

## 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.*

On February 4, 2009, President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA, Pub. L. 111-3). Under ERISA section 701(f)(3)(B)(i)(I), PHS Act section 2701(f)(3)(B)(i)(I), and section 9801(f)(3)(B)(i)(I) of the Internal Revenue Code, as added by CHIPRA, an employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act (SSA), or child health assistance under a State child health plan under title XXI of the SSA, in the form of premium assistance for the purchase of coverage under a group health plan, is required to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for premium assistance under Medicaid and CHIP for health coverage of the employee or the employee's dependents. These notices are referred to in this document as "Employer CHIP Notices."

ERISA section 701(f)(3)(B)(i)(II) requires the Department of Labor to provide employers with model language for the Employer CHIP Notices to enable them to timely comply with this requirement, which is referred to as the "Model Employer CHIP Notice" in this document. The model is required to include information on how an employee may contact the State in which the employee resides for additional information regarding potential opportunities for premium assistance, including how to apply for such assistance.

Section 311(b)(1)(D) of CHIPRA provides that the Departments of Labor and Health and Human Services shall develop the initial Model Employer CHIP Notices under ERISA section 701(f)(3)(B)(i)(II), and the Department of Labor shall provide such notices to employers, by February 4, 2010. Moreover, each employer is required to provide the initial annual notices to such employer's employees beginning with the first plan year that begins after the date on which the initial model notices are first issued. The ICR relates to the Model Employer Chip Notice.

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.*

As stated in response to Item 1 above, CHIPRA requires that the Department of Labor and the Department of Health and Human Services develop a model notice for employers to use to inform employees of potential opportunities currently available in the State in which the employee resides for group health plan premium assistance under Medicaid and the Children's

Health Insurance Program (CHIP). The Departments are required to consult with the Department of the Treasury, as well as State Medicaid and CHIP offices. The Department of Labor is required to provide the model notice to employers by February 4, 2010 (within one year of CHIPRA's enactment). The Department expects that employers will use the Model Employer CHIP Notice to fulfill their obligation under CHIPRA to provide the employee notification.

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). The Employer CHIP Notice may be provided electronically to the extent the criteria of the Department’s electronic disclosure safe harbor at 29 CFR 2520.104b-1(c) are satisfied.

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.*

No duplication of effort is associated with the information collection. As required by CHIPRA, the Department consulted with the Department of Health and Human Services and Department of the Treasury in drafting the notices.

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 would not meet its obligation under CHIPRA to provide the Model Employer CHIP Notice by February 4, 2010.

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 published a notice in the Federal Register on April 2, 2010 (75 FR 16840), as required by 5 CFR 1320.8(d), soliciting comments on the information collection and providing the public 60 days to comment on the submission. No comments were received from the public in response to the notice.

The public also was provided with an opportunity to comment on the burden associated with the information collection in response to the Department's February 4, 2010 Federal Register notice (75 FR 5808) announcing its submission of the ICR to OMB pursuant to the PRA emergency clearance procedures.

In drafting the Model CHIP Notice, 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.*

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.*

None

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.*

CHIPRA requires that employers that maintain a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act (SSA), or child health assistance under a State child health plan under title XXI of the SSA, in the form of premium assistance for the purchase of coverage under a group health plan, is required to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for premium assistance under Medicaid and CHIP for health coverage of the employee or

the employee's dependents. These notices are referred to in this document as "Employer CHIP Notices".

The Department estimates that there are approximately 6,980,000 private sector employers and 76,000 public sector employers that offer a group health plan and are required to send the Employer CHIP Notices to an estimated 187,272,000 private sector employees and 16,523,000 public sector employees annually. Estimates for the number of employees and private employers were derived from the 2008 MEPS-IC. The number of public employers was estimated from the U.S. Census Bureau's 2007 Census of Government Employment.

All employers that are located inside states that have a premium assistance program are counted as having to provide the notice. Employers in states that do not have a premium assistance program are still required to send notice to an employee that does reside in a state that offers premium assistance. The Department is unable to estimate the number of employers in states not having a premium assistance program that must send notice to out-of state workers. The Department assumes 20 percent of these employers would send out notices. The Department has estimated that on average 4.8 percent of employees work in states not having a premium assistance program, but reside in another state that does have a premium assistance program and their employer would be required to provide them a notice. These estimates are included in the totals listed above.

The Department has provided a model notice that requires no modification by employers, and employers are able to distribute the notice with other required notices, such as during open enrollment season. In addition employers may send the notice electronically in accordance with the Department's electronic disclosure regulation. The Department estimates that 38 percent of employees will receive the notice electronically with a de minimis cost. The remaining 126,353,000 employees (62 percent) are estimated to receive a paper copy. Employers may have clerical staff prepare the paper disclosures will an average time of 30 seconds per disclosure to copy and distribute the notice. This results in an hour burden of 1,053,000 hours (126,353,000 employees \* 30/3600 hours per notice). Clerical staff is estimated to have an hourly labor rate of \$26.14, resulting in an equivalent cost of the hour burden of \$27,524,000.

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 cost burden associate with the notice requirement is due to the material and printing costs for the notice. The model notice is four pages in length. The Department assumes a five cent per page printing and material cost and as the notice may be distributed with other plan information no postage costs are included. This leads to a total cost burden of \$25,271,000 (126,353,000 notices \* 4 pages \* 5 cents) for the notices not sent electronically.

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.*

While the Department of Labor and the Department of Health and Human Services are responsible for updating the model notice to ensure that all states with a premium assistance programs and contact information for each program is included, HHS already maintains this list for other purposes and will provide the updated information. Therefore, no cost is attributed to the Department to maintain the model notice.

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

This is a new third-party disclosure requirement pursuant to the Children's Health Insurance Program Reauthorization Act of 2009. Please see Item 1 for a full discussion of the requirements.

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.*

Not applicable.

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 expiration date will be published in the Federal Register following OMB approval.

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.