

SUPPORTING STATEMENT
1545-2178
REG 118412-10
Grandfathered Health Plan

1. CIRCUMSTANCES NECESSITATING 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 regulations 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 regulations 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 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 are exceeded.

2. USE OF DATA

3.

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 are met.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The regulations do not restrict plans or issuers from using electronic technology to provide either disclosure. Regulations 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." Regulations establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement set forth in regulations.

4. EFFORTS TO IDENTIFY DUPLICATION

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. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The 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. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

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 regulations are met.

5. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not Applicable

6. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A Federal Register notice required by 5 CFR 1320.8(d) on the information collection was published on October 29, 2013, at 78 FR 64601. This notice provided the public with 60 days to comment. No comments were received.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not Applicable

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Not applicable

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Grandfathered Health Plan Disclosure

In order to satisfy the regulations' grandfathered health plan disclosure requirement, ERISA covered plans needed to notify policy holders of their plans' grandfathered health plan status. The regulations provided model language for this purpose. After plans first satisfied 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 not incur any burden from this requirement going forward.

Record Keeping Requirement

The Department assumes that most of the documents required to be retained to satisfy the recordkeeping requirement of these 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 estimated that there would only be a recordkeeping burden imposed by this ICR to organize and file the required documents to ensure that they are accessible to participants, beneficiaries, and Federal and State governmental agency officials. The Department estimated this as a one-time cost incurred in 2011. 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 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 the regulations are exceeded.

The Department estimates that there are about 2,358,000 ERISA covered health plans and approximately 54 percent of these plans are grandfathered health plans.¹ Also about 18 percent of the 54 percent of plans that looked to switch insurance carriers actually did switch carriers in 2012.² While the distribution of grandfathered plans is not known, the switching rate is assumed to be the same as the general population that switched. Therefore, the Department estimates that about 124,000 plans are required to send the notice (2.4 million plans * 54 % Grandfathered * 54 % considered switching* 18 % that considered switching and did switch).

It is anticipated that clerical personnel will spend 2 minutes mailing the required plan documents to the new carriers leading to an hour burden of 4,125 hours (124,00 plans * 2 minutes), with an equivalent cost of \$120,000 (124,00 plans * 2 minutes* \$29.14/hour)

Based on the foregoing, the Department's share of the hour burden is approximately 2,063 hours with an equivalent cost of \$60,000, because the Department shares this burden equally with the Departments of Labor.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Grandfathered Health Plan Disclosure

The Department assumes that only printing and material costs are associated with the disclosure requirement, because the 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 page, five cents per page printing and material cost, and that 38 percent of the notices will be delivered electronically. This results in a total cost burden of approximately \$369,000 (\$0.05 per page*1/2 pages per notice * 23.8 million notices*0.62). The Department's share of the cost burden for the grandfathered health plan disclosure is approximately \$184,700, because the cost burden is shared equally with the Department of Labor.

1 Kaiser Family Foundation and Health Research & Education Trust, "2013 Employer Health Benefits Survey".

2 Id.

Documentation of Plan Terms

The Department estimates that disclosure requirement associated with the change in carrier amendment will require 90 pages, five cents per page printing and material cost, and that 50 percent of the notices will be distributed electronically. This results in a cost burden of approximately \$422,000 (124,000 notices * 50% not sent electronically * (90 pages*\$0.05 + \$2.32 postage). The Department's share of the cost burden is approximately \$211,000, because the cost burden is shared equally with the Department of Labor.

Based in the foregoing, the Department's share of the total cost burden associated with this ICR is \$395,700.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

The reduction in the hour and cost burden associated with the renewal of this ICR is attributable to the fact that most of the burden was incurred in the first year (2011). Adjustments also resulted, because the Department of Labor updated labor rates and its estimate of the number of plans and participants affected by the rule. Changes also resulted from the fact that the percentage of plans that are grandfathered dropped to 54 percent of all plans and the percent of all participants in grandfathered plans has dropped to 36 percent of all participants in ERISA covered plans.³

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

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

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

³ Kaiser Family Foundation and Health Research & Education Trust, "2013 Employer Health Benefits Survey".

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

None.