

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
GRANDFATHERED HEALTH PLAN DISCLOSURE AND RECORDKEEPING
REQUIREMENT**

This ICR seeks approval for an extension of an existing control number.

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 or the Act) was enacted 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.¹ 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.² On November 18, 2015, the Departments issued final regulations that continue the information collections contained in the interim final regulations.³

29 CFR 2590.715-1251(a)(3)(i)

To maintain its status as a grandfathered health plan, plans must 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.

29 CFR 2590.715-1251(a)(2)

Grandfathered health plans must include a statement in plan materials 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

¹ 75 FR 34538.

² 75 FR 70114.

³ 80 FR 72191

health plan status and to file complaints (the “disclosure requirement”). However, grandfathered health plans are not required to provide the disclosure statement every time they send out a communication, such as an explanation of benefits, to a participant or beneficiary. Instead, grandfathered health plans will comply with this disclosure requirement if they 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.

29 CFR 2590.715-1251(a)(3)(i)

Grandfathered group health plans that change health insurance issuers must 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 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 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.

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 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. 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.**

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5.

- 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 notice soliciting public comment and providing 60 days for that purpose as required by 5 CFR 1320.8 (d) was published in the Federal Register on December 13, 2021 (86 FR 70866). No comments were received.

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

No payments or gifts are provided to respondents.

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

No assurance of confidentiality has been provided.

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.

There are no questions of a sensitive nature.

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.**
- **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.**

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 2020 Employer Health Benefits Survey it is estimated that 16 percent of plans are grandfathered plans and 14 percent of employees in ERISA covered plans are in a

grandfathered plans.⁴ This is a notable decrease from the previous submission of this ICR which relied on 2014 Employer Health Benefits Survey data showing that 37 percent of plans were grandfathered and 26 percent of employees of ERISA covered plans were in grandfathered plans.

The Departments estimate that there are 321,168 (2.0 million* 0.16) ERISA covered plans⁵ with an estimated 8.5 million policy holders (60.8 million policy holders *0.14) that will need to include the notice in plan documents.⁶ Plans satisfied the grandfathered health plan one-time disclosure requirement in 2011. 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 is 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 affected (39,311) is estimated by multiplying the number of grandfathered plans (321,168) by the percentage of plans shopping for a new carrier (51 percent) and the number of plans shopping for a new carrier that switched carriers (24 percent).⁷ Each of these plans would need to transmit to the carrier documentation of plan terms (including benefits, cost sharing, employer contributions,

⁴ Kaiser Family Foundation, "2020 Employer Health Benefits Survey." <https://files.kff.org/attachment/Report-Employer-Health-Benefits-2020-Annual-Survey.pdf>

⁵ EBSA estimates based on the 2020 Medical Expenditure Survey - Insurance Component.

⁶ Health Insurance Coverage Bulletin: Abstract of Auxiliary Data for the March 2020 Annual Social and Economic Supplement to the Current Population Survey, Table 4
<https://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2020.pdf>

⁷ Kaiser Family Foundation, "2021 Employer Health Benefits Survey." <https://files.kff.org/attachment/Report-Employer-Health-Benefits-2021-Annual-Survey.pdf>

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 \$55.23 per hour.⁸ These estimate result in an hour burden of 1,310 hours (39,311*2/60*\$55.23) with an equivalent cost of \$72,371.

Overall, the Department expects there to be a total hour burden for the disclosure requirements of approximately 1,310 hours with an equivalent cost of approximately \$72,371. The Department's share of the hour burden is approximately 655 hours with equivalent costs of \$36,186, because the burden is shared equally between the Departments of Labor and Treasury.

Estimated Annualized Respondent Cost and Hour Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours per Firm)	Total Burden (Hours)	Hourly Wage Rate	Total Burden Cost
Clerical Staff transmit to the carrier documentation of plan terms	39,311	1	39,311	2/60	1,310	\$55.23	\$72,371
Recordkeeping Requirement	321,168	1	321,168	0	0	-	\$0
Notice of Grandfathering	321,168	26.49	8,507,989	0	0	-	\$0
Total	360,479*	1	8,868,468**	0.033	1,310	-	\$72,371
DOL Total	360,479		8,868,468	0.033	655**	-	\$36,186*

Note:

* The number of respondents was calculated in the following manner: 321,168 (Notice of Grandfathering) + 39,311 (Third-Party Disclosure) = 360,479

** The number of responses is calculated in the following manner: 8,507,989 (Notice of Grandfathering) + 321,168 (Recordkeeping) + 39,311 (Third-Party Disclosure) = 8,868,468

**The Department's share of the hour burden is approximately 655 hours with equivalent costs of \$36,186, 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

⁸ Internal DOL calculation based on 2020 labor cost data. For a description of the Department's methodology for calculating wage rates, see <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-eb-sa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

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 58.2 percent of the notices will be delivered electronically.⁹ This results in a total cost burden of approximately \$88,908 (\$0.05 per page*1/2 pages per notice * 8.5 million notices*0.418). The Department's share of the cost burden is approximately \$44,454, 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 39,311 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 19,655 plans sent the documents on paper. Materials and postage costs could be \$162,158 ((39,311*(90 pages *5 cents + \$3.75 postage))

The Department's share of the cost burden is approximately \$81,079, because the cost burden is shared equally with the Department of the Treasury

Summary

Based on the foregoing, the total cost burden is \$251,066 with DOL's share being \$125,533.

- 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.**

There are no costs to the Federal government.

- 15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14.**

⁹ According to data from the National Telecommunications and Information Agency (NTIA), 40.0% of individuals age 25 and over have access to the Internet at work. According to a Greenwald & Associates survey, 84% of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 33.6% receiving electronic disclosure at work). Additionally, the NTIA reports that 40.4% of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0% of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 24.7% receiving electronic disclosure outside of work). Combining the 33.6% who receive electronic disclosure at work with the 24.7% who receive electronic disclosure outside of work produces a total of 58.2% who will receive electronic disclosure overall.

This ICR contains no program changes. Adjustments to the burden estimates result from updated estimates on the number of grandfathered group health plans and increases in wage and postage rates. These updated data inputs reduce the hour burden by 528 hours compared with the prior submission and reduce the cost burden by \$79,121 compared with the prior submission.

- 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.**

There are no exceptions to the certification statement.