Supporting Statement for IRS/SSA/CMS Data Match
42 CFR 411.20-411.206
CMS-R-137 OMB# 0938-0565

PURPOSE

The Centers for Medicare & Medicaid Service (CMS) is requesting that the Office of Management and Budget (OMB) reinstate its approval of an information collection request previously approved under OMB control number 0938-0565. The information collection relates to employer reporting requirements mandated by the Medicare Secondary Payer (MSP) provisions at 42 U.S.C 1395y(b)(5).
1, 2012.

A. Background

Medicare Secondary Payer is essentially the same concept known in the private insurance industry as coordination of benefits or third party liability; it refers to those situations where Medicare assumes a secondary payer role to certain types of private insurance for covered services provided to a Medicare beneficiary.

Until 1980, the Medicare program was the primary payer in all cases except those involving workers' compensation (including black lung) benefits and for services that were authorized by the Department of Veterans Affairs or other governmental entities. Since 1980, a series of changes in the Medicare law has resulted in Medicare being the secondary payer for beneficiaries who:

- Are aged 65 or older and have coverage under an employer-sponsored group health plan due to their current employment status ("working aged");

- Are aged 65 or older and have coverage under a working spouse's employer group health plan. The employed spouse can be any age;

- Are in the first 30 months Medicare entitlement based on End Stage Renal Disease (ESRD) and have coverage under any group health plan, if Medicare was not the proper primary payer for covered services provided prior to the date of such ESRD-based entitlement;

- Are disabled with coverage under a large group health plan (LGHP) based on their own or a family member's current employment status.

When the MMA was passed in 2003, Congress extended MSP laws to Medicare Part D, meaning Part D is to be a secondary payer to prescription drug coverage that is provided in any of the situations outlined above.

The Federal Role

It is CMS's responsibility to implement the various MSP provisions. In this role, CMS: strives to educate others about the laws, issues, regulations, policy and operational guidelines to implement the laws; charges its Medicare contractors with various tasks to detect MSP cases; develops and disseminates tools to enable contractors to better perform their tasks; and monitors the performance of the contractors in achievement of their assigned MSP functions.

Monitoring Program Implementation

Under the law, CMS may contract with private entities (including those that serve as Medicare intermediaries, carriers and Medicare Administrative Contractors) to perform MSP functions. CMS monitors the performance of these contractors.

Monitoring Program Savings

CMS' reported MSP savings for the past five years as follows: $6.7 billion in Fiscal Year (FY) 2008, $8 billion in FY 2009, $8 billion in FY 2010, $8 billion in FY 2011, and $7.9 billion in FY 2012.

Employer Reporting Mandated by Congress

Congress sought to reduce the losses to the Medicare program by requiring in 42 U.S.C. §1395y(b)(5) that the Internal Revenue Service (IRS), the Social Security Administration (SSA), and CMS perform an annual data match (the IRS/SSA/CMS Data Match, or "Data Match" for short). CMS uses the information obtained through Data Match to contact employers concerning possible application of the MSP provisions by requesting information about specifically identified employees (either a Medicare beneficiary or the working spouse of a Medicare beneficiary). This statutory data match and employer information collection activity enhances CMS's ability to identify both past and present MSP situations. The project is conducted as follows:

1. SSA prepares a Social Security Number (SSN) list of all individuals entitled to Medicare in a given year and gives it to the IRS;

2. The IRS runs the listing against tax filings (married filing jointly or married filing separately) for a given year and links together the SSNs of spouses;

3. The IRS returns the list to SSA, which runs the entire file (Medicare eligible and spouses of same) against the Master Earnings File (MEF) to:
    a. identify individuals who had repeated earnings in a given year, and
    b. to count the number of W-2s filed for an employer in a given year;

4. SSA sends the report to CMS's Coordination of Benefits Contractor (COBC), which processes the questionnaires and sends them to employers;

5. The employers respond within 30 days, unless CMS provides an accommodation (which it generally does for reasonable requests);

6. The COBC analyzes the employer responses and sends periodic reports to CMS identifying the time periods during which Medicare should have been or continues to be a secondary payer to a specific GHP for a specific Medicare beneficiary;

7. CMS uses its national Medicare claims history files to identify all claims that Medicare has paid as a primary payer during any of those identified time periods;

8. CMS sends claims and other necessary documentation to the Medicare Secondary Payer Recovery Contractor (MSPRC) for additional/recovery action when appropriate.

The Debt Collection Improvement Act of 1996, part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134), requires all federal agencies to obtain certain information from any entity with which the government does business that could result in establishment of a debt to the United States. Accordingly, CMS needs to obtain the required information about all entities that could be responsible for a repayment of an MSP-related debt that is identified through the Data Match process. Accordingly, CMS solicits the names, addresses, and tax identification numbers (TINs) of the following entities (in addition to the employer):

- the other plan sponsor;
- the plan itself, if it is a separate legal entity;
- any insurers of the group health plan;
- any third party administrators of the group health plan; and
- the claims processor.

Additional Savings Possible

As a result of major studies undertaken by CMS, the General Accounting Office, and the Office of the Inspector General, CMS actively pursued better methods for identification of MSP situations prior to payment through actions such as:

- Better spousal identification;
- Better coordination of information between intermediaries and carriers;
- Education of hospitals and medical providers regarding MSP provisions to improve billing procedures; and
- Work towards development of the imposition of tax and civil monetary penalties.

Although these efforts improved adherence to MSP laws, the IRS/SSA/CMS Data Match activity continues to identify situations that are not being identified any other way.

B. JUSTIFICATION

1) Need and Legal Basis

Statutory and Regulatory Basis

LAW	EFFECT
Title XVIII of Social Security Act of 1965	Medicare secondary to Workers' Compensation (including Black Lung); Medicare does not pay for services provided by the Department of Veterans Affairs or other governmental entities.
§ 953 of Consolidated Omnibus Reconciliation Act (COBRA) of 1990	Medicare secondary to Automobile, Liability and No-Fault insurances.
§ 1982 of COBRA 1981	Medicare secondary to GHPs for End Stage Renal Disease (ESRD) beneficiaries in the first 12 months of eligibility.
§ 116 of Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982	Medicare secondary to EGHPs for employed beneficiaries aged 65 to 69 covered by their spouse aged 65 to 69.
§ 2301 of Deficit Reduction Act (DEFRA) of 1984	Medicare secondary for spouses of aged 65 to 69 of employed individuals of any age.
§ 9201 of COBRA 1985	Medicare secondary to EHGPs for employed beneficiaries aged 65 and older and spouses aged 65 and older of employed individuals of any age.
COBRA 1986	Medicare secondary for certain disabled beneficiaries who qualify as an active individual as defined in the statute and who have covered under a large GHP.
COBRA 1987	Clarified that COBRA 1986 disability provisions apply to government entities.
§ 6202 of COBRA 1989	Established MSP IRS/SSA/CMS Data Match with 1993 sunset.
COBRA 1990	Extends MSP period for ESRD beneficiaries to 18 months.
COBRA 1993	Extends IRS/SSA/CMS Data Match authority to 1998; allows use of wage parameters. Extends to 10/01/98 the expiration date of the disability provisions and abolishes the concept of "active individual." Retroactive to 1981, exempts individuals covered by a vow of poverty from working aged MSP provisions.
Social Security Amendments of 1994	Numerous technical amendments. Added express authority to charge interest on MSP-based debts. Mandated that CMS send, upon initial enrollment in Medicare, each beneficiary a questionnaire designed to identify MSP situations.

Debt Collection Improvement Act of 1996	Requires all federal agencies to obtain certain information from any entity with which the government does business that could result in establishment of a debt to the United States.
§ 4001 of the Balanced Budget Act of 1997	Extends the MSP period for ESRD beneficiaries to 30 months. Made Data Match reporting permanent Made the MSP Disability provisions permanent.
42 CFR. 411 et seq.	MSP regulations
§1860D-2(a)(4) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003	Extends MSP laws to prescription drug coverage vis-à-vis Medicare Part D
42 CFR 423.462	MSP regulation under MMA

Data Match is done on a continuing annual basis; accordingly, CMS is seeking continued approval of its basic authority to collect this information under the Paperwork Reduction Act of 1995.

Need

This information collection and reporting activity is mandated by statute (see above). It has been estimated that the Data Match reporting has saved the Medicare program over $11 billion since its implementation; without the information collected through Data Match, the Medicare program expenditures will increase by $1 billion annually.

2) Information Users

The information users are: CMS, CMS contractors including intermediaries, carriers, Part A and B Medicare Administrative Contractors (MACs) and Part D plans; GHPs and related entities (insurers, third party payers, sponsoring or contributing employers and other entities responsible for GHPs); claims processors; hospitals, physicians and other providers; and suppliers.

3) Improved Information Technology

There are no barriers or obstacles that prohibit the use of improved technology for information collection activity. Employers continue to use the Secure Web Portal to complete the IRS/SSA/CMS Data Match questionnaires. There are two options for electronic submission using the Secure Web Portal: 1) Direct Entry, which allows employers to complete all IRS/SSA/CMS Data Match questionnaires directly online via the IRS/SSA/CMS Secure Web site without the need to upload or download files; or 2) the Electronic Media Questionnaire (EMQ) program, which is designed to assist those employers with the largest worker population of Medicare beneficiaries, i.e., 500 or more, and covered spouses that employers can upload easily to the secure website. No paper data match questionnaires are printed nor mailed to employers. All questionnaires are completed securely on line.

4) Duplication and Similar Information

The CMS studies have shown a high rate of change of coverage status for beneficiaries under the MSP provisions. CMS cannot rely solely on one method of information collection.

The Data Match project and information collection activity provides a "check and balance" against the Medicare program, relying solely on a single information collection system. It gives CMS the opportunity to pursue collection of identified mistaken payments (within legal constraints) and to update incorrect status indicators to prevent further incorrect suspensions or mistaken payment or denial.

5) Small Business

These requirements can be easily met by small businesses. Congress has limited the "working aged" MSP provisions to employers with at least 20 employees and the "disability" MSP provisions to those with at least 100 employees. There is no reporting requirement for employers with fewer than 20 employees. For purposes of the match, the statute defines a qualified employer as one that has furnished written statements under § 6051 of the Internal Revenue Code with respect to at least 20 individuals for wages paid in that year.

6) Less Frequent Collections

This information must be collected annually in order to identify current MSP situations and recover mistaken primary payments within the statutorily proscribed time limits (3 years from date of service).

7) Special Circumstances

This request conforms to the guidelines in 5 CFR 1320.6.

8) Federal Register Notice/Outside Consultation

The 60-day Federal Register notice published on May 24, 2013.

9) Payment/Gift to Respondent

There are no provisions to provide any payment/gift.

10) Confidentiality

There is no confidentiality concern associated with these requirements. The CMS complies with the applicable confidentiality requirements in § 6312(b) of the Internal Revenue Code.

11) Sensitive Questions

There are no sensitive questions associated with these requirements.

12) Estimates of Burden Hours

The average amount of time to complete a Data Match is stated below and covers data match XIV and XV. Since it only takes an estimated 5.82 hours for each employer to complete a data match questionnaire, the below estimates were identified by taking the total number of respondents times the 5.82 burden hour. There were 163,076 respondents for Data Match XIV and 116,952 respondents for data match XV, so far. (NOTE: Data Match XV respondents are still being received at the time this PRA package is being completed.) The 2006/2007 tax years were combined for Data Match XIV, and tax years 2008/2009 were combined for Data Match XV. The burden hours for Data Match employer reporting activities for previous years are:

2006/2007 Data Match XIV	949,102
2008/2009 Data Match XV	680,661

The average burden for completing this report includes time taken to: 1) review the instructions; 2) search for and compile the needed data; and 3) complete the online questionnaire. The estimates are a proxy based upon IRS projections of the amount of time employers of like size need to complete tax return information.

The burden for completing Data Match reports is primarily dependent upon the number of individuals for whom an employer is requested to supply information. Other influencing factors may be:

- the accessibility and format of personnel and health plan(s) records;
- the number of group health plans offered by an organization;
- the frequency of changes between plans or in coverage elections; and
- the format the employer uses in responding to the collection activity.

This burden can be attributed to employer familiarity with the report, data required on fewer workers and for more current periods of time, enhancements to the reporting system, and clarifications made to the instructional booklet that addressed many of employers' concerns with Data Match.

13) Capital Costs

Respondents will incur no capital costs associated with the IRS/SSA/CMS Data Match. The only cost associated with this project is the labor cost of completing the questionnaire. At the burden hours above and at $10/hour, the wage estimates are below:

Data Match XIV	$9,491,020
Data Matches XV	$6,806,610

14) Cost to Federal Government

Costs incurred by the COBC for Data Match XIV and XV were roughly $7 million. Break down of costs is as follows:

FY 09	$	3,009,517
FY 10	$	2,917,139
FY 11	$	1,083,950
FY 12	$	678,253
DM Costs FY 09-12	$	7,010,606

15) Program Changes

There are no program changes during this period.

16) Publication and Tabulation

There are no plans to publish or tabulate the information collected.

17) Expiration Date

CMS would like to display the expiration date.

18) Certification Statement

There are no exceptions to the certification statement.

C. <u>Collections of Information Employing Statistical Methods</u>

There were no statistical methods employed.