

SUPPORTING STATEMENT FOR THE INFORMATION COLLECTION
REQUIREMENTS CONTAINED IN THE HEALTH CARE SHARING MINISTRY
INFORMATION COLLECTION REQUEST
(CMS-10486/OCN-0938-NEW)

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”), expand access to health insurance for individuals and employees of small businesses through the establishment of new Affordable Insurance Exchanges (Exchanges), including the Small Business Health Options Program (SHOP). The Exchanges, which will become operational by January 1, 2014, will 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.

The data collection and reporting requirements in “Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions” (CMS-9958-F), address federal requirements that states must meet with regard to the Exchange minimum function of performing eligibility determinations and issuing certificates of exemption from the shared responsibility payment. The final regulation addresses standards related to eligibility, including the verification and eligibility determination process, eligibility redeterminations, options for states to rely on HHS to make eligibility determinations for certificates of exemption, and reporting.

The submission seeks OMB approval of the information collection requirements associated with 45 CFR parts 155.

B. Justification

1. Need and Legal Basis

Section 1501(b) of the Affordable Care Act added section 5000A of the Internal Revenue Code (the Code) to a new chapter 48 of subtitle D (Miscellaneous Excise Taxes) of the Code effective for months beginning after December 31, 2013. Section 5000A of the Code, which was subsequently amended by the TRICARE Affirmation Act of 2010, Public Law 111-159 (124 Stat. 1123) and Public Law 111-173 (124 Stat. 1215), requires that nonexempt individuals either maintain minimum essential coverage or make a shared responsibility payment, includes standards for the calculation of the shared responsibility payment, describes categories of individuals who may qualify for an exemption from the shared responsibility payment, and provides the definition of minimum essential coverage.

Section 1311(d)(4)(H) of the Affordable Care Act specifies that the Exchange will, subject to section 1411 of the Affordable Care Act, grant certifications of exemption from the shared responsibility payment specified in section 5000A of the Code. Section 1311(d)(4)(I)(i) of the Affordable Care Act specifies that the Exchange will transfer to the Secretary of the Treasury a list of the individuals to whom the Exchange provided such a certification. Section 1411(a)(4) of the Affordable Care Act provides that the Secretary of Health and Human Services (the Secretary) will establish a program for determining whether a certification of exemption from the shared responsibility requirement and penalty will be issued by an Exchange under section 1311(d)(4)(H). We interpret this provision as authorizing the Secretary to determine “whether,” with respect to the nine exemptions provided for under section 5000A, Exchanges

would perform the role of issuing certifications of exemption under section 1311(d)(4)(H), whether eligibility for the exemption would be determined solely through tax filing, or whether both processes would be available. Under this interpretation, the responsibility under section 1311(d)(4)(H) to issue certifications of exemption would be “subject to” these determinations by the Secretary under section 1411(a)(4), and Exchanges would thus only be required to issue certifications of exemption with respect to exemptions not exclusively assigned to IRS.

Section 1321 of the Affordable Care Act discusses state flexibility in the operation and enforcement of Exchanges and related requirements. Section 1321(a) provides broad authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges and other components of title I of the Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010. Section 1311(k) of the Affordable Care Act specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations promulgated by the Secretary under Subtitle D of Title I of the Affordable Care Act.

In accordance with our interpretation of these sections of the Affordable Care Act, and the authority provided by, *inter alia*, section 1321(a) of the Affordable Care Act, we specify that under the program established under section 1411(a)(4) of the Affordable Care Act, the Exchange would determine eligibility for and grant certificates of exemption as described below.

These information collection requirements are set forth in 45 CFR Parts 155.

2. Information Users

The data collection and reporting requirements described below are critical to the basic ability of Exchanges to determine eligibility for and issue certificates of exemption, and will also assist Exchanges, HHS, and IRS in ensuring program integrity and quality improvement.

3. Use of Information Technology

HHS anticipates that a majority of the activities described below in this rule will be automated. Exchanges are expected to develop automated notice templates for many of the specified notices, and distribute the majority of these notices through secure electronic accounts. The entities issuing notices or collecting information will develop the initial template after which the templates will be automatically populated with the appropriate information for the receiving party. A majority of the information that is collected in accordance with this rule will be submitted electronically. Staff, or systems, will analyze, review, or process the data through largely electronic means and communicate with individuals, states, and HHS using e-mail, telephone, or other electronic means whenever possible.

4. Duplication of Efforts

These information collections do not duplicate any current information collections. They contain information needed for a new program.

5. Small Businesses

We estimate minimal burden on small business as they are not required to issue certificates of exemption.

6. Less Frequent Collection

Due to the required flow of information between multiple parties, it is necessary to collect information according to the indicated frequencies. If the information is collected less frequently, the result would be less accurate, untimely or unavailable information about eligibility determinations for Exchanges, HHS, IRS, and individuals. This would have implications on the federal tax filing process due to IRS's reliance on information about eligibility determinations and certificates of exemption that have been issued by the Exchange in

order for IRS to administer the shared responsibility payment. In summary, if the information is collected less frequently, it would lead to an overall stress on the organizational structure of the Exchanges and decrease in benefit to individuals.

7. Special Circumstances that may cause respondents to submit information in fewer than 30 days

Not applicable

8. Federal Register/Outside Consultation

As part of Exchange implementation to date, we have consulted with contractors, academia, states, and industry of the feasibility of this information collection. CMS has sought input from states and other federal agencies, such as IRS. We have based several of the requirements in this information collection from the consultations with these outside entities.

A 60-day Federal Register notice is scheduled to publish on _____ to solicit public comments on the information collection requirements outlined in this document.

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 respondent privacy with respect to the information collected.

11. Sensitive Questions

Not applicable

12. Burden Estimates (Hours & Wages)

For purposes of presenting an estimate of paperwork burden, we note that these estimates generally reflect burden for the first year, and that the associated burden in subsequent years will

be significantly lower because many of the standards in the regulation will be fulfilled through the development of automated processes that will involve only maintenance in future years. Therefore, these estimates should be considered an upper bound of burden for non-federal entities. These estimates may be adjusted in future PRA packages as Exchange development moves forward.

We utilize data from the Bureau of Labor Statistics to derive average costs for all estimates of salary in establishing the information collection requirements. Salary estimates include the cost of fringe benefits, calculated at 30.4 percent of total labor costs, which is based on the June 2012 Employer Costs for Employee Compensation report by the U.S. Bureau of Labor Statistics.

PART 155- EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

Subpart G— Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions

A. Verification process related to eligibility for exemptions (§155.615)

§155.615 outlines the standards for Exchanges to verify applicant information as it pertains to exemption requests.

In order to facilitate the provision of an exemption for membership in a health care sharing ministry to the members of such ministry, we specify in §155.615(c)(2) that an organization that believes that it meets the statutory standards to be considered a health care sharing ministry will submit certain information to HHS. We are aware of four organizations that have made public statements regarding their status as a health care sharing ministry, and so have estimated burden for four entities. The burden associated with this process includes the time for

the organization to collect and input the necessary information, maintain a copy for recordkeeping by clerical staff, for a manager and legal counsel to review it and for a senior executive to review and sign it. The information would be submitted to CMS electronically at minimal cost. We estimate that it would take a combined total of 4.25 hours (3 hours for clerical staff at an hourly cost of \$30.64, 0.5 hours for a manager at an hourly cost of \$55.22, 0.5 hours for legal counsel at an hourly cost of \$83.10, and 0.25 hours for a senior executive at an hourly cost of \$112.43) to prepare and submit the information to CMS and to retain a copy for recordkeeping purposes. The total cost for one organization is estimated to be approximately \$189, for a total of \$756 for four organizations.

Table 1- Estimated Burden for Health Care Sharing Ministries

Labor Category	Number of Employees	Hourly Labor Costs	Burden Hours	Total Burden Costs (per organization)	Total Burden Costs (4 organizations)
Clerical Staff	1	\$30.64	3	\$91	
Manager	1	\$55.22	0.5	\$28	
Attorney	1	\$83.10	0.5	\$42	
Senior Executive	1	\$112.43	0.25	\$28	
Total	4		4.25	\$189	\$756

13. Capital Costs

Not applicable

14. Cost to Federal Government

Not applicable

15. Changes to Burden

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

16. Publication/Tabulation Dates

TBD

17. Expiration Date

Not applicable

