

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

Dear Mr. Mancini:

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 information collection, “No Surprises Act: IDR Process (1210-0169)” be processed as an Emergency Clearance Request in accordance with section 5 CFR 1320.13, Emergency Processing.

The Department of Labor’s Employee Benefits Security Administration (EBSA), in conjunction with the Department of the Treasury, Internal Revenue Service (IRS), and the Department of Health and Human Services (HHS) (the Departments), as well as the Office of Personnel Management (OPM), issued a joint Interim Final Rule (IFR), *Requirements Related to Surprise Billing; Part II*, on October 7, 2021 (86 FR 55980) under the Consolidated Appropriations Act, 2021 (P.L. 116-260). 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 and for non-emergency services performed by non-participating providers at participating facilities. Section 103 establishes a federal independent dispute resolution (IDR) process that allows plans and issuers and out-of-network providers to resolve disputes regarding out-of-network rates. Section 105 contains limitations on cost sharing and requirements for initial payments for air ambulance services, and established the IDR process for plans, issuers, and providers of air ambulance services. 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 5 CFR 1320.13(a)(2)(ii), an unanticipated event has occurred. On February 23, 2022, the U.S. District Court for the Eastern District of Texas issued an adverse ruling vacating certain provisions of the IFR related to payment determinations under the federal IDR process. In response to the Federal Court ruling, changes to the descriptions of certain data elements that will be collected need to be made to conform with the court’s order. More specifically, the court vacated provisions of the IFR directing certified IDR entities to select the offer closest to the Qualifying Payment Amount, unless it is shown to be materially different from the appropriate out-of-network rate. For more background information about these provisions, please see the IFR (86 FR 55980). This adverse ruling necessitates an Emergency Clearance Request. On this legal basis, I have determined that this information collection needs to be revised 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 the Departments and OPM to implement the provisions of the No Surprises Act.

The ICR approved under OMB Control Number 1210-0169, No Surprises Act: IDR Process, is currently approved for 180 days under the emergency processing provision of the Paperwork Reduction Act at 5 CFR Part 1320.13 (ICR Reference Number: 202110-1210-002, Expires 4/30/2022). Therefore, the Department is not requesting any additional time for approval under this request. Upon approval of this emergency request, and by April 30, 2022, the Department will be publishing a 30-day notice requesting public comments on the extension of the ICR for up to three years of approval and submitting the ICR to OIRA for review, as required by the PRA.

Please provide your approval/disapproval determination of this request by April 8, 2022.

Respectfully,

Ali Khawar,

*Acting Assistant Secretary
Employee Benefits Security Administration
Department of Labor*