Supporting Statement Part A
Retiree Drug Subsidy (RDS) Application and Instructions
(CMS-10156, OMB 0938-0957)

Background

Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and implementing regulations at 42 CFR part 423 subpart R plan sponsors (e.g., employers, unions) who offer prescription drug coverage to their qualified covered retirees are eligible to receive a 28% subsidy for allowable drug costs. In order to qualify, plan sponsors must submit a complete application to the Centers for Medicare & Medicaid Services (CMS) with a list of retirees for whom it intends to collect the subsidy. Once CMS reviews and analyzes the information on the application and the retiree list, notification will be sent to the plan sponsor about its eligibility to participate in the Retiree Drug Subsidy (RDS) Program.

CMS is requesting approval for this re-instatement with no changes request for collection CMS-10156. The collection has expired due to administration issues and makes no changes to the collections instruments or instructions.

A. Justification

1. Need and Legal Basis

Under §1860D-22 of the Social Security Act (Act), added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and implementing regulations at 42 CFR part 423 subpart R, Plan Sponsors (e.g., employers or unions) who offer prescription drug coverage to their qualified covered retirees are eligible to receive a 28% subsidy for allowable drug costs.

2. Information Users

CMS has contracted with an outside vendor to assist in the administration of the RDS program; this effort is called the RDS Center. Plan Sponsors will apply on-line for the retiree drug subsidy by logging on to the RDS Secure Web Site. 42 CFR §423.844 describes the requirement for qualified retiree prescription drug plans who want to receive the retiree drug subsidy. Once the Plan Sponsor submits the RDS application via the RDS Secure Web Site (and a valid initial retiree list) CMS, through the use of its contractor, will analyze the application to determine whether the Plan Sponsor qualifies for the RDS. To qualify for the subsidy, the Plan Sponsor must show that its coverage is as generous as, or more generous than, the defined standard coverage under the Medicare Part D prescription drug benefit. The information within the application includes sponsor account registration information, plan information, benefit options under the plan, actuary information and actuarial attestation. The RDS center has various checks within each section of the application. Applications can be denied if issues cannot be resolved.

3. Use of Information Technology

The application process for the RDS is a completely electronic process (100%). The basis for the decision for adopting this means of collection was to maximize efficiencies. The only instance when hard copy/paper applications can be submitted is when the RDS Center is experiencing technical difficulties. The Plan Sponsor completes and submits the RDS application (including the Plan Sponsor's Authorized Representative's electronic signature) on-line, via the secure RDS Secure Web Site, which is accessed at https://www.rds.cms.hhs.gov.

The collection is currently available for completion electronically. It requires the signature of the Plan Sponsor's Authorized Representative.

4. Duplication of Efforts

The data collected on the application are not currently being collected through any other mechanism. Therefore, this information collection does not duplicate any other effort and the information cannot be obtained from any other source.

Consideration has been given to the duplication of the submission of the Plan Sponsor retiree list. In an effort to avoid duplication, Plan Sponsors who have an existing Voluntary Data Sharing Agreement (VDSA) can submit their retiree list via the Coordination of Benefits (COB) contractor to CMS. A VDSA authorizes CMS and an employer, or agent on behalf of an employer, to electronically exchange health insurance benefit entitlement information. Plan Sponsors who do not currently have a VDSA with CMS are encouraged to enter into one.

5. Small Businesses

CMS has made efforts to minimize the burden that this collection of information will have on all submitting entities including small businesses. Towards this end, CMS has made the entire application process completely electronic. The Plan Sponsor completes and submits the RDS application (including the Plan Sponsor's Authorized Representative's electronic signature) on-line via the RDS Secure Web Site, which is accessed at https://www.rds.cms.hhs.gov. In addition, CMS encourages Plan Sponsors to utilize existing VDSAs, or enter into new VDSAs for the submission of the Plan Sponsor retiree list. The benefits of receiving the subsidy payments will far exceed the cost associated with applying for the subsidy.

6. Less Frequent Collection

In 42 CFR part 423, subpart R stipulates the required timelines for the submission of the RDS application and retiree list. Presently, an application for the given plan year, including the initial retiree list, must be submitted no later than 90 days prior to the beginning of the plan year.

After the application is submitted, Plan Sponsors must submit updated retiree lists on a monthly basis, to the extent there are any updates.

Deviation from those requirements would result in noncompliance.

7. Special Circumstances

Plan Sponsors approved to receive the RDS payments are required to submit updates to submitted retiree information on a monthly basis.

Plan Sponsors must retain records (other than health, medical, government contract, grant-in-aid, or tax records) for more than three years. Specifically, 42 CFR 423.888(d)(1) through (3) requires that Plan Sponsors maintain the following records for 6 years after the expiration of the plan year in which costs were incurred:

1. Reports and working documents of the actuaries who wrote the attestation submitted in accordance with 42 CFR §423.884(a).
2. All documentation of costs incurred and other relevant information utilized for calculating the amount of the subsidy payment made in accordance with §423.886, including the underlying claims data.
3. Any other records specified by CMS.

Otherwise, there are no special circumstances that would cause an information collection to be conducted which would require Plan Sponsors to:

- Prepare a written response to a collection of information in fewer than 30 days after receipt of it.
- Submit more than an original and two copies of any document.
- Cause an information collection 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.
- Cause an information collection requiring the use of a statistical data classification that has not been reviewed and approved by OMB.
- Include 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.
- Require 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.

8. Federal Register/Outside Consultation

The 60-day Federal Register Notice published in the Federal Register on May 29, 2020 (85 FR 32397). One comment was received and has been addressed within the Response to Comment attachment.

The 30-day Federal Register Notice published in the Federal Register on August 10, 2020 (85 FR 48255).

We have consulted on an ongoing basis with business groups, industry groups, union groups, health benefit administrators, and private actuaries to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, reporting format, and on the data elements to be recorded, disclosed, or reported. In addition, CMS may periodically conduct industry focus groups with the aforementioned groups to continue to improve the operations of the RDS Program.

9. Payments/Gifts to Respondents

Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and implementing regulations at 42 CFR part 423 subpart R plan sponsors (e.g., employers, unions) who offer prescription drug coverage to their qualified covered retirees are eligible to receive a 28% subsidy for allowable drug costs.

10. Confidentiality

We have assured potential applicants to the RDS Program that laws, regulations, and guidance associated with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and the Privacy Act of 1974 (as amended) will apply to any information collected by CMS for purposes of this program.

The regulations governing the RDS Program (42 CFR §423.888(c)) require that officers, employees, and contractors of the U.S. Department of Health & Human Services (DHHS) may use information collected for the RDS Program only for the purposes of, and to the extent necessary, to carry out the requirements of the program. We have assured on an ongoing basis that any proprietary information submitted by applicants will not be disclosed.

With regard to the retiree list, a System of Records Notice (SORN), SORN System No 09-70-0550, was filed and published on October 8, 2019. The authority for the maintenance of this system is given under section 1860D–22 of the Act (Title 42 United States Code (U.S.C.) 1302, 1395w–101 through 1395w–152, and 1395hh). These provisions of the Act are amended by section 101 of the MMA and its implementing regulations, codified at Title 42 Code of Federal Regulations (CFR) Part 423, Subpart R.

11. Sensitive Questions

No questions of a sensitive nature, such as sexual behavior and attitudes, and religious beliefs are asked. The data collected is to determine whether an individual is Medicare-eligible, and not already enrolled in a Medicare Part D plan.

12. Burden Estimates (Hours & Wages)

Wages

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates for all salary estimates (https://www.bls.gov/oes/current/oes_nat.htm). In this regard, the following table presents the mean hourly wage, the cost of fringe benefits (calculated at 100 percent of salary), and the adjusted hourly wage.

Occupation Title	Occupation Code	Mean Hourly Wage ($/hr)	Fringe Benefit ($/hr)	Adjusted Hourly Wage ($/hr)
Computer and Information Systems Managers	11-3021	73.49	73.49	146.98
Software Developers and Programmers	15-1130	50.23	50.23	100.46

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. We believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Burden Estimates

For each entity we estimate an average of 16 hours administrative work to read the instructions and complete and submit the application, 40 hours for systems changes to extract identifying information on qualifying covered retirees, and about 8 hours for preparation of the actuarial attestations. This is a total of approximately 64 hours for each prescription drug plan.

Based on current data, there are approximately **1,803 entities** that applied for the subsidy for plan years ending in 2017. This number includes public, private and union sponsors. The total number of hours for all entities applying for the subsidy is **115,392 hr** (64 x 1803) at a cost of **$6,801.60** [(56 hr x $100.46/hr) + (8 hr x $146.98/hr) per entity. The overall cost of the collection is **$12,263,284.80** (1803 entities x $6,801.60).

Information Collection Instruments/Instruction/Guidance Documents

The RDS program website (https://www.rds.cms.hhs.gov) provides information on the RDS application and instructions (both are attached). For example, the website offers the RDS User guide which explains how to apply for the RDS program, common questions on the application process along with responses are posted, and there are links to laws and regulations.

13. Capital Costs

We have determined that there are no new capital-outlays required to participate in the RDS Program. We have assumed that all businesses will own at least one computer and have access to the internet.

14. Cost to Federal Government

The cost to the Federal Government is estimated to be $10.1 million annually. In addition, there are three CMS full time employees (FTEs) dedicated to the RDS Program with an estimated cost to the Federal Government of $336,720 per year. This number is derived multiplying the average employee hourly salary x the number of FTEs assigned to the Program x 40 hours a week x 52 weeks a year.

Note: $336,720/yr = ($112,240, /yr x 3 FTEs) @ GS-12 step 10 for the Washington-Baltimore-Arlington locality (effective January 2020). See https://www.opm.gov/policy-data-oversight/payleave/salaries-wages/salary-tables/pdf/2020/DCB.pdf

15. Program and Burden Changes

The URL to the program website is https://www.rds.cms.hhs.gov.

The total burden is adjusted from 142,592 hr to 115,392 hr due to a reduction in RDS sponsor enrollment.

The chart below shows the retiree enrollment trends in the RDS program since 2010.

Benefit Year	RDS Enrollment
2010	7,316,951
2011	6,918,581
2012	6,217,640
2013	4,161,090
2014	3,039,813
2015	2,502,325
2016	2,227,014
2017	1,915,959

16. Publication/Tabulation Dates

A very limited portion of the collection of information on the RDS application will be published. Specifically, a list of the names of the Plan Sponsor identified on the applications, and their self-reported state, will be periodically published and posted on CMS' Web Site, https://www.cms.gov/Medicare/Medicare-Advantage/Plan-Payment/Plan-Payment-Data.html. CMS does not intend to publish any additional information provided by Plan Sponsors. The posting of this information is explained at 42 CFR §423.884(c)(iii)(2). The purpose of this posting is to make payment data for Medicare Part C and Part D, along with the RDS program payment data, publically available.

17. Expiration Date

The collection instrument will be displayed on-line as part of a paperless initiative. The Plan Sponsor completes and submits the RDS application (including the Plan Sponsor's Authorized Representative's electronic signature) on-line, via the secure RDS Secure Web Site, which is accessed at https://www.rds.cms.hhs.gov. The new expiration date will be incorporated into the electronic document, after the expiration date is known.

18. Certification Statement

There are no exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

B. Collections of Information Employing Statistical Methods

Not applicable. The information collection does not employ statistical methods.