

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 Patient Protection and Affordable Care Act (the Affordable Care Act) was enacted by President Obama on March 23, 2010. Section 2711 of the PHS Act, as added by the Affordable Care Act, and the Department’s interim final regulation (29 CFR 2590.715-2711) The Affordable Care Act dependent coverage enrollment opportunity notice is an information collection request (ICR) subject to the PRA. Before the applicability date of PHS Act section 2711, an individual may have met a lifetime limit under a group health plan or health insurance coverage and therefore lost coverage under the plan or coverage. When the provisions of PHS Act section 2711 become applicable to the plan (or coverage), the plan (or coverage) can no longer exclude coverage for the individual by operation of the lifetime limit.

Accordingly, the interim final regulations (29 CFR 2590.715-2800) require plans to provide a notice of an enrollment opportunity to an individual whose coverage ended due to reaching a lifetime limit on the dollar value of all benefits for any individual. The Affordable Care Act dependent coverage enrollment opportunity notice is an information collection request (ICR) subject to the PRA.

The enrollment opportunity must continue for at least 30 days, regardless of whether the plan or coverage offers an open enrollment period and regardless of when any open enrollment period might otherwise occur. This enrollment opportunity must be presented not later than the first day of the first plan year (or, in the individual market, policy year) beginning on or after September 23, 2010 (which is the applicability date of PHS Act sections 2714). Coverage must begin not later than the first day of the first plan year (or policy year in the individual market) beginning on or after September 23, 2010.

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 enrollment opportunity notice will be used by health plans to notify certain individuals of their right to re-enroll in their plan. The affected individuals are those whose coverage ended due to reaching a lifetime limit on the dollar value of all benefits for any individual.

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 regulation does not restrict plans or issuers from using electronic technology to provide either disclosure. The Department of Labor’s regulations under 29 C.F.R. § 2520.104b-1(b) provide that, “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 29 CFR 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.*

The Affordable Care Act amended the Employee Retirement Income Security Act, the Internal Revenue Code, and the PHS Act. Accordingly, both the Department of Health and Human Services (HHS) and the Department of the Treasury (Treasury) will require plans and issuers to provide an Enrollment Opportunity Notice Relating to Prohibition on Lifetime Limits. There is no duplication of effort, because only the Department of Labor has jurisdiction over ERISA-covered plans.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), 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 this information were conducted less frequently, an individual whose coverage ended due to reaching a lifetime limit on the dollar value of all benefits would not be informed of her right to reenroll in the plan.

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 interim final regulations provide the public with a 60-day period to submit written comments on the rule.

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.

Not applicable

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.*

The Departments estimate that approximately 29,000 individuals qualify for this enrollment right, which as discussed more fully below, should be considered an upward bound. The estimate is based on the following methodology.

The Department estimates that 63 percent of the approximately 139.6 million individuals in ERISA-covered plans are covered by plans with lifetime limits. While limited data are available regarding lifetime limits, the Departments estimated that the average lifetime limit across all markets is about \$4.7 million, which means that an individual would exceed a lifetime limit by incurring at least \$4.7 million in medical expenses during one year or across many years. Although the Departments are unable to track spending across time to estimate the number of individuals that would reach the lifetime limit, the Departments estimate that about 0.033 percent of individuals incur more than \$1 million in medical spending in a year. If these individuals incurred this amount every year, 29,000 individuals would incur expenses of at least \$4.7 million limit by the fifth year.¹

¹ There are several reasons to suspect that these assumptions lead to an over-estimate. First, individuals would have to average \$1 million in medical expenses per year to exceed the \$4.7 million limit. Second, an individual's lifetime limit is reset if he switches employers or, for employees who work for employers with multiple health

The interim final regulations require plans or insurers to notify individuals whose coverage ended due to reaching a lifetime limit on the dollar value of all benefits that they are now eligible to reenroll in the plan or policy. The Departments assume that the notice for all plans and policies (including self-insured plans that are administered by insurers) will be prepared by the estimated 630 health insurers operating in the United States. While plans could prepare their own notice, the Departments assume that the notices will be prepared by service providers. The Departments have previously estimated that there are 630 health insurers (460 providing coverage in the group market, and 490 providing coverage in the individual market). As the hour and cost burden is shared between the Departments of Labor/Treasury and the Department of Health and Human Services, the burden to prepare the notices is calculated using half the number of insurer (315) respondents. On average, the Departments expect that one-half hour of a legal professional's time, valued as \$119, will be required to draft this notice, resulting in an hour burden of approximately 160 hours (315×0.5) with an equivalent cost of \$19,000 ($315 \times 0.5 \times \119.03).

The Departments assume that insurers track information regarding individuals that have lost coverage due to reaching a lifetime limit (including contact information) in their administrative records. Based on the foregoing, the Departments estimate that, on average, five minutes of a clerical staff member's time, valued at \$26 per hour will be required to incorporate the specific information into the notice and mail the estimated 29,000 notices (responses).² This results in an estimated hour burden of approximately 2,400 hours ($29,000 \times 5/60$) with an equivalent cost of \$63,000 ($29,000 \times 5/60 \times \26.14). Therefore, the total hour burden of this notice requirement is approximately 2,600 hours with an equivalent cost of \$82,000. Because the Department of Labor shares the hour burden with the Department of Treasury, the Department of Labor's share of the hour burden is 1,300.

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 of the ICR results from material and mailing cost associated with distributing the estimated 29,000 enrollment opportunity notices. The Departments estimate that the notice will be one-page in length, material and print costs will be five cents per page, and postage will be 44 cents per notice resulting in a per notice cost of 49 cents. This leads to a total cost burden of approximately \$14,000 ($29,000 \times \0.49) to distribute the notices. Because the

insurance coverage options, switches to a different health insurance plan.

² The Department's estimate of the number of responses is determined as follows: 139,600,000 individuals in ERISA-covered health plans * .63 (number of plans with lifetime limits * .033 (percent of individuals reaching lifetime limits) = 29,023 (rounded to 29,000)

Department of Labor shares the cost burden with the Department of Treasury, the Department of Labor is allocated \$7,000 of the cost burden.

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.*

Not applicable.

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 information collection.

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.*

The OMB 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.