

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

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 American Recovery and Reinvestment Act of 2009 (P.L. 111-5) provides for premium assistance and expanded eligibility for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1986, commonly called COBRA. This premium assistance is not paid directly to the covered employee or the qualified beneficiary, but instead is in the form of a tax credit for the health plan, the employer, or the insurer. An individual must be an "assistance eligible individual" to be eligible for the premium assistance. If eligible, these individuals pay only 35% of their COBRA premiums to the plan and the remaining 65% is paid through the tax credit. Eligible individuals can start getting the premium assistance as of the first day of coverage beginning on or after February 17, 2009.

An "assistance eligible individual" is a "qualified beneficiary"¹ who:

- Is eligible for COBRA continuation coverage at any time during the period beginning September 1, 2008 and ending December 31, 2009;
- Elects COBRA coverage; and
- Has a qualifying event for COBRA coverage that is the employee's involuntary termination during the period beginning September 1, 2008 and ending December 31, 2009.

If individuals request treatment as an assistance eligible individual and are denied such treatment because of their ineligibility for COBRA continuation coverage, the Secretary of Labor must provide for expedited review of the denial upon application to the Secretary in the form and manner the Secretary provides. The Secretary of Labor is required to act in consultation with the Secretary of the Treasury and must make a determination within 15 business days after receipt of an individual's application for review.

The *Application to the Department of Labor for Expedited Review of Denial of COBRA Premium Reduction* (the "Application") is the form that will be used by individuals to file their expedited review appeals. Such individuals must complete all information requested on the Application in order to file their review requests with the Department's Employee Benefits Security Administration (EBSA). An Application may be denied if sufficient information is not provided.

¹ In general a "qualified beneficiary" is an individual who was covered by a group health plan on the day before a qualifying event occurred that caused him or her to lose coverage. A qualified beneficiary must be a covered employee, the employee's spouse or former spouse, or the employee's dependent child.

In certain situations, EBSA will have to contact plan administrators for additional information regarding an applicant's appeal of a denial of premium reduction. The "Plan Administrator Information Sheet" will be used for this purpose in cases where the Department has otherwise been unable to contact a plan administrator regarding a filed application.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information provided on the Application will be used by EBSA to make a determination regarding the applicant's eligibility for premium assistance with the 15-business day time frame required under the legislation. EBSA's determination upon review of the denial will be de novo and serve as the final determination of the Secretary. A reviewing court is required to grant deference to the Secretary's determination. The 15-business day time frame is intended to provide the Secretary with the flexibility necessary to make determinations based on the evidence presented.

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 for using information technology to reduce burden.

The Department will provide the capability for applicants to file their Applications electronically through EBSA's website.

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.

There is no duplication of information under the Application. The Department consulted with the Secretary of the Treasury in providing for the expedited review of denied claims for premium assistance. The Secretary of Health and Human Services (HHS) is responsible for the determinations in connection with COBRA continuation coverage other than under part 6 of title I of ERISA, and HHS is using a similar application form. The Application provides guidance on expedited review claims that must be filed with HHS and a forwarding address for such claims.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

The information collection does not impact small businesses or entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the information collection is not conducted, the Department will not have sufficient information to adjudicate expedited review claims within the timeframe required under the legislation.

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 secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

None.

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

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The public is provided with an opportunity to comment on the burden associated with the information collection in response to the Department's Federal Notice announcing its submission of the ICR to OMB pursuant to the PRA emergency clearance procedures under 5 CFR 1320.13. See Vol. 74 Fed. Reg. 20503, May 4, 2009 (<http://edocket.access.gpo.gov/2009/E9-10142.htm>).

In drafting the Application, the Department consulted with the Department of the Treasury, Internal Revenue Service, and Department of Health and Human Services to receive

their input on the format and data elements and to ensure that the burden of the information collection on respondents is minimized.

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

None.

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

The application contains a Privacy Act Notice that complies with the Privacy Act of 1974, and any information provided to the Department must comply with the requirements of Privacy Act System DOL/PWBA-4, Technical Assistance and Inquiries System, which can be accessed at the following URL: <http://www.dol.gov/sol/privacy/dol-pwba-4.htm>.

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.*

Any questions of a sensitive nature are required to comply with the ARRA Section 3001(a)(5) and to enable the Secretary of Labor to make a determination on an applicant's application for the Secretary's expedited review of the denial of his or her request for treatment as an assistance eligible individual.

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 in Item 13 of OMB Form 83-I.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*
- *The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*

The Department estimates that approximately 40.8 million individuals will initially file for Unemployment Insurance between September 1, 2008 and December 31, 2009 from the private-sector. Of these, 11.4 million will be eligible for a COBRA subsidy due to the following factors: their enrollment in employer sponsored insurance (ESI); their employment by a firm of 20 or more employees; and their lack of other options for health insurance coverage. Of those, 50 percent² or 5.7 million are expected to actually apply for the subsidy and enroll in COBRA. National Unemployment Insurance data reported a 5.8 percent appeal rate of initial claims in 2008. The Department assumed that roughly half that share, or 3 percent, of those that applied for the subsidy would contact the Department to appeal a denial, or 172,000. Of these, it was assumed that 45 percent, or 77,000, would involve an initial call to an EBSA benefits advisor who would be able to resolve the issue without going through a formal appeal. The remaining 55 percent, or 95,000, would go through a formal appeal.

The Department assumes that the 3 page application (along with any necessary attachments) would take on average 1 hour to complete. The Department further assumes that all individuals would fill out the appeal application by themselves, resulting in total estimated labor hour burden for this information collection of approximately 95,000 hours.

The Department estimates that it will have to send the “Plan Administrator Information Sheet” for 10% (9,500) of the appeals to receive additional information from plan administrators. The Department assumes that it will take on average one-half hour to complete the information sheet resulting in a total estimated labor hour burden for this information collection of approximately 4,750 hours.

13. *Provide an estimate of the total annual cost burden to respondents or record-keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12.)*

The Application is 3 pages long, and the Department anticipates that each application will include, on average, 4 pages of additional, attached documentation. The Department further estimates that of the estimated 95,000 appeal applications it will receive, 30 percent will be filed electronically. The Department expects that applicants who file electronically will mail their attachments separately.

The costs for materials and postage for the 66,000 paper applications includes \$.59 for postage and an additional \$.01 for materials, resulting in a cost of approximately \$40,000. The cost of materials and postage for electronic applications includes \$.42 for postage and \$.01 for materials to send the attached document, resulting in a cost of approximately \$12,000. Based on

² A graduated take-up rate was assumed for those that lost their job prior to enactment, as it was assumed that they would be less inclined to enroll in COBRA and apply for the subsidy. Take-up rates post-enactment are assumed to be 60 percent. This results in an average take-up rate of 50 percent for all application expected to be received in 2009.

the foregoing, the total cost burden for this information collection is estimated to be approximately \$52,000.

The Department requires the plan administrator to fax the two-page “Plan Administrator Information Sheet” back to the Department by the close of next business day after receipt. Because the time and transmission costs are nominal, the Department has not estimated a cost burden for this information collection.

COBRA Expedited Review Application PRA Calculations

Notice Types	Notices	Labor Hours	Labor Costs	Pages	Mailing Costs	Total Costs
<i>Appeals Application</i>						
Paper Filer (plus attachments)	66,221	66,221	\$0	7	\$39,733	\$39,733
Electronic Filer (plus Attachments)	28,381	28,381	\$0	4	\$12,204	\$12,204
Total	94,602	94,602	\$0	NA	\$51,936	\$51,936

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

As discussed above, the legislation requires the Secretary of Labor to develop and implement an expedited review program and anticipates that approximately \$6,858,000 will be needed to carry out this responsibility. These funds will be used for contract support staff, temporary paralegal staff, or existing permanent professional staff to process these claims and respond to inquiries. These resources also include implementing an electronic filing system to manage the appeals that are filed with the Department.

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

16. *For collections of information whose results will 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.*

There are no plans to publish the results of this collection of information.

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.*

Not applicable.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

None.

B. Collections of Information Employing Statistical Methods

Not applicable.