

Responses to Public Comments on CMS - 10198 – Creditable Coverage Disclosure to CMS Instructions & Form

Background:

The Creditable Coverage Disclosure to CMS Guidance and the on-line disclosure form were posted on the CMS website on January 4, 2006 and subsequently posted in the Federal Register on July 7, 2006 for a 60 day comment period. There were two entities that submitted comments to the July 7, 2006 Federal Register posting of these documents. This document contains a summary of the comments and recommendations received by the close of business September 5, 2006, and our responses to these comments. The final version of the Creditable Coverage Disclosure to CMS Instructions and Form are expected to be posted in the Federal Register for a final 30 day comment period on or before November 1, 2006.

Comment regarding the Creditable Coverage Disclosure Form

Comment: We received one comment from a major employer plan consultant (Hewitt Associates) that recommended that CMS consider a method whereby employers could confirm that CMS has indeed received the Disclosure that the employers filed. The commenter indicated that some employers did not print the confirmation page that indicated that “The information was inserted successfully”. They indicated that employers would appreciate it if there is procedure in place whereby employers can automatically get this confirmation. Or, if that functionality is not currently available, they recommended that the capacity for employers to get this confirmation be addressed.

Response: At this time, CMS does not have systems capability to permit an on-line query of the disclosure to CMS form or to automatically send a “confirmation of receipt” via email to the entity. CMS is in agreement that a more comprehensive confirmation page should be provided to entities completing the on-line Disclosure to CMS form. Since the release of the Instructions and on-line Disclosure to CMS form in January 2006, CMS has made some modifications to the messaging on the disclosure input page and on the confirmation page, which now tells the entity in bold, large print to print the disclosure input page before choosing to submit the disclosure information and again on the Confirmation page telling the entity to print the confirmation page for their records. In addition to the above improvements that have been made, CMS is working with a contractor in response to the PRA comments to improve the Disclosure Confirmation page to include all disclosure elements answered on the form on the confirmation page. It is estimated that these improvements to the Disclosure to CMS page will be functional by early 2007. The disclosure to CMS form is required to be completed no later than 60 days following the beginning of the entities plan year (renewal, filing or contract year). As most employer groups and other entities have plan years that begin January 1st, our goal is to have this enhancement completed so that the majority of entities are able to obtain a more detailed confirmation. In addition, CMS will explore the possibility of an emailed verification to the entity from the Disclosure website to confirm receipt of their Disclosure to CMS form. CMS feels that due to budget constraints, the most cost effective approach at this time is for entities to print the confirmation statement once the disclosure notice has been submitted successfully by the entity while we explore the possibility of an emailed confirmation.

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Comments Regarding the Instructions

Comment: We received several comments from a third party administrator that works primarily with multi-employer benefit plans. The first area that they addressed was Instruction #13 “Name, Title and Email of the Entity’s Authorized Individual. An individual employed by the entity and completing the form must provide his or her name, title and email.” They recommended that CMS consider allowing an outside vendor to complete the form on behalf of the entity. They indicated that Board of Trustees of multiemployer plans usually do not have actual employees, and instead outsource all day-to-day administrative tasks to a TPA and/or other vendors. The Trustees are a group of business executives and labor union leaders who are responsible for establishing plan policies and overseeing plan operations. They felt it was not reasonable to require Trustee’s to complete on-line forms. In addition, they pointed out that the Retiree Dug Subsidy program wisely separated the roles and allowed an Account Manager to be delegated to an appropriate individual who may or may not be an employee of the Plan Sponsor. They recommended that this disclosure form be more like an individual tax return, with optional spaces for the name and address of the Preparer. The Preparer could be someone other than an employee of the plan sponsor who has been authorized by the Plan Sponsor to complete and submit the disclosure form on behalf of the Plan Sponsor.

Response: In response to this comment, CMS is in agreement that an authorized individual, other than an employee of the entity, could complete and submit the form on behalf of the entity. CMS feels that adding an additional field would be burdensome and add additional time and expense. CMS recommends that we revise the instruction for Instruction #13 to read as follows: “Name, Title and Email of the Entity’s Authorized Individual. An “Authorized Individual” is the person completing the disclosure form that is either a) employed by the entity; or b) contracted with the entity as an Authorized Individual to complete the disclosure on behalf of the entity. The Authorized Individual must provide his or her name, title and email.” This would allow either an employee of the entity or an authorized individual of the entity to complete the Disclosure to CMS form. CMS does not feel that it would be necessary to have a separate field for the authorized representative to indicate their information as we feel that if we were to add an addition field for the entity to complete, this would create additional burden.

Comment: As stated above, we received several comments from a third party administrator that works primarily with multi-employer benefit plans. The second area that they addressed was Instruction #9 which states the following: “This estimate should be the total number of Medicare eligible individual expected to be covered under all of the entity’s prescription drug plan options (this includes active, disabled, individuals on COBRA and retired individuals) and should NOT include any RDS participants.” The commenter felt that we should revise our instructions as the required number is not the “total number” of individuals, since the true total would include the RDS participants.

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Recommended Response: CMS believes that making a RDS plan sponsor report duplicative information is burdensome. Since RDS plan sponsors know the number of benefit options for which they are claiming the RDS and the number of qualified covered retirees, it is much easier for the plan sponsors to not have to disclose this again to CMS. CMS has updated the instructions to further clarify the number of individuals that the entity should report on their Disclosure to CMS form.

Comment: As stated above, we received several comments from a third party administrator that works primarily with multi-employer benefit plans. The second area that they addressed was Instruction #10 which states the following: “Entities sponsoring Group Health Plans should estimate the number of Part D eligible individuals covered under **retiree** plans for which they are providing the Disclosure Notice to CMS. This estimate should be the total number of Medicare eligible individuals expected to be covered under the entity’s Retiree prescription drug plan options on the beginning date of the plan year and should NOT include any RDS participants.” The commenter felt that we should revise our instructions as the required number is not the “total number” of individuals, since the true total would include the RDS participants.

Response: CMS believes that making a RDS plan sponsor report to CMS duplicative information is burdensome. Since RDS plan sponsors know the number of benefit options they are claiming the RDS for and the number of qualified covered retirees, it is less burdensome to exclude the sponsors from having to disclose this again to CMS. CMS has updated the instructions to further clarify the number of retired individuals that the entity should report on their Disclosure to CMS form.