



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Assistant Secretary
for Legislation

Washington, D.C. 20201

August 22, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Chairman Upton:

The Secretary has asked that I respond to your letter concerning eligibility determinations under the Affordable Care Act. The Department of Health and Human Services (HHS) has been working tirelessly to implement the Affordable Care Act to ensure that on October 1, 2013, millions of Americans will have access to quality, affordable health coverage, including private insurance plans through the Marketplaces. This work includes close collaboration with other federal agencies and the states to ensure a consumer-friendly experience for individuals, families, and small businesses applying for coverage while implementing appropriate verification procedures and safeguards to protect federal taxpayer dollars.

It is important to note that verification of income and employer-sponsored coverage applies only to individuals and families seeking financial assistance in the Marketplaces through the insurance affordability programs, which include Medicaid, the Children's Health Insurance Program (CHIP), premium tax credits, and cost-sharing reductions. Federal regulations at 45 CFR 155.320 provide detailed verification procedures for household income and eligibility for and enrollment in employer-sponsored coverage for individuals and families applying for insurance affordability programs.

The Marketplace will check the income information submitted by every individual applying for insurance affordability programs by comparing it with data from tax filings and Social Security data, and in many cases, with the additional use of current wage information that is available electronically. The multi-step process begins when an individual applies for an insurance affordability program through the Marketplace and affirms or inputs his or her projected annual household income. The Marketplace then compares the applicant's projected annual household income with information available from the Internal Revenue Service (IRS) and Social Security Administration (SSA). If the data submitted by the applicant cannot be verified by the Marketplace using IRS and SSA data, then the information is compared with wage information from employers provided by Equifax Workforce Solutions (Equifax), which is under contract with HHS to provide this information. If Equifax data does not substantiate the applicant's inputted income, the Marketplace will request an explanation or additional documentation from the applicant.

When documentation is requested, the regulations, at 45 CFR 155.315 (f)(4)(ii), specify that if the consumer meets all other eligibility requirements, he or she will be provided with time-limited advanced payments of the premium tax credits and cost-sharing reductions based on his or her attestation to projected household income, while documentation is gathered and submitted to the Marketplace. If documentation is requested and is not provided within the specified timeframe (90 days, which may be extended based on the applicant's good faith efforts to obtain required documentation), the statute specifies that the Marketplace will base its eligibility determination on data from IRS and SSA. If no data from IRS is available, the Marketplace will discontinue advanced payments of premium tax credits and cost-sharing reductions.

For eligibility for 2014 only, we recently indicated that HHS will exercise enforcement discretion such that a Marketplace may choose to request additional documentation from a statistically-significant sample of the group of individuals in only one specific situation: when the Marketplace has IRS data, the applicant attests to projected annual household income that is more than ten percent below IRS and SSA data, Equifax data is unavailable, and the individual does not provide a reasonable explanation for the inconsistency between the attestation and IRS and SSA data. In all other cases in which the data submitted by the individual cannot be verified using IRS and SSA data or Equifax data, and the individual does not provide a reasonable explanation for any discrepancy identified between their attestation and electronic data, the Marketplace must request additional documentation. This includes, for example, all cases in which IRS data is not available for an individual, and the attestation to projected annual household income cannot be verified using Equifax data; and all cases in which there is both IRS data and Equifax data for an individual but the attestation to projected annual household income cannot be verified using that data.

We have clarified that, for the Federally-facilitated Marketplace, CMS intends to set the initial size of the sample at 100 percent, such that everyone who is in the circumstance described above in which sampling may be used is asked to submit satisfactory documentation. Since publication of the final rule, we have ascertained that there are sufficient resources to ask every individual in this circumstance for such documentation with no exceptions. State-based Marketplaces may choose to use other sample sizes, provided that they are statistically significant for 2014. As described 45 CFR 155.320(c)(3)(vi)(F), if satisfactory documentation is not submitted by the end of the resolution period, the Marketplace will determine eligibility based on the IRS and SSA data.

With respect to verification of employer-sponsored coverage, section 1411(a) of the Affordable Care Act requires the Secretary to establish a program for determining eligibility for enrollment in a qualified health plan (QHP) through the Marketplace, advance payments of premium tax credits, and cost-sharing reductions. Section 1411(b) of the Affordable Care Act requires applicants for insurance affordability programs to provide specific information regarding employer-sponsored coverage, and section 1411(d) of the Affordable Care Act requires the Secretary to verify the accuracy of this information, "in such manner as the Secretary determines appropriate."

The Marketplace requests and verifies employer-sponsored coverage information as part of the eligibility determination process for advance payments of the premium tax credit and cost-sharing reductions. Regulations at 45 CFR 155.320(d) specify that the Marketplace must verify an applicant's access to employer-sponsored coverage through data available to the Marketplace. The Marketplace will have access to electronic data sources for verifying access to employer-sponsored coverage through the Office of Personnel Management (OPM) federal employment data and data from the Small Business Health Options Program (SHOP) Marketplace operating in its state, where available. If discrepancies are identified using either OPM or SHOP data, the Marketplace will notify the applicant and request additional information. If the applicant does not adequately resolve the discrepancy with additional information, the Marketplace will make a final decision based on information obtained from the electronic data sources. A Marketplace may also use additional available electronic data sources that have been approved by HHS for this purpose, based on evidence that the sources are sufficiently current, accurate, and minimize administrative burden.

An individual who applies for insurance affordability programs and has income in the premium tax credit range will input information related to whether or not he or she has access to employer-sponsored coverage that meets the minimum value standard. This process is assisted by the Employer Coverage Tool, a page that is included in the Marketplace's single, streamlined application that will help applicants gather information about any employer health coverage for which they are eligible. Applicants may ask their employer to help fill out the Employer Coverage Tool, or employers may make this information available in other ways, such as by making it part of the notice specified in section 18B of the Fair Labor Standards Act.

The Marketplace then compares the applicant-supplied employer coverage information with information from OPM and the SHOP, where the Marketplace has access to SHOP data. When information provided by an applicant is inconsistent with OPM or SHOP data, the Marketplace will provide a period of 90 days for the applicant to provide satisfactory documentation or otherwise resolve the inconsistency. Consistent with general Marketplace verification procedures, eligibility for advance payments of the premium tax credits and cost-sharing reductions is provided during the period, to the extent that the applicant is otherwise eligible and attests that he or she understands that any advance premium tax credit paid is subject to reconciliation by the IRS. If documentation is not provided within the specified timeframe (90 days, which may be extended based on the applicant's good faith efforts to obtain required documentation), or documentation provided is not sufficient to resolve the inconsistency, the Marketplace will make the determination based on available electronic data.

For eligibility for 2014 only, the Marketplace has the flexibility to identify a statistically-significant sample of the applicant population for which OPM, SHOP, or an approved state-based data source do not have available data, and request information regarding employer-sponsored coverage from their employers. The Federally-facilitated Marketplace will conduct the sample-based review and will collect a robust set of data

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from the income and employer verification process. This data, and information gathered by State-based Marketplaces that are conducting similar reviews, will be used as the basis for analysis to support the development of targeted verification strategies and future enhancements to the verification process.

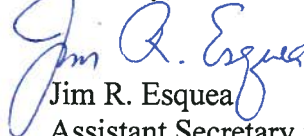
It is important to note that advance payments of premium tax credits are provided directly to the health insurance plan, not to the consumer. In addition, individuals seeking to purchase insurance in the Marketplace must attest, under penalty of perjury, that they are not filing false information. The Affordable Care Act also provides for penalties when an individual provides false or fraudulent information. Individuals on whose behalf tax credits are provided must acknowledge, before they receive advance payments of the tax credit, that they understand that the payments are reconciled at the close of the year. They must also file income taxes for the year in which the credit is received. All advance payments of premium tax credits are reconciled with the IRS at the close of the year.

With respect to your questions about the employer responsibility requirements, as noted in previous correspondence, decisions regarding administrative action with respect to sections 6055, 6056 and 4980H of the Internal Revenue Code remain under the purview of the Department of the Treasury.

Although HHS regularly works with and communicates with other federal departments that share responsibility for implementation of the Affordable Care Act, particularly with respect to programs or provisions that are cross-cutting, it is important to note that the Department of the Treasury's decision to provide transition relief with respect to insurer and employer reporting requirements under the Internal Revenue Code has no impact on the process for verifying employer-sponsored coverage. HHS' policy regarding verification of employer sponsored coverage was articulated in a series of regulatory documents beginning in August 2011, culminating in the final rule, published on July 15, 2013. Throughout the development of this policy HHS has been clear that we would verify the availability of employer-sponsored coverage against available electronic data sources.

HHS is committed to the successful enrollment of millions of Americans into qualified health plans through the Marketplace, and to ensuring that individuals receive the financial assistance for which they are eligible. Please let me know if you have any additional questions.

Sincerely,

A handwritten signature in blue ink that reads "Jim R. Esquea". The signature is written in a cursive style with a large initial "J".

Jim R. Esquea
Assistant Secretary for Legislation

cc: The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce