# SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995 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.*

On October 12, 2017, President Trump issued Executive Order 13813[1], "Promoting Healthcare Choice and Competition Across the United States." The executive order states, in part, that the "Administration will prioritize three areas for improvement in the near term: association health plans (AHPs), short-term, limited-duration insurance (STLDI), and health reimbursement arrangements (HRAs)." With regard to HRAs, the Executive Order directs the Secretaries of the Treasury, Labor, and HHS to "consider proposing regulations or revising guidance, to the extent permitted by law and supported by sound policy, to increase usability of HRAs, to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage." The executive order further provides that expanding "the flexibility and use of HRAs would provide many Americans, including employees who work at small businesses, with more options for financing their healthcare." These proposed regulations have been developed in response to this executive order.[2]

The proposed rules would remove the current prohibition on integrating HRAs with individual health insurance coverage, if certain conditions are met. The proposed rules also set forth conditions under which certain HRAs would be recognized as limited excepted benefits. In addition, the Treasury Department and the IRS are proposing rules regarding premium tax credit (PTC) eligibility for individuals offered coverage under an HRA integrated with individual health insurance coverage, and DOL is proposing a safe harbor to provide HRA plan sponsors with assurance that the individual health insurance coverage that is integrated with an HRA would not become part of an ERISA plan if the conditions of the safe harbor are met. Finally, HHS is proposing rules that would provide a special enrollment period in the individual market for individuals who gain access to an HRA that is integrated with individual health insurance coverage or who are provided a qualified small employer health reimbursement arrangement (QSEHRA).

As discussed in more detail in Item 2., below, the proposed ICRs are needed to

1 82 FR 48385 (Oct. 17, 2017).

2 In response to Executive Order 13813, on June 21, 2018, DOL published the Definition of Employer under Section 3(5) of ERISA – Association Health Plans final rule and on August 3, 2018, DOL, HHS and the Treasury Department published the Short-Term, Limited-Duration Insurance final rule. See the Association Health Plan final rule at 83 FR 28912 and the Short-Term, Limited-Duration Insurance final rule at 83 FR 38212.

notify the HRA that participants are enrolled in individual health insurance coverage, to help individuals understand the impact of enrolling in an HRA on their eligibility for the PTC, and that coverage is not subject to the rules and consumer protections of the Employee Retirement Income Security Act (ERISA).

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 following three Information Collections are contained in the proposed rules: (1) Verification of Enrollment in Individual Coverage; (2) HRA Notice to Participants; (3) Notice to Participants that Individual Policy is not Subject toTtitle I of ERISA. These are described belwo.

1) Verification of Enrollment in Individual Coverage

The HRA must implement and comply with reasonable procedures to verify that participants and beneficiaries are enrolled in individual insurance coverage for that year. This requirement can be satisfied by providing a document from a third party, like an insurance issuer, verifying coverage. An alternative procedure requires participants to provide an attestation of coverage, including the date coverage begins and the provider of the coverage.

2) HRA Notice to Participants

Because HRAs are different from traditional employer-provided health coverage in many respects, the Departments are concerned that individuals eligible for HRAs integrated with individual health insurance coverage may not recognize that the offer and/or acceptance of an HRA will have consequences for PTC eligibility. Therefore, in order to ensure that participants who are eligible to participate in an HRA integrated with individual health insurance coverage understand the potential effect that the offer of and enrollment in the HRA might have on their ability to claim the PTC, these proposed regulations include a requirement that an HRA provide written notice to eligible participants. The HRA sponsor would be required to provide a written notice to each participant at least 90 days before the beginning of each plan year. For participants who are not yet eligible to participate at the beginning of the plan year (or who are not eligible when the notice is provided at least 90 days prior to the beginning of the plan year), the HRA must provide the notice no later than the date on which the participant is first eligible to participate in the HRA.

The written notice must include certain relevant information, including among other things, a description of the terms of the HRA, including the contribution amount used in the affordability determination under the Code section 36B proposed regulations[3]; a statement of the right of the participant to opt-out of and waive future reimbursement under the HRA; a description of the PTC eligibility consequences for a participant who opts out of the HRA; and a description of the PTC eligibility consequences for a participant who accepts the HRA.

The written notice must include the information required by the proposed regulations, and may include other information, as long as the additional information does not conflict with the required information. The written notice would not need to include information specific to a participant. For example, it would be sufficient under the proposed rule for the notice to include a description of the terms of the HRA that would allow a participant to determine the amounts newly made available under the HRA, which are needed for the participant to determine affordability under the proposed rules at 26 CFR 1.36B-2(c)(5). The proposed regulations would not require the HRA to include in the notice a determination of whether the HRA is considered affordable for the participant.

3) Notice to Participants that Individual Policy is not subject to title I of ERISA.

If certain conditions are met individual health insurance coverage is not considered an "employee welfare benefit plan" with the consumer protections provided under ERISA. The proposed rule would require HRAs plan sponsrs to notify participant of this fact. For an HRA sponsor, this notice requirement is meet if annually the notice requirements in section 2590.702-2(c)(6) are met. These notice requirements are part of the HRA notice to Participants. For QSEHRAs this notice requirement is met if the plan sponsor annually, includes language provided in the rule in the Summary Plan Description.

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 regulation does not restrict HRAs from using electronic technology to provide either disclosure. The Department of Labor's regulations under 29 C.F.R. § 2520.104b-1(b) provide that, "where certain material, including reports, statements, and documents, is

3 The Departments note that in order to comply with the notice requirement, the HRA must determine the amounts that will be newly made available for the plan year prior the plan year. A similar requirement applies under the proposed premium tax credit regulations.

required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries." Section 29 CFR 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

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*.

The information collection does not require duplicative information.

5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

Section 29 CFR 2520.104b-1(c) allows for electronic delivery of notices as long as the requirements are met. Also, while specific content is required in the notices, the notices does not require participant specific information.

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 this information collection was conducted less frequently affected individuals would not have the information they need to make an annual selection of a health plan.

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*
- *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 provides the public with sixty days to comment on the information collections contained therein.

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.*

Not applicable.

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.*

- *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 hour burden associated with the three information collections is discussed below.

1) Verification of Enrollment in Individual Coverage

The HRA must implement and comply with reasonable procedures to verify that participants and beneficiaries are enrolled in individual insurance coverage for that year. This requirement can be satisfied by providing a document from a third party, like an insurance issuer, verifying coverage. An alternative procedure requires participants to provide an attestation of coverage including the date coverage begins and the provider of the coverage.

Documentation, or proof of expenditure of funds, is nearly universal when seeking reimbursement from a HRA. The HRA can require proof of coverage or attestations of coverage when participants seek reimbursement for premiums or other medical expenditures. The additional burden is de minimis, because the attestation can be part of the information already required when seeking reimbursement.

2) HRA Notice to Participants

These proposed regulation requires an HRA plan sponsor to provide written notice to eligible participants including, among other things, the following information: (1) a description of the terms of the HRA, including the contribution amount used in the affordability determination under the Code section 36B proposed regulations; (2) a statement of the right of the participant to opt-out of and waive future reimbursement under the HRA; (3) a description of the Premium Tax Credit (PTC) eligibility consequences for a participant who opts out of the HRA; and (4) a description of the PTC eligibility consequences for a participant who accepts the HRA. The written notice may include other information, as long as the additional information does not conflict with the required information. The written notice does not need to include information specific to a participant.

The HRA plan sponsor must provide the written notice to each participant at least 90 days before the beginning of each plan year. For participants who are not yet eligible to participate at the beginning of the plan year (or who are not eligible when the notice is provided at least 90 days prior to the beginning of the plan year), the HRA plan sponsor must provide the notice no later than the date on which the participant is first eligible to participate in the HRA.

The Departments estimate that a compensation and benefits manager would require 2 hours (at $125 per hour) and a lawyer would require need 1 hour (at $136.44 per hour) to prepare the notice for each HRA plan sponsor. Thus, the total hour burden for each HRA plan sponsor would be 3 hours with an equivalent cost of approximately $386. The Departments estimate that each notice would be two pages, with total materials and printing cost of $0.10 per notice ($0.05 per page).
The Departments estimate that 78,797 private employers would switch from traditional health plans to HRAs[4] or newly offer HRAs in 2020[5] as a result of the proposal in the first year. Therefore, the Departments estimate for the total hour burden for these HRA sponsors to prepare the notices would be 236,390 hours with an equivalent cost of $30,450,216.

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4 U.S. Department of the Treasury, Office of Tax Analysis used a simulation model to obtain these estimates. For 2020 the model estimated that 80,000 employers would newly offer HRAs and one million individuals would enroll in those HRAs. Based on DOL estimates about 98 percent of these will be in the private market, and the rest will be though public employers like state and local governments. There are on average one dependent for every policy holder. "Health Insurance Coverage Bulletin", Abstract of the Auxiliary Data for the March 2016 Annual Social and Economic Supplement of the Current Population Survey, July 25, 2017.
https://www.dol.gov/sites/default/files/ebsa/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2016.pdf

5 Comparable numbers for 2021 are 118,195 private employers would create new HRAs offering coverage to 1,441,262 eligible participants, and for 2022 196,992 private employers would create new HRAs offering coverage to 2,882,523 eligible participants.

TABLE 1.-- *Burden to Prepare HRA Notice for the First Time- Private Sector Employers*

| Year | Number of Employers Newly Offering HRAs | Legal Cost Per Hour | Number of Hours for Legal | Benefit Manager Cost per Hour | Number of Hours for Benefit Manager | Total Hour Burden | Total Equivalent Cost |
|---|---|---|---|---|---|---|---|
| (a) | (b) | (c) | (d)=1*(b) | (e) | (f)=2*(b) | (g)=(d)+(f) | (c)*(d)+ (e)*(f) |
| 2020 | 78,797 | $136.44 | 78,797 | $125.00 | 157,593 | 236,390 | $30,450,216 |
| 2021 | 118,195 | $136.44 | 118,195 | $125.00 | 236,390 | 354,585 | $45,675,324 |
| 2022 | 196,992 | $136.44 | 196,992 | $125.00 | 393,984 | 590,976 | $76,125,539 |

3) Notice to Participants that Individual Policy is not subject to title I of ERISA

If certain conditions are met individual health insurance coverage is not considered an "employee welfare benefit plan" with consumer protections provided under ERISA. HRA plan sponsors are required to notify participant of this fact. For an HRA this notice requirement is meet if annually the notice requirements in section 2590.702-2(c)(6) are met, which are part of the HRA notice to Participants. Therefore, this notice requirement imposes no additional burden. For QSEHRAs this notice requirement is met if the plan sponsor annually includes language provided in the rule is include in the Summary Plan Description. The Department estimates that this burden is de minimis, because the required text is provided by the Department and the required information can be included with other notices

**The three year total hour burden for these ICRs is 393,984 hours with an equivalent cost of $50,750,360. As the DOL and Treasury share the burden, DOL's share is 196,991 hours with an equivalent cost of $76,125,539.**

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.)*

The Departments estimates that there would be 576,505 eligible participants[6] at private

6 Number of eligible participants is estimated based on the assumption that 75 percent of eligible participants would enroll in their employers' plans. See Section 3 of the Kaiser "2017 Employer Health Benefits Survey".

employers in 2020 that would need to receive the HRA notice. The Departments assume that approximately 54 percent of notices would be provided electronically and approximately 46 percent will be provided in print along with other benefits information. Therefore, a total of 265,192 notices will be printed at a cost of $26,519 in 2020. Table 2 provides estimates for years 2021 and 2022.

TABLE 2.--*Burden to Provide Notice to Participants*

| Year | Total # of Notices | # of Notices Sent by Mail | Cost Per Notice | Total Cost Burden |
|---|---|---|---|---|
| (a) | (b) | (c) | (d) | (e)=(c)*(d) |
| 2020 | 576,505 | 265,192 | $0.10 | $26,519 |
| 2021 | 1,441,262 | 662,980 | $0.10 | $66,298 |
| 2022 | 2,882,523 | 1,325,961 | $0.10 | $132,596 |

**The three year total cost burden for these ICRs is $75,138. As the DOL and Treasury share the burden, DOL's share is $37,569.**

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. No information is provided to the DOL.

15. *Explain the reasons for any program changes or adjustments reported in Items 13 or 14.*

This is a new ICR. The proposed rules would remove the current prohibition on integrating HRAs with individual health insurance coverage, if certain conditions, including notice requirements, are met.

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*

https://www.kff.org/health-costs/report/2017-employer-health-benefits-survey/.

*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."*

Not applicable; no exceptions to the certification statement.

Part B. Statistical Methods.

This information collection does not employ statistical methods.