

**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 might not include certain consumer protections of the Affordable Care Act; and 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

¹ 75 FR 34538.

² 75 FR 70114.

³ 80 FR 72191

grandfathered 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 include the model disclosure language provided in the Departments’ 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)(ii)

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 ensure 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. 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.

ERISA and regulations thereunder provide general standards for the delivery of all information employee benefit plans must furnish to participants, beneficiaries, and other individuals under Title I of ERISA (29 C.F.R. § 2520.104b-1(b)). Plan administrators must use delivery methods reasonably calculated to ensure actual receipt of information by participants, beneficiaries, and other individuals (29 C.F.R. § 2520.104b-1(b)(1)). For example, in-hand delivery to an employee at his or her workplace is acceptable, as is material sent by first class mail. The Departments amended ERISA's delivery standards in 2002 by establishing a safe harbor for the use of electronic media to furnish disclosures (the 2002 safe harbor; 29 C.F.R. § 2520.104b-1(c)). The 2002 safe harbor was not and is not the exclusive means by which a plan administrator may use electronic media to satisfy the general standard. However, plan administrators who satisfy the conditions of the safe harbor are assured that the general delivery requirements have been satisfied. As discussed below in Question 13, the Departments estimate that 58.3 percent of the notices to participants and beneficiaries will be delivered electronically.

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 certain consumer protections of the Affordable Care Act. 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 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 July 09, 2024 (89 FR 56416). 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.**
- **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.

Estimate of the Number of Grandfathered Plans

Data from the 2020 Employer Health Benefits Survey, the most recent data available, reported that 16 percent of plans are grandfathered plans and 14 percent of employees in ERISA covered plans are in a grandfathered plan.⁴

As the Department does not have an updated estimate of the percent of plans that are grandfathered the Department continues to use the 2020 Medical Expenditure Panel Survey (MEPS) data to estimate the number of grandfathered plans to correlate with the 2020 estimate of the percent of plans that were grandfathered. This is a reasonable approach as the number of grandfathered plans cannot increase but can decrease. The Department acknowledges that the number of plan policyholders may change if the size of grandfathered plans changes. Therefore, the number of ERISA plan policyholders has been updated using the most recent 2022 MEPS data. The Departments estimate that there are 321,168 (2,007,298 ERISA-covered plans x 16 percent) grandfathered ERISA-covered plans⁵ with an estimated 9,982,000 policy holders (71.3 million policy holders x 14 percent).⁶

This information collection will calculate the burden for employer-sponsored private sector policyholders under ERISA plans. Individual plans and government plans are under the jurisdiction of the Department of Health and Human Services.

Grandfathered Health Plan Disclosure

In order to satisfy the final regulations to maintain their status as grandfathered health plan, a plan must disclose to participants and beneficiaries its status as a Grandfathered Health Plan. Model language is provided by the Department. Plans satisfied the grandfathered health plan one-time disclosure requirement in 2011. The Departments estimate that plans will incur no additional burden to maintain or remove the notice from plan documents. The printing and material costs of the notice are discussed below in Question 13.

Recordkeeping Requirement

⁴ Kaiser Family Foundation, *2020 Employer Health Benefits Survey*, <https://files.kff.org/attachment/Report-Employer-Health-Benefits-2020-Annual-Survey.pdf>. Note: More the most recent survey has stopped asking the question about grandfathered plans.

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

⁶ Health Insurance Coverage Bulletin: Abstract of Auxiliary Data for the March 2023 Annual Social and Economic Supplement to the Current Population Survey, Table 3C. <https://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2022.pdf>

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 Departments assume 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 Departments estimated this as a one-time cost incurred in 2011, because after the first year, the Departments anticipated 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 affected plans is estimated as 39,311, which is calculated 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, 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 Departments estimate that the transmission of the already retained documents would require 2 minutes of a clerical staff's time with a labor rate of \$69.41 per hour.⁸ See Table 1 for calculations and burden totals.

As DOL and the Department of the Treasury share jurisdiction, DOL and the Department of the Treasury will each account for 50 percent of the hour burden.

Table 1. Hour Burden

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

⁸ Internal DOL calculation based on 2024 labor cost data. For a description of the DOL'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-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

Activity	Number of Responses (A)	Number of Hours Per Response (B)	Total Hour Burden (A x B)	Wage Rate (C)	Equivalent Cost of Hour Burden (A x B x C)
Clerical Staff transmit to the carrier documentation of plan terms	39,311	2/60	1,310	\$69.41	\$90,952
Total	39,311	-	1,310	-	\$90,952
DOL Total	16,655		655		\$45,476

Table 2. Estimated Annualized Respondent Cost and Hour Burden

Activity	Number of Respondents	Number of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Wage Rate (Hourly)	Dollar Equivalent of Hour Burden
Clerical Staff transmit to the carrier documentation of plan terms	39,311	1	39,311	2/60	1,310	\$69.41	\$90,952
Total	360,479*	-	10,021,311**	-	1,310	-	\$90,952
DOL Total***	180,240	-	5,010,656	-	655	-	\$45,476

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: 9,982,000 (Notice of Grandfathering) + 39,311 (Third-Party Disclosure) = 10,021,311.

***The burden is shared equally between the Department of Labor and the Department of the Treasury.

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

- **The cost estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring,**

- **sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Grandfathered Health Plan Disclosure

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 58.3 percent of the notices will be delivered electronically.⁹ Departments estimates 9,982,000 policy holders in grandfathered plans receive notices, and 58.3 percent of notices are distributed electronically. The paper and printing cost per page is five cents and notice will be a half-page. See Table 3 for details of burdens calculations.

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. The Departments estimate that about 58.3 percent of the plans transmitted the requirements electronically, and remaining 41.7 percent used mailing services. The grandfathered plan notices are assumed to be half a page in length, while the disclosures are assumed to be 90 pages. The Departments also estimate that the cost of printing and

⁹ According to data from the National Telecommunications and Information Agency (NTIA), 37.4 % 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 31.4% receiving electronic disclosure at work). Additionally, the NTIA reports that 44.1% 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 26.9% receiving electronic disclosure outside of work). Combining the 31.4% who receive electronic disclosure at work with the 26.9% who receive electronic disclosure outside of work produces a total of 58.3% who will receive electronic disclosure overall.

material is five cents per page, \$4.85 for certified mailing, and \$0.73 for postage.¹⁰ See Table 3 for calculations and burden totals.

As DOL and the Department of the Treasury share jurisdiction, DOL and the Department of the Treasury will each account for 50 percent of the cost burden.

Table 3. Cost Burden

Activity	Number of Notices Sent by Mail (A)	Printing and Materials Costs (B)	Certified Mail (C)	Postage (D)	Cost Burden (A x (B + C + D))
Distribute Grandfathered Plan Notices	4,162,494	\$0.03 ¹¹			\$104,062
Mailing of Disclosures	16,393	\$4.50 ¹²	\$4.85	\$0.73	\$165,238
Total	4,178,887	-	-	-	\$269,300
DOL Share	2,089,443	-	-	-	\$134,650

- 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.**

This information collection contains no program changes. The Departments have updated the wage and postage rates, as well as the number of policyholders in grandfathered ERISA-covered group health plans. As the result, the number of responses has decreased by 3,857,812 responses, the hour burden has remained the same, and the cost burden has increased by \$9,117.

- 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.**

¹⁰ United States Postal Service, *Price List*, <https://www.usps.com/business/prices.htm>.

¹¹ This estimate is calculated in the following manner: 0.5 page in length x \$0.05 = \$0.025, rounded to \$0.03.

¹² This estimate is calculated in the following manner: 90 pages x \$0.05 = \$4.50.

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.

Not applicable.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

There are no statistical methods used in this information collection.