

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
AFFORDABLE CARE ACT ADVANCE NOTICE OF RESCISSIONS**

This ICR seeks approval for an extension of an existing control number.

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.**

The Patient Protection and Affordable Care Act, Public Law 111-148, (the Affordable Care Act or the Act) was enacted on March 23, 2010. Section 2712 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act and incorporated into the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code), and the Department's final regulation (26 CFR 54.9815-2712, 29 CFR 2590.715-2712, 45 CFR 147.2712)¹ provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard applies to all rescissions, whether in the group, or individual insurance market, or for self-insured coverage. These rules also apply regardless of any contestability period of the plan or issuer.

PHS Act section 2712 mandated a new advance notice requirement when coverage is rescinded where still permissible. Specifically, the second sentence in section 2712 provides that coverage may not be cancelled unless prior notice is provided, and then only as permitted under PHS Act sections 2702(c) and 2742(b). Under the final regulations, even if prior notice is provided, rescission is only permitted in cases of fraud or an intentional misrepresentation of a material fact as permitted under the cited provisions.

The final regulations provide that a group health plan, or health insurance issuer offering group health insurance coverage, must provide at least 30 days advance written notice to each participant who would be affected before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group.

¹ 80 FR 72191.

- 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.**

The rescission notice will be used by health plans to provide advance notice to certain individuals that their coverage may be rescinded. The affected individuals are those who are at risk of rescission on their health insurance coverage.

- 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.**

The regulation does not require or restrict plans or issuers from using electronic technology to provide either disclosure. The Department of Labor's regulations under 29 C.F.R. § 2520.104b-1(b) provide that, "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 29 CFR 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). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

The Department amended ERISA's delivery standards in 2002 by establishing a safe harbor for the use of electronic media to furnish disclosures (the 2002 safe harbor; 29 CFR 2520.104b-1(c)). The 2002 safe harbor was not and is not the exclusive means by which a plan administrator may use electronic media to satisfy the general standard. However, plan administrators who satisfy the conditions of the safe harbor are assured that the general delivery requirements have been satisfied.

The Department estimates that 58.3 percent of participants will receive electronic disclosures under the 2002 safe harbor.

- 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.**

The Affordable Care Act amended the ERISA, the Code, and the PHS Act. The rescission provision is expected to have an impact on the individual insurance market, which is under the jurisdiction of the Department of Health and Human Services. The provision is also expected to have a small impact in the group health insurance market, which is under the jurisdiction of the Department of Labor. Therefore, there will be no duplication of effort.

5. If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.

Although this information collection does impact small plans, the impact is estimated to be negligible, because rescissions are rare in the group health insurance market.

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.

If this information were conducted less frequently, affected individuals would not be notified of potential rescission of their health insurance policy.

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 date 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 July 9, 2024 (89 FR 56416). 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.**
- **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 14.**
- **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 14.**

As discussed earlier, PHS Act Section 2712 and the final regulations prohibit group health plans and health insurance issuers that offer group or individual health insurance coverage generally from rescinding coverage under the plan, policy, certificate, or contract of insurance from the individual covered under the plan or coverage unless the individual (or a person seeking coverage on behalf of the individual) performs an act, practice, or omission that constitutes fraud, or unless the individual makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan or coverage. The final regulations provide that a group health plan or a health insurance issuer offering group health insurance coverage must provide at least 30 days advance notice to each participant who would be affected before coverage may be rescinded.

The hour burden for the associated information collection requirement is based on the preparation and distribution of rescission notices. Please see Table 1 for the corresponding calculations and burden totals.

The annual hour burden estimate is based on the following assumptions:

Affected Entities and Participants

The Department assumes that rescissions are rare in the group market and that small group health plans primarily are affected by rescissions. The Department is not aware of a data source on the number of group plans whose policy is rescinded; therefore, the Department assumes that 100 group health plan policies are rescinded in a year, and these plans are the respondents for the ICR. The Department estimates that there is an average of 14 participants in small, insured group health plans.

Distribution of Information Packages

Based on the foregoing, the Department estimates that approximately 1,400 policies are rescinded during a year, which would result in 1,400 advance rescission notices (responses) being sent to affected participants.² Of these, the Department assumes that 58.3 percent are transmitted electronically and 41.7 percent are mailed.³ In addition, the Department believes the costs of electronic transmission would be de minimis.

Labor Costs

The Department estimates⁴ that 15 minutes of legal professional time (\$177.97 per hour) would be required by the insurers of the 100 plans to prepare the notice, and one minute per notice of clerical professional time (\$69.41 per hour) would be required to distribute the paper notices.

Table 1 – Hour Burden

	Number of Plans	Hours per Plan	Total Hour Burden	Hourly Wage	Equivalent Cost of Hour
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² This estimate is calculated in the following manner: 100 group health plan policies x 14 participants per plan = 1,400 rescinded policies.

³ According to data from the National Telecommunications and Information Agency (NTIA), 37.4% of individuals age 25 and over have access to the Internet at work. According to a Greenwald & Associates survey, 84% of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 31.4% receiving electronic disclosure at work). Additionally, the NTIA reports that 44.1% of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0% of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 26.9% receiving electronic disclosure outside of work). Combining the 31.4% who receive electronic disclosure at work with the 26.9% who receive electronic disclosure outside of work produces a total of 58.3% who will receive electronic disclosure overall.

⁴ Internal DOL calculation based on 2024 labor cost data. For a description of the Department's methodology for calculating wage rates, see: <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

	(A)	(B)	(A x B)	(C)	Burden (A x B x C)
Legal staff prepare the plan's notice	100	15/60	25	\$177.97	\$4,449
Clerical staff mail notice to participants	584*	1/60	10	\$69.41	\$676
Total	-	-	35	-	\$5,125
DOL Total	-	-	17	-	\$2,562
* The number of notices is calculated as (100 affected plans) x (14 participants per affected plan) x (41.7% rate of non-electronic disclosure) = 584. Values may not equate due to rounding.					

In summary, the total hour burden associated with this information collection is approximately 35 hours with an equivalent cost of approximately \$5,125. The Department of Labor shares the hour burden of this information collection equally with the Department of Treasury; therefore, the hour burden allocated to the Department of Labor is approximately 17 hours with an equivalent cost of approximately \$2,562.

Table 2 – Estimated Annualized Respondent Cost and Hour Burden

Activity	Number of Respondents	Number of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Equivalent Cost of Hour Burden
Legal staff prepare the plan's notice	100	1	100	15/60	25	\$177.97	\$4,449
Clerical staff mail notice to participants	584	1	584	1/60	10	\$69.41	\$676
Total	100*	-	1,400**	-	35	-	\$5,125
DOL Total***	50	-	700	-	17	-	\$2,562
* As discussed above, the Department assumes that 100 group health plan policies are rescinded in a year. **As discussed above, the Department estimates that approximately 1,400 policies are rescinded during a year, which would result in 1,400 advance rescission notices. *** The Department of Labor shares the hour burden of this information collection equally with the Department of Treasury; therefore, half of the hour burden is allocated to the Department of Labor.							

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.)

- The cost estimate should be split into two 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.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The Department has determined that the only additional annual costs arising from this requirement are the mailing costs of the information package to participants. As previously mentioned, the Department estimates that approximately 58.3 percent of participants receive disclosures electronically under the 2002 safe harbor. The Department is therefore accounting for mailing burden related to the 41.7 percent of non-electronic requests.

The Department estimates that approximately 584 reports will be mailed annually to participants (100 affected plans x 14 participants per plan x 41.7 percent rate of paper disclosures). The Department assumes that notices are a single page. Material and printing costs are estimated to be \$0.05 per page, while the mailing cost (postage) is estimated to be \$0.73 per report.⁵

See Table 3 for the corresponding calculations and burden totals.

Table 3 – Cost Burden

⁵ For more information regarding postage costs, please see <https://pe.usps.com/text/dmm300/Notice123.htm>.

	Number of Reports	Pages per Report	Material and Printing Costs	Mailing Costs	Total Cost Burden
	(A)	(B)	(C)	(D)	(A x [(B x C) + D])
Mailing Cost	584*	1	\$0.05	\$0.73	\$456
Total	-	-	-	-	\$456
DOL Total	-	-	-	-	\$228
* The number of notices is calculated as (100 affected plans) x (14 participants per affected plan) x (41.7% rate of non-electronic disclosure) = 584. Values may not equate due to rounding.					

In summary, the Department estimates that the cost burden associated with this information collection is approximately \$456. The Department of Labor shares the cost burden of this information collection equally with the Department of Treasury; therefore, the cost burden allocated to the Department of Labor is \$228.

- 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 are no costs to the Federal government.

- 15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14.**

This ICR contains no program changes. Adjustments to the burden estimates result from updated estimates on the average number of participants in small plans, an increase in the share of notices assumed to be transmitted electronically, a correction to the number of respondents and responses to indicate the burden split equally with the Department of the Treasury, and increases in wage and postage rates. As a result, the number of respondents decreased by 50 responses, the number of responses decreased by 1,044, the hour burden decreased by two hours, and the cost burden decreased by \$2 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.

There are no plans to publish the results of this collection of information.

- 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.**

Not applicable.

- 18. Explain each exception to the certification statement.**

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

There are no statistical methods used in this information collection.