

Subject: No material/Non-Substantive Change Request – No Surprises Act: IDR Process

This memo requests a no material/non-substantive change request for the No Surprises Act: IDR Process (OMB Control Number 1210-0169), which currently is scheduled to expire on November 30, 2025. As further discussed below, the Department is updating the instructions, but not changing the underlying collection.

Background

The Department of Labor’s Employee Benefits Security Administration, in conjunction with the Department of the Treasury, Internal Revenue Service, and the Department of Health and Human Services as well as the Office of Personnel Management, issued a joint Final Rule (FR), *Requirements Related to Surprise Billing*, on August 26, 2022 (87 FR 52618). The FR 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 (P.L. 116-260). 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.

On February 6, 2023, the U.S. District Court for the Eastern District of Texas issued an adverse ruling vacating certain provisions of the FR related to the information a certified IDR entity must consider in making a payment determination, and the information required to be included in a certified IDR entity’s written decision payment determinations under the federal IDR process. The court also vacated the parallel provisions applicable to air ambulance payment disputes.

Overview of Requested Changes

In order to comply with the recent court decision, DOL is updating the instructions to the Notice of Offer Data Elements and the Certified IDR Entity Written Payment Determination Notice. However, these updates do not change the underlying collection. These updates remove the reference to whether the additional information relating to the offers submitted by the parties relates to the circumstances. These updates also remove the reference that if the certified IDR entity relies on information other than the QPA in selecting an offer, the written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the

QPA. Therefore, this change is non-material and will not affect the hour or cost burden associated with the annual information collection.

Time Sensitivities

An immediate approval is requested with no change in the approved expiration date. The IDR Process has been paused following the vacatur as changes are made to the review process and these forms. Approval will allow the reviews to resume.