SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995 SUBMISSIONS

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.*

Section 734 of the Employee Retirement Income Security Act (ERISA), which was added by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. 104-191, Aug. 21, 1996) (HIPAA), gives the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, (jointly, the Departments) the authority to promulgate necessary or appropriate regulations to carry out the provisions of Part 7 of ERISA (the HIPAA provisions). Among other things, the HIPAA provisions limit the extent to which group health plans and their health insurance issuers can restrict health coverage based on pre-existing conditions for individuals who previously had health coverage. Section 701(f) of ERISA also provides special enrollment rights to individuals who have previously declined health coverage offered to them to enroll in health coverage upon the occurrence of specified events, including when they lose other coverage, when employer contributions to the cost of other coverage cease, and when they marry, have a child or adopt a child ("special enrollment events"). Plans and issuers are required to provide for 30-day special enrollment periods following any of these events during which individuals who are eligible but not enrolled have a right to enroll without being denied enrollment or having to wait for a late enrollment opportunity (often called "open enrollment").

The Departments issued Interim Final Rules for Health Insurance Portability for Group Health Plans on April 8, 1997 (67 FR 16894), and Final Regulations for Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers under HIPAA Titles I & IV on December 30, 2004 (69 FR 78720). The implementing regulations require plans and their issuers to provide all employees a notice describing the special enrollment rights at or before the time the employees are initially offered the opportunity to enroll in the plan, whether or not they enroll. The Departments believe that the special enrollment notice is necessary to ensure that employees understand their enrollment options and will be able to exercise their rights during any 30-day enrollment period following a special enrollment event. The final regulations provide detailed sample language describing special enrollment rights for use in the notice. The sample language is expected to reduce costs for group health plans since it eliminates the need for plans to develop their own language.

Under the HIPAA provisions, a group health plan may require, as a pre-condition to having a special enrollment right to enroll in group health coverage after losing eligibility

under other coverage, that an employee or beneficiary who declines coverage provide the plan a written statement declaring whether he or she is declining coverage because of having other coverage. Failure to provide such a written statement can then be treated as eliminating the individual's right to special enrollment upon losing eligibility for such other coverage. The regulations further establish that the right to special enroll can be denied in such circumstances only if employees are given notice of the requirement for a written statement and the consequences of failing to provide the written statement at the time an employee declines enrollment. As part of the special enrollment notice, it must be given at or before the time the employee is initially offered the opportunity to enroll.

This information collection request (ICR) covers the requirement in the implementing regulations under section 701(f) for a special enrollment notice.

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.*

This information collection implements the disclosure obligation of a plan to inform all employees, at or before the time they are initially offered the opportunity to enroll in the plan, of the plan's special enrollment rules. The regulations require plans and their issuers to provide all employees with a notice describing their special enrollment rights, whether or not they enroll. This provision is necessary to make sure that employees are informed of their special enrollment rights before they take any action that may affect those rights, so that they will be aware of and able to exercise their rights within any 30-day enrollment period following a special enrollment event. Absent the notice requirement, there is a risk that employees will not know in advance that they have special enrollment rights and will not be able to take timely action to enroll in group health coverage following a special enrollment event.

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.*

29 C.F.R. § 2520.104b-1(b) of ERISA states: "where certain material, including reports, statements, and documents, is 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 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), including the special enrollment notice.

The Department understands that a substantial proportion of employee benefit plans, including group health plans subject to this information collection requirement, have adopted electronic means of communication with participants under the Department's regulation. However, this burden analysis does not reflect any burden reduction for electronic communications because, as explained further in the response to Items 12 and 13 below, the special enrollment notice will be including in other already required disclosures (e.g., enrollment materials and the plan's summary plan description) and is not anticipated to cause any significant increase in the paperwork burden. The use of electronic communications media in connection with providing those other materials has already been taken into account by the Department in ICRs that cover those other required disclosures.

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.*

Before enactment of the HIPAA provisions, despite incremental state reforms in the laws affecting the group health insurance market, group health plans and health insurance issuers had not been required to notify eligible individuals of enrollment rights. This information collection therefore does not create any duplication of effort, and no similar information is already available elsewhere.

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

For the purpose of determining burden, "small entities" are defined by the Department to include employee benefit plans covering fewer than 100 participants. Although some large employers may have small plans, most small plans are maintained by small businesses. Accordingly, assessing the impact on small plans is an appropriate substitute for evaluating the effects on small entities.

The regulations do not include any special rules for small plans because the Department believes that all eligible individuals have the same need for the special enrollment notice, regardless of the size of the plan; however, the Department has provided model language to satisfy the information collection, thereby reducing the burden on small plans as well as large plans.

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.*

The Department has determined that requiring notice of special enrollment rights to be provided in advance of enrollment decisions is necessary to ensure that the affected individuals understand their rights and can exercise them. Any "less frequent"

information collection would be ineffective in preventing individuals from taking actions without awareness of their potential consequences.

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.

   There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5.

8. *If applicable, provide a copy and identify the data 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 recordkeeping, 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 Department's notice soliciting public comment and providing 60 days for that purpose as required by 5 CFR 1320.8 (d) was published in the Federal Register on October 23, 2018 (83 FR 53500). No comments were received.

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

No payments or gifts are provided to respondents.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

No assurance of confidentiality has been provided.

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.*

There are no questions of a sensitive nature.

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 Department determined the number of private-sector group health plans affected by this information collection (respondents) from data in the 2017 Medical Expenditure Panel Survey Insurance Component (MEPS-IC), which indicated just over 2.3 million such plans, of which approximately 75,875 were assumed to have 100 or more participants (large plans) and almost 2,254,430 were assumed to have fewer than 100 participants (small plans).

The Department estimated the number of notices (responses) that will be provided annually by reference to data on the number of new employees hired in a year who will be given opportunity to enroll in a private-sector group health plan. According to the Medical Expenditure Panel Survey Household Component (MEPS-HC), in 2016, 8,746,897 individuals were estimated to have started jobs that offered them private employer-sponsored health insurance. Therefore, the Department has assumed that 8,746,897 special enrollment notices will be provided annually.

The Department further estimated that all of the small group health plans and 75 percent of large plans will hire service providers to provide the special enrollment notice. As noted, the number of small plans is estimated at 2,254,430, The total number of plans assumed to use service providers is therefore 2,330,305 (2,254,430 + 75,875). Burden for those plans is described in the response to Item 13, below. The remaining 25 percent of large plans are assumed to prepare and distribute the notice using in-house resources. Therefore, hour burden for this information collection would arise only with respect to the 25 percent of large plans (18,969 out of a total of 2,254,430) that will provide the notice using in-house resources. The Department estimates that those plans, because of their size, will provide a disproportionate number of the special enrollment notices. Because large plans cover 70 percent of participants and 25 percent of large plans are assumed to use in-house resources to provide these notices, it is estimated that these large plans will provide 17.5 percent of the required notices, or approximately 1.5 million notices annually.[1]

Despite the large number of notices required to be provided annually, the Department does not anticipate that this information collection will impose any significant hour burden on respondents.

First, the notice will not impose any significant paperwork burden to create because the Department has provided model language that can be used without change by all plans; in addition, the Department assumes that all plans will merely incorporate the model language into existing disclosure documents, such as the plan's summary plan

1 Of the total 8,746,897 special enrollment notices distributed per year, 17.5% or 1.5 million are assumed distributed through in-house resources, while 82.5% or 7,216,190 are assumed to be distributed by outside service providers (these figures are weighted by the number of participants in the plans distributing notices through in-house resources or service providers.)

description. Because plans typically make annual revisions to their enrollment materials, incorporation of the model language will not cause any additional burden.

Second, the Department does not expect that distribution of the special enrollment notice will create any additional hour burden for respondents, since the disclosure documents into which the notice will be incorporated are distributed to the affected population of individuals for independent reasons, and the burden of that distribution has previously been accounted for by the Department in ICRs covering those disclosures.

The Department concludes that approximately 18,969 plans annually will provide 1,530,707 special enrollment notices, but that those plans will not experience any measurable additional paperwork burden due to the requirement to provide these notices. These plans are estimated to experience a cost burden arising from the information collection that is described in the response to Item 13, below.[2]

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).*

The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operational and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining and disclosing or providing information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which the costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing the cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60 day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

Generally, estimates should not include purchases of equipment or services, or portions thereof, made:(1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associate with the information collection, (3) for reasons other than to

2 The Department has entered 1 burden hour as a placeholder for the de minimis amount of burden attributable to this information collection.

provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

The assumptions regarding estimated annual numbers of respondents (group health plans) and numbers of responses (special enrollment notices) are described in the response to Item 12, above. As explained, the Department has assumed that all small group health plans and 75 percent of large group health plans will purchase services from providers to comply with the information collection requirement. The number of plans that will do so is estimated at 2,311,336 (2,254,430 small plans + 56,906 large plans). The number of notices annually distributed by such plans is estimated at 7.1 million. The remaining large plans (18,969 plans) will distribute special enrollment notices (1,530,707 notices annually) using in-house resources, which is accounted for as an hour burden in Item 12, above.

Preparation costs for the notice are considered negligible, because the regulations provide sample language that can be reproduced identically for all plans and all notices. The Department believes that additional costs for purchase of services to provide these notices will also be negligible. Service providers for group health plans typically offer bundled services that include the creation and distribution of disclosure materials, such as the summary plan description. For the plans that employ service providers, the addition of the special enrollment notice to the already prepared and routinely distributed plan materials will be inconsequential and unlikely to generate additional fees. Therefore, the only additional costs attributed to this information collection are the direct costs borne by plans that comply with the information collection using in-house resources. Those costs are limited to additional reproduction costs, estimated at $.10 per notice.

Based on the estimate of 1,530,707 notices distributed annually, the Department estimates an aggregate annual cost burden arising from the requirement to provide the special enrollment notice of $153,071. For purposes of paperwork burden analysis, the Departments of Labor and the Treasury share the paperwork burden of this requirement equally because the two Departments share enforcement jurisdiction against group health plans and employers under the HIPAA portability provisions (see section 701 of ERISA and section 9801 of the Internal Revenue Code).[3] Therefore, the annual cost burden attributable to the Department of Labor's regulation is one-half of the aggregate, or $76,536

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*

3 The Department of Health and Human Services has only secondary jurisdiction under the HIPAA portability provisions, if a State fails substantially to enforce a provision, over issuers acting as insurers in States that enact the HIPAA requirements as State law.

single table.

There is no reporting to the federal government and, consequently, no cost to the federal government.

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

There have been no program changes to this ICR since the last submission. The Department has updated its estimate of numbers of plans (respondents) based on the most current information available. These updated data inputs increase the number of responses by 146,897 responses compared with the prior submission and increase the cost burden by $78,071 compared with the prior submission.

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.*

The results of this collection of information will not be published.

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.*

There are no forms on which to display the expiration date. The expiration date will be published in the Federal Register following OMB approval.

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

There are no exceptions to the certification statement.