SUPPORTING STATEMENT
1545-2178
TD 9489 (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. On June 17, 2010, the Departments issued interim final regulations implementing section 1251 and requesting comment. On November 17, 2010, the Departments issued an amendment to the interim final regulations to permit certain changes in policies, certificates, or contracts of insurance without loss of grandfathered status.

To maintain its status as a grandfathered health plan, the interim final regulations and these final regulations (29 CFR 2590.715-1251(a)(3)(i))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 and the 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").

The November 2010 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. The Department has retained this provision in the final regulations ((29 CFR 2590.715-1251(a)(3)(i)).

The Department has now issued final regulations that continue the information collections from those contained in the interim final regulations. The final regulations clarify that a grandfathered health plan is not required to provide the disclosure statement every time it sends out a communication, such as an explanation of benefits, to a participant or beneficiary. Instead, a grandfathered health plan will comply with this disclosure requirement if it includes the model

disclosure language provided in the Departments' interim final grandfather regulations (or a similar statement) whenever a summary of the benefits under the plan is provided to participants and beneficiaries.

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 set forth in paragraph (g)(1) of the final regulations are met.

3. USE OF IMPROVED 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. 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 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 believe 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 paragraph (g)(1) of the interim final regulations are met.

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

There are no circumstances requiring inconsistency with guideline in 5 CFR 1329.5(d)(2).

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

The Department provided the public with 60 days to comment on the ICRs contained in the interim final regulations. The Department did not receive and comments in response to this request. Therefore, the Departments are retaining the approach of the interim final regulations in the final regulations.

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

No gifts are being provided.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

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 final regulations' to maintain their status as grandfathered health plan, the plan must disclose to participants and beneficiaries its status as a Grandfathered Health Plan. Model language is provided by the Department. Using data from the 2014 Employer Health Benefits Survey it is estimated that 37 percent of plans are grandfathered plans and 26 percent of employees in ERISA covered plans are in a grandfathered plans.

The Departments estimate that there are 851,000 (2.3 million* 0.37) ERISA covered plans with an estimated 17.2 million policy holders (66 million policy holders *0.26) that will need to include the notice in plan documents. After plans 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 incur no additional burden to maintain or remove the notice from plan documents. Paper and mailing cost of the notice in discussed below.

Record Keeping Requirement

Plans were required to maintain records documenting the terms of the plan or health insurance coverage in connection with the coverage in effect on March 23, 2010.

The Department assumes that most of the documents required to be retained to satisfy the recordkeeping requirement of these 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. The Department estimated this as a one-time cost incurred in 2011, because after the first year, the Departments anticipate that any future costs to retain the records will be de minimis.

Documentation of Plan Terms

The final regulations contain a 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.

The number of plans that might be effected (133,200) is estimated by multiplying the number of grandfathered plans (850,700) by the percentage of plans shopping for a new carrier (58 percent) and the number of plans shopping for a new carrier that switched carriers(27 percent). Each of these plans would need to transmit to the carrier documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination of whether the standards of paragraph (g)(1) of the final regulations are exceeded. The Department estimates that the transmission of the already retained documents would require 2 minutes of a clerical staff's time with a labor rate of $30.42 per hour. These estimate result in an hour burden of 4,440 hours (133,200*2/60*$30.42) with an equivalent cost of $135,100.

Both IRS and Department of Labor burden:

Responses	Timer per response	Burden
133,200	.03333	4,440 hrs.

Overall, the Department expects there to be a total hour burden for the disclosure requirements of approximately 4,440 hours with an equivalent cost of approximately $135,100.

IRS' burden:

Responses	Timer per response	Burden
66,600	.03333	2,220 hrs.

The IRS' share of the hour burden is approximately 2,220 hours, because the burden is shared equally between the Departments of Labor and Treasury.

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 these 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 $266,000 ($0.05 per page*1/2 pages per notice * 17.2 million notices*0.62). The Department's share of the cost burden is approximately $133,000, because the cost burden is shared equally between the Departments of Labor and Treasury.

Documentation of Plan Terms

As discussed above the Departments estimated that 133,200 plans could be affected by this requirement. Each of these plans would need to transmit to the carrier documentation of plan terms. If half the plans transmitted the requirements electronically then 66,600 plans sent the documents on paper. Materials and postage costs could be $467,600 ((66,600*(90 pages *5 cents + $2.52 postage)). The IRS' share of the cost burden to Respondents is approximately $233,800 (467,600/2), because the cost burden is shared equally with the DOL.

Total cost to Respondents:

Grandfathered Health Plan Disclosure	*Documentation of Plan Terms*	*Total Costs*
$133,000	$233,800	$366,800

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

De Minimis.

15. REASONS FOR CHANGE IN BURDEN

As reported by the Internal Revenue Service, there is a change in the burden previously approved by OMB due to update of the shared burden information between Departments. This submission is also to renew the collection.

Overall this Information Collection Request shared between the Departments' seeks no program changes. Changes to the estimates are the result of a decrease in the number of grandfathered group health plans over-time and increases in wages and postage rates.

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.

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

There are no exceptions to the certification statement.