

disputes and lost opportunities to elect COBRA coverage. This will result in an increase in the number of COBRA elections by qualified beneficiaries. These benefits of the regulation are expected to outweigh its costs.

New administrative costs imposed by these regulations are limited because plan sponsors and administrators already distribute notices pursuant to the COBRA statute, and many of their existing practices are likely to already satisfy the requirements of these proposed regulations. The Department estimates the new administrative costs to be \$2.4 million in the first year that the regulations are effective and \$0.9 million annually in subsequent years. The \$0.9 million ongoing annual cost is attributable to the new requirements to notify qualified beneficiaries when continuation coverage is not available or has been terminated before the maximum period of coverage has ended. The additional \$1.5 million first-year cost reflects the cost to plans to review existing notices and procedures, to make any necessary revisions, and to develop the new notices.

The Department also expects the number of COBRA elections to increase slightly, resulting in an increased subsidy from employers to COBRA enrollees, *i.e.*, those qualified beneficiaries who elect continuation coverage. Employers can charge COBRA enrollees the full average cost of coverage plus an administrative charge, but those electing continuation coverage tend to have higher than average costs and therefore as a group enjoy a subsidy from plan sponsors equal to about one-third of the cost of their coverage. If COBRA elections increase by between 0.5 percent and 1.0 percent, the amount of the subsidy will increase by a similar proportion, or between \$12 million and \$24 million annually. This cost to plan sponsors represents an even larger benefit to the new enrollees. Absent COBRA continuation coverage, these enrollees might purchase insurance individually, and such individual policies generally provide less coverage per dollar than the group policies continued under COBRA. Alternatively, they might go without any coverage and thereby place their finances and possibly their health at risk.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory

action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" within the meaning of section 3(f)(4) of the Executive Order and therefore subject to review by the Office of Management and Budget (OMB). Accordingly, the Department has undertaken an assessment of the costs and benefits of this regulatory action. The analysis is summarized below.

As noted earlier in this preamble, COBRA provides that under specific circumstances participants and beneficiaries may elect to continue group health coverage temporarily following events that would otherwise result in the loss of coverage. Within its authority to issue implementing guidance concerning the notice and disclosure provisions of COBRA, the Department is proposing these regulations to address concerns raised by plan administrators, participants, and beneficiaries about the content, timing, and format of the notices required by the statute.

Costs—The Department considered economic costs and benefits in its consideration of alternatives and formulation of this proposal. The Department estimates that the regulations will increase administrative costs by \$2.4 million in the first year and \$0.9 million annually in subsequent years. Reflecting instances in which clear guidance will avert a lost opportunity to elect COBRA coverage, the Department also expects the number of COBRA elections to increase slightly. As a result, a portion of the cost of health care coverage will transfer from those new COBRA enrollees to plan sponsors, thereby increasing the subsidy from employers to COBRA enrollees by between 0.5 percent and 1.0 percent, or between \$12 million and \$24 million annually. This transfer represents a cost

to plan sponsors and a benefit to COBRA enrollees. Both the administrative cost and the transfer cost will be borne by the 415,000 group health plans, covering a total of about 111 million participants and their dependents, that are currently required to offer continuation coverage.

The administrative cost of these regulations is expected to be modest, primarily because COBRA's statutory provisions have been in effect since 1986. As a result, most group health plans, plan administrators, and health insurance issuers already have developed forms and procedures for the administration of COBRA notices. The Department's estimates recognize only the cost of changes to existing practices that are likely to be associated with these rules; they exclude the pre-regulation impact of the statute itself.

Economies of scale also tend to moderate COBRA administrative costs because the majority of notice obligations are met through the purchase of COBRA administrative services from a number of providers that is small relative to the number of group health plans they serve. Nonetheless, group health plan sponsors, plan administrators, and professional service providers have stated a need for guidance, the implementation of which is expected to result in their reconsideration of their notices and procedures in light of the specific provisions of these regulations and model notices. The estimate includes the cost of professional time for the entities administering continuation coverage for all group health plans to conduct such a review. The estimate is grounded in an assumption as to the entity expected to perform the needed work (*e.g.*, a health insurer or professional administrator); the assumption should not be interpreted to bear on any party's legal responsibility for COBRA compliance.

The Department assumes that the percentage of qualified beneficiaries who lose the opportunity to elect COBRA coverage because they receive inadequate notice is very small. A portion of the cost of health care for those qualified beneficiaries would be transferred to plan sponsors to the extent that the inadequacies would be corrected as a result of the adoption of clearer and more uniform standards in connection with this guidance. The transfer arises because surveys indicate that although qualified beneficiaries who elect COBRA coverage pay the applicable cost of coverage plus an administrative charge for continuation coverage, the average cost of continuation coverage to the sponsor is