

Supporting Statement – Part A

Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors

A. Background

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act. On March 30, 2010, the Health Care and Education Reconciliation Act of 2010 was also signed into law. The two laws collectively are referred to as the Affordable Care Act.

The Affordable Care Act creates health insurance Exchanges, new competitive marketplaces where consumers and small businesses can purchase private health insurance. Consumers who access health insurance coverage through Exchanges will be able to receive skilled assistance from certified application counselors (CACs) who will provide information about applying for coverage in a qualified health plan (QHP) and insurance affordability programs through an Exchange, assist to apply for coverage in a QHP and insurance affordability programs, and will help to facilitate enrollment in QHPs and insurance affordability programs. A robust range of enrollment assistance programs will be critical to helping consumers enroll, particularly during the initial open enrollment period beginning October 1, 2013. The certified application counselor program supplements other consumer assistance programs established under the Affordable Care Act, such as Navigators and non-Navigator Assistance Programs. As further discussed and clarified in the Final Rule, “Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors,” (78 FR 42824, July 17, 2013), certified application counselors will play a more limited role relative to other assistance programs, as they will focus on providing skilled application assistance.

This information collection request covers the following information collections: (1) certified application counselor (CAC) organization application; (2) follow-up questions to certain organizations that submit a CAC organization application; and (3) information collections associated with the agreement between CMS and the designated CAC organization. These are discussed in more detail below.¹

B. Justification

1 . Need and Legal Basis for an Emergency Review

¹ There are other information collections associated with this program. This includes: (1) training registration for CAC applicants, (2) disclosure requirements for CACs, (3) recordkeeping requirements for CACs, (4) third-party disclosure requirements for CACs, (5) notice requirements for the Exchanges, (6) and other collections associated with implementation of § 155.225. CMS will submit a revision to this information collection to obtain approval for these additional information collections before they become effective.

Section 1413 of the Affordable Care Act directs the Secretary of HHS to establish, subject to minimum requirements, a streamlined enrollment system for qualified health plans offered through the Exchange and insurance affordability programs. In addition, section 1321(a)(1) of the Affordable Care Act directs and authorizes the Secretary to issue regulations setting standards for meeting the requirements under title I of the Affordable Care Act, with respect to, among other things, the establishment and operation of Exchanges. Pursuant to this authority, regulations establishing the certified application counselor program were finalized at 45 CFR §155.225. Specifically, 45 CFR §155.225(a) requires an Exchange to establish a certified application counselor program that complies with the requirements of the rule. Section 155.225(b)(1) allows each Exchange to designate certain organizations, including organizations designated by state Medicaid or CHIP agencies, which will certify their staff and volunteers to act as certified application counselors. In accordance with 45 CFR §155.225(b)(2), Exchanges may choose to certify directly individuals who seek to act as certified application counselors, designate certain organizations which will certify staff or volunteers to perform application services, or do both.

The duties of certified application counselors and standards for certification, such as training and disclosure of potential conflicts of interest, withdrawal and applicant/enrollee authorization requirements are set forth under 45 CFR §155.225(c) through (f).

2. Information Users

Exchanges will use the information collected to certify individual CACs or designate organizations that may certify CACs.

Designated organizations will use the information collected to manage their internal processes to certify individual CACs.

3. Use of Information Technology

We expect organizations seeking designation would submit an application, which we expect will be available online in addition to a paper process. We expect that the Exchange will maintain the model application and agreement and make training materials available through electronic means.² In addition, we expect that an Exchange will maintain a record of potential occurrences of noncompliance as a basis for withdrawal by electronic means. The HHS-developed process will include training of certified application counselors through an online portal maintained by CMS.³

Government Paperwork Elimination Act (GPEA)

² See Appendix C, “Sample Application, Apply to be a Certified Application Counselor Organization” for the application HHS intends to use to solicit applications from interested organizations in FFMs.

³ See Appendix A, “Registration Screen Shots,” for screen shots of a sample registration portal and sample training certificate; see Appendix B, “Registration Data Elements,” for specific data elements required for certified application counselors registration.

Is this collection currently available for completion electronically?

- No, this will be a new electronic data collection.

Does this collection require a signature from the respondent(s)?

- Organizations, and individuals in certain State Exchanges, will submit applications using the format prescribed by the Exchange. While details on the format of the model application and agreement have yet to be finalized, it is expected that a signature will be required on each collection instrument.

If CMS had the capability of accepting electronic signature(s), could this collection be made available electronically?

- Yes, to the extent that the collection will be made available electronically once systems are developed, we expect that an e-signature would be required on the application and agreement.

If this collection isn't currently electronic but will be made electronic in the future, please give a date (month & year) as to when this will be available electronically and explain why it can't be done sooner.

- Not applicable because this collection isn't currently required and will be made electronic.

If this collection cannot be made electronic, or if it isn't cost beneficial to make it electronic, please explain.

- Not applicable. We expect that the collection will be made electronic.

4. Duplication of Efforts

This information collection does not duplicate any other effort and the information cannot be obtained from any other source. We expect that most organizations and individuals will go through the designation or certification process, as applicable, as a one-time requirement only.

5. Small Businesses

Small businesses may seek designation from the Exchange on a voluntary basis. Further, organizations, including small businesses, which provide enrollment assistance, are not required to

be designated under these provisions to continue providing these services. The burden on small businesses that are eligible organizations and choose to seek to be designated to certify staff or volunteers to act as application counselors will be minimized by the use of a model application and agreement developed by the Exchange as a one-time requirement. In addition, small businesses that may be designated will have discretion in developing processes to register and track the performance of certified application counselors, withdraw certification from an individual staff or volunteer, and obtain authorization from applicants and enrollees. As provided above, HHS will issue guidance with respect to implementation of the certified application counselor program in Federally-facilitated Exchanges so that organizations will have a clear understanding of what is required of the organization.

6. Less Frequent Collection

Implementation of the certified application counselor program, in accordance with final regulations at 45 CFR §155.225, will require collection to allow each Exchange to establish a process for designating organizations or certifying individuals, as applicable. Collections will allow designated organizations to comply with these provisions, such as maintaining a registration process, providing required disclosures and obtaining required authorizations, and responding appropriately to the withdrawal of designation. Organizations that seek to be designated to certify staff or volunteers as application counselors would only be required to submit the required application with the Exchange one time, unless, in accordance with law, there is a change in eligibility that would require a new application for designation or a material change to the terms to which an organization must agree to remain designated.

7. Special Circumstances

None.

8. Federal Register/Outside Consultation

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.

In the January 22, 2013 (78 FR 4594, 4661) proposed rule, we requested public comment on each of the proposed rule's information collection requirements. In addition, we solicited comments in a separate notice of proposed rulemaking dated April 5, 2013, in connection with the Navigator proposed rule, regarding to what extent the requirements of Navigators, non-Navigator Assistance personnel and certified assistance counselors should overlap. The comments and our responses are discussed in the preamble to the final rule. No comments were received regarding estimated time and cost burdens.

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.

We do not foresee circumstances that would preclude CMS from consulting with organizations or application counselors.

9. Payments/Gifts to Respondents

Payments and gifts will not be provided.

10. Confidentiality

HHS may collect some personally identifiable information related to applications for health coverage offered through the Exchange and investigations into potential noncompliance pursuant to withdrawal procedures. To the extent provided by law, we will maintain the privacy of any respondent with respect to the information being collected.

11. Sensitive Questions

We do not foresee circumstances that would require the collection of any questions of a sensitive nature.

12. Burden Estimates (Hours & Wages)

Wage per hour for organization and Exchange staff:⁴ certified application counselors, health policy analysts, senior managers, and attorneys are as follows:

Certified Application Counselors	\$26.65
Mid-level Health Policy Analyst	\$49.35
Senior Manager	\$79.08
Attorney	\$90.15

A. CAC organization application

Organizations seeking to be designated by CMS as a CAC organization must submit an application. A sample application is provided as an appendix to this request.

⁴ Based on Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, May 2012. Includes fringe benefits calculated at 35% of base wage.

We estimate that it will take an organization up to 1 hour to review instructions and complete and submit an application. For purposes of the cost burden, we estimate it will take a senior manager with a wage of \$79.08 an hour up to 1 hour to complete and submit the application. The total estimated cost burden is \$79.08 for each organization seeking designation. We estimate that there will be 5,000 total applicants.

B. Follow-up questions to certain organizations that submit a CAC organization application

The information submitted by some organizations on their CAC application will trigger CMS to seek some additional information from these organizations. Many completed applications will not require this follow-up information. The follow-up information that may be collected will consist of:

- Description of the processes the organization has in place to protect consumers' personally identifiable information (PII);
- Identification of any rules concerning PII which the organization is already required to follow; and
- Description of the screening processes they use or intend to use for staff and volunteers who they certify to be CACs.

We estimate that it will take an organization up to .5 hour total to respond to this collection. For purposes of the cost burden, we estimate that it will take a senior manager with a wage of \$79.08 an hour up to .5 hour to complete and submit the follow-up information electronically. The total estimated cost burden is \$39.54 for each organization that is required to provide the follow-up information. While we do not know exactly how many applicants will receive these follow-up questions, for purposes of analysis we estimate that no more than 20% of applicants might receive them. Therefore, we estimate that these questions will be sent to no more than 1,000 applicants.

C. Information collections associated with the agreement between CMS and the designated CAC organization

Each organization that CMS designates as a CAC organization must enter into an agreement with CMS. That agreement will include a number of provisions, including the following information collections:

Reporting

- The organization must attest that the organization has entered into agreements with its individual CACs requiring their compliance with CAC requirements.

We estimate it will take a senior manager at the organization up to .25 hours (15 minutes) to enter into each agreement. We estimate the cost burden is \$19.77 per agreement, and we estimate that there will be 5,000 agreements.

- The organization must provide CMS with the names of individuals it has certified as CACs.

We estimate it will take a health policy analyst with a professional wage of \$49.35 up to .25 hours (15 minutes) to provide a list to CMS for a cost burden of \$12.34 per update. We estimate that there will be up to 5,000 lists provided to CMS.

Third-party disclosures

- The organization must issue certificates to its CAC staff and volunteers when it certifies them.

We estimate it will take a health policy analyst with a professional wage of \$49.35 up to .016 hours (1 minute) to issue a certificate for a cost burden of \$0.79 per certification. We estimate that there will be 30,000 certificates.

Recordkeeping requirements

- The designated organization must retain a record of authorization provided by consumers to the organization's CACs for the CAC to obtain access to a consumer's PII.

We estimate it will take a health policy analyst with a professional wage of \$49.35 up to .016 hours (1 minute) to collect each record of authorization for a cost burden of \$0.79 per authorization. We estimate that the time burden associated with maintaining record of the authorization is 0.016 hours (1 minute). We estimate the total cost for the organization to maintain the record of authorization is \$0.79, for a total cost burden of \$1.58 per record of authorization.

In addition, with respect to the requirement on the CAC to receive authorization from each consumer before obtaining access to the consumer's PII, we estimate it will take a certified application counselor 0.25 hours (15 minutes) to obtain the authorization. The total cost estimate for disclosures by each individual certified application counselor is therefore \$6.66. We estimate that the time burden associated with maintaining record of the authorization is 0.016 hours (1 minute). We estimate the total cost for the individual to maintain the record of authorization is \$0.43, for a total cost burden of \$7.09 per authorization.

Therefore, assuming that 2.2 million individuals⁵ provide authorization, this brings the total estimate for this recordkeeping requirement to \$4,260,300

⁵ This number is based on number of consumers who sought assistance from counselors in the State Health Insurance Assistance Programs (SHIPs) counselor program in 2012. CMS New SHIP Director Training 4 (7th ed., 2013).

Table 1 - Annual Recordkeeping and Reporting Requirements

Regulation Section(s)	Respondents	Responses (total)	Burden per Response (hours)	Total Annual Burden (hours)	Labor Cost of Reporting (\$)	Total Cost (\$)
§155.225(b)(1) (organization designation by Exchange)	5,000	5,000	1	5,000	79.08 (for one respondent)	395,400
§155.225(b)(1) (organization follow-up for application)	1,000	1,000	.5	500	39.54 (for one respondent)	19,770
§155.225(b)(1)(i) (organization attestation)	5,000	5,000	.25	1,250	19.77 (per agreement)	24,712.50
§155.225(b)(1) (organization list)	5,000	5,000	.25	1,250	12.34 per updated list	15,425
§155.225(b)(1)(i) (certificate issuance)	5,000	30,000	.016	480	.79 per certificate	379.20
§155.225(d)(2) and (f) (organization record of authorization)	5,000	2,200,000	.032	70,400	1.58 (per authorization)	111,232
§155.225(d)(2) and (f) (CAC authorization to consumer)	30,000	2,200,000	.266	585,200	7.09 (per respondent)	4,149,068
Total.....	56,000	4,446,000	664,080	4,715,986.70

13. Capital Costs

There are no capital costs needed for this collection requirement.

14. Cost to Federal Government

The designation requirements provided under §155.225 would apply to an Exchange that is being operated by HHS as a Federally-facilitated Exchange or as a State Partnership Exchange, pursuant to HHS authority under section 1321(c)(1) of the Affordable Care Act. These Exchanges are collectively referred to here as Federally-facilitated Exchanges. We note that it is anticipated that HHS would create a single process for designating these organizations to certify their staff or volunteers as certified application counselors, including the creation of a single model application and agreement for use in the Federally-facilitated Exchanges. Therefore, the estimates with respect to establishing a designation process, including the creation of an application and agreement, are on a one-time basis. The burden associated with these provisions is the time and effort necessary for the Federally-facilitated Exchange to create an application, as well as review

applications and execute agreements with designated organizations. Additionally, the Federally-facilitated Exchange would investigate and verify potential noncompliance and determine whether to withdrawal an entity’s designation. HHS will issue guidance on the implementation of the certified application counselor program in Federally-facilitated Exchanges.

The burdens on HHS operating a Federally-facilitated Exchange and by extension, the certified application counselor program in the Federally-facilitated Exchange, include the following burdens: the time and effort necessary to establish a process for designating organizations seeking to have its staff or volunteers certified as application counselors in accordance with §155.225(b)(1) including the time and effort necessary to establish a withdrawal process in accordance with §155.225(e)(1); the time and effort necessary to develop training materials for the training described in §155.225(d)(1); the time and effort necessary to develop the agreement identified in §155.225(b)(1)(A).

Developing a process for designating organizations would be required on a one-time basis for the Federally-facilitated Exchange; we estimate that it will take the Federally-facilitated Exchange up to 20 hours to create a model application and agreement and procedures for withdrawal. For purposes of the cost burden, we estimate it would take a mid-level health policy analyst⁶ up to 10 hours, a senior manager⁷ up to 5 hours for review and an attorney⁸ up to 5 hours for legal review. The estimated cost burden would be \$764.75 for the Federally-facilitated Exchange.

Labor Category	Number of Employees	Hourly Labor Costs (Hourly rate + Fringe benefits)	Burden Hours	Total Burden Costs
Health Policy Analyst	1	\$31.33	10	\$313.30
Attorney	1	\$37.54	5	\$187.70
Senior Manager	1	\$52.75	5	\$263.75
Total	3		20	\$764.75

There are recordkeeping requirements associated with developing and maintaining a model application. The Federally-facilitated Exchange would be expected to maintain a copy of the model application. It is estimated that the time burden associated with maintaining a copy of the model application would be 0.016 hours (1 minute); we assume the model application will be maintained through electronic copies with minimal cost. We assume a mid-level health policy

6 These positions are estimated to be equivalent to a GS-11 position with the Federal government. http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2012/general-schedule/gs_h.pdf.

7 These positions are estimated to be equivalent to a GS-14 position with the Federal government. http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2012/general-schedule/gs_h.pdf.

8 These positions are estimated to be equivalent to a GS-12 position with the Federal government. http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2012/general-schedule/gs_h.pdf.

analyst with a professional wage of \$31.33 an hour will maintain the model application through electronic copies with minimal cost, which we estimate as \$0.50 as a one-time requirement for the Federally-facilitated Exchange.

The cost burden associated with reviewing each application and notifying the organization of the result of its review would apply to the Federally-facilitated Exchange for each organization that seeks to be designated. It is anticipated that this application would be a one-time requirement for the organization seeking to be designated. Therefore, the burden estimated for reviewing the application is on a per organization basis. We estimate that it would take the Federally-facilitated Exchange up to 1.16 hours to review an application. For purposes of the cost burden, we estimate it would take a health policy analyst up to 1 hour and a senior manager up to .16 hours to review. The estimated cost burden would be \$39.77 for each organization.

Labor Category	Number of Employees	Hourly Labor Costs (Hourly rate + Fringe benefits)	Burden Hours	Total Burden Costs (per organization)
Health Policy Analyst	1	\$31.33	1	\$31.33
Senior Manager	1	\$52.75	.16	\$8.44
Total	2		1.16	\$39.77

The Federally-facilitated Exchange will enter into agreements with designated organizations meeting all requirements in accordance with §155.225(b)(1)(A). The burden estimates for executing each agreement is on a per organization basis. We estimate that it would take a senior manager at the Federally-facilitated Exchange up to .25 hours to execute each agreement.

	Number of Employees	Hourly Labor Costs (Hourly rate + Fringe benefits)	Burden Hours	Total Burden Costs (per agreement)
Senior Manager	1	\$52.75	0.25	\$13.19
Total	1		.25	\$13.19

There are recordkeeping requirements associated with this requirement. We estimate that the time burden for maintaining proof of each signed agreement is 1 minute (.016 hours). We estimate the cost estimate for the senior manager at the Federally-facilitated Exchange to maintain proof of each agreement is \$.84, for a total estimated cost burden of \$14.03 per organization.

In accordance with §155.225(e), when appropriate, the Exchange will withdraw designation from

an organization when it finds noncompliance with the terms and conditions of the organization’s application counselor agreement. The Exchange will investigate instances of noncompliance it identifies or that are reported, and notify the appropriate organization, or individual as applicable, when it determines noncompliance necessitates withdrawing the applicable entity’s designation. There are recordkeeping requirements associated with these procedures. The Exchange is expected to maintain a record of each verification review and copy of any withdrawal notification. We estimate that it will take the Exchange up to 3 hours to investigate, maintain a record, and notify an organization or individual, as applicable, of the withdrawal of its certification, respectively. For purposes of the cost burden, we estimate it will take a mid-level health policy analyst up to 2 hours to investigate, draft, and send notification of withdrawal and a senior manager up to 1 hour to review. We estimate the cost burden is \$115.41 for each occurrence.

	Number of Employees	Hourly Labor Costs (Hourly rate + Fringe benefits)	Burden Hours	Total Burden Costs (per reported occurrence)
Health Policy Analyst	1	\$31.33	2	\$62.66
Senior Manager	1	\$52.75	1	\$52.75
Total	2		3	\$115.41

There are recordkeeping requirements associated with this requirement. We estimate that the time burden for maintaining an electronic record is 1 minute (.016 hours). We estimate the cost estimate for a health policy analyst at the Exchange to maintain proof of each agreement is \$.50, for a total estimated cost burden of \$115.91 per occurrence.

15. Changes to Burden

This is a new collection; therefore there are no burden adjustments. As discussed in the final rule for these provisions, with respect to the information collection requirements we proposed in the notice of proposed rulemaking issued on January 22, 2013, in our original burden estimates, we calculated the overall estimated burden associated with these provisions as 105 hours per Exchange. We did not provide a detailed breakdown of this estimate. Our proposed estimate did not include all of the burdens on the Exchange as well as on certified application counselors and organizations seeking designation to certify individual application counselors. The proposed rule’s estimates did not contemplate the finalized regulatory provisions. For example, our proposed estimates did not include either the impact on organizations seeking designation in Exchanges or the State Exchange option to certify directly application counselors, including entering into an agreement with the designated organization or with individual staff or volunteers.

Therefore, while our overall proposed burden estimates pursuant to proposed § 155.225 were properly calculated, we note that the final rule reflects burden estimates based on the finalized regulation's requirements on all respondents.

16. Publication/Tabulation Dates

At this time, HHS does not expect that the data collected with respect to applications, agreements or withdrawals in accordance with §155.225 will be published or shared with other agencies.

17. Expiration Date

Not applicable.

18. Certification Statement

There are no exceptions to the certification statement.