

distributed electronically. Plan administrators are not precluded from using electronic disclosure methods that comply with regulations at 29 CFR 104b-1(b) and (c). However, the Department believes that due to the nature of the rights and obligations involved in COBRA notice requirements, most plan administrators tend not to choose electronic distribution methods for COBRA notices. The Department requests comments on the use of electronic technology in COBRA notice administration. The application of these assumptions results in estimates of the distribution of 2,809,000 employer notices, 651,000 employee notices, 4,699,000 plan administrator election notices, and 1,000,000 early termination notices each year.

The preparation and distribution of these notices is accounted for as cost rather than hours because most COBRA administration is accomplished through the purchase of services for which fees are paid. The Department welcomes comments on its assumptions and methodology for arriving at these estimates. The number of notices of unavailability of continuation coverage cannot be reasonably estimated.

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice Requirements of the Health Care Continuation Coverage Provisions.

OMB Number: 1210-0NEW.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 415,000.

Frequency of Response: On occasion.

Responses: 9,159,000.

Estimated Total Burden Hours: None.

Total Annualized Capital/Startup Costs: \$1,452,500.

Total Burden Cost (Operating and Maintenance): \$17,386,200.

Total Annualized Cost: \$18,838,700.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time

of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of the Act which permits the Secretary to prescribe simplified annual reports for pension plans, which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure requirements for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104-20, 2520.104-21, 2520.104-41, 2520.104-46 and 2520.104b-10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants that satisfy certain other requirements.

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, EBSA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). EBSA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities. On this basis, EBSA has determined that the proposed regulation will not have a significant impact on a substantial number of small entities. In support of this conclusion, the Department has conducted an initial regulatory flexibility analysis, which is summarized below.

EBSA is proposing the regulation to provide plans and qualified beneficiaries with greater certainty as to how the notice obligations of COBRA can be met. The Department is considering this action because inquiries to the Department as well as public comment in response to the 1997 RFI indicated that service providers and

plan administrators would welcome guidance that would provide greater administrative efficiency and reduce exposure to risk resulting from procedural or substantive failures to meet notification requirements. At the same time, improvements in the quality of information provided to participants and beneficiaries is expected to help them understand their rights and limit their risk of losing the opportunity to elect the COBRA coverage that is required to be offered.

The COBRA provisions of title I of ERISA require a group health plan to offer qualified beneficiaries the opportunity to elect continuation coverage when they would otherwise lose group health coverage as a result of certain events described in the statute as "qualifying events." Under section 608, the Secretary has the authority to carry out the provisions of Part 6 of title I of ERISA. Further, the Conference Report that accompanied COBRA provided that the Secretary has the authority to issue regulations implementing the notice and disclosure provisions of section 606 of ERISA. The Department's objective in issuing the proposed regulations is to provide guidelines that will assure plan administrators that they are in compliance with the notification provisions of COBRA and that participants and beneficiaries have sufficient information to exercise their COBRA rights. Small plans will benefit from clarifications about the content and timing of notices and from the likelihood that fewer determinations about COBRA coverage will be delayed, disputed, or appealed. In addition, an increased number of qualified beneficiaries in small health plans will be able to obtain group health plan continuation coverage.

The Department believes that, because of the expertise required, small plans will use service providers to review notices and to modify or adapt Department models for use by the plan administrator. Generally, COBRA service providers offer plans on-going administrative services such as notifying employees about their group health plan continuation coverage, distributing and processing election forms, collecting and applying premium payments, and monitoring COBRA compliance. Small plans, in particular, are less likely to have in-house capabilities to handle these administrative tasks. For a service provider, reviewing and adopting or modifying forms for plans will result in some direct cost. Service providers may choose to absorb some of the cost in order to maintain competitive products; others may charge the cost to their client