

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

### A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

Under section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, certain provisions of the Affordable Care Act do not apply to a group health plan or health insurance coverage in which an individual was enrolled on March 23, 2010 (a grandfathered health plan). The statute and these interim final regulations allow family members of individuals already enrolled in a grandfathered plan to enroll in the plan after March 23, 2010; in such cases, the plan or coverage is also a grandfathered health plan with respect to the family members. New employees (whether newly hired or newly enrolled) and their families can enroll in a grandfathered group health plan after March 23, 2010.

If a plan or health insurance coverage intends to be a grandfathered health plan, it must include a statement in any plan materials provided to participants or beneficiaries (in the individual market, primary subscriber) describing the benefits provided under the plan or health insurance coverage, and that the plan or coverage is intended to be grandfathered health plan within the meaning of section 1251 of the Affordable Care Act (“grandfathered health plan disclosure”). Model language has been provided, which will satisfy this disclosure requirement

To maintain status as a grandfathered health plan under these interim final regulations, a plan or issuer must maintain records documenting the plan or policy terms in connection with the coverage in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan (“recordkeeping requirement”). In addition, the plan or issuer must make such records available for examination. Accordingly, a participant, beneficiary, individual policy subscriber, or State or Federal agency official would be able to inspect such documents to verify the status of the plan or health insurance coverage as a grandfathered health plan.

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

**The grandfathered health plan disclosure notice will be used by health plans to notify their beneficiaries that their plan is a grandfathered plan. In addition, it will provide contact information if the beneficiary has questions about their plans status. In addition, the health plan must maintain records that document its status as a grandfathered health plan. This information will be used by the Department to verify the status of the plan.**

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.*

The regulation does not require or restrict plans or issuers from using electronic technology to provide either disclosure.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

The Affordable Care Act amended the Employee Retirement Income Security Act, the Internal Revenue Code, and the PHS Act. Accordingly, the Department of Health and Human Services, the Department of Labor and the Department of the Treasury (Treasury) will require plans and issuers to notify beneficiaries of the health plan's grandfathered status and maintain records. There will be no duplication of effort with Departments of Labor and Treasury, however, because each agency is responsible for a different subset of health plans.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

The information collection does not impact small businesses or entities.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

If the information collection was conducted less frequently, beneficiaries would not be informed about the grandfathering status of their health plan. Without recordkeeping by the health plans, it would be much more difficult for the agencies to confirm the health plans grandfathered status.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*

- *requiring respondents to report information to the agency more often than quarterly;*
- *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- *requiring respondents to submit more than an original and two copies of any document;*
- *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

None.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

*Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.*

*Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.*

The interim final regulations provide the public with a 60-day period to submit written comments on the rule.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

None.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

Not applicable

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

Not applicable.

12. *Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*

- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*

- *The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*

### *Disclosure requirement*

The Department estimates that 98,000 state and local governmental plans will need to notify approximately 16.2 million policy holders and that 7400 plans providing coverage in the individual market will need to notify approximately 4.3 million policy holders of their plans' status as a grandfathered health plan. The following estimates except where noted are based on the mid-range estimates of the percent of plans retaining grandfathered status

Because the interim final regulations provide model language for this purpose, the Department estimates that five minutes of clerical time (with a labor rate of \$26.14/hour) will be required to incorporate the required language into the plan document and ten minutes of a human resource professional's time (with a labor rate of \$89.12/hour) will be required to review the modified language. After plans first satisfy the grandfathered health plan disclosure requirement in 2011, any additional burden should be *de minimus* if a plan wants to maintain its grandfathered status in future years. The Department also expects the cost of removing the notice from plan documents as plans relinquish their grandfathered status to be *de minimus* and therefore is not estimated. Therefore, the Department estimates that plans and insurers will incur a one-time hour burden of 26,000 hours with an equivalent cost of \$1.8 million to meet the disclosure requirement.

The corresponding estimates for the lower-range estimate of plans and policies relinquishing grandfathered status are: 23,000 hours, with an equivalent cost of \$1.6 million.

The corresponding estimates for the upper-range estimate of plans and policies relinquishing grandfathered status are: 29,000 hours, with an equivalent cost of \$1.9 million.

### *Record Keeping Requirement*

The Department assumes that most of the documents required to be retained to satisfy the Affordable Care Act's recordkeeping requirement already are retained by plans for tax purposes, to satisfy record retention and statute of limitations requirements, and for other business reasons. Therefore, the Department estimates that the recordkeeping burden imposed by this ICR will require five minutes of a legal professional's time (with a rate of \$119.03/hour) to determine the relevant plan documents that must be retained and ten minutes of clerical staff time (with a labor rate of \$26.14/hour) to organize and file the required documents to ensure that they are accessible to participants, beneficiaries, and Federal and State governmental agency officials.

With an estimated 98,000 grandfathered plans and 7,400 grandfathered individual insurance products in 2011, the Department estimates an hour burden of approximately 26,000 hours with equivalent costs of \$1.5 million. The Department's have estimated this as a one-time cost incurred in 2011, because after the first year, the Department assumes any future costs will be *de minimus*.

The corresponding estimates for the lower-range estimate of plans and policies relinquishing grandfathered status are: 23,000 hours, with an equivalent cost of \$1.3 million.

The corresponding estimates for the upper-range estimate of plans and policies relinquishing grandfathered status are: 29,000 hours, with an equivalent cost of \$1.6 million.

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

The Department assumes that only printing and material costs are associated with the disclosure requirement, because the interim final regulations provide model language that can be incorporated into existing plan documents, such as an SPD. The Department estimates that the notice will require one-half of a page, five cents per page printing and material cost will be incurred, and 38 percent of the notices will be delivered electronically. This results in a cost burden of \$318,000 ( $\$0.05 \text{ per page} \times 1/2 \text{ pages per notice} \times 12.7 \text{ million notices} \times 0.62$ ).

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

Not applicable.

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

This is a new information collection.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

There are no plans to publish the results of this collection of information.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

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

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

None.

## **B. Collections of Information Employing Statistical Methods**

Not applicable.