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.*

The Patient Protection and Affordable Care Act, Public Law 111-148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010. Section 1251 of the Act provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. To maintain its status as a grandfathered health plan, the interim final regulations (29 CFR 2590.715-1251(a)(3)) require the plan to maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify, explain or clarify status as a grandfathered health plan (the "recordkeeping requirement"). The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

The interim final regulations (29 CFR 2590.715-1251(a)(2)) also require a grandfathered health plan to include a statement in any plan material provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act, that being a grandfathered health plan means that the plan does not include certain consumer protections of the Affordable Care Act, providing contact information for participants to direct questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status and to file complaints. (the "disclosure requirement").

An amendment to the interim final regulations requires a grandfathered group health plan that is changing health insurance issuers to provide the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether the standards of paragraph (g)(1) of the interim final regulations are exceeded.

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 disclosure requirement will provide participants and beneficiaries with important information about their grandfathered health plans, such as that grandfathered plans are not required to comply with certain consumer protection provisions contained in the Act. It also will provide important contact information for participants to find out which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to

change from grandfathered to non-grandfathered health plan status. The recordkeeping requirement will allow a participant, beneficiary, or Federal or state official to inspect plan documents to verify that a plan or health insurance coverage is a grandfathered health plan. The disclosure required when a change in carrier occurs will insure that the succeeding health insurance issuer has sufficient information to determine whether the standards set forth in paragraph (g)(1) of the interim final regulations are met.

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 restrict plans or issuers from using electronic technology to provide either disclosure. The Department of Labor's regulations under 29 C.F.R. § 2520.104b-1(b) provide that, "where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries." Section 29 CFR 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information submitted by customers to the federal government.

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 Public Health Service Act. Accordingly, both the Department of Health and Human Services (HHS) and the Department of the Treasury (Treasury) will require plans and issuers to comply with the disclosure and recordkeeping requirements. There will be no duplication of effort with HHS and Treasury, however, because only the Department of Labor oversees ERISA-covered group health plans.

5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

The interim final regulations provide model language that can be incorporated into existing plan documents, such as a summary plan description to meet the disclosure requirement, which should reduce small business burden. Also, the Departments assume that most of the documents required to be retained to satisfy the recordkeeping requirement already are retained by plans for tax purposes, to satisfy ERISA's record retention and statute of limitations requirements, and for other business reasons.

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 this information were conducted less frequently, affected individuals would not be provided with a disclosure that their plan is a grandfathered health plan and that grandfathered health plans do not have to comply with some of the Affordable Care Act's consumer protection provisions. Without the recordkeeping requirement, it would be more difficult for participants, beneficiaries, or a Federal or state official to verify a plan's grandfathered health plan status. Without the change in carrier disclosure, it would be difficult for the succeeding plan to determine whether the requirements of paragraph (g)(1) of the interim final regulations are met.

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 Department's Federal Register notice required by 5 CFR 1320.8(d) on the information collection was published on May 22, 2013 (78 Fed. Reg. 30334). This notice provided the public with 60 days to comment. No comments were received

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.

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Grandfathered Health Plan Disclosure

In order to satisfy the interim final regulations' grandfathered health plan disclosure requirement, the Departments estimate that 2.2 million ERISA covered plans will need to notify an estimated 56.3 million policy holders of their plans' grandfathered health plan status. 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 an 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 minimis 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 minimis and therefore it is not estimated. Based on the foregoing, the Department estimates that plans will incur a one-time hour burden of 538,000 hours with an equivalent cost of $36.6million to meet the disclosure requirement.

Record Keeping Requirement

The Department assumes that most of the documents required to be retained to satisfy the recordkeeping requirement of these interim final regulations already are retained by plans for tax purposes, to satisfy ERISA's 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 2.2 million grandfathered plans in 2011, the Department estimates an hour burden of approximately 538,000 hours with equivalent costs of $30.7 million. The

Department has estimated this as a one-time cost incurred in 2011, because after the first year, the Departments anticipate that any future costs will be de minimis.

Documentation of Plan Terms

As discussed earlier, the amendment to the interim final regulation added a new disclosure requirement that requires the group health plan that is changing health insurance coverage to provide to the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether the standards of paragraph (g)(1) are exceeded.

Overall, the Department expects there to be a total hour burden for the new disclosure requirement of approximately 3,800 hours with an equivalent cost of approximately $96,000. The Department's share of the hour burden is approximately 1,800 hours with equivalent costs of $48,000, because the burden is shared equally between the Departments of Labor and Treasury.

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.)*

Grandfathered Health Plan Disclosure

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 Departments estimate 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 total cost burden of approximately $873,000 ($0.05 per page*1/2 pages per notice * 34.9 million notices*0.62). The Department's share of the cost burden is approximately $437,000, because the cost burden is shared equally between the Departments of Labor and Treasury.

The Departments estimate that new disclosure requirement associated with the change in carrier amendment will result in a cost burden of approximately $228,000. The Department's share of the cost burden is approximately $124,000, because the cost burden is shared equally with the Department of the Treasury

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 ICR seeks no program changes or adjustments.

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.