

**SUPPORTING STATEMENT FOR  
INFORMATION COLLECTIONS: EMPLOYEE POLYGRAPH PROTECTION ACT**

**OMB CONTROL NO.: 1235-0005**

The U.S. Department of Labor (Department) submits this information collection request (ICR) as an extension without change of a currently approved collection.

**A: JUSTIFICATION**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Employee Polygraph Protection Act of 1988 (EPPA or the Act) prohibits most private employers from using any lie detector tests, either for pre-employment screening or during the course of employment. 29 CFR 801.1(a), 801.4. As per 29 CFR 801.1(a) and 801.10, federal, state, and local government employers are exempted from the Act. EPPA section 7 contains several limited exemptions authorizing polygraph tests under certain conditions, including testing: (1) by the federal government of experts, consultants, or employees of federal contractors engaged in national security intelligence or counterintelligence functions (29 CFR 801.11); (2) of employees the employer reasonably suspects of involvement in a workplace incident resulting in economic loss or injury to the employer's business (29 CFR 801.12); (3) of some current and prospective employees of certain firms authorized to manufacture, distribute, or dispense controlled substances (29 CFR 801.13); and (4) of some prospective employees of private armored car, security alarm, and security guard firms (29 CFR 801.14).

EPPA section 5 requires the Secretary of Labor to promulgate such rules and regulations as may be necessary to carry out the Act and to require the recordkeeping necessary or appropriate for administration of the Act. 29 U.S.C. 2004(a).

- a. Written Notice to Examinee of Polygraph Testing—Ongoing Economic Loss or Injury Investigations, Security Services Industry, and Controlled Substances*

EPPA section 7 provides limited exemptions from the general prohibition on polygraph use in private employment settings of current employees during ongoing investigations of an employer's economic loss or injury (29 CFR 801.12(a)) or theft or diversion of controlled substances by certain authorized manufacturers, distributors, or dispensers (29 CFR 801.13(a)). With respect to polygraph tests for ongoing investigations of an employer's economic loss, EPPA section 7(d)(4) requires a notice that particularly identifies the specific incident or activities being investigated and the basis for testing particular employees. (29 CFR 801.12(a)). EPPA section 7 also provides limited exemptions from the general prohibition on polygraph use in private employment settings for pre-employment testing in the security services industry (29 CFR 801.14(a)) and security of controlled substances by certain manufacturers, distributors, or dispensers (29 CFR 801.13(a)). A statutory condition of all these exemptions is that the examinee be provided the written notice prescribed by 29 CFR

801.23. The regulation at 29 CFR 801.30(a)(1), (2), and (3) require employers to retain copies of such written notices for a period of three years from the date the polygraph examination is conducted (or from the date the examination is requested, if no examination is conducted).

*b. Written Notice to Polygraph Examiner Identifying Persons to be Examined under the EPPA*

The regulation at 29 CFR 801.30(a)(4) requires employers to identify, in writing, to the polygraph examiner persons to be examined under EPPA sections 7(d), (e), or (f) and to retain a copy of the notice for a period of three years. This requirement ensures the examiner is alerted of the need to follow specific steps required by the Act for tests administered under the various exemptions (e.g., 90-minute minimum duration per test and no more than five tests per day). In addition, this requirement creates a record of job applicants or current employees who have been tested.

*c. Written Notice of Test Results Prior to Adverse Employment Action*

EPPA section 8(b)(4) provides that, prior to any adverse employment action, the examinee will be provided with a written copy of any opinion or conclusion rendered as result of a polygraph test and a copy of the questions asked during the test and corresponding charted responses. 29 CFR 801.25.

*d. Test Results Written Report and Test Record Maintenance*

EPPA section 8(c)(2) requires polygraph examiners to set forth any opinions or conclusions regarding polygraph tests in writing and to maintain all opinions, reports, charts, written questions, lists, and other records relating to the test for at least three years. 29 U.S.C. 2007(c)(2). The regulation at 29 CFR 801.30(a)(6) provides that the examiner must maintain a record of (1) the number of tests conducted each day (both those subject to the EPPA and those that are not) and (2) the duration of each test period. The regulation at 29 CFR 801.30(a)(5) provides that the employer retaining the polygraph examiner to administer the tests must also maintain copies for at least three years of all opinions, reports, or other records that the examiner furnished to the employer.

**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 Department's Wage and Hour Division (WHD) uses the subject information collections to ensure individuals subjected to polygraph testing receive the rights and protections contained in the Act. Failure to collect the information would prevent employees from knowing their rights and obligations under the EPPA and impact WHD's ability to enforce the provisions of the Act.

**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.**

EPPA section 8(b) and 29 CFR 801.22 through 29 CFR 801.25 require specific information to be provided to prospective examinees both orally and in writing before taking a polygraph examination permitted under exemptions 7(d), (e), and (f) of the Act. Appendix A of 29 CFR part 801 contains a specific written statement that employers must use to satisfy the section 8(b)(2)(D) disclosure requirement of the EPPA, which sets forth in writing information about the polygraph test. In accordance with the Government Paperwork Elimination Act, the Department has posted this notice on the Internet in a PDF format for downloading and printing. See <http://www.dol.gov/whd/forms/wh1481.pdf>.

- 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.**

This information collection does not duplicate existing WHD requirements. No similar information is available from any other source.

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

This information collection does not have a significant impact on a substantial number of 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.**

This information collection is required only when employers use polygraph tests subject to the EPPA. Less frequent collection would not satisfy the provisions of the Act.

- 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 circumstances associated with this information collection.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and 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 February 28, 2023, the Department published a notice in the *Federal Register* inviting public comment about this information collection (88 FR 12701). No comments were received. In addition, through the course of doing regular business, the agency did not hear any concerns that the information collection imposes any substantive problems or undue burdens.

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

The Department offers no payments or gifts to respondents in connection with this information collection.

- 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, information gathered during the course of an investigation of a complaint is generally disclosed only in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; and attendant regulations, 29 CFR parts 70 and 71. The FOIA provides an exception from its disclosure requirements for records or information compiled for law enforcement purposes to the extent that release of the information could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis. 5 U.S.C. 552(b)(7)(D). The FOIA also provides an exemption for business records and trade secrets.

**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. Section 8(b)(1)(C) of the EPPA prohibits a polygraph examinee from being asked any questions dealing with religious beliefs or affiliations; beliefs or opinions regarding racial matters; political beliefs or affiliations; sexual behavior; and beliefs, affiliations, opinions, or lawful activities concerning unions or labor organizations. 29 CFR 801.23(a)(3)(vii).

**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.”**
- a. *Written Notices to Examinee of Polygraph Testing—Ongoing Investigations, Security Services, Drug Investigations.*

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The Department estimates that there are 82,000 respondents with an average of two responses each, which would result in 164,000 polygraph tests conducted annually that are subject to EPPA. Each of the polygraph tests requires a written notice, and the Department estimates a recordkeeping burden of one minute per notice.

$$164,000 \text{ polygraph tests} \times 1 \text{ minute} = 164,000 \text{ minutes.}$$

$$164,000 \text{ minutes} \div 60 \text{ minutes} = 2,733 \text{ hours (rounded).}$$

**2,733 burden hours.**

*b. Notice to Examinee--Ongoing Investigations of Employer's Economic Loss or Injury*

The Department estimates that 42,500 respondents, with an average of two responses each, would conduct 85,000 polygraph tests involve ongoing investigations that are subject to EPPA section 7(d)(4), which requires an additional written notice explaining the reasons why the examinee is being tested. The Department estimates providing this additional information takes approximately 30 minutes per notice.

$$85,000 \text{ polygraph exams} \times 30 \text{ minutes} = 2,550,000 \text{ minutes.}$$

$$2,550,000 \div 60 \text{ minutes} = 42,500 \text{ burden hours.}$$

**42,500 burden hours.**

*c. Written Notice to Polygraph Examiner Identifying Persons to be Examined under EPPA—Maintenance of Records Provided by Polygraph Examiner.*

The Department estimates that there are 82,000 respondents with an average of two responses each, which would result in 164,000 polygraph tests conducted annually that are subject to EPPA. Each of those polygraph tests require a written notice be sent to the polygraph examiner identifying persons to be examined. The Department estimates it will take 5 minutes to prepare each notice.

$$164,000 \text{ polygraph exams} \times 5 \text{ minutes} = 820,000 \text{ minutes.}$$

$$820,000 \text{ minutes} \div 60 \text{ minutes} = 13,667 \text{ hours (rounded).}$$

The Department estimates that the filing of each written notice with the polygraph examiner, identifying those persons to be examined, takes 1 minute.

$$164,000 \text{ polygraph exams} \times 1 \text{ minute} = 164,000 \text{ minutes.}$$

$$164,000 \text{ minutes} \div 60 \text{ minutes} = 2,733 \text{ hours (rounded).}$$

**13,667 hours + 2,733 hours = 16,400 annual burden hours.**

*d. Written Notice of Test Results Prior to Adverse Employment Action.*

The Department estimates that 10% of the respondents, with an average of two responses each, will have polygraph examinations subject to the EPPA that will result in an adverse action requiring a written notice of the test results. Providing that written notice to the examinee takes approximately 1 minute per test, as the employer provides the examinee with a copy of a record already in possession of the employer.

$$82,000 \text{ respondents} \times 10\% = 8,200 \text{ respondents.}$$

$$8,200 \text{ respondents} \times 2 \text{ responses} = 16,400 \text{ polygraph exams.}$$

$$16,400 \text{ polygraph exams} \times 1 \text{ minute} = 16,400 \text{ minutes.}$$

$$16,400 \text{ minutes} \div 60 \text{ minutes} = 273 \text{ hours (rounded).}$$

**273 annual burden hours.**

*e. Test Results Written Report and Test Record Maintenance--Employer*

An employer is also required to maintain records furnished by the polygraph examiner for 3 years. This adds an additional recordkeeping burden of 1 minute per test for the filing of these records for each of the 82,000 respondents.

$$164,000 \text{ polygraph exams} \times 1 \text{ minute} = 164,000 \text{ minutes.}$$

$$164,000 \text{ minutes} \div 60 \text{ minutes} = 2,733 \text{ hours (rounded).}$$

**2,733 hours burden hours.**

**2,733 hours + 42,500 hours + 16,400 hours + 273 hours + 2,733 hours = 64,639 total annual burden hours.**

Without the availability of specific data for those employers who complete these information collections, the Department calculates costs using the average hourly rate of private employees on nonfarm payrolls, which, as of April 2023, is \$28.62.<sup>1</sup> The Department also adds in a 45% benefit cost and 17% overhead cost of the average hourly rate of private employees on nonfarm payrolls.

$$\$28.62 \times 45\% \text{ benefit cost} = \$12.88 \text{ (rounded).}$$

$$\$28.62 \times 17\% \text{ overhead cost} = \$4.87 \text{ (rounded).}$$

$$\$28.62 + \$12.88 + \$4.87 = \$46.37 \text{ total loaded wage rate.}$$

**64,639 total annual burden hours × \$46.37 total loaded wage rate = \$2,997,310 cost burden (rounded).**

*f. Written Report of Test Results and Maintenance of Test Record—Polygraph Examiner.*

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<sup>1</sup> *The Employment Situation, April 2023, Table B-8*, available at <https://www.bls.gov/news.release/pdf/empsit.pdf>.

The Department estimates no reporting burden with the requirement for polygraph examiners to furnish any opinion or conclusions regarding the polygraph test in writing, since they routinely provide such a report notwithstanding the EPPA requirement. A polygraph examiner also routinely maintains opinions, conclusions, reports, charts, written questions, lists, and other records relating to a test; thus, the only burden for this requirement is the filing of these records. The Department estimates that 3200 respondents spend 1 minute per polygraph test.

$$164,000 \text{ polygraph exams} \times 1 \text{ minute} = 164,000 \text{ minutes.}$$

$$164,000 \text{ minutes} \div 60 \text{ minutes} = 2,733 \text{ hours (rounded).}$$

The Department also estimates that it takes  $\frac{1}{2}$  minute per test to file the records for the number of tests conducted each day and the length of each test.

$$164,000 \text{ polygraph exams} \times \frac{1}{2} \text{ minute} = 82,000 \text{ minutes.}$$

$$82,000 \text{ minutes} \div 60 \text{ minutes} = 1,367 \text{ hours (rounded).}$$

**2,733 hours + 1,367 hours = 4,100 annual polygraph examiner burden hours.**

Absent specific data on polygraph examiner earnings, the Department uses the median hourly earnings for detectives and criminal investigators to determine polygraph examiners' respondent costs, which, as of May 2022, is \$41.48.<sup>2</sup> The Department also adds in a 45% benefit cost and 17% overhead cost of the median hourly earnings for detectives and criminal investigators.

$$\$41.48 \times 45\% \text{ benefit cost} = \$18.67 \text{ (rounded).}$$

$$\$41.48 \times 17\% \text{ overhead cost} = \$7.05 \text{ (rounded).}$$

$$\$41.48 + \$18.67 + \$7.05 = \$67.20 \text{ total loaded wage rate.}$$

**4,100 annual polygraph examiner burden hours  $\times$  \$67.20 total loaded wage rate = \$275,520 cost burden.**

**\$2,997,310 + \$275,520 = \$3,272,830 total respondent cost burden.**

### **Estimated Annualized Respondent Cost and Hour Burden**

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<sup>2</sup> *Occupational Employment and Wages, May 2022, Table 1*, available at <https://www.bls.gov/news.release/pdf/ocwage.pdf> (published March April 2023).

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Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden per Response (Hours)	Total Annual Burden (Hours, rounded)	Hourly Wage Rate (loaded)	Monetized Value of Time (rounded)
a. Written Notices to Examinee of Polygraph Testing—Ongoing Investigations, Security Services, Drug Investigations (Recordkeeping)	82,000	2	164,000	0.0166667	2,733	\$46.37	\$126,729
b. Written Notices to Examinee of Polygraph Testing--Ongoing Investigations of Employer's Economic Loss or Injury	42,500	2	85,000	0.5	42,500	\$46.37	\$1,970,725
c. Written Notice to Polygraph Examiner Identifying Persons to be Examined under EPPA-- (Preparation of Notice)	82,000	2	164,000	0.0833333	13,667	\$46.37	\$633,739
c. Written Notice to Polygraph Examiner Identifying Persons to be Examined under EPPA -- (Filing Notice with Polygraph Examiner)	82,000	2	164,000	0.0166667	2,733	\$46.37	\$126,729
d. Providing Examinee Written Notice of Test Results Prior to Adverse Employment Action	8,200	2	16,400	0.0166667	273	\$46.37	\$12,659
e. Test Results Written Report and Test Record Maintenance--(Employer Recordkeeping)	82,000	2	164,000	0.0166667	2,733	\$46.37	\$126,729
f. Written Report of Test Results and Maintenance of Test Record—Polygraph Examiner (Filing opinions, conclusions, reports, charts, written questions, lists, and other records relating to a test).	3,200	51.25	164,000	0.0166667	2,733	\$67.20	\$183,658
f. Written Report of Test Results and Maintenance of Test Record—Polygraph Examiner (Filing records for the number of tests conducted each day and the length of each test).	3,200	51.25	164,000	0.0083333	1,367	\$67.20	\$91,862
<b>Totals</b>	<b>85,200*</b>		<b>757,400</b>		<b>68,739</b>		<b>\$3,272,830</b>

\* non-cumulative

**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.**
- **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.**

No system or technology acquisition is required to satisfy these third-party notification and recordkeeping requirements. Therefore, respondents incur no maintenance or operations costs for these information collections.

**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.**

The Department estimates that it prints and mails the WH-1481 form to approximately 2% of respondents for their use, as most respondents print the form available online. The Department estimates that it costs \$0.04 cents to print each form, \$0.04 cents for an envelope, and \$0.66 cents for a first-class stamp as of February 2023.

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164,000 polygraph exams  $\times$  2% = 3,280 forms.

3,280 forms  $\times$  \$0.04 print cost = \$131.20 printing costs.

3,280 forms  $\times$  \$0.04 envelope cost = \$131.20 envelope costs.

3,280 forms  $\times$  \$0.66 first-class stamp = \$2,164.80 mailing costs.

**\$131.20 printing/copying costs + \$131.20 envelope costs + \$2,164.80 mailing costs = \$2,427.20 total federal cost.**

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

There is an increase in respondent cost due to an increase in wage rates, and a decrease in federal costs as the Department now estimates that it has printing and mailing costs for 2% of the respondents as opposed to 10% previously. This reflects that the majority of respondents print out WH-1481 themselves, as it is available online.

**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.