

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration****29 CFR Part 2520**

RIN 1210-AA69

Proposed Amendments to Summary Plan Description Regulations

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations governing the content of the Summary Plan Description (SPD) required to be furnished to employee benefit plan participants and beneficiaries under the Employee Retirement Income Security Act of 1974, as amended, (ERISA). These amendments are being proposed to implement information disclosure recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, as set forth in their November 20, 1997 report "Consumer Bill of Rights and Responsibilities," by clarifying benefit, medical provider and other information required to be disclosed in, or as part of, the SPD of a group health plan and for other reasons as well. This document also contains a proposed amendment to repeal the limited exemption with respect to SPDs of welfare plans providing benefits through qualified health maintenance organizations (HMOs). In addition, the Department is proposing a number of amendments to the SPD content regulation that are intended to update and clarify the application of provisions affecting both pension and welfare benefit plans. The amendments contained in this document will affect employee pension and welfare benefit plans, including group health plans, as well as administrators, fiduciaries, participants and beneficiaries of such plans.

DATES: Comments: Written comments concerning the proposed amendments must be received by November 9, 1998.

ADDRESSES: Interested persons are invited to submit written comments (preferably three copies) concerning the proposals herein to: Office of Regulations and Interpretations, Room N-5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Proposed SPD Content Regulations. All written comments should clearly reference the relevant proposed

amendment(s). All submissions will be open to public inspection in the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N-5638, 200 Constitution Avenue, N.W. Washington, D.C.

FOR FURTHER INFORMATION CONTACT: June Solonsky, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 219-8521. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:**A. Background**

Pursuant to ERISA section 101(a)(1), the administrator of an employee benefit plan is required to furnish a summary plan description (SPD) to each participant covered under the plan and each beneficiary who is receiving benefits under the plan. Section 102(b) and the Department's regulation issued thereunder, 29 CFR 2520.102-3, describe the information required to be included in the SPD. The SPD is the primary vehicle under ERISA for communicating information to participants and beneficiaries about their rights, benefits, and obligations under their employee benefit plans.¹

The Regulation governing the content of the SPD was first adopted in 1977.² While this regulation was later amended to implement changes to ERISA's disclosure provisions enacted as part of the Health Insurance Portability and Accountability Act of 1996 and the Newborns' and Mothers' Health Protection Act of 1996,³ most of the SPD content provisions have not been modified, updated or otherwise changed since adoption of the 1977 regulation. Since that time there have been a number of legislative and other changes affecting plans and plan practices that, in turn, affect the information necessary for participants and beneficiaries to understand and exercise their rights under their plans and under ERISA. Taking into account the continuation coverage provisions enacted under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and subsequent amendments, the portability, access and renewability requirements enacted as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the mental health parity provisions enacted as part of the Mental Health Parity Act of 1996, the requirements of the Newborns' and Mothers' Health Protection Act of 1996, and the growth

of managed care programs and practices, some of the most significant changes have taken place with respect to group health plans.

In addition, the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry (the Commission), in its November 20, 1997 report entitled "Consumer Bill of Rights and Responsibilities," made a number of recommendations intended to enhance disclosure of health care plan and other information. In response to the Commission's report, the Department of Labor identified various regulatory actions that could be taken to implement the Commission's recommendation in the area of information disclosure. Following the Department's response, the President issued a memorandum to the Department, directing it to "propose regulations that require ERISA health plans to ensure the information they provide to plan participants is consistent with the Patient Bill of Rights."⁴

As discussed below, this document contains a number of proposed amendments to the regulations governing the content of summary plan descriptions, specifically, 29 CFR 2520.102-3 and 2520.102-5, that, consistent with the Department's commitment are intended to implement the Commission's recommendations for improved information disclosure by group health plans, as well as generally update the SPD disclosure requirements for both welfare and pension plans.

B. Amendments Relating to the "Consumer Bill of Rights and Responsibilities"

One of the eight principles set forth in the "Consumer Bill of Rights and Responsibilities" is the right of individuals to receive accurate, easily understood information about their health plans, professionals and facilities. While the Department does not have the authority under ERISA to mandate disclosure of all of the information identified by the Commission in their report, the Department does have the authority to establish standards governing the style, format and content of the SPD, which is the primary vehicle through which plan

¹ Publication of this regulation is not intended to address any disclosure issues arising under Part 4 of Subtitle B of Title I.

² 42 FR 37178, July 19, 1977.

³ 62 FR 16979, April 8, 1997.

⁴ The President further directed the Department to "propose regulations to strengthen the internal appeals process for all Employee Retirement Income Security Act (ERISA) health plans to ensure that decisions regarding urgent care are resolved within not more than 72 hours and generally resolved within 15 days for non-urgent care." The Department is publishing today in the **Federal Register** a proposal that would revise the Department's regulation at 29 CFR 2560.503-1 to accomplish this goal.

benefit and other information is communicated to participants and beneficiaries. Consistent with the Commission's recommendation that health care information be communicated in an easily understood manner, both ERISA and the Department's regulations currently require that SPD information be communicated in a manner calculated to be understood by the average plan participant and sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan.⁵ The Department believes these standards serve to further the Commission's recommendations without modification or amendment at this time. The Department, however, has concluded that the SPD regulations should be amended to clarify the required disclosure by group health plans in their SPDs of various categories of information identified by the Commission and to ensure that all participants and beneficiaries, without regard to whether they are covered by a Federally qualified HMO, are provided health plan information consistent with the SPD requirements.

In responding to the Commission's recommendations, the Department indicated that it could propose amendments to the SPD regulations to ensure that all participants and beneficiaries in group health plans are provided, consistent with the Commission's recommendations, clear and understandable information concerning: benefits and limits on coverage; the extent to which preventive services are covered; whether, and under what circumstances, coverage is provided for existing and new drugs; whether, and under what circumstances, coverage is provided for tests, devices, and procedures; provider network composition; coverage of out-of-network services; conditions, if any, for access to specialty medical care; conditions, if any, applicable to urgent care; and preauthorization and utilization review procedures. The Department also indicated that it could amend the special rules, at § 2520.102-5, governing the disclosure of plan information by certain health maintenance organizations (HMOs) to improve the information furnished participants and beneficiaries.

1. Changes to the SPD Content Requirements

In order to implement the Department's response to the

Commission's recommendations, the Department is proposing to amend paragraph (j) of § 2520.102-3 to add a new subparagraph (3) clarifying the information that must be included in the SPD of a group health plan, as defined in section 733(a).⁶ Paragraph (j) generally provides that the SPD of an employee benefit plan must describe "[t]he plan's requirements respecting eligibility for participation and for benefits." Subparagraph (2) of paragraph (j) provides, in the case of welfare benefit plans, the SPD must also include a "statement of the conditions pertaining to eligibility to receive benefits, and a description or summary of the benefits." That subparagraph also provides that where a plan provides an extensive schedule of benefits, only a general description is required if reference is made to detailed schedules of benefits which are available without costs to any participant or beneficiary who so requests.

It is the view of the Department that the information described in the new paragraph (j)(3) is currently required to be disclosed through the SPD under paragraph (j)(2), and that most group health plans in fact disclose such information to participants and beneficiaries in, or as part of, the plan's SPD. Nonetheless, the Department believes that, in view of the Commission's report and recommendations, the amendment proposed herein adding a new paragraph (j)(3) is necessary to remove any ambiguity as to the required disclosure of such information. Specifically, paragraph (j)(3) provides that the SPD of a group health plan shall describe: Any cost-sharing provisions, including premiums, deductibles, coinsurance, and copayment amounts for which the participant or beneficiary will be responsible; any annual or lifetime caps or other limits on benefits under the plan; the extent to which preventive services are covered under the plan; whether, and under what circumstances, existing and new drugs are covered under the plan; whether, and under what circumstances, coverage is provided for medical tests, devices and procedures; provisions governing the use of network providers, the composition of the provider network and whether, and under what circumstances, coverage is provided for

out-of-network services; any conditions or limits on the selection of primary care providers or providers of specialty medical care; any conditions or limits applicable to obtaining emergency medical care; and any provisions requiring preauthorizations or utilization review as a condition to obtaining a benefit or service under the plan.

Paragraph (j)(3) further provides that, in the case of plans with provider networks, the listing of providers may be furnished to participants and beneficiaries as a separate document, provided that the SPD contains a general description of the provider network and indicates that provider lists are furnished, without charge, in a separate document.

With regard to the disclosure of preauthorization and utilization review procedures, the Department is proposing to amend paragraph (s) of § 2520.102-3, that currently requires a description of the plan's claims procedures, to clarify that the required description of procedures governing claims for benefits includes, in the case of a group health plan, any procedures for preauthorizations, approvals, or utilization review. It is the view of the Department that a plan is not precluded from furnishing a description of the plan's claims procedures as a separate document that accompanies the plan's SPD, provided that the description otherwise satisfies the style and format requirements of § 2520.102-2.

2. Repealing the Limited Exception for SPDs of Plans Providing Benefits Through a Federally Qualified HMO

The Department is proposing to repeal § 2520.102-5, which provides that SPDs of welfare benefit plans which provide benefits through a qualified HMO, as defined in section 1310(d) of the Public Health Act, 42 U.S.C. 300e-9(d), are not required to include the information described in §§ 2520.102-3(j)(2), (l), (q) and (s) provided certain conditions are met. The Department believes that, in view of the legislative and other changes affecting the operation of group health plans since the adoption of § 2520.102-5 in 1981,⁷ the information required to be disclosed through the SPD and summaries of changes thereto are as important to participants and beneficiaries electing coverage through a qualified HMO, as defined in § 1310(d) of the Public Health Act, 42 U.S.C. 300e-9(d), as any other employee benefit plan participant or beneficiary.

⁶ ERISA § 733(a)(1), defines the term "group health plan" to mean "an employee welfare benefit plan to the extent that the plan provides medical care (as defined in paragraph (2) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance reimbursement, or otherwise."

⁵ See ERISA § 102(a)(1), 29 U.S.C. 1022(a)(1), and 29 CFR 2520.102-2.

⁷ See 46 FR 5884, January 21, 1981.

C. Other Amendments Relating to the SPD Content Requirements

The following amendments are intended to update the SPD content regulations, § 2520.102-3, to reflect legislative and other changes that have taken place since adoption of the regulations. The amendments are discussed below paragraph-by-paragraph in the order in which they appear in the regulation.

1. § 2520.102-3(d)—Type of Pension and Welfare Plan

Paragraph (d) of § 2520.102-3 requires plan administrators to specify in the summary plan description the type of welfare or pension plan they administer. The regulation provides examples of types of pension and welfare plans. Due to the fact that participant and beneficiary rights and obligations may be substantially affected, in the case of pension plans, by whether their defined contribution pension plan is intended to comply with ERISA section 404(c) and, in the case of welfare plans, by whether the plan is a group health plan subject to HIPAA, in an effort to update the regulation, the proposal would amend paragraph (d) to include references to ERISA section 404(c) plans and group health plans as defined in ERISA section 733(a). While the Department's regulation at § 2550.404c-1(b)(2)(i)(B)(1)(i) already requires participants and beneficiaries to be provided with an explanation that the plan is intended to constitute a plan described in ERISA section 404(c), the Department intends to emphasize plan administrators' notification responsibilities by including the reference to ERISA section 404(c) plans in paragraph (d) of § 2520.102-3.

2. § 2520.102-3(j)—Eligibility for Participation and Benefits

In addition to the above discussed amendment of paragraph (j) of § 2520.102-3 relating to group health plans, the Department is proposing to amend paragraph (j)(1) to require that the SPD of a pension plan include either a description of the plan's procedures governing qualified domestic relations order (QDRO) determinations or a statement indicating that participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan administrator. Similarly, the Department is proposing to amend paragraph (j)(2) to require that the SPD of group health plans include either a description of the plan's procedures governing qualified medical child support order (QMCSO) determinations or a statement indicating that

participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan.⁸ If an SPD contains a description of the procedures governing QDRO determinations, in the case of a pension plan, or QMCSO determinations, in the case of a group health plan, the description should include information sufficient to enable prospective alternate payees and alternate recipients to exercise their rights. The Department believes that participants and beneficiaries should be aware that procedures exist for making such determinations and that the most appropriate vehicle for communicating information about the procedures is through the SPD.

3. § 2520.102-3(l)—Plan Terminations and Authority To Eliminate Benefits

Paragraph (l) of § 2520.102-3 requires pension and welfare benefit plan administrators to include in their SPDs a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture or suspension of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by the SPD regulations. In 1984, the Department issued ERISA Technical Release 84-1 setting forth the Department's view that a plan termination is a circumstance which may result in the denial or loss of benefits that a participant or beneficiary might otherwise reasonably expect to receive under a plan such that plan administrators, pursuant to § 2520.102-2 and § 2520.102-3(l), must include in their SPD information concerning the provisions of the plan which relate to the termination of the plan.

It is the Department's view that paragraph (l) currently requires the disclosure of information concerning the circumstances under which the plan can be amended to reduce or eliminate benefits. To eliminate uncertainty, however, the Department is proposing to amend paragraph (l) in order to incorporate the principles of Technical

⁸The Department notes that the procedures governing qualified domestic relations order determinations under ERISA § 206(d)(3) and the procedures governing qualified medical child support order determinations under ERISA § 609 would constitute an instrument under which a plan is operated for purposes of ERISA § 104(b)(4), and, thereby, would be required to be furnished to participants and beneficiaries upon request. A failure or refusal to furnish a copy of such instrument in response to a request from a participant or beneficiary (including prospective alternate payees and alternate recipients), therefore, may subject the administrator to a penalty of up to \$110 a day from the date of such failure or refusal (See ERISA § 502(c)(1)).

Release 84-1 in the SPD content regulation, as well as clarify the application of those principles to the plan amendments. These changes serve to codify the principles of Technical Release 84-1, thereby, providing more effective notice to plan administrators, participants and beneficiaries, and others regarding the information required to be included in the SPD.⁹

Specifically, the Department proposes to add to the end of paragraph (l) the requirement that plan administrators include the following: (1) A summary of any plan provisions governing the authority of the plan sponsor or others to terminate the plan or eliminate, in whole or in part, benefits under the plan and the circumstances, if any, under which the plan may be terminated and under which benefits under the plan may be amended or eliminated; (2) a summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on termination of the plan or amendment or elimination of benefits under the plan, including in the case of an employee pension benefit plan, a summary of any provisions relating to the accrual and the vesting of pension benefits under the plan upon termination of the plan; and (3) a summary of any plan provisions governing the allocation and disposition of assets of the plan upon termination of the plan.

The Department notes that, in accordance with the general SPD format requirements of § 2520.102-2(b), any description of an exception, limitations, reductions or other restrictions—which, in the Department's view includes plan amendment and termination provisions—must not be minimized, rendered obscure, or otherwise made to appear unimportant.

4. § 2520.102-3(m)—PBGC Coverage

Under § 2520.102-3(m)(2), plans with benefits insured under Title IV are required to indicate that fact in their SPD along with a summary of the pension benefit guaranty provisions of Title IV and a statement indicating that further information on the provisions can be obtained from the plan administrator or the Pension Benefit Guaranty Corporation (PBGC). An SPD is deemed to meet the requirements of paragraph (m)(2) if it includes the model

⁹At least one federal court has interpreted the Department's regulations as not requiring administrators of ERISA plans to disclose in their SPDs that the plans are subject to amendment or termination. See *Sprague v. GENERAL MOTORS CORP.*, 133 F.3d 388 (6th Cir. 1997), cert. denied, 66 U.S.L.W. 3779 (1998).

statement set forth in paragraph (m)(3). The Department is proposing to amend the model statement contained in paragraph (m)(3), in accordance with changes provided by the PBGC, to more accurately reflect the benefits guaranteed under Title IV, as well as update the information relating to the PBGC.

5. § 2520.102-3(o)—“Cutback” Provisions/COBRA

Paragraph (o) of § 2520.102-3 requires that certain pension plans electing use of the “cutback” rule of Internal Revenue Code Revenue Ruling 76-378 include information concerning the application of such election in the SPD. The Department understands that the referenced “cutback” rule has little, if any, current application. Accordingly, the Department is proposing to amend paragraph (o) to eliminate the discussion of the “cutback” rule.

The Department is further proposing to address in a new paragraph (o) the requirement that participants and beneficiaries in group health plans subject to the continuation coverage provisions of COBRA be provided information concerning their rights and obligations under those provisions. It is the view of the Department that the SPD of group health plans, within the meaning of section 607(1), subject to the continuation coverage provisions of COBRA, must describe the rights and responsibilities of participants and other “qualified beneficiaries” (as defined in ERISA section 607(3)) under such provisions. ERISA section 606(a)(1) also requires that group health plans, within the meaning of section 607(1) of ERISA, provide, at the time of commencement of coverage under the plan, a notice to each covered employee and his or her spouse informing them of their rights under the COBRA continuation coverage provisions. It is the view of the Department that the disclosure obligation under section 606(a)(1) will be satisfied by furnishing to the covered employee and spouse, at the time of commencement of coverage, an SPD that includes the required COBRA continuation coverage description.¹⁰

Specifically, paragraph (o), as amended, would require group health plans subject to the COBRA continuation coverage provisions to describe the rights and obligations of

participants and beneficiaries with respect to continuation coverage, providing, among other things, information concerning qualifying events, premiums, notice and election requirements and procedures, and duration of coverage.

6. § 2520.102-3(q)—Identity of Funding Medium/Interim Amendment

On April 8, 1997, the Department published an amendment to paragraph (q) of § 2520.102-3, implementing statutory changes to SPD disclosure requirements enacted as part of the Health Insurance Portability and Accountability Act of 1996.¹¹ This amendment is intended to ensure that SPDs clearly inform participants and beneficiaries about the role of insurance issuers with respect to their group health plan, particularly in those cases where the plan is self-funded and an insurer is serving as a contract administrator or claim payer, rather than an insurer. Although this notice of proposed rulemaking does not propose any change to paragraph (q), the Department intends to publish one consolidated final rule covering the proposals published in this document and the portions of the April 1997 interim rule that address SPD content requirements.

7. § 2520.102-3(t)—Statement of ERISA Rights

Under paragraph (t) of § 2520.102-3(t), the requirement to furnish participants and beneficiaries with the statement of ERISA rights described in section 104(c) of the Act is satisfied by providing the model statement set forth in paragraph (t)(2) or a statement prepared by the plan containing the information in the model statement. The Department is proposing to amend paragraph (t)(2) to improve and update the model statement. Specifically, the Department is proposing to amend the model statement to incorporate references to participant rights under the COBRA continuation coverage and the portability provisions of Parts 6 and 7, respectively, of ERISA, added to ERISA since the publication of the statement of ERISA rights in 1977. The Department also is proposing to extend to all employee benefit plans the model statement changes applicable to group health plans as a result of amendments enacted as part of the Health Insurance Portability and Accountability Act of 1996. In general, these changes to the statement of ERISA rights resulted in the addition of a sentence directing participants and beneficiaries who have

questions about the statement of rights or their rights under ERISA to the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, in Washington, D.C.¹² The Department believes the information included in the revised statement will benefit participants and beneficiaries of both pension and welfare plans generally, as well as group health plans. Other changes to the statement include: modifying the reference of “up to \$100 a day” to “up to \$110 a day”, reflecting the fact the civil monetary amount under ERISA section 502(c)(1) has been increased to take inflation into account, as required by the Debt Collection Improvement Act of 1996,¹³ clarifications to the language discussing the types of documents participants and beneficiaries have the right to examine and receive copies upon request, and the addition of a sentence indicating that issues involving the qualified status of domestic relations orders and medical child support orders may be pursued in Federal court.

8. § 2520.102-3(u)—Newborns’ and Mothers’ Health Protection Act Disclosure

On April 8, 1997, the Department published, in the **Federal Register** (62 FR 16979) an interim rule setting forth information required to be disclosed in the SPD concerning the provisions of the Newborns’ and Mothers’ Health Protection Act of 1996 (NMHPA). The Department, in response to concerns about the adequacy of the information currently required to be disclosed pursuant to paragraph (u) of § 2520.102-3, is publishing in the “rules and regulations” section of today’s **Federal Register** an interim rule expanding the information required to be disclosed in the SPD concerning the NMHPA provisions.

D. Effective Dates

The Department is proposing to make the amendments contained herein effective 60 days after publication of the final rule in the **Federal Register**. In general, the Department believes that the information delineated in paragraphs (j)(3), applicable to group health plans, and (l) of § 2520.102-3 is currently required to be disclosed under the current disclosure framework of ERISA. Accordingly, the Department views the proposed addition of the new

¹⁰ The Department has taken the position that, where a spouse’s last known address is the same as the covered employee’s, a single mailing of the required COBRA disclosure addressed to both the employee and spouse will constitute good faith compliance with the general COBRA disclosure requirement. See ERISA Technical Release No. 86-2.

¹¹ 62 FR 16979, April 8, 1997.

¹² 62 FR 16979, April 8, 1997.

¹³ See 62 FR 40696.

paragraph (j)(3) and the amendment of paragraph (l) as clarifications of existing law, rather than new disclosure requirements. Other amendments proposed herein may result in new disclosure obligations. With regard to these amendments, the Department is proposing to require plans to comply with the new requirements no later than the earlier of: (1) the date on which the first summary of material modification (or updated SPD) is required to be furnished participants and beneficiaries following the effective date of the amendments or (2) the first day of the second plan year beginning after the effective date of the final rule.

E. Request for Comments

The Department invites interested persons to submit written comments on the amendments contained herein. Comments (preferably three copies) should be submitted to: the Office of Regulations and Interpretations, Room N-5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington D.C. 20210, Attention: Proposed SPD Content Regulations. Comments must be submitted no later than November 9, 1998. All submissions will be open to public inspection in the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N-5638, 200 Constitution Avenue, N.W., Washington, D.C.

Economic Analysis Under 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 consistent with the President's priorities with respect to ensuring that all participants in group health plans receive understandable information about their plans, as described in the Commission's Consumer Bill of Rights and Responsibilities. To avoid underestimating of the burdens attributable to this regulation, and as more fully explained below, the Department used assumptions designed to result in cost estimates that represent the maximum potential impact of the proposal. This regulatory action, as a result, is being treated as having an economic effect exceeding \$100 million in the year 2000. Therefore, this notice is "significant" and subject to OMB review under Sections 3(f)(1) and 3(f)(4) of the Executive Order.

Therefore, consistent with the Executive Order, the Department has undertaken to assess the costs and benefits of this regulatory action. The Department's assessment, and the analysis underlying that assessment, is detailed following the discussions of the Regulatory Flexibility Act and the Paperwork Reduction Act.

Although the requirements of the proposal are generally clarifications of rather than additions to the requirements of the existing regulation, it is believed that the variety of clarifications in the proposal will cause many plan administrators to reevaluate and revise existing SPDs. For purposes of this analysis, it has been assumed that all plans will add to or otherwise modify the content of their SPDs and distribute them to participants by the end of calendar year 2000 as a result of this proposal. Expenses associated with the preparation and distribution of these additions and revisions substantially constitute the estimated cost of the proposal.

The Department estimates the cost of the revisions implemented by this proposal to be \$37 million in 1999, \$176 million in 2000, falling to \$15 million in 2001, and thereafter increasing or decreasing only in proportion to participation. The peak costs in 2000 reflect the preparation of 535,000 different SPDs describing 2.4 million pension and welfare plans and the distribution of those SPDs to 107 million participants. As noted above, the Department believes that these estimates are conservatively high.¹⁴

¹⁴In fact, many plans already provide much of this information to participants and beneficiaries in SPDs and other materials. For example, many managed care organizations routinely disclose information to enrollees either as a condition of private accreditation or in response to plan

The proposed regulation will assist plan administrators to meet their statutory disclosure obligations. The proposed regulation will also assure that participants have better access to more complete information on their benefit plans. Such information is important to participants' ability to understand and secure their rights under their plans. Better information will also enable participants to derive more value from their benefit plans, and will lead both participants and plan sponsors to make more economically efficient decisions regarding benefit plans. This enhanced value and efficiency from better information, along with the clarified guidance to plan administrators, constitute the benefits of the regulation.

There is wide-spread agreement that the market for health care can be improved if purchasers, consumers, and patients are provided with better information. In an analysis of the Consumer Bill of Rights conducted for the Commission, The Lewin Group¹⁵ notes that there is currently considerable information being collected which is not routinely passed on to consumers. For instance, information reported through a private-accreditation survey or collected by a large purchaser may not be available to individuals to help them make decisions. The proposed SPD regulations would clarify the requirement that certain types of information, such as provider network composition and utilization review procedures, be provided in the SPD.

According to Lewin, the collection and dissemination of this type of information will foster value-based purchasing. The information disclosure requirements contained in the revised SPD regulations will also assist employees in choosing health plan options that best meet their needs. According to Lewin, such empowerment "may lead to increased satisfaction" and may "improve consumer confidence in the health care system."

Lewin and others assert that information disclosure will aid in the development of an efficient, competitive market. While some have argued that the lack of "perfect" information will hamper the usefulness of information to consumers, there is strong evidence

sponsors, government program requirements, and other competitive pressures. Also, approximately 27% of plans are already known to amend and reissue their SPDs each year to account for routine changes in plan terms.

¹⁵*Consumer Bill of Rights and Responsibilities Cost and Benefits: Information Disclosure and External Appeals*, The Lewin Group, November 15, 1997.

from other markets (e.g., the securities and investment industry) that indicates basic information disclosure requirements such as the one contained in the revised SPD regulation will help to improve the quality of information available to consumers over time.

Equally important, information disclosure under the proposed SPD regulation, if combined with additional disclosures pertaining to plan and provider performance, and with other health system reforms that promote efficient, competitive choices in the health care market, could yield redoubled benefits. Lewin points out that such reformed systems, as exemplified by CalPERS and other examples of privately sponsored "managed competition," have successfully reduced health care inflation, producing savings that dwarf the cost of this proposed SPD regulation and other pro-competitive reforms.

The Department believes, therefore, that the benefits of this proposed regulation will substantially outweigh its costs. The disclosures it describes are a component of evolving legislative, regulatory, and voluntary private reforms that together are already improving health care market efficiency.

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 which are likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a proposed rule is likely to 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, PWBA 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 ERISA, which permits the Secretary of Labor 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 simplified annual reporting

and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at §§ 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 and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general, most small plans are maintained by small employers. Thus, PWBA 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 (5 U.S.C. 631 *et seq.*). PWBA 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, however, PWBA has preliminarily determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, PWBA has considered the elements of an initial regulatory flexibility analysis in the discussion which follows.

This regulation applies to all small employee benefit plans covered by ERISA. Employee benefit plans with fewer than 100 participants include 629,000 pension plans, 2.6 million health plans, and 3.4 million non-health welfare plans (mainly life and disability insurance plans).

The proposed regulation amends the Department's existing SPD regulation, which implements ERISA's statutory SPD requirements. Both ERISA and the existing regulation require plans to provide SPDs that include certain information and adhere to certain formats to participants according to statutory schedules. The compliance requirements assumed for purposes of this proposed regulation consist of revising SPDs consistent with the proposed regulation's requirements and distributing them to participants

consistent with the proposed regulation's assumed effective date.

The Department believes that revising an SPD requires a combination of professional and clerical skills. Professional skills pertaining to employee benefits law and plan design and administration are needed to draft language for inclusion in an SPD, while clerical skills are needed to type, assemble and format SPD materials. Distributing SPDs requires clerical skills to reproduce the materials and to mail or electronically transmit materials to participants.

The Department estimates that the cost to small plans of complying with the proposed regulation will amount to \$16 million in 1999, \$42 million in 2000, and \$3 million in 2001 and subsequent years, changing thereafter only in proportion to plan participation.

The peak year cost of \$42 million in 2000 consists of \$13 million to prepare 460,000 unique SPDs describing 2.3 million plans, and \$29 million to distribute these SPDs to 23 million participants. These costs amount to \$18 per affected small plan and \$1.81 per affected small plan participant. By contrast, the total cost to large plans in 2000 is estimated at \$134 million, or \$1,803 per affected large plan and \$1.61 per affected large plan participant.

The costs are modest in large part because the features of the large majority of small health and other welfare plans are chosen from a finite menu of products offered by insurers and HMOs. The insurers and HMOs prepare the large majority of SPD material, describing their small plan products, and provide that material to their small plan customers. Thus, the cost of preparing a relatively small number of unique SPDs is spread thinly over a far larger number of small plans.

The basis of these estimates is explained below, following the discussion of the Paperwork Reduction Act.

Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and

the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed revision of the information collection request (ICR) included in the Proposed Amendments to Summary Plan Description Regulations. A copy of the existing ICR may be obtained by contacting the office listed in the addressee section of this notice. This proposal would modify the existing ICR, which is also revised pursuant to the Interim Rule Amending Summary Plan Description Regulation (Interim Rule),¹⁶ also published in today's **Federal Register**.

The Department has submitted a copy of the proposed information collection, as modified by the Interim Rule Amending Summary Plan Description, to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department has requested emergency clearance for that portion of the ICR which is changed by the Interim Rule, specifically, the SPD disclosure provision concerning hospital lengths of stay in connection with childbirth for a mother or newborn child. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the

Pension and Welfare Benefits Administration. Although comments may be submitted through November 9, 1998, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

ADDRESSES (PRA 95): Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N-5647, Washington, D.C. 20210. Telephone: (202) 219-4782; Fax: (202) 219-4745. These are not toll-free numbers.

I. Background

Pursuant to ERISA section 101(a)(1), the administrator of an employee benefit plan is required to furnish a Summary Plan Description (SPD) to each participant covered under the plan and each beneficiary who is receiving benefits under the plan. The SPD is required to be written in a manner calculated to be understood by the average plan participant, and must be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. To the extent that there is a material modification in the terms of the plan or a change in the information required to be included in the SPD, ERISA requires that the administrator furnish participants covered under the plan and beneficiaries receiving benefits with a summary of such changes.

ERISA section 102(b) describes the types of information specifically required to be included in the SPD. The Department has previously issued guidance concerning the required contents of summary plan descriptions in regulations at 29 CFR 2520.102-3.

II. Current Actions

As described in this preamble, the proposed revisions to § 2520.102-3 would modify the required contents of summary plan descriptions in a number of ways that may be expected to affect the nature and burden of the information collection under PRA 95. The proposal includes amendments to §§ 2520.102-3(j) and (s) and § 2520.102-5 that are designed to implement with respect to ERISA covered group health plans the Commission's recommendations as incorporated in the Consumer Bill of Rights. Specifically, the proposal provides that group health plans will not be deemed to have satisfied content requirements unless they have provided understandable information in their SPDs concerning any cost-sharing provisions, including premiums, deductibles, coinsurance,

and copayment amounts for which the participant or beneficiary will be responsible; any annual or lifetime caps or other limits on benefits under the plan; the extent to which preventive services are covered under the plan; whether, and under what circumstances, existing and new drugs are covered under the plan; whether, and under what circumstances, coverage is provided for medical tests, devices and procedures; provisions governing the use of network providers, the composition of the provider network and whether, and under what circumstances, coverage is provided for out-of-network services; any conditions or limits on the selection of primary care providers or providers of speciality medical care; any conditions or limits applicable to obtaining emergency medical care; and any provisions requiring preauthorizations or utilization review as a condition to obtaining a benefit or service under the plan.

In the Department's view, these proposed changes clarify existing rules in light of changes in group health plan practices in recent years. Although the Department believes that most ERISA covered group health plans currently provide this information, many plan sponsors may take the opportunity to address ambiguities and update their SPDs following adoption of final amendments. Because the number of plans that fully comply with the clarifications set forth in the proposal is unknown, a conservatively high assumption as to the number of plans that will consider SPD revisions necessary has been made for purposes of this analysis.

For purposes of this analysis, it is estimated that the Consumer Bill of Rights disclosures, including the proposal with respect to disclosure of procedures governing claims for benefits, will require approximately 17 additional hours of preparation time for group health plans with over 100 participants and for the estimated 8,600 small group products utilized by approximately 2.6 million group health plans with fewer than 100 participants. It is also estimated that the additional time necessary to ensure that this material is included in the mailings that are otherwise necessary will add approximately an additional minute to the time spent in accumulating and mailing information to participants, and an additional \$0.50 in materials and mailing costs. These incremental increases have been incorporated in both the preparation and distribution burden estimates.

¹⁶ The Interim Rule modifies the required content to group health plan SPDs to clarify the applicability under the Newborns' and Mothers' Health Protection Act of minimum hospital lengths of stay for mothers and newborn children following childbirth.

Additional burden has also been computed in connection with the proposed elimination of the limited exemption with respect to SPDs of welfare plans providing benefits through a federally qualified HMO. Under the proposal to eliminate the limited exemption, disclosures of rules for eligibility and participation, circumstances which may result in loss of or disqualification from eligibility, plan funding medium, and claim and appeal procedures, would be required to be included in an SPD, and all other generally applicable provisions as to SPD style, content, and format would apply for SPDs provided to participants and beneficiaries covered by a federally qualified HMO. Based upon available information as to the number of federally qualified HMOs and the numbers of ERISA covered plans offering HMOs, it has been estimated that approximately 153,000 plans will be required to implement SPD content and format changes that will eliminate the existing 50 percent savings in preparation time for these plans.

Clarifications proposed with respect to procedures governing qualified domestic relations orders (QDRO) and qualified medical child support orders (QMCSO), disclosures concerning plan type, updating of the model statement of ERISA rights, disclosures with respect to the circumstances under which the plan can be amended to reduce or eliminate benefits and plan's provisions and participants' rights and obligations upon termination of the plan, and disclosure of participant rights under the Consolidated Omnibus Budget Reconciliation Act (COBRA) have also been taken into account in estimating the total burden expected to be imposed by the proposed changes to SPD content requirements. While the clarifications with respect to QDRO, QMCSO, amendment/termination provision disclosures, and COBRA disclosures are expected to result in some increase in preparation burden, as a group these clarifications are estimated to represent only a slight burden increase.

As to the distribution burden for SPDs that the Department is assuming for purposes of this analysis will be revised as a result of the proposed content requirements, ERISA section 104(b)(1) and regulations published at §§ 2520.104b-2 and 2520.104b-3, describe the obligation of an employee benefit plan administrator to furnish the SPD and the summary of material modifications (SMM) to participants and the time frames within which this distribution is required to be made. In general, a plan administrator must furnish an updated SPD every five

years, unless no amendments have been made to the plan within that five-year period. In that event, the updated SPD must be furnished only every ten years. A plan administrator is also required to furnish each participant with a summary description of any material change made to the plan or SPD content during a period prior to preparation of an updated SPD, which may be appended to the participant's SPD.

For purposes of this analysis under PRA 95, the Department has treated the change to the NMHPA disclosure provision included in the Interim Rule as a change implemented by this proposal. This is because the distribution burden associated with revision of an SPD represents the greater portion of total burden, and it is assumed that plans will prepare and distribute revised disclosure materials in the most cost-efficient way, which would likely involve incorporating as many changes as possible in a single distribution.

Because this single ICR is currently the subject of two separate regulatory actions, the Department believes that a meaningful burden analysis should contemplate as a whole the nature and timing of all changes to existing Summary Plan Descriptions that might be made by plan administrators due to regulatory amendments. As a result, the burden analysis included in this proposal addresses the impact of the Interim Rule in addition to the changes that might be made as a result of this proposal. The methodology and assumptions used in estimating burden are applicable to both the proposed amendments and the interim final regulation. Both the total burden of the ICR and the burden specifically associated with this proposal are displayed in this notice.

As a consequence of SPD distribution requirements, and the fact that the majority of plans have either chosen to or have been required to make material changes to plan provisions in recent years, about 27 percent of plans routinely update and distribute an SPD each year. The methodology for estimating burden associated with the proposed clarifications to the SPD content rules must, therefore, integrate the recurring baseline burden with the projected incremental preparation and distribution burden in the years in which those increases are expected to be incurred.

For purposes of the burden estimates for these proposed clarifications, and based on the expected applicability dates for the clarifications, it has been assumed that no incremental increases will be experienced by plans until

1999.¹⁷ It is further assumed that plans that would ordinarily be preparing and distributing SPDs in 1999 will elect to incorporate the revisions in SPD content they consider necessary as a result of the proposal as part of the updated SPDs they would otherwise be preparing. Finally, it has been assumed for this analysis that all plans will have prepared and distributed a revised SPD by the end of the year 2000, whether or not an SPD would ordinarily have been prepared during this period. It is anticipated that these proposed rules will be applicable generally by the end of 2000.

The recurring baseline burden is estimated on the basis of several assumptions. It is assumed that routine preparation of an updated SPD requires 4 hours. Routine distribution is estimated to require two minutes and \$0.50 in materials and postage per participant. It is further assumed that 100 percent of small, fully insured welfare plans and, on average, 75 percent of other plans hire outside parties to prepare and distribute the SPD. These preparation services are assumed to be purchased at a rate of \$50 per hour, which is a blend of both professional and clerical rates. The clerical rate incorporated in estimates of distribution burden is \$11 per hour. The assumptions with respect to the rates of use of purchased services affect the distribution of burden between hours and costs for purposes of PRA 95.

Type of Review: Revision of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

Title: Regulations Regarding Required Contents of Summary Plan Descriptions for Employee Benefit Plans (Proposed Amendments to Summary Plan Description Regulations).

OMB Number: 1210-0039.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 2,027,293 (1998); 888,393 (1999); 2,641,818 (2000).

Total Responses: 83,332,000 (1998); 52,115,000 (1999); 160,703,000 (2000).

Estimated Burden Hours: 842,586 (1998); 815,850 total, 815,029 for existing ICR and Proposed Amendments (1999); 2,101,624 total, 2,099,405 for

¹⁷ It should be noted that while no incremental increase is incorporated in 1998 estimates for the proposed clarifications of the SPD content regulations, the 1998 burden hour and cost estimates do include increments previously computed in connection with amendments to the disclosure provisions of ERISA enacted as part of HIPAA, the NMHPA, and the interim disclosure rules issued on April 8, 1997 (62 FR 16979).

existing ICR and Proposed Amendments (2000).

Estimated Annual Costs (Operating and Maintenance): \$95,265,366 (1998); \$101,465,306 total, \$101,255,399 for existing ICR and Proposed Amendments (1999); \$218,395,191 total, \$218,118,450 for existing ICR and Proposed Amendments (2000).

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Analysis of Cost

The Department performed a comprehensive, unified analysis to estimate the costs of the proposed regulation for purposes of compliance with Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act. The methods and results of that analysis are summarized below.

To estimate the cost of the proposed regulation, it was necessary to estimate the number of SPDs in the ERISA-covered employee benefit plan universe, the frequency with which those SPDs are updated and distributed, and the number of participants to whom they must be distributed. It was also necessary to make certain assumptions about the cost of preparing and distributing SPDs, in particular the cost of bringing SPDs into compliance with the proposed regulation's provisions. The Department separately estimated the baseline cost of its current SPD regulation and the incremental cost of the proposed regulation. As noted earlier, the incremental cost is based on a conservative assumption, which results in an estimate of the maximum impact the proposal may be expected to have.

The Department estimated the number of SPDs and the number of participants based on Form 5500 Series data and other sources. Each pension plan is estimated to maintain one SPD. With respect to welfare plans, the number of SPDs is estimated to be smaller than the number of plans because small plans typically buy standard products from vendors.

In addition, individual plan sponsors often sponsor more than one plan and/or offer more than one kind of benefit (such as retirement and disability) under a single plan, but describe two or more of their plans or benefit types in a single SPD. The Department assumes that pension plans and health plans (or products) maintain separate SPDs, but that non-health welfare benefits are either offered together with health

benefits as part of unified welfare plans or are maintained as separate plans but described along with accompanying health plans in a single combined SPD.

Pursuant to these assumptions, the Department estimates that the universe includes a total of 690,000 unique pension plan SPDs and 51,000 unique health plan SPDs, which together encompass all other welfare plan SPDs.

With respect to the frequency of updating and distributing SPDs, plans filing the Form 5500 indicate whether they amended and distributed their SPDs in the preceding year. About 27 percent of plans so report. This figure is interpreted to represent a baseline level of SPD modification and distribution activity. In an exception to this general assumption, the Department estimates that a larger proportion of health plans have modified or will modify their SPDs in 1998 in order to comply with the Department's interim final regulation implementing the disclosure provisions of HIPAA and the NMLHA.

The Department generally assumes that preparing a revised SPD requires four hours of combined professional and clerical time, priced at \$50 per hour (a blended professional and clerical rate). In connection with the interim final regulation implementing the disclosure provisions of HIPAA and the NMLHA, the Department assumed a burden of one hour at \$50. The time required was assumed to be less than for a typical SPD revision because HIPAA requires only that certain brief and specific disclosures be added to SPDs or provided in SMMs. The Department assumes that distributing an SPD consumes two minutes of clerical labor at \$11 per hour, plus \$0.50 for materials and mailing or electronic dissemination. This amounts to \$0.87 per SPD distributed.

The Department estimates the baseline cost to prepare and distribute SPDs under the current regulation at \$113 million in 1998, falling to \$86 million in 1999, and thereafter growing in tandem with plan participation to reach \$89 million in 2001. The higher cost in 1998 reflects HIPAA requirements that health plans revise and distribute their SPDs or prepare and distribute SMMs by the end of that year. Focusing on 1999, a more typical baseline year, the \$86 million total cost includes \$41 million to prepare 206,000 unique SPDs, and \$45 million to distribute copies to 52 million participants.

The Department separately estimated the cost of revisions to SPDs that plan administrators may undertake to address ambiguities and update their SPDs following adoption of final

amendments of the SPD content requirements. This cost is separate from the baseline cost attributable to normal SPD revisions, such as those made pursuant to plan amendments. Plans preparing SPDs solely to comply with the clarifications of the proposed regulation would incur only the costs attributable to those revisions deemed necessary to comply with the clarifications, while plans simultaneously revising their SPDs for other reasons would incur this additional cost plus the baseline unit cost.

With respect to pension plans, the Department assumes that preparing an SPD to comply with the proposal requires 30 minutes of combined professional and clerical labor, at a blended rate of \$50 per hour. The time and expense associated with distributing each SPD is assumed to be unchanged from the baseline.

To estimate the per-unit cost to prepare revised health plan SPDs, the Department drew on two studies of the cost to health plans to comply with the Consumer Bill of Rights, one by The Lewin Group for the President's Commission, and one by Coopers and Lybrand for the Kaiser Family Foundation.¹⁸ Excerpting and adjusting these studies' estimates to reflect proposed regulation's provisions, the Department essentially adopted the midpoint of these two studies' findings. With the addition of the small burden attributable to other provisions, the cost to prepare a health plan SPD to bring it into conformity with the clarifications of the proposed regulation amounts to approximately 18 hours at \$50 per hour.

The Department assumed that the cost to distribute a health plan SPD will rise, consuming an additional one minute of clerical time at \$11 per hour and an additional \$0.50 for materials and mailing or electronic distribution, for a total for \$1.55 per SPD.

The Department estimates the added cost attributable to this proposed regulation to be \$37 million in 1999 and \$176 million in 2000, falling to \$15 million in 2001 and subsequent years, growing only in proportion to plan participation. The peak costs in 2000 reflect \$41 million to prepare 535,000 different SPDs describing 2.4 million pension and welfare plans, and \$135 million to distribute those SPDs to 107 million participants.

¹⁸ *Estimated Costs of Selected Consumer Protection Proposals—A Cost Analysis of the President's Advisory Commission's Consumer Bill of Rights and Responsibilities and the Patient Access to Responsible Care Act*, Coopers & Lybrand, LLP for the Kaiser Family Foundation, April, 1998.

Combining this added cost with the baseline cost attributable to the current regulation, the total cost to prepare and distribute SPDs under the proposed regulation amounts to \$123 million in 1999, \$264 million in 2000, and \$104

million in 2001 and beyond. The peak costs in 2000 include \$82 million to prepare 597,000 SPDs describing 2.6 million plans, and \$182 million to distribute those SPDs to 161 million participants.

The baseline, additional, and total costs associated with this proposed SPD regulation are summarized in the table below.

COST OF THE PROPOSED SPD REGULATION
[\$ millions]

Year	Baseline	Additional	Total
1998*	\$113	\$0	\$113
1999	86	37	123
2000	88	176	264
2001	89	15	104

* Includes the cost of certain SPD revisions necessitated by HIPAA.

Plans that are assumed for purposes of this analysis to prepare and distribute SPDs in 2000 for the sole purpose of complying with the proposed regulation would have the option of complying by preparing and distributing SMMs instead. The content of such SMMs would essentially duplicate the content that would otherwise be added to or substituted into SPDs. Plans presumably would elect to prepare and distribute SMMs only if doing so lessened their overall cost to comply. Therefore, as a means to comply with the proposed regulation, preparing and distributing SMMs should be no more costly than revising and distributing SPDs. The Department's estimates of the costs to revise and distribute SPDs in response to this proposed regulation can therefore be interpreted to account for the likelihood that some plans will elect to prepare and distribute SMMs instead.

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, but does include mandates which may impose an annual burden of \$100 million or more on the private sector. The basis for this statement is described in the analysis of costs for purposes of Executive Order 12866 and the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule proposed in this action is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA) and is a major rule under SBREFA. The rule, if finalized, will be transmitted to Congress and the Comptroller General for review.

Statutory Authority

These regulations are proposed pursuant to authority contained in section 505 of ERISA (Pub. L. 93-406, 88 Stat. 894, 29 U.S.C. 1135) and sections 104(b) of ERISA, as amended, and under Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2520

Employee benefit plans, Employee Retirement Income Security Act, Group health plans, Pension plans, Welfare benefit plans.

For the reasons set forth above, Part 2520 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2520—[AMENDED]

1. The authority for Part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93-406, 88 Stat. 840-52 and 894 (29 U.S.C. 1021-1025, 1029-31, and 1135); Secretary of Labor's Order No. 27-74, 13-76, 1-87, and Labor Management Services Administration Order 2-6.

2. Section 2520.102-3 is amended by revising paragraphs (d), (j), (l), (m)(3), (o), (S), and (t)(2) to read as follows:

§ 2520.102-3 Contents of summary plan description.

* * * * *

(d) The type of pension or welfare plan, e.g., for pension plans—defined benefit, money purchase, profit sharing, ERISA section 404(c) plans, etc., and for welfare plans—group health plans, disability, pre-paid legal services, etc.,

* * * * *

(j) The plan's requirements respecting eligibility for participation and for benefits. The summary plan description shall describe the plan's provisions relating to eligibility to participate in the plan and the information identified in paragraphs (j)(1), (2) and (3), as appropriate.

(1) For employee pension benefit plans, it shall also include a statement describing the plan's normal retirement age, as that term is defined in sec. 3(24) of the Act, and a statement describing any other conditions which must be met before a participant will be eligible to receive benefits. Such plan benefits shall be described or summarized. In addition, the summary plan description shall include a description of the procedures governing qualified domestic relations order (QDRO) determinations or a statement indicating that participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan administrator.

(2) For employee welfare benefit plans, it shall also include a statement of the conditions pertaining to eligibility to receive benefits, and a description or summary of the benefits. In the case of a welfare plan providing extensive schedules of benefits (a group health plan, for example) only a general description of such benefits is required if reference is made to detailed schedules of benefits which are available, without cost to any participant or beneficiary who so requests. In addition, the summary plan description shall include a description of the procedures governing qualified medical child support order (QMCSO) determinations or a statement indicating that participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan administrator.

(3) For employee welfare benefit plans that are group health plans, as defined in section 733(a)(1) of the Act, the summary plan description shall include a description of: any cost-sharing provisions, including premiums, deductibles, coinsurance, and copayment amounts for which the participant or beneficiary will be responsible; any annual or lifetime caps or other limits on benefits under the plan; the extent to which preventive

services are covered under the plan; whether, and under what circumstances, existing and new drugs are covered under the plan; whether, and under what circumstances, coverage is provided for medical tests, devices and procedures; provisions governing the use of network providers, the composition of the provider network and whether, and under what circumstances, coverage is provided for out-of-network services; any conditions or limits on the selection of primary care providers or providers of specialty medical care; any conditions or limits applicable to obtaining emergency medical care; and any provisions requiring preauthorizations or utilization review as a condition to obtaining a benefit or service under the plan. In the case of plans with provider networks, the listing of providers may be furnished as a separate document, provided that the summary plan description contains a general description of the provider network and indicates that provider lists are furnished automatically, without charge, as a separate document.

* * * * *

(l) For both pension and welfare benefit plans, a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture or suspension of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by paragraphs (j) and (k) of this section. In addition to other required information, plans must include a summary of any plan provisions governing the authority of the plan sponsors or others to terminate the plan or amend or eliminate benefits under the plan and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated; a summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on termination of the plan or amendment or elimination of benefits under the plan, including, in the case of an employee pension benefit plan, a summary of any provisions relating to the accrual and the vesting of pension benefits under the plan upon termination; and a summary of any plan provisions governing the allocation and disposition of assets of the plan upon termination. Such summaries shall be disclosed in accordance with the requirements under 29 CFR 2520.102-2(b).

(m) * * *

(3) A summary plan description will be deemed to comply with paragraph (m)(2) of this section if it includes the following statement:

Your pension benefits under this plan are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. If the plan terminates (ends) without enough money to pay all benefits, the PBGC will step in to pay pension benefits. Most people receive all of the pension benefits they would have received under their plan, but some people may lose certain benefits.

The PBGC guarantee generally covers: (1) normal and early retirement benefits; (2) disability benefits if you become disabled before the plan terminates; and (3) certain benefits for your survivors.

The PBGC guarantee generally does not cover: (1) Benefits greater than the maximum guaranteed amount set by law for the year in which the plan terminates; (2) some or all of benefit increases and new benefits based on plan provisions that have been in place for fewer than 5 years at the time the plan terminates; (3) benefits that are not vested because you have not worked long enough for the company; (4) benefits for which you have not met all of the requirements at the time the plan terminates; (5) certain early retirement payments (such as supplemental benefits that stop when you become eligible for Social Security) that result in an early retirement monthly benefit greater than your monthly benefit at the plan's normal retirement age; and (6) non-pension benefits, such as health insurance, life insurance, certain death benefits, vacation pay, and severance pay.

Even if certain of your benefits are not guaranteed, you still may receive some of those benefits from the PBGC depending on how much money your plan has and on how much the PBGC collects from employers.

For more information about the PBGC and the benefits it guarantees, ask your plan administrator or contact the PBGC's Technical Assistance Division, 1200 K Street N.W., Suite 930, Washington, D.C. 20005-4026 or call 202-326-4000 (not a toll-free number). TTY/TDD users may call the federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4000. Additional information about the PBGC's pension insurance program is available through the PBGC's website on the Internet at <http://www.pbgc.gov>

* * * * *

(o) In the case of a group health plan, within the meaning of section 607(1), subject to the continuation coverage provisions of Part 6 of Title I of ERISA, a description of the rights and obligations of participants and beneficiaries with respect to continuation coverage, including, among other things, information concerning qualifying events, premiums, notice and election requirements and procedures, and duration of coverage.

* * * * *

(s) The procedures governing claims for benefits (including procedures for

obtaining preauthorizations, approvals, or utilization review decisions in the case of group health plan services or benefits, filing claim forms, notifications of benefit determinations, and review of denied claims in the case of any plan), applicable time limits, and remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 503 of Title I of the Act). The plan's claims procedures may be furnished as a separate document that accompanies the plan's SPD provided that the document satisfies the style and format requirements of § 2520.102-2, and, provided further, that the summary plan description contains a statement that the plan's claims procedures are furnished, without charge, as a separate document.

(t) * * *

(2) A summary plan description will be deemed to comply with the requirements of paragraph (t)(1) of the section if it includes the following statement; items of information which are not applicable to a particular plan should be deleted:

As a participant in (name of plan) you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

Examine, without charge, at the plan administrator's office and at other specified locations, such as worksites and union halls, all documents governing the plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the plan with the U.S. Department of Labor.

Obtain, upon written request to the plan administrator, copies of documents governing the operation of the plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The administrator may make a reasonable charge for the copies.

Receive a summary of the plan's annual financial report. The plan administrator is required by law to furnish each participant with a copy of this summary annual report.

Obtain a statement telling you whether you have a right to receive a pension at normal retirement age (age * * *) and if so, what your benefits would be at normal retirement age if you stop working under the plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once every twelve (12) months. The plan must provide the statement free of charge.

Continue health care coverage for yourself, spouse or dependents if there is a loss of coverage under the plan as a result of a qualifying event. You or your dependents may have to pay for such coverage. Review

this summary plan description and the documents governing the plan on the rules governing your COBRA continuation coverage rights.

Reduction or elimination of exclusionary periods of coverage for preexisting conditions under your group health plan, if you have creditable coverage from another plan. You should be provided a certificate of creditable coverage, free of charge, from your group health plan or health insurance issuer when you lose coverage under the plan, when you become entitled to elect COBRA continuation coverage, when your COBRA continuation coverage ceases, if you request it before losing coverage, or if you request it up to 24 months after losing coverage. Without evidence of creditable coverage, you may be subject to a preexisting condition exclusion for 12 months (18 months for late enrollees) after your enrollment date in your coverage.

In addition to creating rights for plan participants ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to

prevent you from obtaining a (pension, welfare) benefit or exercising your rights under ERISA. If your claim for a (pension, welfare) benefit is denied in whole or in part you must receive a written explanation of the reason for the denial. You have the right to have the plan review and reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the plan administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in Federal court. If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may

order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

If you have any questions about your plan, you should contact the plan administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

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§ 2520.102-5 [Removed]

3. Section 2520.102-5 is removed.

Signed at Washington, DC, this 28th day of August, 1998.

Meredith Miller,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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