

## **SUPPORTING STATEMENT (T.D. 8812)**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

The Service published final regulations relating to the COBRA continuation requirements applicable to group health plans under section 4980B of the Internal Revenue Code. Proposed regulations were published in 1987 and 1998. The final regulations contain six third-party information collection requirements (ICRs).

(1) The first ICR arises from a statutory requirement that group health plans notify individuals of their rights to continue coverage under the plan upon the occurrence of certain qualifying events, such as termination of employment, divorce, or death.

(2) The second ICR arises from a statutory right of individuals to elect the continuation coverage that the plan is required to make available. It is estimated that most of these elections are made in writing.

(3) The third ICR arises from a statutory provision that requires a group health plan subject to COBRA to make COBRA continuation coverage available to spouses and dependent children of covered employees if the covered employee is divorced or if a dependent child ceases to be covered under the generally applicable requirements of the plan (referred to as "aging out"). The covered employee, the spouse, or a dependent child (or someone else on their behalf) must notify the plan administrator of the covered employee's divorce or of the dependent child's aging out within 60 days of those events in order for the plan to be obligated to make the COBRA continuation coverage available.

(4) The fourth ICR arises in connection with the practice of health care providers to contact plans to confirm the coverage of individuals. The statute grants COBRA qualified beneficiaries a period of at least 60 days after losing coverage to decide whether to elect COBRA continuation coverage, a period of 45 days after electing COBRA to make the first payment for coverage, and for all subsequent payments a period of at least 30 days after the due date to make the payment. Some plans may cancel coverage during these periods and then retroactively reinstate it if the election or required payment is made; other plans may extend coverage during these periods and cancel it retroactively if the election or required payment is not made. When health care providers - such as physicians, hospitals, or pharmacies -

call a plan to confirm the coverage of a qualified beneficiary, the regulations require the plan to disclose all the rights that the qualified beneficiary has to coverage during the period.

(5) The fifth ICR arises in connection with the statutory provisions for a disability extension. Under the statute, the maximum period for which a plan is required to make COBRA continuation coverage available is generally 18 months in the case of a qualifying event that is a termination of employment or reduction in hours of employment. In certain cases of disability, the 18-month period is extended to 29 months if certain requirements are satisfied. One of those statutory requirements is that notice of a determination of disability must be provided to the plan administrator on any date that is both within 60 days after the determination of disability is issued and that is before the end of the original 18-month period of COBRA continuation coverage.

(6) The sixth ICR arises in connection with insignificant underpayments. Under the statute, a plan can require the payment of 102 percent of the applicable premium for COBRA continuation coverage. Individuals have complained that they have tendered checks in which the digits for the cents portion of the payment were transposed and in which the plan administrator has terminated the COBRA continuation coverage of the individuals for not making full payment timely. Individuals have also complained of other cases where their COBRA continuation coverage was terminated due to an insignificant underpayment. The regulations require plans to treat an insignificant underpayment as full payment unless the plan notifies the individual of the amount of the deficiency and provides a reasonable period of time to pay the deficiency.

## **2. USE OF DATA**

(1) Individuals use the notice of their rights upon the occurrence of a qualifying event to decide whether to elect to continue their coverage. (2) Plans administrators use the election of COBRA continuation coverage to determine which qualified beneficiaries receive COBRA continuation coverage. (3) Plan administrators use the notice of a divorce or child's aging out to verify that certain individuals are entitled to COBRA continuation coverage. (4) Providers of health care use the confirmation of coverage information in deciding whether to provide care. (5) Plan administrators use the notice of the determination of disability to verify that certain individuals are entitled to the extended period of COBRA continuation coverage available in certain cases of disability. (6) Individuals use the notice of an

insignificant underpayment to pay the deficiency on an earlier payment in order to retain their COBRA continuation coverage.

**3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

**4. EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

**5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

Not applicable.

**6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

**7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Not applicable.

**8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

A notice of proposed rulemaking (EE-143-86) was published in the **Federal Register** on June 15, 1987 (52 FR 22716). A public hearing was held on November 4, 1987. A supplemental set of proposed regulations (REG-209485-86) was published in **Federal Register** on January 7, 1998 (63 FR 708). No public hearing was requested or held. The final regulations were published in the **Federal Register** on February 3, 1999 (64 FR 5160).

In response to the **Federal Register Notice dated May 12, 2011 (76 FR 27750)**, we received no comments during the comment period for T.D. 8812.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR**

## **GIFT TO RESPONDENTS**

Not applicable.

### **10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

The ICRs are third-party disclosure requirements. Third parties -- plan administrators, health care providers, and individuals -- provided with information can keep the information confidential to the extent they wish to do so.

### **11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

### **12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

(1) Section 4980B(f)(6)(D) of the Code requires plan administrators to notify qualified beneficiaries of their rights to COBRA continuation coverage, and this requirement is referred to in Q&A-1 of §54.4980B-6 . A single notice can be sent for all family members residing at the same address. The burden on the plan administrator entails the initial preparation of a form, occasional minor revisions to it to account for changes in the applicable premium or the statutory requirements, and providing the form to qualified beneficiaries when they experience a qualifying event. We estimate that plan administrators send out approximately 10 million of these notices to qualified beneficiaries each year. At an estimated two minutes per notice, the total annual burden hours are approximately 333,000 hours.

(2) Section 4980B(f)(5) of the Code and Q&A-1 in §54.4980B-6 permit plans to condition the availability of COBRA continuation coverage on the qualified beneficiary's making an election for the coverage within the election period. Generally a qualified beneficiary will make an election by returning to the plan administrator a form that the plan administrator provides with the notice (described in the previous paragraph of this item 12). One qualified beneficiary can elect on behalf of other members of the qualified beneficiary's family. We estimate that approximately 1.68 million such elections are made each year. At an estimated one minute per election, the total annual burden hours are approximately 28,000 hours.

(3) Section 4980B(f)(6)(C) of the Code and Q&A-2 in §54.4980B-6 of the regulations require that notice of the divorce of a covered employee and of a dependent child's aging out be provided to the plan administrator. This entails, at most, providing the plan

administrator with a written note of the divorce or of the child's age (or other circumstances) that will cause the child no longer to be considered a dependent under the plan. We estimate that approximately 67,200 individuals elect COBRA continuation coverage due to a divorce or aging out each year. Accordingly, we estimate that individuals send to plan administrators each year a total of approximately 67,200 notices of a divorce of the covered employee or of a dependent child's aging out. At an estimated 20 minutes per response, the total annual burden hours are approximately 22,400 hours.

(4) Q&A-3(b) in §54.4980B-6 and Q&A-5(c) in §54.4980B-8 of the regulations require plans, when health care providers contact the plan to confirm the coverage of a qualified beneficiary, to disclose the complete rights of a qualified beneficiary to coverage during the statutory period for electing COBRA coverage or the statutory grace periods for making payments for COBRA coverage. Many qualified beneficiaries will have elected and paid for coverage when a request for confirmation of coverage is made. The regulations apply only in those situations where the qualified beneficiary has not elected or has not paid for coverage but is still within the statutory period for electing COBRA coverage or is still within the statutory grace period for paying for COBRA coverage. In such a situation, independent of what the regulations require, the plan must look at plan records to determine what a qualified beneficiary's election or payment status is. The regulations merely require a more detailed response than simply affirming or denying whether the qualified beneficiary is covered. We estimate that at any given time there are approximately 3.5 million qualified beneficiaries, that health care providers contact a plan to confirm the coverage of qualified beneficiaries approximately 1 million times per year, and that about one-quarter of these contacts - thus, 250,000 per year - relate to qualified beneficiaries who have not yet elected or paid for COBRA coverage covering the date for which the contact is made. At an estimated 30 seconds per response, the total annual burden hours are approximately 2,100 hours.

(5) Sections 4980B(f)(2)(b)(i) and (f)(2)(6)(C) of the Code and paragraph (d) in Q&A-5 of §54.4980B-7 of the regulations require a qualified beneficiary otherwise entitled to the disability extension in the maximum period of COBRA continuation coverage to provide a copy to the plan administrator of the notice of determination of disability. This entails making a copy of the notice of determination of disability received from the Social Security Administration and mailing it to the plan administrator. Estimates of the hours burden associated with this information collection requirement were published previously on January 7, 1998 and comments regarding the accuracy of the

estimates was requested. No comments were received. Accordingly, we retain the estimate that approximately 26,400 individuals elect the disability extension each year. We retain the corresponding estimate that individuals send a total of approximately 26,400 copies of a determination of disability to plan administrators each year. At an estimated one minute per response, the total annual burden hours are approximately 440 hours.

(6) Paragraph (d) in Q&A-5 of §54.4980B-8 of the regulations requires group health plans receiving a payment for COBRA continuation coverage that is deficient by an insignificant amount either to treat the amount paid as full payment or to notify the individual receiving the coverage of the deficiency and grant a reasonable period of time for payment of the deficiency to be made. We estimate that plan administrators receive as payment for COBRA continuation coverage each year approximately 168,000 payments that are short by an insignificant amount and that plan administrators will choose to send qualified beneficiaries notice of the underpayment in approximately one-third of those cases, or 56,000 times per year. At an estimated 20 minutes per notice, the total annual burden hours are approximately 18,700 hours.

Estimates of the annualized cost to respondents for the burden hours shown are not available at this time.

### **13. ESTIMATED ANNUALIZED COSTS TO RESPONDENTS**

As suggested by OMB, our **Federal Register Notice dated May 12, 2011 (76 FR 27750)**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

### **14. ESTIMATED ANNUALIZED COSTS TO THE FEDERAL GOVERNMENT**

Not applicable.

### **15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION**

Not applicable.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations cease to be effective as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I**

Not applicable.

**Note:** The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.