

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Part 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, Public Law 111-148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010 and amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 on March 30, 2010. As part of the Act, Congress added section 2713 to the Public Health Service (PHS) Act. The Departments of Health and Human Services, Labor, and Treasury (the Departments) published interim final rules (2010 interim final rules) on July 19, 2010 to require non-grandfathered group health insurance coverage to provide benefits for certain preventive services without cost sharing.

On August 1, 2011, Health Resources and Services Administration (HRSA), one of the entities providing lists of covered preventive services, adopted and released guidelines providing for the coverage of contraceptive services. On August 3, 2011, the Departments amended the 2010 interim final rules (2011 amended interim final rules) to provide HRSA with the authority to exempt group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) from the requirement to cover contraceptive services provided in the guidelines and to specify what a religious employer is for the exemption. HRSA exercised its authority in its guidelines to exempt religious employers from the requirement to cover contraceptive services.

On February 10, 2012, the Departments issued final rules that adopted the definition of religious employer in the 2011 amended interim final rules for purposes of the exemption to cover contraceptive services. The Departments also issued guidance establishing a one year enforcement safe harbor for group health plans established or maintained by certain nonprofit organizations that have religious objections to contraceptive coverage (and any group health insurance provided in connection with such plans). The safe harbor is in effect until the first plan year that begins on or after August 1, 2013.

On February 6, 2013 the Departments published proposed rules that would establish accommodations for contraceptive coverage for health coverage established or maintained by eligible organizations with religious objections to contraceptive services. The proposed rules would require each eligible organization to self-certify that it meets the definition of an eligible organization. An eligible organization can utilize a model form provided on the Internet to prepare the self-certification. The eligible organization would provide its third party administrator with a copy of its self-certification.

Coverage of Certain Preventive Services Under the Affordable Care Act
OMB Control Number 1210-0150
June 2013

The Departments are now finalizing the February 6, 2013 proposed regulations. The final rules, like the proposal, require eligible organizations to self-certify that they meet the eligible employer definition. In addition, the final regulations include a notice of availability of separate payments for contraceptive services that require a third party administrator arranging or providing payments for contraceptive services at no cost to participants and beneficiaries of eligible organizations to provide a written notice to such plan participants and beneficiaries (or such student enrollees and covered dependents) informing them of the availability of such payments. The notice must be provided contemporaneous with (to the extent possible) but separate from plan enrollment (or re-enrollment) materials, and must specify that contraceptive coverage will not be provided by the eligible organization but that the issuer or third party administrator will separately arrange or provide payments for contraceptive services, and must provide contact information for the issuer or third party administrator for questions and complaints. To satisfy the notice requirement, issuers and third party administrators may use the model language set forth in the final regulations or substantially similar language.

The self-certification and notice requirements are Information Collection Requests that are subject to the Paperwork Reduction Act.

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 self-certification and notice requirement are third-party reporting disclosures. They will be used for eligible organizations to determine how individual contraceptive coverage will be provided. The self-certification also will trigger a notice requirement for third party administrators to notify participants and beneficiaries regarding coverage for contraceptive services. Employers seeking the exception must maintain the self-certification in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be maintained for six years.

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 final regulations do not limit the ability of affected plans to furnish information required by the regulation to issuers or third party administrators via electronic media.

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.*

Coverage of Certain Preventive Services Under the Affordable Care Act
OMB Control Number 1210-0150
June 2013

The final information collection does not require duplicative information.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

The eligible employer only has to self-certify one time. The plan maintains the self-certification in its own records and is not required to submit it to the government. The plan only has to send this self-certification to its third-party administrator, and can do so electronically to further reduce burden. The participant notification is sent annually; the final regulations contain model language that can be used to satisfy the notice requirement to minimize burden.

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 self-certification does not occur, a third-party administrator cannot verify that an organization has qualified for an accommodation while avoiding any inquiry into the organization's character, mission, or practices. Also, without the notice requirement, participants and beneficiaries would not know their plans' benefits for contraceptive services.

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*

Coverage of Certain Preventive Services Under the Affordable Care Act
OMB Control Number 1210-0150
June 2013

- *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 record keeping, 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 notice of proposed rulemaking was published on February 6, 2013 (78 FR 8833) and provided the public with a 60-day comment period. In the proposal, the Department asked the public to comment on the information collections contained in the NPRM. The Department received one comment that the cost of preparing and sending notices may be greater than the Department estimated, but did provide an estimate. The Department believes that using the model language contained in the rule to satisfy the notice requirement will help minimize costs and did not revise its estimate. No other comments on the information collection requirements were received.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

Not applicable.

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.*

Coverage of Certain Preventive Services Under the Affordable Care Act
OMB Control Number 1210-0150
June 2013

No additional justifications beyond those included in Item 1. An employer seeking to take advantage of the accommodation would need to self-certify that on account of religious objections, the organization opposes providing coverage for some or all of any contraceptive services that would otherwise be required to be covered; the organization is organized and operates as a nonprofit entity; and the organization holds itself out as a religious organization. The Department of Labor believes eligible organizations, themselves, would normally make such representations public under other circumstances; however, Form EBSA-700 makes clear to third-party administrators that the information is not to be disclosed unless authorized by law and that information may be privileged and confidential. The regulations also require the self-certification to be maintained in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be kept for six years.

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 13.*

The Departments of Health and Human Services, Labor, and Treasury are each submitting separate information collection requests in association with this joint rulemaking. Each agency is claiming a unique burden, in order not to be duplicative.

Each organization seeking accommodation under the final rules is required to self-certify that it meets the definition of an eligible organization. The self-certification must be executed by an authorized representative of the organization. The self-certification is not submitted to the Department. The form that is used by eligible organizations for their self-certification is EBSA Form 700. The eligible organization must maintain the self-certification in its records for each plan year to which the accommodation is to apply and provide a copy of its self-certification to a third party administrator.

The Department does not have an estimate for how many organizations would seek an accommodation. The Department sought comment on the likely number of organizations

Coverage of Certain Preventive Services Under the Affordable Care Act
OMB Control Number 1210-0150
June 2013

seeking an accommodation and the number of participants and beneficiaries in the plans of such organizations at the proposed rule stage but received no comments. Therefore, the Department assumes that clerical staff for each eligible organization would gather and enter the necessary information and send the self-certification electronically to the issuer or third party administrator, a manager and legal counsel would review it, and a senior executive would execute it. The Department estimates that an organization would need approximately 50 minutes (30 minutes of clerical labor at a cost of \$30.64 per hour, 10 minutes for a manager at a cost of \$55.22 per hour, 5 minutes for legal counsel at a cost of \$83.10 per hour, and 5 minutes for a senior executive at a cost of \$112.43 per hour) to execute, send, and file the self-certification. This averages out to a rate of \$48.98. Therefore, the total annual burden for preparing and providing the information in the self-certification will take 50 minutes for each eligible organization with an equivalent cost burden of \$41.

As discussed in Item 1 above, the final regulations direct a third party administrator arranging or providing payments for contraceptive services at no cost to participants and beneficiaries in self-insured plans of eligible organizations to provide a written notice to such plan participants and beneficiaries informing them of the availability of such payments. The notice must be provided contemporaneously with (to the extent possible) but separate from plan enrollment (or re-enrollment) materials, and must specify that contraceptive coverage will not be provided by the eligible organization but that the third party administrator will separately arrange or provide payments for contraceptive services, and it must provide contact information for the issuer or third party administrator for questions and complaints. To satisfy the notice requirement, third party administrators may use the model language set forth in the final regulations or substantially similar language. These activities do not impose start-up or capital costs, but a respondent third party administrator may incur some operational cost because of the Department of Labor rule.

The Department does not know how many third party administrators provide services to self-insured plans of eligible organizations and did not receive any information for the public regarding this issue at the proposed rule stage. This notice would count as a separate response to the information collection for PRA purposes. The Department estimates that each third party administrator would need approximately one hour of clerical labor (at \$31.64 per hour) and 15 minutes of management review (at \$55.22 per hour) to prepare the notices at an equivalent cost of approximately \$44.

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.)*

Coverage of Certain Preventive Services Under the Affordable Care Act
OMB Control Number 1210-0150
June 2013

The Department estimates that each certification and third-party administrator notice will require \$0.46 in postage and \$0.05 in materials cost (paper and ink) and the total postage and materials cost for each notice sent via mail will be \$0.51, for a combined mailing burden of \$1.02 per accommodation request.

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.*

None

15. *Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.*

New information collection requirements.

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.*

Not applicable.

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.*

Not applicable.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

Not applicable; no exceptions to the certification statement.\

Part B. Statistical Methods.

This information collection does not employ statistical methods.