

plans. Where these costs are charged to plans, the cost will most likely be minimized because of the economies of scale inherent in the use of standardized forms and procedures. At the same time, costs to small plans are further reduced because of the large number of small plans that share the cost burden; there are approximately seven times as many small plans as large plans. Finally, to further reduce costs, the Department has provided two model notices that can be adapted by service providers for use by individual plans.

The cost estimates for small plan compliance recognize only the cost of changes to existing practices associated with the proposed regulation; they exclude the impact of the statute itself. Costs result first from the likelihood that service providers will develop or modify two notices currently required to be sent to a plan administrator, and the requirement to develop and implement the new early termination notice described in the proposed regulation. No cost is attributable to the new notice of unavailability of continuation coverage. Finally, small plans will incur transfer costs as a result of an increase in the number of elections of continuation coverage by qualified beneficiaries who would have lost the opportunity to elect COBRA coverage absent improved notices and procedures.

The Department estimates that there are approximately 2.5 million plans with fewer than 100 participants that are considered small group health plans under the Department's definition. Among these, COBRA applies to only those plans with 20 or more employees or 365,000 plans, with approximately 12.3 million participants. While the majority of group health plans subject to COBRA are small plans, participation in those plans represents only about 22% of participation in all plans covered by COBRA. Based on the analysis below, the cost to small group health plans to review and adapt or modify existing notices is estimated at \$275,900. The cost to develop the new early notice of termination is estimated at \$254,300. The total cost to small plans for a service provider's assistance in reviewing, modifying, or developing notices is estimated to be \$530,200, or \$1.45 per small plan. The comparable average cost to large plans is \$37.38 per plan.

Employers with small plans will also incur transfer costs as a result of increased numbers of qualified beneficiaries who will elect continuation coverage. A portion of the cost of health care coverage previously borne by individuals will be transferred

from those new COBRA enrollees to plan sponsors under the proposed regulations. For small plans, the per-plan transfer costs are considerably less than for large plans due to there being fewer participants. The potential transfer cost to small plans is estimated to range between \$2.6 million and \$5.2 million, depending on the number of qualified beneficiaries who will elect COBRA coverage. The rate of potential losses of opportunity to elect COBRA coverage is estimated to fall between .5% and 1%. This represents an average of \$7–\$14 per small plan. The comparable cost to large plans ranges from \$9.4 million to \$18.7 million, an average of \$185–\$370 per plan. At the upper bound, the cost of the proposed regulation for 365,000 small plans is estimated to be \$5.7 million, or \$15.45 per plan.

Although the basis for the proposed regulation lies in the notice and disclosure provisions of section 606 of title I of ERISA, the proposed regulation does not duplicate, overlap, or conflict with other relevant federal rules. COBRA notification provisions have been in effect for many years. As such, most plan administrators and service providers have developed procedures to comply with their statutory obligations. The proposed regulation merely seeks to provide additional, detailed guidance that will clarify a plan's administrative obligations while assuring plan administrators and service providers that, in complying with the proposed regulation, they have satisfied their statutory obligations. A discussion of alternatives to the proposed regulation that the Department considered appears above in the discussion under Executive Order 12866.

The Department has attempted to minimize the burden of the review and potential revision of existing notices that will be undertaken in response to this guidance by including model notices that can be adapted to plans' specific circumstances. This should lessen the use of resources for small and large plans alike.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this proposed rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2590

Employee benefit plans, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department proposes to