ($0.259433380 \times 6,536 = 1,696$)

Federal Government: 2 hours ($0.0002348951 \times 6,536 = 2$)

Total Notice to Employees of Change of 12-month Period for Determining FMLA Eligibility Burden Hours: 6,537

F. Key Employee Notification

The Department estimates that annually 10 percent of FMLA-covered employers notify one key employee of the intent not to restore the employee at the conclusion of FMLA leave. Total number of covered employers is estimated to be 392,127, of which, 290,304 are private; 101,731 are state, local, and tribal; and 92 are federal employers, as outlined above. In addition, the Department estimates that half of these cases will require the employer to issue a second notice to address a key employee's subsequent request for reinstatement.

$392,127$ employers \times 0.10 = 39,213 respondents

Respondents by sector:

Private: 29,030 employers or respondents ($290,304 \times 0.10 = 29,030$)

State, Local, Tribal Government: 10,173 employers or respondents ($101,731 \times 0.10 = 10,173$)

Federal Government: 9 employers or respondents ($92 \times 0.10 = 9$)

Total Key Employee Notification Respondents: 39,213

Responses by sector:

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Private: 43,545 responses (29,030 employers × 1.5 notices = 43,545)
State, Local, Tribal Government: 15,260 responses (10,173 employers × 1.5 notices = 15,260)
Federal Government: 14 responses (9 employers × 1.5 notices = 14)

Total Key Employee Notification Responses: 58,819

The Department estimates each key employee notification takes the employer approximately 5 minutes to complete and issue.

$$58,819 \text{ responses} \times 5 \text{ minutes per response} \div 60 \text{ minutes} = 4,902 \text{ burden hours}$$

Burden hours by sector:

Private: 3,629 hours (0.7403317215 × 4,902 = 3,629.11)
State, Local, Tribal Government: 1,272 hours (0.259433380 × 4,902 = 1,271.74)
Federal Government: 1 hour (0.0002348951 × 4,902 = 1.15)

Total Key Employee Notification Burden Hours: 4,902

G. Periodic Employee Status Reports

The Department estimates that employers require periodic reports from 25.5 percent of FMLA leave takers, which is based on the percentage of FMLA leave takers with absences lasting more than 30 days. The Department also estimates that a typical employee would normally respond to an employer's request for a status report. However, to account for any additional burden the regulations might impose, the Department estimates a 10 percent response rate and a burden of 2 minutes of employee time per response. The Department further estimates that each such respondent annually provides two periodic status reports. While the Department believes most employers would only seek these reports in accordance with customary business practices, the agency has accounted for any potential additional employer burden in the "Eligibility Notice."

$$\begin{aligned} 6,889,489 \text{ leave takers} \times 0.255 \text{ request rate} \times 0.10 \text{ response rate} &= 175,682 \text{ respondents} \\ 175,682 \text{ respondents} \times 2 \text{ responses per year} &= 351,364 \text{ responses} \\ 351,364 \times 2 \text{ minutes} \div 60 \text{ minutes per hour} &= 11,712 \text{ burden hours} \end{aligned}$$

Total Periodic Employee Status Report: Respondents: 175,682

Total Periodic Employee Status Report Responses: 351,364

Total Periodic Employee Status Report Burden Hours: 11,712

H. Documenting Family Relationships

The Department estimates that approximately 50 percent of the 6,889,489 employees who take FMLA leave do so for reasons related to family, such as caring for a newborn, a recently adopted child, or a qualifying family member with a serious health condition. As it did in the 2013 final rule, the Department estimates that employers may require additional documentation to support a family relationship in 5 percent of these cases, which would require an additional 5 minutes of employee time per case.

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6,889,489 leave takers \times 0.50 = 3,444,745 respondents
3,444,745 respondents \times 0.05 request rate = 172,237 responses
172,237 responses \times 5 minutes \div 60 minutes per hour = 14,353 hours

Total Documenting Family Relationships Respondents: 3,444,745
Total Documenting Family Relationships Responses: 172,237
Total Documenting Family Relationships Burden Hours: 14,353

I. Notice to Employee of Pending Cancellation of Health Benefits

Based on the number of employees indicating they have lost benefits, the Department estimates that half of FMLA-covered employers send one FMLA leave taker per year a notification of not having received health insurance premiums. The total number of covered employers is estimated to be 392,127, of which 290,304 are private; 101,731 are state, local, and tribal; and 92 are federal employers. For purposes of estimating the paperwork burden associated with this information collection, the Department estimates that unique respondents would send all responses, and each notification would take 5 minutes to prepare and issue.

Respondents by sector:

Private: 145,152 respondents ($290,304 \times 0.50 = 145,152$)
State, Local, Tribal Government: 50,866 respondents ($101,731 \times 0.50 = 50,866$)
Federal Government: 46 respondents ($92 \times 0.50 = 46$)

Total Notice to Employee of Pending Cancellation of Health Benefits Respondents: 196,064

Responses by sector:

Private: 145,152 responses ($145,152 \text{ respondents} \times 1 \text{ notice} = 145,152$)
State, Local, Tribal Government: 50,866 responses ($50,866 \text{ respondents} \times 1 \text{ notice} = 50,866$)
Federal Government: 46 responses ($46 \text{ respondents} \times 1 \text{ notice} = 46$)

Total Notice to Employee of Pending Cancellation of Health Benefits Responses: 196,064

Burden hours by sector:

Private: 12,096 hours ($145,152 \times 5 \text{ minutes} \div 60 \text{ minutes per hour} = 12,096$)
State, Local, Tribal Government: 4,239 hours ($50,866 \times 5 \text{ minutes} \div 60 \text{ minutes per hour} = 4,239$)
Federal Government: 4 hours ($46 \times 5 \text{ minutes} \div 60 \text{ minutes per hour} = 4$)

Total Notice to Employee of Pending Cancellation of Health Benefits Burden Hours: 16,339

J. General Recordkeeping

Employers are responsible for all general recordkeeping required by the FMLA.

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The Department estimates that 97.54 percent of FMLA leave is for traditional FMLA leave; 1.96 percent is for qualifying exigency leave; 0.41 percent is for military caregiver (current servicemember) leave; and 0.10 percent is for military caregiver (veteran) leave. Based on a 2018 survey, the Department estimates that there are 1.6 traditional FMLA instances of leave annually per respondent. In addition, the Department estimates the following instances of leave annually per respondent by leave type: 13 qualifying exigency, 44 military caregiver (current servicemember), and 51 military caregiver (veteran). The Department estimates that the FMLA imposes an additional general recordkeeping burden on each FMLA-covered employer that equals 1.25 minutes for each FMLA instance of leave. The number of responses equals the number of FMLA instances of leave.

1. Respondents

The total number of respondents is equal to the total number of employers, as explained in the opening paragraph to this response 12, and is 392,127 respondents.

Total General Recordkeeping Respondents: 392,127

Respondents by leave type:

Traditional FMLA leave respondents: 382,480.68 ($392,127 \times 0.9754 = 382,480.68$)

Qualifying Exigency leave respondents: 7,685.69 ($392,127 \times 0.0196 = 7,685.69$)

Military Caregiver leave respondents: 1,609.17 ($392,127 \times 0.0041 = 1,609.17$) (current servicemember); and 392.13 ($392,127 \times 0.0010 = 392.13$) (veteran)

2. Responses

The number of responses equals the number of FMLA instances of leave. The calculation for the number of responses is explained in the response at 12A ($10,079,004 + 1,755,260 + 1,242,736 + 351,339 = 13,428,339$)

Total General Recordkeeping Responses: 14,100,273

Responses by leave type:

Traditional FMLA: 10,750,938 responses ($6,719,336 \times 1.6$ instances = 10,750,938)

Qualifying Exigency FMLA: 1,755,260 responses ($135,020 \times 13$ instances = 1,755,260)

Military Caregiver FMLA: 1,594,075 responses ($(28,244 \times 44$ current servicemember instances = 1,242,736) + $(6,889 \times 51$ veteran instances = 351,339))

Responses by sector:

Private: 10,438,879 responses ($14,100,273 \times 0.7403317215 = 10,438,879$)

State, Local, Tribal Government: 3,658,082 responses ($14,100,273 \times 0.259433380 = 3,658,082$)

Federal Government: 3,312 responses ($14,100,273 \times 0.0002348951 = 3,312$)

3. Burden Hours

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The Department estimates that the FMLA imposes an additional general recordkeeping burden on each FMLA-covered employer that equals 1.25 minutes for each FMLA instance of leave.

Burden hours:

$$14,100,273 \text{ total responses} \times 1.25 \text{ minutes} \div 60 \text{ minutes per hour} = 293,756 \text{ burden hours}$$

Total General Recordkeeping Burden Hours: 293,756

Burden hours by leave type:

Traditional FMLA: 223,978 burden hours (10,750,938 responses \times 1.25 minutes \div 60 minutes per hour = 223,978)

Qualifying Exigency FMLA: 36,568 burden hours (1,755,260 responses \times 1.25 minutes \div 60 minutes per hour = 36,568)

Military Caregiver FMLA: 33,210 burden hours (1,594,075 responses \times 1.25 minutes \div 60 minutes per hour = 33,210)

Burden hours by sector:

Private: 217,477 hours (293,756 \times 0.7403317215 = 217,477)

State, Local, Tribal Government: 76,210 hours (293,756 \times 0.259433380 = 76,210)

Federal Government: 69 hours (293,756 \times 0.0002348951 = 69)

K. Totals

FMLA Item	Respondents	Responses	Burden Hours
A. Employee Notice	6,889,489	16,300,273	543,342
B. Eligibility and Rights & Responsibilities Notices	392,127	16,300,273	2,716,712
C. Employee Certifications (Certifications C.1.–C.4.)	6,719,336	9,901,840	2,361,231
D. Designation Notice	392,127	16,300,273	2,716,712
E. Change of 12-Month Period Notice	39,213	39,213	6,537
F. Key Employee Notification	39,213	58,819	4,902
G. Periodic Employee Status Reports	175,682	351,364	11,712
H. Documenting Family Relationships	3,444,745	172,237	14,353
I. Pending Cancellation of Employee Health Benefits Notice	196,064	196,064	16,339
J. General Recordkeeping	392,127	14,100,273	293,756

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Totals:	6,889,489	73,720,629	8,685,596
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Persons responding to the various FMLA information collections may be employees of any of a wide variety of businesses. Therefore, absent specific wage data regarding respondent employers, to estimate employer burden costs, the Department uses data for a non-supervisory Human Resources Specialist. To calculate this cost, the median hourly wage for a Human Resources Specialist is used (BLS Occupational Employment and Wages Statistics (OEWS) May 2021, <https://www.bls.gov/oes/current/oes131071.htm>). The median hourly wage is \$29.95, with an additional 45 percent benefits cost (BLS Employer Costs for Employee Compensation (ECEC) quarterly total benefit civilian average from December 2021 through September 2022, <https://www.bls.gov/ncs/data.htm>) ($\$29.95 \times 0.45 = \13.48), and 17 percent overhead cost ($\$29.95 \times 0.17 = \5.09).

8,685,594 hours \times \$29.95 = \$260,133,154

8,685,594 hours \times \$13.48 = \$117,128,137

8,685,594 hours \times \$5.09 = \$44,222,704

Total Monetized Value of the Time Burden for All Requirements: \$421,484,395

13. Provide an estimate for 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 already reflected on the burden worksheet).

- **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 and maintenance and purchase of services 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 collections 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.**

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- **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.**

Employees seeking FMLA leave for a serious health condition must obtain, upon their employer's request, a certification of the serious health condition from a health care provider. Often the health care provider's office staff completes the form for the provider's signature. In other cases, the health care provider personally completes it. While most health care providers do not charge for completing these certifications, some do. The Department estimates completion of serious health condition certification and leave to care for a covered servicemember certification to take about 15 minutes each and a fitness-for-duty certification to require 10 minutes.

To determine operations and maintenance costs the Department calculated health care provider burden cost to capture the cost of time spent completing medical certifications. The Department used the median hourly wage for a Physician's Assistant of \$58.43 plus 45 percent in fringe benefits, which results in a total hourly rate of \$84.72 ($(\$58.43 \times 0.45) + \$58.43 = \84.72). See BLS OEWS, May 2021, <https://www.bls.gov/oes/current/oes291071.htm>; see also BLS ECEC, quarterly total benefit civilian average from December 2021 through September 2022, <https://www.bls.gov/ncs/data.htm>.

C-1. Medical Certification and Recertification:

8,280,630 responses \times 15 health care provider minutes \div 60 minutes per hour = 2,070,158 hours

C-2. Fitness-for-Duty Medical Certification:

1,370,745 responses \times 10 health care provider minutes \div 60 minutes per hour = 228,457 hours

C-4. Certification for Leave Taken to Care for a Covered Servicemember (current servicemember and veterans):

51,716 responses \times 15 health care provider minutes \div 60 minutes per hour = 12,929 hours

Total health care provider burden hours: 2,311,544 (2,070,158 + 228,457 + 12,929 = 2,311,544)

Total operations and maintenance burden costs: \$195,834,007 (2,311,544 hours \times \$84.72 = \$195,834,007)

- 14. Provide estimates of annualized costs 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 may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

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The federal costs that the Department associates with this information collection relate to printing or duplicating and mailing the subject forms. The Department believes that most respondents retrieve the forms online, and therefore estimates it will annually provide an average of one copy of each form covered by this information collection to 10 percent of the 392,127 FMLA-covered employers, and that the agency will mail all forms simultaneously to any given requestor. The Department further estimates information technology costs will offset some of the printing and duplicating costs in an equal amount; therefore, the agency is presenting only the costs of the latter:

392,127 Forms WH-380-E × 4 pages (or × 2 two-sided pages) = 1,568,508 pages

392,127 Forms WH-380-F × 4 pages (or × 2 two-sided pages) = 1,568,508 pages

392,127 Forms WH-381 × 2 pages (or × 1 two-sided pages) = 784,254 pages

392,127 Forms WH-382 × 1 page (or × 1 two-sided pages) = 392,127 pages

392,127 Forms WH-384 × 3 pages (or × 2 two-sided pages) = 1,176,381 pages

392,127 Forms WH 385 × 4 pages (or × 2 two-sided pages) = 1,568,508 pages

392,127 Forms WH-385-V × 4 pages (or × 2 two-sided pages) = 1,568,508 pages

Total forms = 2,744,899 (392,127 FMLA-covered employers × 7 forms)

Total printed (front and back) pieces of paper for one copy of each form = 12 (2 + 2 + 1 + 1 + 2 + 2 + 2 = 12)

Total pages = 8,626,794 (1,568,508 pages + 1,568,508 pages + 784,254 pages + 392,127 pages + 1,176,381 pages + 1,568,508 pages + 1,568,508 pages = 8,626,794)

8,626,794 pages ÷ 2 for front and back printing × \$0.03 printing costs per page = \$129,402

392,127 mailings × \$1.53 (\$0.03 envelopes + \$1.50 postage to mail 1 flat envelope and 12 pages with an approximate weight of 2 ounces. USPS rate for first ounce is \$1.26 plus \$0.24 for each additional ounce) = \$599,954.31

Total Estimated Annual Federal Costs = \$72,356 (\$129,402 + \$599,954.31 = \$729,356 × 0.10 = \$72,356)

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

Changes reported on the burden worksheet do not result from changes to the regulations; they result because updated data has been used, resulting in adjustments to the burden worksheet.

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First, there is a decrease in respondents, responses, and burden hours due to correcting the calculation regarding Documenting Family Relationships. WHD estimates that half of FMLA leave takers take leave for a family member. However, the supporting statement in 2020 did not include this calculation. WHD corrects the error in this supporting statement, which reduces the number of respondents, responses, and burden hours by half. (See response #12H for detailed calculation.)

Second, there was a change to the number of respondents in regard to General Recordkeeping. The 2020 supporting statement incorrectly used the number of employees as respondents instead of the number of employers. This supporting statement correctly uses the number of employers as respondents, reducing the number of respondents by 94 percent.

Third, there is a decrease in responses and burden hours regarding Fitness for Duty Medical Certifications due to a decrease in the estimated rate of employees taking leave for their own serious health condition from 54.6 percent to 51 percent. This change is due to the use of data from a new FMLA survey. Specifically, the 2020 supporting statement used WHD's 2012 FMLA survey, which reported 54.6 percent of employees taking leave for their own serious health condition, whereas this supporting statement used WHD's 2018 FMLA survey, which reported 51 percent.

Fourth, there is a decrease in responses regarding the Change of 12-month Period Notice. The 2020 supporting statement stated that every respondent had to individually send notices to their employees. However, this supporting statement recognized that respondents can provide these notifications by sending one email to all employees or by posting hard copies. These notifications are not individually sent to every employee. This change resulted in a 99.6 percent decrease in responses for this particular notice.

Fifth, there is an increase in responses and burden hours regarding Employee Notice of Need for Leave, Notices to Employee FMLA Eligibility and Rights and Responsibilities, Certification of Health Care Provider for Serious Health Condition, Fitness-for-Duty Medical Certification, Certification of Military Family Leave for Qualifying Exigency, Certification for Serious Injury or Illness of a Current Servicemember and Veteran for Military Caregiver for Leave, Notice to Employee of FMLA Leave Designation, and General Recordkeeping. This change is due to the use of data from a more recent FMLA survey. Specifically, the 2020 supporting statement used WHD's 2012 FMLA survey, which reported an average of 1.5 FMLA leave requests annually per respondent, whereas this supporting statement used WHD's 2018 FMLA survey, which reported an average of 1.6 FMLA leave requests annually per respondent. This change resulted in an increase in responses and burden hours.

Finally, there is a decrease in total operations and maintenance cost which is attributed to a \$0.39 decrease in the health care provider hourly wage rate applied to a slight reduction in health care provider burden hours. In addition, federal cost significantly decreased overall. Despite a slight USPS postage rate increase of \$0.10, WHD estimates that it mails FMLA forms to only 10 percent of employers annually resulting in a reduction of approximately 90 percent.

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16. For collections of information whose results are planned to 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 of information, completion of report, publication dates, and other actions.

The Department does not plan to publish results of this information collection.

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.

The Department is not requesting an exception to the requirement to display the expiration date on this information collection.

18. Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”

The Department is not requesting an exception to the certification requirements for these information collections.

Part B: EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.