

Notice to Employees of Coverage Options Under Fair Labor Standards Act Section 18B
OMB Number 1210-0149
February 2020

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995
SUBMISSIONS

The Department of Labor, Employee Benefits Security Administration requests an extension without change for the information collections currently approved under OMB Control Number 1210-0149.

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*

Many provisions of the Patient Protection and Affordable Care Act (Affordable Care Act) that became effective in 2014 were designed to expand access to affordable health coverage. These include provisions for coverage to be offered through a Health Insurance Marketplace (Marketplace), premium tax credits to assist individuals in purchasing such coverage, employer notice to employees of coverage options available through the Marketplace, and other related provisions. The Departments of Labor, Health and Human Services (HHS), and the Department of Treasury are working together to develop coordinated regulations and other administrative guidance to assist stakeholders with implementation of the Affordable Care Act.

Since January 1, 2014, individuals and employees of small businesses have had access to affordable coverage through a new competitive private health insurance market – Health Insurance Marketplace. The Marketplace offers “one-stop shopping” to find and compare private health insurance options. Open enrollment for health insurance coverage through the Marketplace began in October, 2013. Section 1512 of the Affordable Care Act created a new Fair Labor Standards Act (FLSA) section 18B [29 USC 218b] requiring a notice to employees of coverage options available through the Marketplace.¹

Section 18B of the FLSA, as added by section 1512 of the Affordable Care Act, generally provides that, in accordance with regulations promulgated by the Secretary of Labor, an applicable employer must provide each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013), a written notice:

1 The Secretary of Labor has delegated responsibility for FLSA section 18B rulemaking to the Employee Benefits Security Administration (EBSA), within the Department of Labor. See Q2 in ACA Implementation FAQ Part V, available at: <http://www.dol.gov/ebsa/faqs/faq-aca5.html>.

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1. Informing the employee of the existence of Exchanges including a description of the services provided by the Exchanges, and the manner in which the employee may contact Exchanges to request assistance;
 2. If the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, then the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code (the Code) if the employee purchases a qualified health plan through an Exchange; and
 3. If the employee purchases a qualified health plan through an Exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.
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 Department issued the guidance and model notice in response to requests received from employers for a model notice they could use when informing their employees about coverage options through the Marketplace. Employers are permitted to use the model notice and/or rely on this guidance when fulfilling the requirement to notify their employees.

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.*

Under 29 C.F.R. 2520.104b-1(b) of ERISA, “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 Section 2520.104b-1(b). The Department assumes that 51.8 percent of the notices will be sent electronically.

The Department posted the notice on the Agency Web site, so that respondents may easily access it.

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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.*

No other notice exists informing employees of the existence of health insurance exchanges, and the other information required on the notice.

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

The Department has developed a model notice that can be used by employers to satisfy the requirement. Employers will only have to add their own health plan specific information to the notice. They already possess all the information they need to add.

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.*

This information collection is to notify employees of the existence of the Health Insurance Marketplace. The purpose is to help increase insurance coverage by employees not receiving “affordable” coverage through their employer.

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.*

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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 published a notice in the Federal Register on October 10, 2019 (84 FR 54642) in accordance with 5 CFR 1320.8(d) soliciting comments on the ICR. 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.*

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There are no questions of a sensitive nature pertaining to sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private. Therefore, this is not applicable to the requirements of this regulation.

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 14.*

DOL Technical Release 2013-2 requires employers to make certain disclosures. Specifically, all employers who have at least one employee subject to the FLSA's minimum wage or overtime requirement is required to notify all new employees of their coverage options available through the Marketplace.

The Department estimates that there are approximately 7,760,000 private sector employers with 120,690,000 employees² and 90,126 state and local governments with 18,730,000 employees subject to the FLSA. Of these covered employees, 32,068,268 employees are new hires each year, who would be required to be provided with the Notice of Employee Coverage Options.

The Department has developed a model notice that requires no modification by employers that do not offer a health insurance plan. Employers that do offer health insurance only have to add minimal plan specific information that they have readily accessible. Employers are able to distribute the notice with other required notices, such as other documents to new employees. In addition employers may send the notice electronically in accordance with the Department's electronic disclosure regulation. The Department estimates that 56.4 percent of new employees will receive the notice

² DOL estimates based on the 2016 Statistics of U.S. Businesses.

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electronically with a de minimis cost.³ The remaining 13,970,573 new employees (48.2 percent) are estimated to receive a paper copy. Employers may have clerical staff prepare the paper disclosures with an average time of 30 seconds per disclosure to copy and distribute the notice. This results in an hour burden of 116,421 hours (13,970,573 new employees * 30 seconds per notice) of which 100,781 hours is for private employers and 15,640 hours is for public employers. Clerical staff is estimated to have an hourly labor rate of \$55.14,⁴ resulting in an equivalent cost of the hour burden of \$6,419,478 million.

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).*

The cost burden associate with the notice requirement is due to the material and printing costs for the notice. The model notice is two pages in length. The Department assumes a five cent per page printing and material cost. Postage costs are 55 cents per notice. The Department estimates that 56.4 percent will be sent electronically and incur no printing or postage costs. The Department estimates that 50 percent of the remaining notices will be mailed. The other notices will be distributed by hand or with other documents, so no postage costs are included. This leads to a total cost burden of \$5,238,965 annually of which \$4,535,150 is for private employers and \$703,814 is for public employers. .

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.*

None.

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

³ According to data from the National Telecommunications and Information Agency (NTIA), 37.7 percent of individuals age 25 and over have access to the internet at work. According to a Greenwald & Associates survey, 84 percent 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 that are automatically enrolled (for a total of 31.7 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 40.5 percent of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61 percent of internet users use online banking, which is used as the proxy for the number of internet users who will opt in for electronic disclosure (for a total of 24.7 percent receiving electronic disclosure outside of work). Combining the 31.7 percent who receive electronic disclosure at work with the 24.7 percent who receive electronic disclosure outside of work produces a total of 56.4 percent who will receive electronic disclosure overall.

⁴ 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-ebbsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

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There are no program changes for this submission. The PRA hour and cost burden estimates decreased in this submission because the previous submission reflected one-time start-up costs, which are no longer applicable.

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.*

The OMB expiration date will be published in the Federal Register following OMB approval.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission."*

Not applicable; no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

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