

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

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.**

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 result in the elimination of 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. The Department anticipates that this notice will be provided within the Summary Plan Description (SPD) and assumes that the rate of electronic delivery for this notice will be consistent with the rate of electronic delivery for the SPD.

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 the 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 January 6, 2025 (90 FR 671). One comment on this ICR was received. Below is the comment and the Departments response.

Barrier: Employees and dependents often fail to take advantage of special enrollment periods due to unclear communication or difficulty navigating the process.

Proposed Improvements:

- Automated, real-time notifications: Require employers to integrate special enrollment notices into payroll and HR systems that trigger automatic notifications when a qualifying event (e.g., job loss, marriage, birth) occurs.
- Direct email contact: Rather than requiring employees to call a general HR or insurer number, require notices to provide a specific email address for direct enrollment assistance.
- Centralized verification portal: Allow employees to check their special enrollment eligibility in a secure online portal, rather than relying on verbal explanations from insurers.

These changes align with the 21st Century Cures Act's goal of improving real-time access to information and reducing procedural delays that create de facto barriers to coverage.

Response to Comment:

In general, an employer or group health plan may take measures to implement the proposed improvements on a voluntary basis, provided they comply with the applicable requirements under ERISA and the Department's implementing regulations. However, requiring an employer or plan to: (1) provide automated, real-time notifications, (2) provide direct email contacts, and (3) provide a centralized verification portal would at a minimum require notice and comment rulemaking, and possibly legislation as well.

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 assumes that health plan issuers will utilize the model language provided by the Department. Service providers for group health plans typically offer bundled services that include the creation and distribution of disclosure materials, such as the SPD. As the Department assumes that the model language will be sent to the service

provider developing the notice by the health plan issuer, the preparation costs for the special enrollment notice are de minimis. 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.

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.**

The Department has estimated the number of notices (responses) that will be provided annually by utilizing data on the number of new employees hired in a year who will be given the opportunity to enroll in a private-sector group health plan. According to the Medical Expenditure Panel Survey Household Component (MEPS-HC), in 2022, 10,585,910 individuals were estimated to have started jobs that offered them private employer-sponsored health insurance. Therefore, the Department assumes that 10,585,910 special enrollment notices will be provided annually.

Additionally, the Department assumes that 58.3% of the notices will be provided electronically at no additional cost,¹ while 41.7% will be paper notices that are mailed to

¹ According to data from the National Telecommunications and Information Agency (NTIA), 37.4 % of individuals

participants and beneficiaries at a cost of \$0.05 per notice for materials. As this notice is provided with the SPD, no mailing costs are estimated for this notice. Please see Table 1 for calculations and burden.

For purposes of paperwork burden analysis, the Departments of Labor and the Treasury share the 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).² Please see Table 1 for calculations and total burden.

Table 1. Estimated Annualized Cost Burden

Activity	Notices	Mailing Rate	Mailed Notices	Cost Per Notice	Total Cost
	(A)	(B)	(A x B)	(C)	(A x B x C)
Additional reproduction costs attributed to information collection	10,585,910	41.7%	4,414,324	\$0.05	\$220,716
Total	10,585,910	-	4,414,324	-	\$220,716
DOL's Total	-	-	-	-	\$110,358

- 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.**

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.

² 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.

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.

Since the last ICR submission, the Department has updated its estimates and assumptions. First, the Department has also updated the number of job changers. The Department has also assumed a de minimis cost for preparing the notice, which has resulted in a reduction of the hour burden and equivalent cost. Additionally, the Department has revised its estimate of the material cost from \$0.10 down to \$0.05, based on the length of the model notice. Finally, the Department has assumed some share of the notices will be delivered electronically. As a result, the number of responses has increased by 1,967,147 responses, the hour burden has decreased by 552 hours, and the cost burden has increased by \$320,315.

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.

Not applicable.

18. Explain each exception to the certification statement.

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.