

SUPPORTING STATEMENT
(TD 9166)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The IRS published final regulations relating to the portability provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191 in the Federal Register on December 30, 2004 (69 FR 78720). Substantially similar provisions were added by HIPAA to the Employee Retirement Income Security Act of 1974 (administered by the Employee Benefits Security Administration in the U.S. Department of Labor) and the Public Health Service Act (administered by the Centers for Medicare & Medicaid Services in the U.S. Department of Health and Human Services). The regulations contained Information Collection Requests (ICRs) which were approved through January 31, 2014 under OMB Control Number 1545-1537 and this Supporting Statement is being submitted to renew the ICR. The final regulations interpreted statutory requirements imposed on group health plans to certify periods of coverage when participants and beneficiaries lose their coverage under the plan and in other situations. The final regulations required plans to provide notices to employees when they declined coverage under the plan about their rights to later enrollment. For plans that imposed preexisting condition exclusions, the regulations also required the plan to notify new participants about the exclusion and their right to present certificates and other evidence of prior creditable coverage to reduce the period. If the participant presented a certificate or other evidence of prior creditable coverage, the final regulations also required these plans to notify the participant of any remaining period of the exclusion that has not been offset. These notice requirements are imposed on plans to ensure that participants have enough information to accomplish the objectives established by the statute of having any period of preexisting condition exclusion reduced by prior creditable coverage (if the prior creditable coverage otherwise meets the statutory requirements). While preexisting conditions were to be excluded as a condition for health coverage as of 1/1/2014, the TD does not supersede State laws with stricter requirements.

2. USE OF DATA

The data in the certificates are used by participants as evidence to reduce the period of preexisting condition exclusions in new plans. The notices inform participants of their rights and responsibilities under the statute, and assist them in making decisions about the consumption of medical care.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication wherever possible. The final regulations also provide relief from potentially duplicative requirements of the statute to provide more than one certificate for a single period of coverage.

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 1320.6

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

The Treasury Department, along with the Departments of Labor and of Health and Human Services, published on December 30, 1996 a notice requesting comments on the interpretation of HIPAA, including the certification requirements. Comments received in response to the notice were considered and taken into account in drafting the proposed (REG-253578-96 [62 FR 16977]) and temporary regulations (TD 8716 [62 FR 16894, 17004]) published in the Federal Register on April 8, 1997. Final regulations (TD 9166), were published in the Federal Register on December 30, 2004 (69 FR 78720).

We received no comments during the comment period in response to the **Federal Register** notice dated October 24, 2013 (78 FR 63567).

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103. The collections of information are third-party reporting requirements. The

recipients of the information -- participants under the plan -- can keep the information confidential to the extent they wish to do so.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burdens described below are imposed on group health plans under both the HIPAA amendments to the Employee Retirement Income Security Act of 1974 (ERISA), which are administered by the Employee Benefits security Administration (EBSA), and the HIPAA amendments to the Code, administered by the IRS. The collections of information under the amendments to ERISA are almost identical to the collections of information under the HIPAA amendments to the Code. Because EBSA and the IRS jointly administer these requirements as they relate to group health plans, the agencies have divided the burden equally and the numbers below (and in paragraph 13) reflect 50% of the total estimated burdens imposed on group health plans by the statute and implementing regulations.

Section 54.9801-3(c) requires group health plans that impose a preexisting condition exclusion requirement to notify participants about the exclusion and about their right to present certificates and other evidence to reduce the period of the exclusion. This burden consists mainly in preparing the initial notice describing the plan's preexisting condition exclusion period and in describing how prior coverage of the participant can reduce the exclusion period. Once prepared, the notice will be a standardized form that can be photocopied in volume and handed to each participant along with other documents provided at the commencement of participation under the plan (such as the summary plan description and the initial notification of rights under COBRA). There is no information required on the notice that is particular to the individual (though some information will be particular to the plan). It is estimated that 2.7 million of these notices are issued each year. The cost burden for the notices is estimated to be \$272,000 per year. It is further estimated that the total time burden for these plans will be 2,289 hours per year.

Section 54.9801-3(e) requires any plan seeking to impose a preexisting condition exclusion to notify an affected individual in writing of its determination regarding the exclusion period that applies to that individual. It is estimated that 540,000 of these notices are issued each year, that the annual cost burden of these notices is \$470,000.

TD 9491 amends paragraph (a)(1)(i) of section 54.9801-3 relating to the definition of *preexisting conditions*. This amendment has no effect on the estimated number of

notices projected to be issued on an annual basis, mentioned above.

Section 9801(e) of the Code and §54.9801-5 impose certification requirements on group health plans. Certificates must be issued when participants become eligible to elect COBRA continuation coverage, when they otherwise lose coverage under the plan, and upon request if the request is made within 24 months after the participant last had coverage under the plan. It is estimated that 21 million certificates are issued each year at a total cost of \$18.5 million. The total time burden for the preparation of certificates is estimated to be 260,000 hours per year.

Section 54.9801-6(c) requires plans to notify individuals upon initial eligibility for enrollment of special enrollment periods that may arise later. The regulations provide model language that will satisfy this notice requirement. The model language could either be incorporated into other plan notices given to individuals when they become eligible to participate in the plan, or could be printed alone in a separate document. In either case, the notice would be the same for all individuals and hence could be photocopied in volume and distributed with other plan information documents. It is estimated that 9.2 million of these issues are issued each year. The annual cost burden for this requirement is estimated to be \$76,793. No time burden is estimated because this notice is included with other enrollment materials that are already distributed.

13. ESTIMATED ANNUALIZED COSTS TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated October 24, 2013, 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

\$19,318,793

15. REASONS FOR CHANGE IN BURDEN

There is no change to 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 IRS 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.