Supporting Statement – Part A

Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel

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 (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 direct assistance from Navigators authorized to help consumers through the registration, eligibility determination, and plan selection process as they enroll in the Exchanges. Some Exchanges will also provide additional consumer assistance as well as education and outreach.

Section 1311(i)(4) of the Affordable Care Act requires the Secretary to establish standards for Navigators, including provisions to ensure that any entity selected as a Navigator is qualified, and licensed if appropriate, to engage in the Navigator activities required by the law and to avoid conflicts of interest. Final Exchange regulations at 45 CFR 155.205(d) and (e) also require that each Exchange must have a consumer assistance function, and must conduct outreach and education activities to educate consumers about the Exchange and insurance affordability programs to encourage participation. Individuals and entities fulfilling the duties under 45 CFR 155.205(d) and (e) are referred to as non-Navigator assistance personnel.

In order to ensure that any entity selected as a Navigator is qualified to engage in the Navigator activities required by the law and to avoid conflicts of interest, certain disclosures will be necessary. These disclosures were specified in a notice of proposed rulemaking published on April 5, 2013 at 78 FR 20581, codified at 45 CFR 155.210 and 155.215. These disclosures are now being finalized as part of a final rulemaking being published concurrently with this supporting statement. The disclosures relate to eligibility requirements for Navigators, the mitigation of conflicts of interest, the methods of disclosure of any non-prohibited conflicts of interest, registration prior to training, the maintenance of proof of certification or recertification, and the dissemination to consumers of the full range of QHP options and insurance affordability programs for which they may be eligible. These requirements also apply to non-Navigator assistance personnel. These standards are only applicable in Federally-facilitated Exchanges and for federally-funded non-Navigator assistance personnel in State-based Exchanges.

B. Justification

1. Need and Legal Basis

The establishment of Navigator Programs to provide education and outreach to consumers about health insurance exchanges and to provide culturally and linguistically appropriate information in a fair, accurate, and impartial manner among consumers is authorized by Sections 1311(d)(4)(K) and 1311(i) of the Affordable Care Act.

Section 1321(c)(1) of the Affordable Care Act authorizes the Secretary of HHS to “establish and operate” a federal Exchange within any State that does not elect or is not prepared to establish a State-based Exchange, as well as to “take such actions as are necessary to implement” the requirements for establishing an Exchange, including the awarding of Navigator grants.

Section 1311(i)(4) of the Affordable Care Act requires the Secretary to establish standards for Navigators, including provisions to ensure that any entity selected as a Navigator is qualified, and licensed if appropriate, to engage in the Navigator activities required by the law and to avoid conflicts of interest. In addition, Exchanges must provide various forms of consumer assistance in order to fulfill the requirements of 45 CFR 155.205(d) and (e).

2. Information Users

Navigators as well as non-Navigator assistance personnel fulfilling the requirements of 45 CFR 155.205(d) and (e) in Federally-facilitated Exchanges have to provide an attestation to the Exchange that they are not ineligible to serve as a Navigator or non-Navigator assistance personnel. In addition, Navigators and non-Navigator assistance project leads have to prepare and submit a plan for mitigating conflicts of interest during their term as a Navigator grantee or non-Navigator assistance personnel. This mitigation plan is only required on a per entity basis, not a per individual basis. Navigators will include attestation information within their grant application through previously approved OMB covered forms, and as such, the burden for Navigators providing this information is not calculated in this PRA.

Navigators and non-Navigator assistance personnel are required to provide information to eligible consumers about the full range of QHP options and insurance affordability programs for which they may be eligible. A disclosure to the Exchange and each consumer receiving assistance, about certain non-prohibited conflicts of interest, are required by Navigators and non-Navigator assistance personnel.

Prior to performing any Navigator or non-Navigator assistance personnel duties, individuals are required to register for training as a prerequisite to becoming certified. After their first year performing their required duties, they will be required to be recertified. Navigators and non-Navigator assistance personnel are required to maintain proof of their certification or recertification.

3. Use of Information Technology

All Navigators and non-Navigator assistance personnel will provide conflict of interest disclosures to the Exchange electronically. Disclosures to consumers will be able to be provided orally. Registration and maintenance of proof of certification or recertification will also be through electronic means. Details on the specific electronic format for submission will be made available to Navigators and non-Navigator assistance personnel as soon as systems are developed.

Government Paperwork Elimination Act (GPEA)

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)?

- Navigators and non-Navigator assistance personnel will submit disclosures using the format prescribed by HHS. While they have to identify themselves, there is no requirement for an electronic signature.

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

electronically?

- Not applicable. The collection will be made electronically. An e-signature will not be required.

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. The collection will be made electronically.

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

- Not applicable. The collection will be made electronically.

4. Duplication of Efforts

This information collection does not duplicate any other effort and the information cannot be obtained from any other source.

5. Small Businesses

There are no unique impacts to small businesses involved.

6. Less Frequent Collection

Non-Navigator assistance personnel are only required to provide the required attestation, mitigation plan, and disclosure of certain non-prohibited conflicts of interest to the Exchange one time, unless there is a change which would require the submission of an updated disclosure. Navigators are only required to provide the mitigation plan, disclosure of certain non-prohibited conflicts of interest to the Exchange one time, unless there is a change which would require the submission of an updated disclosure.

Navigators and non-Navigator assistance personnel are required to disclose to consumers receiving assistance information about the full range of QHP options and insurance affordability programs for which they are eligible, as well as certain non-prohibited conflicts of interest. These disclosures are required on a per consumer basis to ensure that each consumer is provided all information as required by statute and regulation.

Navigators and non-Navigator assistance personnel are required to register one time for initial training and certification. Navigators and non-Navigator assistance personnel are required to maintain proof of their initial certification, and, in subsequent years, proof of their recertification. This recordkeeping requirement is annual in frequency.

7. Special Circumstances

A disclosure of non-prohibited conflicts of interest may need to be reported to the agency more often than quarterly if a Navigator or non-Navigator assistance personnel has a change in the nature of the conflict of interest initially reported, necessitating an updated disclosure.

Navigators and non-Navigator assistance personnel would maintain the proposed disclosures as described for the duration of their term as a Navigator or non-Navigator assistance personnel which may exceed three years.

8. Federal Register/Outside Consultation

We are adding collection requirements associated with 45 CFR 155.210 and 155.215. These requirements were proposed in CMS-9949 (Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond). No changes are being made to currently approved collection requirements.

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.

CMS specified these collections in a proposed rule published on April 5, 2013 at 78 FR 20581. CMS solicited public comments on these collections. We received a few comments regarding the estimated wages; these comments generally stated an appreciation for an estimate of a livable wage; however the comments noted a concern that the wage estimates are unrealistic. No comments recommended specific wage estimates.

The wage estimates are not being modified. The estimates are not mandatory wages and are not broken down based on the role geographic differences may play in setting actual wages. There is nothing in the final rule that would require any Navigators or non-Navigator assistance personnel to be paid any specific amount. In addition Navigators and non-Navigator assistance personnel wages could be funded in many different ways. For example, a Navigator grantee may have outside funding sources for wages, with their Navigator grant completely funding all outreach and education and application assistance activities not included in wages. These are estimates commonly used for estimating paperwork burden and do not represent a recommendation or a requirement of how much Navigator and non-Navigator personnel are to be paid.

In the March 21, 2014 Exchange and Insurance Market Standards for 2015 and Beyond proposed rule (79 FR 15854), we requested public comment on each of the proposed rule's information collection requirements. Because the comment period for the information collection requirements was 60 days (ending May 20, 2014), whereas the proposed rule's comment period was 30 days, we did not discuss the comments and responses to the information collection requirements in the final rule published on May 27, 2014. Accordingly, we will post a 30-day notice in the Federal Register in advance of these information collection requirements being finalized. The comment and response can be viewed in Appendix C.

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 Navigators or non-Navigator assistance personnel.

9. Payments/Gifts to Respondents

Payments and gifts will not be provided.

10. Confidentiality

CCIIO may collect some personally identifiable information related to disclosures of non-prohibited conflicts of interest as well as registration prior to training. To the extent provided by law, we will maintain respondent privacy with respect to the information being collected.

11. Sensitive Questions

In order to perform their required duties, Navigators and non-Navigator assistance personnel may need to communicate with clients about sensitive topics, such as their health status and needs, in order to assist with eligibility determinations and enrollment. As such, requests for some information such as individual or family income, employment status, citizenship, and other characteristics that people might commonly consider private may be communicated.

12. Burden Estimates (Hours & Wages)

Wage per hour data[1] for Navigator grantee personnel, project leads, and senior level executives; and non-Navigator assistance project leads, personnel, and senior level executives are as follows:

Navigator Personnel – GS-9 equivalent	$20
Mid-Level Project Lead – GS-12 equivalent	$29
Senior Level Executive – GS-15 equivalent	$48
Non-Navigator Assistance Personnel – GS-9 equivalent	$20
Non-Navigator Assistance Mid-Level Project Lead- GS 12 equivalent	$29
Non-Navigator Senior Level Executive – GS-15 equivalent	$48

At this time there are 105 Navigator grantees. We estimate that there are 3,000 individuals working as Navigators. In addition, each grantee organization has one Project Lead and one Senior Level executive. We estimate the number of non-Navigator assistance project leads to be 300 and 1800 for personnel.

Previous estimates have indicated that we expect 4,336,646 applications to be submitted for coverage through the Exchange during the 2013-2014 open enrollment period.[2] We estimate about 25 percent of consumers submitting applications for Marketplace coverage will seek assistance from Navigator personnel. In total we estimate that Navigators will assist 1,084,161 individuals during 2014.

Preparing an attestation that an individual or entity is not ineligible to serve as non-Navigator assistance personnel is estimated to have a burden of 0.25 hours (15 minutes) per respondent.

Preparing a conflict of interest mitigation plan is estimated to have a burden of 5 hours per Navigator grantee. The Senior Level Executive is expected to prepare the mitigation plan at a cost of $240 (5 X 48).

1 Wage data from OPM GS Wage Tables at http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/gs_h.pdf.

2 *See* Supporting Statement for Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid and Children's Health Insurance Program Agencies, available at http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS-10440.html.

For 105 grantees the total time burden associated with preparing the mitigation plan is estimated to be 525 hours (5 X 105) at a total cost of $126,000 (240 X 525).

For non-Navigator assistance personnel, preparing a conflict of interest mitigation plan is estimated to have a burden of 5 hours per respondent.

Preparing disclosure to consumers receiving assistance information about the full range of QHP options and insurance affordability programs for which they are eligible, including completion of any necessary forms, is estimated to have a burden of 1 hour per consumer at a cost of $20 (1 X 20). For 1,084,161 consumers the total time burden for this disclosure is estimated to be 1,084,161 hours at a total cost of $21,683,220 (20 X 1,084,161).

Preparing disclosure of non-prohibited conflicts of interest is estimated to have a burden of 0.16 hours (10 minutes) per Navigator personnel at a cost of $3.20 (.16 X 20) For 3,000 Navigator personnel the total time burden associated with preparing this disclosure is estimated to be 480 hours (0.16 X 3,000) at a total cost of $9,600 (20 X 480).

For non-Navigator assistance personnel disclosure of non-prohibited conflicts of interest is estimated to have a burden of 0.16 hours (10 minutes) per respondent.

Registering prior to training is estimated to have a burden of 0.25 hours (15 minutes) per respondent. For a Navigator Senior Level Executive the estimated cost for registration is $12 (0.25 X 48), for Navigator Project Leads the estimated cost is $7.25 (0.25 X 29) and for Navigator personnel the estimated cost is $5 (0.25 X 20). For 105 Senior Level Executives the total time burden associated with registration prior to training is estimated to be 26.25 hours (0.25 X 105) at a total cost of $1,260 (48 X 26.25). For 105 Project Leads the total time burden associated with registration is estimated to be 26.25 hours (0.25 X 105) at a total cost of $761.25 (29 X 26.25). For 3,000 Navigator personnel the total time burden associated with registration is estimated to be 750 hours (0.25 X 3,000) at a total cost of $150,000 (20 X 750).

For non-Navigator assistance personnel, registration prior to training is estimated to have a burden of 0.25 hours (15 minutes) per respondent.

Maintenance of proof of certification or recertification is estimated to have a burden of 0.016 hours (1 minute) per respondent.[3] For a Navigator Senior Level Executive the estimated cost for maintenance of proof od certification or recertification is estimated to be $0.77 (0.016 X 48), for Navigator Project Leads the estimated cost is $0.46 (0.016 X 29) and for Navigator personnel the estimated cost is $0.32 (0.016 X 20). For 105 Senior Level Executives total time burden associated with maintenance of proof of certification or recertification is estimated to be 1.68 hours (0.016 X 105) at a total cost of $80.64 (48 X 1.68). For 105 Project Leads the total time burden associated with maintenance of proof is estimated to be 1.68 hours (0.016 X 105) at a total cost of $48.72 (29 X 1.68). For 3,000 Navigator personnel the total time burden associated with maintenance of proof is estimated to be 48 hours (0.016 X 3,000) at a total cost of $960 (20 X 48).

For non-Navigator assistance personnel, maintenance of proof of certification or recertification is estimated to have a burden of 0.016 hours (1 minute) per respondent.[4]

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3 *See* Appendix A for screen shots of a sample registration portal and a sample certification certificate; *see* Appendix B for specific data elements required for Navigator and non-Navigator assistance personnel registration.
4 *See* Appendix A for screen shots of a sample registration portal and a sample certification certificate; *see* Appendix B for specific data elements required for Navigator and non-Navigator assistance personnel registration.

In accordance with 45 CFR 155.210(e)(6) and 45 CFR 155.215(g), Navigators, as well as those non-Navigator personnel to whom 45 CFR 155.215 applies, are required to maintain procedures to inform consumers of the functions and responsibilities of Navigators and non-Navigator assistance personnel (as applicable), and to obtain authorization for the disclosure of consumer information to the Navigator or non-Navigator assistance personnel (as applicable). This is a one-time requirement for the organization.

We estimate that it would take a Navigator or non-Navigator assistance personnel project lead up to 2 hours to create the form for providing authorization to applicants, and a Navigator or non-Navigator senior executive up to 1 hour to review the procedure, for a total time burden of up to 3 hours. We estimate the cost burden associated with creating this procedure would be $106 per organization. The total cost for all 105 Navigator grantee organizations is estimated to be $11,130. The total cost for all 300 non-Navigator assistance personnel organizations is estimated to be $31,800.

There are also recordkeeping requirements associated with developing and maintaining a model agreement and authorization form. Each organization is expected to maintain a copy of the executed forms. We estimate that the time burden associated with maintaining a copy of executed agreement and authorization forms for each consumer would be 0.016 hours (1 minute); we assume these would be maintained through electronic copies with minimal cost.

In addition, there are burdens on individual Navigators, as well as those non-Navigator assistance personnel to whom 45 CFR 155.215 applies. Under 45 CFR 155.210(e)(6) and 155.215(g), respectively, Navigators and non-Navigator assistance personnel are required to inform consumers of the functions and responsibilities of Navigators and non-Navigator assistance personnel and obtain authorization for the disclosure of consumer information to a Navigator or non-Navigator assistance personnel prior to obtaining the consumer’s personally identifiable information.

In the final rule on certified application counselors (78 FR 42824, 42854-42855), we estimated that it would take a certified application counselor 0.25 hours (15 minutes) to provide consumers with information about the functions and responsibilities of a certified application counselor, obtain their authorizations, and provide any applicable conflict of interest disclosures. Because here we are only estimating the time required to provide consumers with information about the functions and responsibilities of a Navigator or non-Navigator assistance personnel and obtain their authorization, we estimate that it would take a Navigator or non-Navigator assistance personnel 0.1667 hours (10 minutes) to perform this task.

The total cost estimate for the consumer authorization process for Navigators and non-Navigator assistance personnel therefore would be $3.33. The total time burden on all 3,000 Navigators is estimated to be approximately 500 hours, and the total cost burden on all 3,000 Navigators is estimated to be $9,990. The total time burden on all 1,800 non-Navigator assistance personnel is estimated to be 300 hours, and the total cost burden on all 1,800 non-Navigator assistance personnel is estimated to be $5,994.

Table 1 - Annual Recordkeeping and Reporting Requirements, By Respondent

Proposed Regulation Section(s)	Number of Respondents	Number of Responses	Burden per Response (hours)	Total Annual Burden (hours)	Hourly Labor Cost of Reporting ($)	Labor Cost of Reporting per Response ($)	Capital/ Maintenance Costs ($)	Total Cost ($)
Conflict of Interest Attestation §155.215(a)(2)(ii) Non-Navigator Assistance Program	-	-	0.25	-	29.20	7.30	0	-
Conflict of Interest Mitigation Plan§155.215(a)(1)(ii) & (a)(2)(iii)								
Navigator Senior Executive	105	1	5	525	48	240	0	126,000
Non-Navigator Assistance Project Lead	-	-	5	-	29	145	0	-
Conflict of Interest Disclosure of Coverage Options § 155.215(a)(1)(iii) & (a)(2)(iv)	3000	361	1	1,084,161	20	20	0	21,683,220
Conflict of Interest Disclosure to Exchange and Consumers § 155.215(a)(1)(iv) & (a)(2)(v)								
Navigator Personnel	3,000	1	.16	480	20	3.20	0	9,600
Non-Navigator Assistance Personnel	-	-	.16	-	20	3.20	0	-
Training Registration §155.215(b)(1)(ii)								
Navigator Senior Level Executives	105	1	0.25	26.25	48	12	0	1260
Navigator Project Leads	105	1	0.25	26.25	29	7.25	0	761.25
Navigator Personnel	3,000	1	0.25	750	20	5	0	150,000
Non-Navigator Assistance Project Lead	300	1	0.25	75	29	7.25	0	2175
Non-Navigator Assistance Personnel	1800	1	0.25	450	20	5	0	9000
Certification and Recertification §155.215(b)(1)								
Navigator Senior Level Executives	105	1	0.016	1.68	48	0.77	0	80.64
Navigator Project Leads	105	1	0.016	1.68	29	0.46	0	48.72
Navigator Personnel	3,000	1	0.016	48	20	0.32	0	960
Non-Navigator Assistance Project Lead	-	-	0.016	-	29	0.46	0	-

Proposed Regulation Section(s)	Number of Respondents	Number of Responses	Burden per Response (hours)	Total Annual Burden (hours)	Hourly Labor Cost of Reporting ($)	Labor Cost of Reporting per Response ($)	Capital/ Maintenance Costs ($)	Total Cost ($)
Non-Navigator Assistance Personnel	-	-	0.016	-	20	0.32	0	-
Consumer authorization forms (§155.210(e)(6) and §155.215(g)								
Navigator Senior Level Executives	105	1	1	1	48	48	0	5,040
Navigator Project Leads	105	1	2	2	29	58	0	6,090
Navigator Personnel	3,000	1	0.1827	0.1827	20	3.654	0	10,962
Non-Navigator Assistance Senior Level Executives	300	1	1	1	48	48	0	14,400
Non-Navigator Assistance Project Lead	300	1	2	2	29	58	0	17,400
Non-Navigator Assistance Personnel	1800	1	0.1827	0.1827	20	3.654	0	6,577.20
Total			18.04		681	938.308	0	
Navigator Program	3,210	372		1,862.04				21,994,022.61
Non-Navigator Assistance Program	2400	-		-				-

13. Capital Costs

There are no capital costs needed for this collection requirement.

14. Cost to Federal Government

I. REVIEW OF DOCUMENTATION SUBMITTED BY NAVIGATOR AWARDEES

It is expected that Navigators will submit a conflict of interest attestation through the grant application process, which is covered under another PRA burden estimate. In addition, Navigators will have to submit a risk mitigation plan and a conflict of interest disclosure to the Federally-facilitated Exchange. In contrast, non-Navigator assistance personnel that are covered by this burden estimate will be operating in Consumer Partnership Marketplaces and as such, will submit any required attestations, risk mitigation plans, and conflict of interest disclosures directly to a state operating in a consumer partnership with CMS.

A. Risk Mitigation Plan and Conflict of Interest Disclosure to Exchange
The risk mitigation plans and non-prohibited conflicts of interest disclosures that a Navigator may have to provide during the course of a grant period will be reviewed and approved by CMS grant

project officers, with an estimated wage of $29 per hour.[5] The time to review each risk mitigation plan and conflict of interest disclosure submission is estimated to be 0.5hours (30 minutes) total.

Hours: 0.5 hours (30 minutes) per submission

Cost: $29 mid-level range x .5 hours (30 minutes) per submission = **$14.50 per submission**

15. Changes to Burden

We estimate that this collection would increase the total annual cost to Navigator programs by $22,092.00. We did not previously estimate the total annual cost to non-Navigator assistance programs, but we estimate that this collection would increase that cost by $38,377.20.

16. Publication/Tabulation Dates

At this time, HHS does not expect that the data collected in the quarterly and annual reports will be published or shared with other agencies.

17. Expiration Date

This collection does not lend itself to the displaying of an expiration date.

5 Wage data from OPM GS Wage Tables at http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2012/general-schedule/gs_h.pdf.