

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
NOTICE OF SPECIAL ENROLLMENT RIGHTS UNDER GROUP HEALTH PLANS**

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 enrollment 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 March 17, 2022 (87 FR 15267). 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) using data in the 2020 Medical Expenditure Panel Survey Insurance Component (MEPS-IC), which indicated 2,007,298 such plans, of which approximately 79,512 were assumed to have 100 or more participants (large plans) and almost 1,927,786 were assumed to have fewer than 100 participants (small plans). The Department has assumed 2,007,298 plans (respondents) will provide the special enrollment notices.

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 2020, 8,618,763 individuals were estimated to have started jobs that offered them private employer-sponsored health insurance. Therefore, the Department has assumed that 8,618,763 special enrollment notices will be provided annually.

Preparation costs for the notice are considered to be minimal, because the regulations provide sample language that can be reproduced identically for all plans and all notices. 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 the addition of the special enrollment notice to the already prepared and routinely distributed plan materials will be inconsequential. Even as other plan materials are revised, once added to a plan document, this notice will not need to be revised once added.

The Department assumes that 6.6 percent of plans¹ or 132,482 plans² are new in a year and will prepare the special enrollment notice for the first time. The Department also assumes that it will take a clerical staff member half a minute for a new plan to prepare a special enrollment notice at a labor cost of \$58.66 per hour.³ This results in an annual hour burden of 1,104 hours and an associated equivalent cost of \$64,761.⁴

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).⁵ Therefore, the annual hour burden attributable to the Department of Labor’s regulation is one-half of the aggregate, or 552 hours with equivalent cost of \$32,381.

Estimated Annualized Respondent Hour and Equivalent Cost Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Equivalent Cost Burden
Clerical staff prepares the special	132,482	1	132,482	½ minute	1,104	\$58.66	\$64,761

1 The Department does not have data from the Form 5500 to estimate the percent of new health plans as most plans are not required to file, but the Department does have data on the percent of new pension plans. Using the 2019 Annual Return/Report of Employee Benefit Plan (Form 5500) data, the Department estimates that 6.6 percent are new pension plans. The Department is using this estimate as a proxy for the percent of new health plans.

2 2,007,298 plans x 6.6 percent = 132,482 plans

3 DOL estimates of labor costs by occupation reflect estimates of total compensation and overhead costs. Estimates for total compensation are based on mean hourly wages by occupation from the 2021 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the December 2021 National Compensation Survey’s Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2020 Service Annual Survey. To estimate overhead cost on an occupational basis, OPR allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are in 2021 dollars.

4 The hour burden is calculated as follow: 132,482 plans x 0.5 minute = 1,104 hours; A labor rate of \$58.66 is used for clerical staff. The labor rate is applied in the calculation as: 132,482 plans x 0.5 minute x \$58.66 = \$64,761.

5 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.

enrollment notices for new plans using in-house resources							
Total	2,007,298*	-	8,618,763**		1,104		\$64,761
DOL's Total	2,007,298		8,618,763		552		\$32,381

Note:

*As discussed above, the Department has assumed 2,007,298 plans will provide the special enrollment notice.

**As discussed above, the Department has assumed that 8,618,763 special enrollment notices will be provided annually.

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 or 14).

- **The cost estimate should be split into 2 components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the 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 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 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.**

As discussed in Question 12, the Department has assumed that 8,618,763 special enrollment notices will be provided annually. The only costs attributed to this information collection are the direct costs borne by plans that comply with the information collection. Those costs are limited to additional distribution costs, estimated at \$0.10 per notice.

Estimated Annualized Cost Burden

Activity	Notices	Cost per Notice	Total Cost
Additional reproduction costs attributed to information collection	8,618,763	\$0.10	\$861,876
Total	8,618,763	\$0.10	\$861,876

Based on the estimate of 8,618,763 notices distributed annually, the Department estimates an aggregate annual cost burden arising from the requirement to provide the special enrollment notice of \$861,876. 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).⁶ Therefore, the annual cost burden attributable to the Department of Labor’s regulation is one-half of the aggregate, or \$430,938.

- 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.**

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 and wage rates. The Department has also estimated the hour burden for plans preparing the special enrollment notices. These updated data inputs decrease the number of responses by 128,134 responses compared with the prior submission, increase the hour burden by 551 hours, and increase the cost burden by

⁶ 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.

\$354,402 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.**

There are no exceptions to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. The use of statistical methods is not relevant to this collection of information.