

# **Supporting Statement for Information Collection Requirements for Section 1332 of the Affordable Care Act, “Waiver for State Innovation”**

**Regulations at 31 CFR Parts 33.108, 33.112, 33.116, 33.120, 33.124, and 33.128 and 45 CFR 155.1308, 155.1312, 155.1316, 155.1320, 155.1324, and 155.1328**

**CMS-9987-F, CMS Collection # CMS-10383, OMB Control # 0938-New**

## **A. Background**

Section 1332 of the Affordable Care Act establishes authority for a 'Waiver for State Innovation'. Under this section, States can apply for a waiver, effective for plan years beginning on or after January 1, 2017, of the Affordable Care Act requirements relating to qualified health plans, Exchanges, cost-sharing reductions, premium tax credits, the individual responsibility requirement, and shared responsibility for employers. The Affordable Care Act requires that HHS and Treasury issue regulations regarding procedures for section 1332 waivers.

Under this section, the Secretaries are required to establish a process for the submission of an application for a section 1332 waiver, including a process for public notice and comment at the State and Federal levels that is sufficient to ensure a meaningful level of public input. The Secretaries are also required to establish reporting requirements for States and a process for the periodic evaluation of approved waivers. This information collection request would establish requirements pertaining to the provisions required under section 1332 of the Affordable Care Act.

## **B. Justification**

### **1. *Need and Legal Basis***

The information required under this collection is necessary to ensure that States comply with statutory and regulatory requirements related to the development and implementation of section 1332 waivers. States seeking waiver authority under section 1332 of the Affordable Care Act are required to meet certain requirements for applications, public notice, and reporting. The authority for these requirements is found in section 1332 of the Affordable Care Act. This information collection reflects the requirements provided in the final rules published in February, 2012.

### **2. *Information Users***

The information required is used by the Department of Health and Human Services and the Department of the Treasury when evaluating waiver proposals and approved waivers to determine compliance with section 1332 of the Affordable Care Act.

**3. *Use of Information Technology***

The Secretaries will likely request that States submit the information required under this rule electronically.

**4. *Duplication of Efforts***

This information collection does not duplicate any current information collection. It contains information required by statute for a new program.

**5. *Small Businesses***

This information collection does not impact small businesses or other small entities.

**6. *Less Frequent Collection***

There are no special circumstances associated with this collection.

**8. *Federal Register/Outside Consultation***

A notice of proposed rulemaking that included proposed information collection requirements and had a 60-day comment period was published in the Federal Register on March 14, 2011 (76 FR 13553).

**9. *Payments/Gifts to Respondents***

There is no payment or gift to respondents.

**10. *Confidentiality***

We make no pledges of confidentiality. The information received by HHS and Treasury is not confidential and will be made publically available, in whole or in part, in order to comply with statutory requirements designed to promote transparency in the review and approval of section 1332 waivers.

**11. *Sensitive Questions***

There are no questions of a sensitive nature.

## **12. *Burden Estimates (Hours & Wages)***

We solicited comment on the number of States that will seek waivers, and did not receive any responses. Given the lack of response and length of time before the earliest possible effective date for section 1332 waivers, the Secretaries have no way to accurately quantify the number of States that will seek waivers. With that said, we believe that the per-State burden estimates provide adequate information regarding the collections related to these rules. As such, for the purpose of this estimate, we use one State.

For all estimates, we have used an average hourly employee cost of \$46.67. This is based on a 75%/25% blend of wages for a Management Analyst (Occupation No. 13-1111 in the May 2010 National Occupational Employment and Wage Estimate; Industry: State Government; Category: Business and Financial Operations Occupations) and a General and Operations Manager (Occupation No. 11-1021 in the May 2010 National Occupational Employment and Wage Estimate; Industry: State Government; Category: Management Occupations), with an additional factor of 31.2 percent to account for additional employer costs (paid leave, supplemental pay, insurance, retirement and savings, and legally-required benefits) by using the State and local government rate for such costs for management, professional, and related workers from the Bureau of Labor Statistics' September 2011 Employer Costs for Employee Compensation survey.

### **Coordinated Waiver Process and (33 CFR 33.102 and 45 CFR 155.1302) and Application Procedures (31 CFR 33.108 and 45 CFR 155.1308)**

Under certain conditions, 31 CFR 33.102 and 45 CFR 155.1302(a) and (b) provide that a State may submit a single application for a waiver under section 1332 of the Affordable Care Act and a waiver under one or more of the existing waiver processes applicable under titles XVIII, XIX, and XXI of the Act, or under any other Federal law relating to the provision of health care items or services. 31 CFR 33.108 and 45 CFR 155.1308 of the regulations establish the application process for section 1332 waivers. Under 31 CFR 33.108(a) and 45 CFR 155.1308(a), a State's application for approval of a section 1332 waiver must be submitted to the Secretary as an electronic document. Paragraph (f) of 31 CFR 33.108 and 45 CFR 155.1308 specifies that an application for a section 1332 waiver will not be considered complete unless the application meets all of the conditions set out in those sections.

The burden associated with the requirements in 31 CFR 33.102 and 33.108 and 45 CFR 155.1302 and 155.1308 is the time and effort necessary for a State to develop and submit a complete application for a section 1332 waiver. We estimate that it will take **400 hours** for a State to develop and submit a complete section 1332 waiver application, at a total cost of **\$18,668**.

*400 hrs per State per waiver term x \$46.67 average hourly employee cost for 1 FTE = \$18,668 per State per waiver term x 1 State = \$18,668*

### **State Public Notice Requirements (31 CFR 33.112 and 45 CFR 155.1312)**

Paragraph (a) of 31 CFR 33.112 and 45 CFR 155.1312 of the regulations require a State to provide a public notice and comment period prior to submitting an application for a section 1332 waiver.

The public notice must address the information requirements listed in paragraphs (b)(1) through (4) of 31 CFR 33.112 and 45 CFR 155.1312. The burden estimate associated with this requirement is the time and effort necessary to develop and publish a public notice that complies with the aforementioned information requirements. The Departments estimate that each State submitting an application for a section 1332 waiver will require **80 hours** to comply with the requirements in this section, at a total cost of **\$3,734**.

*80 hrs per State per waiver term x \$46.67 average hourly employee cost for 1 FTE = \$3,734 per State per waiver term x 1 State = \$3,734*

Paragraph (a)(2) of 31 CFR 33.112 and 45 CFR 155.1312 require States with one or more Federally-recognized Indian tribes to consult with such tribes before submitting a section 1332 waiver application. Paragraph (f)(2) of 31 CFR 33.108 and 45 CFR 155.1308 explain that documentation of the State's public notice, which incorporates this consultation, must be included in the waiver application.

The burden associated with these requirements is both the time and effort necessary for a State to conduct its tribal consultations and the time and effort necessary to notify CMS of the State's compliance with paragraph (f)(2) of 31 CFR 33.108 and 45 CFR 155.1308. We estimate that each State submitting an application for a section 1332 waiver will require **40 hours** to both conduct its tribal consultations and to submit the aforementioned evidence to CMS, at a total cost of **\$1,867**.

*40 hrs per State per waiver term x \$46.67 average hourly employee cost for 1 FTE = \$1,867 per State per waiver term x 1 State = \$1,867*

Paragraph (c) of 31 CFR 33.112 and 45 CFR 155.1312 specify that after issuing the public notice and prior to submitting an application for a section 1332 waiver, a State must conduct public hearings regarding the State's waiver application. While this requirement is subject to the PRA, we believe the associated burden is exempt under 5 CFR 1320.3(h)(4). Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that

no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment are not subject to the PRA.

### **Monitoring and Compliance (31 CFR 33.120 and 45 CFR 155.1320)**

31 CFR 33.120(b) and 45 CFR 155.1320(b) of the regulations require States to periodically perform reviews of the implementation of an approved section 1332 waiver. We estimate that it will take a State **80 hours** annually to periodically review the waiver's implementation, at a total cost of **\$3,734**.

*80 hrs per State per year x \$46.67 average hourly employee cost for 1 FTE = \$3,734 per State per year x 1 State = \$3,734*

Paragraph (c) of 31 CFR 33.120 and 45 CFR 155.1320 of the regulations further specifies that at least 6 months after the implementation date of the waiver and annually thereafter, the State must hold a public forum to solicit comments on the progress of a section 1332 waiver. As specified in paragraph (c)(1) of 31 CFR 33.120 and 45 CFR 155.1320, the State must publish the date, time, and location of the public forum in a prominent location on the State's public web site, at least 30 days prior to the date of the planned public forum.

The burden associated with these provisions includes the time and effort necessary to conduct the public meeting and the time and effort necessary for a State to publish the date, time, and location of the public forum in a prominent location on the State's public web site, at least 30 days prior to the date of the planned public forum. While these requirements are subject to the PRA, we believe the associated burden is exempt from the PRA. As discussed previously in this collection, facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment are not subject to the PRA. Therefore, the burden associated with the annual public hearing requirement is exempt. Similarly, we believe the time and effort necessary for a State to publish the date, time, and location of the public forum in a prominent location on the State's public web site is a burden that would be incurred in the course of usual and customary State business practices and is therefore exempt from the PRA under 5 CFR 1320.3(b)(3).

### **State Reporting Requirements (31 CFR 33.124 and 45 CFR 155.1324)**

Paragraph (a) of 31 CFR 33.124 and 45 CFR 155.1324 requires States to submit quarterly reports to CMS in accordance with the terms and conditions of a State's approved section 1332 waiver. The burden associated with this reporting requirement is the time and effort necessary

to submit quarterly reports to CMS. We estimate that it will take **10 hours** per quarter for each State to comply with this reporting requirement, for a total of **40 hours** per year, at a total annual cost of **\$1,867**.

*4 quarterly reports per State per year x 10 hrs per report = 40 hrs/yr  
40 hrs per State per year x \$46.67 average hourly employee cost for 1 FTE = \$1,867 per State per year x 1 State = \$1,867*

Paragraph (b) of 31 CFR 33.124 and 45 CFR 155.1324 of the regulations requires States to submit annual reports to CMS documenting the information listed in paragraph (b)(1) through (4) of 31 CFR 33.124 and 45 CFR 155.1324. As part of the submission process, paragraph (c) of 31 CFR 33.124 and 45 CFR 155.1324 requires States to submit draft annual reports to CMS no later than 90 days after the end of each waiver year, or as specified in the State's terms and conditions. The burden associated with this reporting requirement is the time and effort necessary to submit draft annual reports to CMS. We estimate that it will take **40 hours** for each State to comply with this reporting requirement, at a total cost of **\$1,867** per State.

*40 hrs per State per year x \$46.67 average hourly employee cost for 1 FTE = \$1,867 per State per year x 1 State = \$1,867*

Paragraph (c)(1) of 31 CFR 33.124 and 45 CFR 155.1324 of the regulations specifies that within 60 days of receipt of comments from CMS, the State must submit to CMS the final annual report for the waiver year. While this requirement is subject to the PRA, we believe the associated burden is exempt under 5 CFR 1320.3(h)(9). Facts or opinions obtained or solicited through non-standardized follow-up questions designed to clarify responses to approved collections of information are not subject to the PRA.

Paragraph (c)(2) of 31 CFR 33.124 and 45 CFR 155.1324 of the regulations specifies that the draft and final annual reports must be published on the State's public web site. The burden associated with this is the time and effort required for a State to post the aforementioned information on the State's public web site. We estimate that it will take **4 hours** for each State to comply with this requirement, at a total cost of **\$187** per State.

*4 hrs per State per year x \$46.67 average hourly wage for 1 FTE = \$187 per State per year x 1 State = \$187*

### **Periodic Evaluation Requirements (31 CFR 33.128 and 45 CFR 155.1328)**

31 CFR 33.128 and 45 CFR 155.1328 specify that the Secretary of Health and Human Services and the Secretary of the Treasury shall periodically evaluate the implementation of section 1332 waivers. The Departments recognize that evaluation will likely involve information

collections, but are not seeking OMB approval for collections related to this provision at this time. The Departments will seek OMB approval, as needed, once it develops guidance for States regarding this evaluation requirement. Such approval will be requested following the 60- and 30-day comment periods required by the PRA.

**13. *Capital Costs***

There are no capital costs associated with this collection.

**14. *Cost to Federal Government***

There is no cost to the Federal government.

**15. *Changes to Burden***

This is a new collection.

**16. *Publication/Tabulation Dates***

There are no specific publication dates associated with this collection.

**17. *Expiration Date***

There are no forms involved in this collection that will have an expiration date; therefore, this item is not applicable.

**18. *Certification Statement***

There are no exceptions to the certification statement.