

Sharon Block
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street N.W.
Washington, DC 20503

Dear Ms. Block:

Pursuant to Office of Management and Budget (OMB) procedures established at 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, I request that the proposed information collection, “No Surprises Act: IDR Process (1210-0NEW)” and a revision to “Affordable Care Act Internal Claims and Appeals and External Review Procedures for ERISA Plans (1210-0144)” be processed as Emergency Clearance Requests in accordance with section 5 CFR 1320.13, Emergency Processing.

The Department of Labor’s Employee Benefit Security Administration (EBSA), in conjunction with the Office of Personnel Management (OPM), the Department of The Treasury, Internal Revenue Service (IRS), and the Department of Health and Human Services (HHS), will be issuing a joint Interim Final Rule (IFR), *Requirements Related to Surprise Billing; Part II*, on October 4, 2021 (86 FR XXXXX). The IFR implements provisions of the No Surprises Act. The No Surprises Act was enacted on December 27, 2020, as title I of Division BB of the Consolidated Appropriations Act, 2021. The No Surprises Act establishes new protections from surprise billing and excessive cost-sharing for consumers receiving health care items and services. Section 102 of the No Surprises Act contains limitations on cost sharing and requirements for initial payments for emergency services. Section 103 establishes a federal independent dispute resolution (IDR) process that allows plans and issuers and out-of-network providers to resolve disputes on out-of-network rates. Section 105 contains limitations on cost sharing and requirements for initial payments for air ambulance services, and allows plans, issuers, and providers of air ambulance services to access the federal IDR process. The IFR implements many of the law’s requirements for group health plans, health insurance issuers, carriers under the Federal Employees Health Benefits (FEHB) Program, health care providers and facilities, and air ambulance service providers. The requirements in the No Surprises Act apply for plan years (in the individual market, policy years) beginning on or after January 1, 2022.

Under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.), a general notice of proposed rulemaking is not required when an agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. The Secretaries and OPM Director have determined that it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final rules in place until after a full public notice and comment process has been completed. Although this effective date may have allowed for the regulations, if promulgated with the full notice and comment rulemaking process, to be applicable in time for the applicability date of the provisions in the No Surprises Act, this

timeframe would not provide sufficient time for the regulated entities to implement the requirements.

On this legal basis, I have determined that this information must also be collected prior to the time periods established under Part 1320 of the Paperwork Reduction Act (PRA) and that this information is essential to the mission of EBSA to implement the provisions of the No Surprises Act.

The Department is hereby requesting that OMB process a 180-day clearance for both the new ICR “No Surprises Act: IDR Process” (1210-0NEW) and a revision to 1210-0144, Affordable Care Act Internal Claims and Appeals and External Review Procedures for ERISA Plans.

Please provide your approval/disapproval determination of this request by October 4, 2021.

Respectfully,

Ali Khawar
Acting Assistant Secretary
Employee Benefits Security Administration
Department of Labor