

## 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 Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides that under certain circumstances participants and beneficiaries of group health plans that satisfy the definition of “qualified beneficiaries” under COBRA may elect to continue group health coverage temporarily following events known as “qualifying events” that would otherwise result in loss of coverage. COBRA provides that the Secretary of Labor (the Secretary) has the authority under section 608 of the Employee Retirement Income Security Act of 1974 (ERISA) to carry out the provisions of Part 6 of title I of ERISA. The Conference Report that accompanied COBRA authorized the Secretary to issue regulations implementing the notice and disclosure requirements of COBRA.

The Department has implemented the Notice Requirements of Section 606 of ERISA (regulations) because the provision of timely and adequate notifications regarding COBRA rights and responsibilities is critical to a qualified beneficiary’s ability to obtain health continuation coverage. In addition, in the Department’s view, regulatory guidance was necessary to establish clearer standards for administering and processing COBRA notices.

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 provision of timely and adequate notifications is critical for the effective exercise of COBRA rights. As such, plan administrators, group health plan insurers, and other service providers to the healthcare industry have indicated to the Department that additional guidance on notification and disclosure under COBRA would be welcome. Failure on the part of a plan administrator to meet notice requirements might result in a qualified beneficiary’s losing out on continuation coverage, assessment of fines on a plan administrator, or other adverse consequences.

Under the regulatory guidelines, plan administrators are required to distribute notices as follows: a general notice to be distributed to all participants in group health plans subject to COBRA; an employer notice that must be completed by the employer upon the occurrence of a qualifying event; a notice and election form to be sent to a participant upon the occurrence of a qualifying event that might cause the participant to lose group

health coverage; an employee notice that may be completed by a qualified beneficiary upon the occurrence of certain qualifying events such as divorce or disability; and, two other notices, one of early termination and the other a notice of unavailability. Also included in the ICR are two model notices that the Department believes will help reduce costs for service providers in preparing and delivering notices to comply with the regulations.

*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.*

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107.1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information submitted by customers to the federal government.

*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 regulations. The regulations address the content, timing, and distribution requirements for notices that are required to be sent under COBRA. Because COBRA has been in effect since 1984, most plans will likely continue to use notices that they have developed and that already satisfy the requirements of the regulations. This information is not duplicated elsewhere.

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. The information provided in the regulations will assist all plans in fulfilling the statutory notice requirements under COBRA. Plan administrators of small plans will have confidence that a plan's COBRA notices are in compliance and that they are less likely to be subject to penalties or costly litigation because they are not complete or not distributed in a timely manner. In addition, with proper notification, qualified beneficiaries of small group health plans that may have previously been denied coverage under COBRA will have improved opportunities to elect less expensive continuation coverage under an employer's group health plan. Moreover, the smallest plans (those with less than 20 participants) are exempt from COBRA. Because the smallest plans are exempt from the regulation and the cost to non-exempt small plans is distributed among a greater number of plans, the expected per plan cost to small plans (\$5-\$6 per plan) is significantly less than the cost to large plans (\$263-\$264 per plan). For the foregoing reasons, the Department believes that the rule will not have a significant impact on small plans.

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.*

Under section 606(a)(1) of ERISA, general notices must be distributed when coverage under the group health plan commences for an employee and his or her spouse and certain other notices are required to be sent upon the occurrence of a qualifying event. Because of COBRA's statutory requirements, the collection of information cannot be conducted at any other time or less frequently.

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 Department's Federal Register Notice, required by 5 CFR 1320.8(d), soliciting comments on the proposed extension of information collection was published in the Federal Register on April 2, 2010 (75 FR 16841), and provides the public with 60 days to comment. No comments were received.

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.*

None.

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.*

Not applicable.

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.*

Because of the expertise required in the administration of COBRA, group health plans generally make use of an outside service provider to handle such tasks as elections by qualified beneficiaries, payment, notification, and distribution of notices. These service providers contract with a large number of plans and have established procedures and standardized documents, including notices and other forms, for use by plan participants and administrators. Plans are therefore expected to incur a cost for using a service provider to prepare and distribute notices. As such, the burden for the regulations is accounted for as a cost and is reported in Question 13, below.

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).*

The Department estimates that approximately 649,000 plans with 55.2 million participants are subject to notification requirements under COBRA.<sup>1</sup> The on-going costs of this regulation are limited to the completion and mailing costs of notices. Completion costs are further limited to plan administrator election notices and early termination notices, as employer and qualified beneficiary notices require information that would be provided in the normal course of business. In addition, no cost has been included for the

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<sup>1</sup> EBSA estimates based on the 2008 Medical Expenditure Panel Survey, Insurance Component (MEPS-IC) and the U.S. Department of Labor, EBSA calculations using the March 2008 Current Population Survey Annual Social and Economic Supplement and the 2008 Medical Expenditure Panel Survey.

completion of the notice of unavailability of continuation coverage because there is currently no basis for determining the number of these notices that might be sent. The Department has assumed however, that due to the clear and consistent information provided in the general notice, plan administrators will distribute a limited number of unavailability notices annually, and that the associated cost will be very small.

Because general notices are included in most Summary Plan Descriptions (SPDs), only those dependents living outside the home of new workers offered group health coverage require a separate notice to be sent.<sup>2</sup> Employer notices include employees holding insurance that leave their job,<sup>3</sup> die,<sup>4</sup> or become eligible for Medicare.<sup>5</sup> Qualified beneficiary notices include notices for divorce or separation,<sup>6</sup> a dependent aging out of the plan,<sup>7</sup> and those on COBRA experiencing a second qualifying event.<sup>8</sup> Plan administration notices are the sums of employer and qualified beneficiary notices. Finally, termination notices are based on the number of COBRA enrollees that leave COBRA before they exhaust their benefit.<sup>9</sup>

The Department assumes that service providers would make use of an administrative assistant to complete the plan administrator's notice and the notice of early termination with the appropriate information about a qualified beneficiary's coverage. It is estimated that an assistant will require 4 minutes at \$26 per hour,<sup>10</sup> to complete 7.3 million plan administrator notices (\$12.7 million), and one minute to complete 1 million notices of early termination (\$.5 million), for a total cost of \$13.2 million.

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<sup>2</sup> The number of new hires in the private sector is based on the Bureau of Labor Statistics 2009 *Job Openings and Labor Turnover Survey* (JOLTS). This total was multiplied by the share of workers that are ESI policy holders (from the 2008 MEPS-IC) and the share with dependents living outside the household, based on U.S. Department of Labor, EBSA calculations using the March 2008 Current Population Survey Annual Social and Economic Supplement and the 2008 Medical Expenditure Panel Survey.

<sup>3</sup> EBSA estimates for insurance holders leaving their job is based on the 2003 Medical Expenditure Panel Survey, Household Component (MEPS-HC).

<sup>4</sup> Mortality rates for the working population based on the 2007 *National Vital Statistics Report*, Vol 58, No. 19 Table 3.

<sup>5</sup> EBSA estimates of the share of policy holders that become Medicare eligible is based on the U.S. Department of Labor, EBSA calculations using the March 2008 Current Population Survey Annual Social and Economic Supplement and the 2008 Medical Expenditure Panel Survey.

<sup>6</sup> EBSA estimates based on the divorce rate as reported in the CDC's 2008 *Vital Statistics*, Vol 59, no. 20.

<sup>7</sup> EBSA estimates based on the U.S. Department of Labor, EBSA calculations using the March 2006 Current Population Survey Annual Social and Economic Supplement and the 2008 Medical Expenditure Panel Survey.

<sup>8</sup> EBSA estimates of COBRA enrollees are based on the U.S. Department of Labor, EBSA calculations using the March 2008 Current Population Survey Annual Social and Economic Supplement and the 2008 Medical Expenditure Panel Survey. The share experiencing a second qualifying event is based on the previously reported share of the population experiencing divorce or aging out, and the assumption from the previous COBRA PRA that 1 percent of the COBRA population is disabled.

<sup>9</sup> EBSA estimates of the share of COBRA enrollees exiting COBRA early during a year are based on raw, unpublished average duration of COBRA coverage data provided by the Spencer Group in 2006.

<sup>10</sup> Labor costs are the total compensation costs for an administrative assistant based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index (June 2009, Bureau of Labor Statistics).

As explained in Question 3, plan administrators are not precluded from using electronic disclosure methods. No assumption has been made as to the number of these notices that will be distributed electronically. The costs for materials and postage for 15.7 million notices have been estimated at \$.45 per mailing for a total of \$7.0 million and are described below.

COBRA PRA Renewal Calculations, 2010

	Notices	Number of Hours	Labor Cost	Mailing Costs	Total Costs
Notice Type	Total	Labor Hours	Labor Cost	Mailing Cost	Total Cost
<i>General Notices</i>	31,698	0	\$0	\$14,264	\$14,264
<i>Employer Notices</i>	5,590,743	0	\$0	\$2,515,834	\$2,515,834
<i>Qualified Beneficiary Notice</i>	1,708,394	0	\$0	\$768,777	\$768,777
<i>Plan Administrator Election Notice</i>	7,299,137	486,609	\$12,719,962	\$3,284,612	\$16,004,574
<i>Termination Notice</i>	1,032,362	17,206	\$449,766	\$464,563	\$914,329
<b>Total</b>	<b>15,662,333</b>	<b>503,815</b>	<b>\$13,169,728</b>	<b>\$7,048,050</b>	<b>\$20,217,778</b>

The total on-going cost for the regulation is \$20.2 million.

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.*

There is no cost to the Federal government associated with this information collection.

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

Most of the adjustments to the PRA burden are relatively minor and are due to updates in costs (both labor and mailing), the use of more recent data to reflect shifts in demographics and insurance coverage, and the absence of start-up costs. Hourly labor costs actually declined since the last PRA, due to the absence of start-up costs and the hourly rate of an administrative assistant in the DC-metro area being substantially lower (\$25 per hour as compared to \$34 per hour) than previously reported. In addition, the previous PRA assumed a much lower termination rate (less than half) for insured workers than recent data indicates is appropriate. Adjusting this assumption more than doubled the number of Employer Notices and increased Plan Administrator Election Notices by roughly fifty percent. Finally, the previous PRA mistakenly included only

small plan participants in its statement regarding the number of participants subject to COBRA notification. This error did not affect any of the subsequent calculations.

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.