DATE: October 28, 2011

TO: Cass R. Sunstein, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

FROM: Jacquelyn White
Director, Office of Strategic Operations and Regulatory Affairs
Centers for Medicare & Medicaid Services

SUBJECT: Request for Emergency PRA Clearance to Update to Rate Review Program Association Product Reporting Requirements (OCN: 0938-1141)

<u>Summary</u>

The Centers for Medicare and Medicaid Services (CMS) is requesting that a Paperwork Reduction Act (PRA) package for the update to rate review program association product reporting requirements be processed under the emergency clearance process associated with 5CFR 1320.13(a)(2)(i). Public harm is reasonably likely to ensue if the normal clearance procedures are followed. The approval of this data collection process is essential to ensuring that consumers enrolled in individual and small group association products receive the consumer protections provided under Section 1003 of the Affordable Care Act. In absence of this change, a significant number of individual and small group rate increases for the 2012 plan year would not be subject to the review and public disclosure requirements of the rate review program and, instead, would be subject to rate increases that are largely unregulated. Because of an historical tendency for association plans to take advantage of their freedom from oversight, it is likely that consumers who are covered by these plans will endure higher, potentially unjustified rate increases in 2012 unless these products come under the purview of the rate review system by November 1, 2011. This is especially true for the individual market where the potential for abuses in the form of excessive, unjustified, and unfairly discriminatory insurance premium rates is the greatest, and for which rates for the following year are normally filed during the last few months of the year.

Background:

Section 1003 of the Affordable Care Act adds a new section 2794 of the PHS Act which directs the Secretary of the Department of Health and Human Services (the Secretary), in conjunction with the States, to establish a process for the annual review of “unreasonable increases in premiums for health insurance coverage.” The statute provides that this process shall require health insurance issuers to submit to the Secretary and the applicable State justifications for unreasonable premium increases prior to the implementation of the increases.

On May 23, 2011, CMS published the final rate review rule (76 FR 29964; RIN 0938-AQ68), which establishing the review process and issuer reporting and disclosure process called for under Section 1003 of the Affordable Care Act. The final rule took effect on September 1, 2011. The issuer reporting requirements in the rule applied to individual and small group health insurers as defined under existing State definitions for the individual and small group markets.

On September 6, 2011, CMS published an amendment to the Rate Increase Disclosure and Review Regulation (45 CFR Part 154). The amendment changes the definition of individual and small group markets as follows:

> *Individual market* has the meaning given the term under the applicable State’s rate filing laws, except that:
> (1) Where State law does not define the term, it has the meaning given in section 2791(e)(1)(A) of the PHS Act; and
> (2) Coverage that would be regulated as individual market coverage (as defined in section 2791(e)(1)(A)) if it were not sold through an association is subject to rate review as individual market coverage.
>
> *Small group market* has the meaning given under the applicable State’s rate filing laws, except that:

(1) Where State law does not define the term, it has the meaning given in section 2791(e)(5) of the PHS Act; provided, however, that for the purpose of this definition, ‘‘50’’ employees applies in place of ‘‘100’’ employees in the definition of ‘‘small employer’’ under section 2791(e)(4); and
(2) Coverage that would be regulated as small group market coverage (as defined in section 2791(e)(5)) if it were not sold through an association is subject to rate review as small group market coverage.

Under the amended definitions for the terms individual market and small group market, health insurance issuers will have to report on rate increases for association products sold to individuals or small groups that are considered to be large group products under State law or have been otherwise excluded from State's existing definition of individual and small group coverage. The effective date of the amendment is November 1, 2011.

The amendment expands the applicability of the reporting requirements to include certain types of association coverage previously not included in the final rule. However, it did not include any changes to the existing data collection reporting instruments or other aspects of the rate review reporting requirements. In other words issuers will submit information on more rate increases as a consequence of the amendment, but the information that is collected will be consistent with the current rate review reporting requirements.

Proposed Timeline:

October 5, 2011
- Submit PRA package to OSORA

October 7, 2011
- Target publication date for the Emergency FR notice
- Start of 14-day public comment period
- PRA package submitted to OMB
- Start of informal OMB review period

October 21, 2011
- End of 14-day public comment period

October 21, 2011
- Start of formal OMB review period.

October 31, 2011
- Requested OMB approval date.