

Supporting Statement for Agent/Broker Consent Information Collection (CMS-10840/OMB control number: 0938-1438)

A. Background

The Patient Protection and Affordable Care Act, Public Law 111-148, enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111-152, enacted on March 30, 2010 (collectively, “Affordable Care Act”), expanded access to health insurance for individuals and employees of small businesses through the establishment of new Affordable Insurance Exchanges (Exchanges), also called Marketplaces. The Exchanges, which became operational on January 1, 2014, enhance competition in the health insurance market, expand access to affordable health insurance for millions of Americans, and provide consumers with a place to easily compare and shop for health insurance coverage.

Section 1312(e) of the Affordable Care Act directs the Secretary of the Department of Health and Human Services (HHS) to establish procedures under which a state may permit agents and brokers to enroll qualified individuals and employers into qualified health plans (QHPs) offered through an Exchange and to enable these agents and brokers to assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions.

Authority for collection of this information comes from 45 C.F.R. §155.220(c)(5), which states that “HHS or its designee may periodically monitor and audit an agent, broker, or web-broker under this subpart to assess its compliance with the applicable requirements of this section.” This information collection specifically details what information will be required to be collected and maintained by agents, brokers, and web-brokers were they to receive a request from HHS for consent records. Currently, HHS only plans to collect information from a small percentage of agents, brokers, or web-brokers in conjunction with active investigations of potential fraud. Utilizing §155.220(c)(5) and the information to be collected under newly proposed §§ 155.220(j)(2)(ii)(A)(1-2) and 155.220(j)(2)(iii)(A-C), HHS will be able to verify whether or not an agent, broker, or web-broker has obtained consent from a consumer they are assisting in enrolling in coverage in the individual market, and whether the consumer has reviewed their eligibility information and confirmed its accuracy.

B. Justification

1. Need and Legal Basis

This PRA package serves as the formal request for a data collection clearance associated with the *HHS Notice of Benefit and Payment Parameters for 2024 Payment Notice* (2024 Payment Notice) regarding the authority to allow HHS to collect the necessary information to verify whether or not agents, brokers, and web-brokers sufficiently obtained the required information from consumers prior to assisting them in the Marketplace if HHS so chooses. All entities covered by this section are required to (1) document that eligibility application information has been reviewed by and confirmed to be accurate by the consumer or their authorized representative designated in compliance with § 155.227, prior to application submission in accordance with

155.220(j)(2)(ii)(A)(1-2), and (2) document the receipt of consent from the consumer, or the consumer's authorized representative designated in compliance with § 155.227, and maintain the consent records in accordance with 155.220(j)(2)(iii)(A-C). Covered entities will only be required to produce this information to HHS in response to monitoring, audit, and enforcement activities conducted consistent with § 155.220(c)(5), (g), (h), and (k). HHS will use this information to determine if fraudulent activity occurred as it relates to consumer review and consent.

Agents, brokers, and web-brokers are required to “provide the FFEs with correct information” under 45 C.F.R § 155.220(j)(2)(ii). However, this section does not currently require that the agent, broker, or web-broker document that the consumer has reviewed and confirmed their application information is accurate. The lack of documentation concerning the consumer information entered on applications exposes consumers to risks concerning receiving inaccurate eligibility determinations, tax liability, or other negative results. Providing this information to HHS will ensure consumers enrolling through the Exchange using an agent, broker, or web-broker are confirming the information entered on their Exchange applications has been reviewed by them and is accurate prior to submission. The information collection will provide HHS with documentation that may be used for monitoring, audit, and enforcement activities.

Consumers may enroll in individual healthcare insurance coverage by working with insurance agents, brokers, or web-brokers. 45 CFR §155.220(j)(2)(iii) states that agents, brokers, and web-brokers must obtain the consent of the individual, employer, or employee prior to assisting or facilitating enrollment through a Federally-facilitated Exchange or assisting the individual in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs. Section 155.220(j)(2)(iii) does not currently require the receipt of consent to be documented, but oversight of agents, brokers, and web-brokers is substantially complicated without a consent documentation requirement. In cases where there are disputes between agents, brokers, or web-brokers and consumers, or between two or more agents, brokers, or web-brokers, about who has been authorized to act on behalf of a consumer (or whether anyone has been authorized), there may not be reliable records to reference to resolve the disputes and identify potential bad actors. The lack of a consent documentation requirement exposes consumers and the FFEs to increased risk of fraudulent activities, including unauthorized enrollments and inappropriate access to consumers' personally identifiable information. The information collection will provide HHS with documentation that may be used for monitoring, audit, and enforcement activities.

2. Information Users

HHS will use the requested information from agents, brokers, and web-brokers to verify whether or not they have sufficiently obtained consent and documentation of eligibility information review from the consumers they are assisting in enrolling in coverage in the individual market if HHS so chooses.

3. Use of Information Technology

HHS is not mandating a specific format or method for collecting and maintaining the

documentation stating a consumer reviewed and deemed their eligibility information accurate, nor consumer consent records. HHS will provide a consumer consent form for agents, brokers, and web-brokers to use if they so choose. HHS anticipates documentation collection methods will vary, ranging from electronic format to paper documentation. However, HHS does request that submitted documentation be provided to HHS in an electronic format. This will ensure there are no delays in receiving the requested information and will allow HHS to review the information in an expeditious manner and determine if any fraudulent activity was committed as it relates to a consumer reviewing and deeming their eligibility application was correct and obtaining consumer consent.

4. Duplication of Efforts

This information collection does not duplicate any other Federal effort.

5. Small Businesses

This information collection does not have a significant impact on small business.

6. Less Frequent Collection

The policy requires that consumer documentation about their consent and review and confirmation of their eligibility application be collected from agents, brokers, and web-brokers as needed. If information is collected on a less frequent basis, HHS will be unable to resolve issues between agents, brokers, or web-brokers and consumers or two or more agents, brokers, or web-brokers regarding whether eligibility information was reviewed and deemed accurate by the consumer, or one who has been authorized to act on behalf of a consumer, in a timely manner. This could expose consumers and the FFEs to increased risk of incorrect eligibility determinations or fraudulent activities.

Therefore, this information must be collected year-round and provided to HHS once annually if it so chooses.

7. Special Circumstances

There are no anticipated special circumstances.

8. Federal Register/Outside Consultation

This ICR was posted as part of the Payment Notice rule published in the Federal Register on 12/21/2022 (Vol. 87, No. 244, Pg. 78206) for the public to submit written comment as part of a first-round public comment period. Ninety-five comments were received that were directly relevant to this ICR. These comments are summarized and responses provided in Appendix A. The relevant comments that were received from the public are provided in Appendix B.

This ICR will be published as part of the Payment Notice rule in the Federal Register on April 27, 2023 (88 FR 25740) as part of a second-round public comment period for the public to submit written comment.

No additional outside consultation was sought.

9. Payments/Gifts to Respondents

No payments and/or gifts will be provided to respondents.

10. Confidentiality

To the extent of the applicable law and HHS policies, we will maintain consumer privacy with respect to the information disclosed. Nothing in the information collection should be interpreted as preventing a state from being allowed to disclose its own data.

11. Sensitive Questions

There are no sensitive questions included in this information collection effort.

12. Burden Estimates (Hours & Wages)

The following section contains estimates of burden imposed by the associated information collection requirements. Salaries for the positions cited were taken from the Bureau of Labor Statistics (BLS) web site (<https://www.bls.gov>). According to the May 2021 BLS, the mean hourly wage for insurance sales agents was \$33.34, plus a 100% fringe benefit rate of \$33.34, for an adjusted hourly wage of \$66.68 per hour. See Table 1.

Table 1. Adjusted Hourly Wages Used in Burden Estimates

Occupational Title	Occupational Code	Mean Hourly Wage (\$/hour)	Fringe Benefits & Overhead (100%) (\$/hour)	Adjusted Hourly Wage (\$/hour)
Insurance Sales Agent	41-3021	\$33.34	\$33.34	\$66.68

We are finalizing several amendments to §§ 155.220(j)(2)(ii)(A) and 155.220(j)(2)(iii). First, we are requiring the individual receiving assistance, or the individual's authorized representative, designated in compliance with § 155.227, to take an action that produces a record that they reviewed and confirmed the information on the application was accurate prior to submission. Second, agents, brokers, and web-brokers are required to obtain and document receipt of consumer consent prior to assisting with or facilitating enrollment through a Federally-facilitated Exchange, making updates to an existing application or enrollment, or assisting the individual in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs. Agents, brokers, and web-brokers would be required to maintain these documents for 10 years and produce these records in response to monitoring, audit, and enforcement activities conducted consistent with § 155.220(c)(5), (g), (h), and (k).

We estimate costs will include those related to obtaining and retaining the records of consent and eligibility information review and confirmation of accuracy, and when an agent, broker, or web-broker will be required to produce such records. This would not mandate any language, method, or

prescribe a form for collecting this information, but HHS will provide a consumer consent form for agents, brokers, and web-brokers to use if they so choose, see Appendix C. It would be up to the agents, brokers, and web-brokers to determine the best way to meet these regulatory requirements. As agents, brokers, and web-brokers are currently required to obtain consumer consent prior to assisting them, the requirement of obtaining consent would not add any costs to the enrolling agent, broker, or web-broker.

Costs associated with retaining consent documentation would depend on the method selected by the agent, broker, or web-broker to meet the regulatory requirements. For those agents, brokers, or web-brokers currently meeting the requirements, no additional costs would be incurred. If an enrolling entity opts to use paper for documentation, they will bear the costs of printing the consent confirmation.

Costs related to requiring that the consumer take some affirmative action to memorialize the consent and eligibility information review are as follows. We estimate it would take about 5 minutes per policy, for total of 10 minutes (0.17 hours), for an enrolling agent, broker or web-broker to obtain consumer affirmation of their consent and review of eligibility information and confirmation of approval. Using the adjusted hourly wage for an Insurance Sales Agent in Table 1, each enrollment will have approximately \$11.34 in additional cost associated with it based on the extra time commitment from these proposed policy changes. In PY 2022, agents submitted 4,947,909 policies. Based on this number of enrollments, the total annual burden is 841,145 hours with a total annual cost of \$56,109,288.06

Table 2. Burden to Memorialize the Eligibility and Consent Documentation

Labor Category	Number of Respondents	Hourly Labor Costs (Hourly rate + 100% Fringe benefits)	Burden Hours	Total Burden Costs (Per Respondent)	Total Burden Costs (All Respondents)
Insurance Sales Agent	4,947,909	\$66.68	0.17	\$11.34	
Total Annual			841,145		\$56,109,288.06
Total Three Years			2,523,435		\$168,327,864.18

HHS will only require an agent, broker, or web-broker to produce retained records in limited circumstances related to fraud investigation or agency audits. Pursuant to § 155.220(j)(2)(iii), HHS will use this information to verify whether or not an agent, broker, or web-broker has obtained consent from a consumer they are assisting in enrolling in coverage in the individual market. In instances of fraud investigation, HHS typically asks for records of approximately 10 different applications, generally from the past 2 to 3 years. These records are able to be mailed electronically, so there would be no cost associated with printing or mailing the retained records. Agency-wide audits are not completed often by HHS but may become more widespread. In those instances, HHS would ask the agency to produce a certain number of records from the past 10 years. We estimate it would take an agent approximately 2 hours to gather receipts for 10

applications. Using the adjusted hourly wage for an Insurance Sales Agent in Table 1, we estimate the total burden cost per respondent to be \$133.36. Each year, HHS generally investigates approximately 120 agents, brokers, or web-brokers, so we estimate the total annual burden is 240 hours with a total annual cost of \$16,003.20 annually.

Table 3. Burden to Produce Retained Eligibility and Consent Records

Labor Category	Number of Respondents	Hourly Labor Costs (Hourly rate + 100% Fringe benefits)	Burden Hours	Total Burden Costs (Per Respondent)	Total Burden Costs (All Respondents)
Insurance Sales Agent	120	\$66.68	2	\$133.36	
Total Annual			240		\$16,003.20
Total Three Years			720		\$48,009.60

Table 4. Summary of Annual Total Burden

Table Number: Name	CFR Section	Burden Hours	Burden Cost
Table 2: Burden to Memorialize the Eligibility and Consent Documentation	§ 155.220(j)(2)(ii) § 155.220(j)(2)(iii)	841,145	\$56,109,288.06
Table 3: Burden to Produce Retained Eligibility and Consent Records	§ 155.220(j)(2)(ii) § 155.220(j)(2)(iii)	240	\$16,003.20
Total		841,385	\$56,125,291.26

13. Capital Costs

There are no anticipated capital costs associated with these information collections.

14. Cost to Federal Government

We estimate that the operations and maintenance costs for the data collection tool and the data collection support to have a total cost to the federal government of \$816.04 per year. The calculations for CCIIO employees' hourly salary was obtained from the OPM website:

https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/GS_h.pdf

Table 5. Administrative Burden Costs for the Federal Government Associated with the Collection

Task	Estimated Cost
Operations, maintenance, and data collection support	
2 GS-11 (step 7): 2 x \$68.22 ¹ x 4 hours	\$545.76
Managerial review and oversight	
1 GS-15 (step 7): \$135.14 ² x 2 hours	\$270.28
Total Costs to Government	\$816.04

15. Changes to Burden

There are no changes to the burden as this is a new data collection.

16. Publication/Tabulation Dates

The results of the data collection will not be made public.

17. Expiration Date

The expiration date and OMB control number will appear on the first page of the instrument in the top right corner.

1 Hourly basic rate \$34.11 + 100% fringe benefit rate.
 2 Hourly basic rate \$67.57 + 100% fringe benefit rate.