

**Supporting Statement for Information Collection Requirements  
for State Permissions for Enrollment in Qualified Health Plans in the Federally-  
Facilitated Exchange & Non-Exchange Entities  
(CMS-10650/OMB control number 0938-1349)**

**A. Background**

On March 23, 2010, the Patient Protection and Affordable Care Act (P.L. 111-148) was signed into law and on March 30, 2010, the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) was signed into law. The two laws implement various health insurance policies.

This Information Collection Request (ICR) serves as the renewal of the data collection related to the ability of states to permit agents and brokers, as well as web-brokers, to assist qualified individuals, qualified employers, or qualified employees enrolling in Qualified Health Plans (QHPs) in the Federally-facilitated Exchanges (FFE) (45 C.F.R. §155.220) and data collection requirements related to non-Exchange entities. (45 C.F.R. §155.260).

**B. Justification**

1. Need and Legal Basis

Section 1312(e) of the Affordable Care Act directs the Secretary to establish procedures under which a state may permit agents and brokers to enroll qualified individuals and qualified employers in QHPs through an Exchange, and to assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions. In addition, CMS recognizes in implementing the Affordable Care Act that Exchanges may contract with web-based entities to assist in, among other things, enrollment in QHPs. ([76 FR 41865](#))

2. Information Users

The data collection assists HHS in monitoring agents, brokers, and web-brokers for compliance with Federal standards.

3. Use of Information Technology

A majority of the systems, notices, and information collection required are automated. A majority of the information that is required by the collection of information is submitted electronically. HHS staff analyzes or reviews the data in the same manner it is submitted in and communicates with states, health insurance issuers, and other entities using e-mail, telephone, or other electronic means.

4. Duplication of Efforts

This information collection does not duplicate any other Federal effort.

5. Small Businesses

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

6. Less Frequent Collection

If information is collected on a less frequent basis, the enrollment for qualified individuals and providers will be affected.

7. Special Circumstances

There are no special circumstances.

8. Federal Register/Outside Consultation

A 60-day notice was published in the Federal Register on 12/30/2020 (85 FR 86567-86568). One comment was received. However, it does not relate to any burden or subject in this ICR and therefore, no comments applicable to this ICR were received. A 30-day Notice will be published in the Federal Register on 3/10/2021 (86 FR 13719) for the public to submit written comment on the information collection requirements.

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. 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)

Average labor costs (including 100 percent fringe benefits) used to estimate the costs are calculated using data available from the May 2019 National Industry-Specific Occupational Employment and Wage Estimates (Bureau of Labor Statistics (BLS) ([May 2019 National Occupational Employment and Wage Estimates](#))).

**Table 1: Adjusted Hourly Wages Used in Burden Estimates**

OES Designation	Occupational Code	Mean Hourly Wage (\$/hour)	Fringe Benefits and Overhead (\$/hour)	Adjusted Hourly Wage (\$/hour)
Agent or Broker	41-3021	\$32.59	\$32.59	\$65.18
Business Operations Specialist	13-1000	\$36.31	\$36.31	\$72.62
Computer Programmer	15-1251	\$44.53	\$44.53	\$89.06
General and Operations (Senior) Manager	11-1021	\$59.15	\$59.15	\$118.30

The following sections of this document contain estimates of burden imposed by the associated information collection requirements; however, not all of these estimates are subject to the PRA for the reasons noted.

*ICRs Related to Monitoring of Agents, Brokers, and Web-brokers Enrollment Activities as to QHPs in the FFEs (§155.220(g))*

Section 155.220(g) authorizes HHS to take various actions by sending notices when an agent, broker, or web-broker is out of compliance with FFE standards, to which agents, brokers, and web-brokers respond. The burdens related to responding to these notices are detailed herein.

**Notices of Intent to Terminate, of Temporary Suspension, and of Termination of FFE Agreements**

Section 155.220(g)(3) authorizes a notice of intent to terminate the FFE agreements that HHS issues to an agent or broker prior to terminating for cause. An agent or broker who receives this notice has 30 days to submit mitigating facts or circumstances to contest the termination, or otherwise resolve the issue. Similarly, §155.220(g)(5)(i) states that HHS may issue a notice of a temporary 90-day suspension for suspected fraud or abusive conduct regarding use of personally identifiable information or in connection with an Exchange enrollment and that the agent, broker, or web-broker may submit evidence to rebut an allegation of fraud or abuse during the 90-day suspension. HHS may then issue an immediate termination of the FFE agreements for cause after 90 days if the rebuttal evidence does not persuade HHS to lift the suspension, or if the agent, broker, or web-broker fails to submit rebuttal evidence during the suspension period, based on a finding of fraud or abusive conduct under §155.220(g)(5)(ii).

The notices may include a denial of right to enter into an agreement with the FFE in future years for failure to comply with the requirements of §155.220, under §155.220(k)(1)(i). The burden to respond to that remedy is included in the burden estimates for responses to the aforesaid notices of intent to terminate, of 90-day suspension, and to terminate the FFE agreements, and is included in those burden estimates.

We estimate that HHS will send a thirty (30)-day notice of intent to terminate the FFE agreements or a notice of temporary 90-day suspension of the agreements for suspected fraud or abusive conduct regarding use of personally identifiable information or in connection with an Exchange enrollment to a total of 25 agents and brokers, and to one (1) web-broker, each year.

We also estimate that HHS will send notices of immediate termination for cause based on a finding of fraud or abusive conduct to a total of 15 agents or brokers, and to one (1) web-broker, each year. The hour burden associated with these actions is the time and effort needed to gather the necessary background information, create the written response to the notice, and submit it by mail and electronically to HHS. We estimate that that all 40 agents and brokers, and both web-brokers, will respond to the notices to suspend or terminate and that it will take 10 hours to respond to each of these notices. Each agent’s or broker’s wage is an estimated \$65.18 per hour, for a total burden cost of \$651.80 per agent or broker. We assume web-brokers act through agents or brokers and have the same wage and total burden cost per web-broker. Therefore, we estimate an aggregate burden of 400 hours at a total burden cost of \$26,072 for the 40 agents and brokers, and a burden of 20 hours at a total burden cost of \$1,303.60 for two (2) web-brokers.

Section 155.220(k)(2) gives HHS the authority to impose a civil money penalty on agents and brokers as described at §155.285. ICRs proposed in this provision are exempt from PRA requirements in accordance with 5 C.F.R. 1320.4(a)(2) because this information would be collected during the conduct of an administrative action or investigation involving an agency against specific individuals or entities.

Pursuant to §155.220(g)(3)(i), HHS may send agents, brokers, and web-brokers found to be non-compliant with 45 C.F.R. §155, the terms of the FFE agreement, or state or federal law regarding agents and brokers, a 30-day notice of intent to terminate the FFE agreements. In addition, under §155.220(g)(5)(i)(A), HHS may send agents, brokers, and web-brokers a notice of temporary 90-day suspension of the agreements for suspected fraud or abusive conduct that regarding use of personally identifiable information or in connection with an Exchange enrollment. The table below displays the burden for agents, brokers, and web-brokers relating to responding to these regulatory provisions.

**Table 2: Burden to Agents, Brokers, and Web-brokers to Respond to Notices of Intent to Terminate, of Temporary Suspension, and of Termination of FFE Agreements**

Labor Category	Number of Respondents	Hourly Labor Costs (Hourly rate + 100%)	Burden Hours	Total Burden Costs (per Respondent)	Total Burden Costs (All Respondents)
Agent or Broker	40	\$65.18	10	\$651.80	
Web-broker	2	\$65.18	10	\$651.80	
Total			20	\$1,303.60	\$27,375.60

### Notices of Immediate Termination of FFE Agreements for Lack of State Licensure

Under §155.220(g)(3)(ii), HHS may send a notice of immediate termination where the an agent or broker fails to maintain the appropriate license under state law in every state in which the agent or broker assists consumers with enrolling in QHPs through the Federally-facilitated Exchanges. We estimate that HHS will send 100 notices of termination annually based on a lack of state licensure, of which 50 agents and brokers will respond. The hour burden associated with these actions is the time and effort needed by the agent or broker to gather the necessary background information, create the written response to the notice, and submit it by mail and electronically to HHS. We estimate that it will take 5 hours to respond to each of these notices. Each agent’s or broker’s wage is an estimated \$65.18 per hour, for a total burden cost of \$325.90 per agent or broker. Therefore, we estimate an aggregate burden of hours at a total burden cost of \$16,295.00 annually for the 50 agents and brokers.

Pursuant to §155.220(g)(3)(ii), HHS may send a notice of immediate termination to agents and brokers that fail to maintain the appropriate license under state law in every state in which the agent or broker assists consumers with enrolling in QHPs through the Federally-facilitated Exchanges. The table below displays the burden for agents and relating to responses to these regulatory provisions.

**Table 3: Burden to Agents and Brokers to Respond to Immediate Termination for Non-Licensure**

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)
Agent or Broker	50	\$65.18	5	\$325.90	\$16,295.00

### Reconsideration of Termination of FFE Agreements and Other Penalty

As stated in §155.220(h) and §155.220(k)(2), an agent, broker, or web-broker can request reconsideration of any termination or penalty decision by HHS within 30 calendar days of notification of the decision, and §155.220(h) describes the process for reconsideration of HHS’s termination or denial of right to enter into future agreements with the FFEs. Specifically, the agent or broker would be required to submit the request for reconsideration within 30 calendar days of receipt of the date of the notice of termination. We assume that web-brokers submit the request via an agent or broker.

We estimate that all 40 agents and brokers, and both of the web-brokers, who receive a notice of termination or penalty decision by HHS will submit a request for reconsideration, except that HHS estimates that one-half of agents and brokers will request reconsideration of Notices of Termination for State Non-Licensure. We expect the request to address the issues presented in the notice and estimate that it will take 10 hours for an agent, broker, or web-broker to prepare and submit this request. Steps include gathering and assembling necessary background materials,

preparing the written request, and submitting it by mail and electronically. Each agent’s or broker’s wage is an estimated \$65.18 per hour, for a total burden cost of \$651.80 per agent or broker. Therefore, we estimate an aggregate burden of 400 hours at a total burden cost of \$26,072.00 for the 40 agents and brokers, and an aggregate burden of 20 hours at a total burden cost of \$1,303.60 for two (2) web-brokers.

Pursuant to §155.220(h) and §155.220(k)(2), an agent, broker, or web-broker can request reconsideration of any termination or penalty decision by HHS. The table below displays the burden for agents, brokers, and web-brokers relating to responses to these regulatory provisions.

**Table 4: Burden to Agents, Brokers, and Web-brokers to Request Reconsideration of Termination of FFE Agreements and Other Penalties**

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)
Agent or Broker	40	\$65.18	10	\$651.80	
Web-broker	2	\$65.18	10	\$651.80	
Total			20	\$1,303.60	\$27,375.60

**Agents’ and Brokers’ Feedback to HHS Regarding Training Experience**

Pursuant to 45 C.F.R. §155.220(d), agents and brokers who enroll qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange (including the FFEs), or assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs, must comply with the terms of an agreement between the agent or broker and the Exchange. The terms of that agreement must include training in the range of QHP options and insurance affordability programs, as well as registration. HHS requires annual online training for agents and brokers who enroll individuals through the FFEs, and also offers optional educational outreach. The burden related to training and registration is approved under OMB control number 0938-1204. The burden statement for training and registration is available at OMB-0938-1204. In order to create more effective training and outreach for agents and brokers, and improve the process by which agents and brokers may assist consumers enrolling in QHPs in the FFEs, HHS requests optional feedback from agents and brokers regarding their training experience.

For purposes of this burden estimate, we assume that 900 agents and brokers will respond to our request for feedback. We assume that it will take 0.17 burden hours to write the feedback and electronically send it to HHS. Each agent’s or broker’s wage is an estimated \$65.18 per hour, for a total burden cost of \$11.08 per agent or broker. Therefore, we estimate an aggregate burden of 153 hours at a total burden cost of \$9,972.54 for the 900 agents and brokers.

Pursuant to 45 C.F.R. §155.220(d), agents and brokers enter into FFE agreements with HHS, which include a requirement for training, and agents and brokers are requested to voluntarily provide feedback to HHS to create more effective training and to improve the process by which agents and brokers assist consumers. The table below displays the burden for agents and brokers to voluntarily provide feedback to HHS about training.

**Table 5: Burden to Agents and Brokers to Respond to HHS Feedback Request Regarding Training**

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)
Agent or Broker	900	\$65.18	0.17	\$11.08	\$9,972.54

*ICRs Related to Privacy and Security Policies and Procedures*

Agents, brokers, and web-brokers, along with other non-Exchange entities, assist consumers as they enroll in coverage in the FFEs. These non-Exchange entities must enter into privacy and security agreements with the FFE pursuant to 45 C.F.R. 155.260(b), which require these entities to implement privacy and security policies and procedures. These include developing training and awareness programs, implementing breach and incident handling procedures, creating a privacy disclosure statement, maintaining accounting of disclosures, and obtaining informed consent from individuals for any use or disclosure that is not permissible within the scope of the privacy notice statement or any relevant agreements.

The burdens for agents and brokers, and for web-brokers, are discussed below. The burden for other non-Exchange entities is approved under OMB control number 0938-1215.

The burden on agents and brokers, and for web-brokers, to develop and adhere to the policies and procedures outlined above is an estimated 5 hours. Each agent’s or broker’s wage is an estimated \$65.18 per hour, for a total burden cost of \$325.90 per agent or broker. In addition, we assume that the work done for web-brokers will be performed by agents or brokers, at the same rate. We estimate there will be 54,000 agents and brokers, for an annual total burden cost of \$17,598,600.00 for all agents and brokers. We estimate that there will be 30 web-brokers for an annual total burden cost of \$9,777.00 for all web-brokers.

Pursuant to 45 C.F.R. §155.260(b), agents, brokers, and web-brokers are required to implement privacy and security policies and procedures to protect any personally identifiable information the agent or broker comes into possession of as a non-Exchange entity. The table below displays the burden for agents and brokers to implement the privacy and security policies and procedures.

**Table 6: Burden to Agents, Brokers, and Web-brokers to Develop and Adhere to Privacy and Security Policies and Procedures**

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)
Agent or Broker	54,000	\$65.18	5	\$325.90	
Web-brokers	30	\$65.18	5	\$325.90	
Total			10	\$651.80	\$17,608,377.00

*ICRs relating to Web-broker Data Collection Requirements*

In §155.220(c)(3), requirements for internet websites operated by web-brokers in states in which an FFE is operating are set out. To confirm compliance with these requirements, HHS requires web-brokers to submit business information to track a web-broker’s Agreement status, registration and training completion, state licensure, and general profile and operational data, including privacy and security processes. The data elements necessary for web-brokers to complete the data collection include basic contact information such as business name, address, phone number, corporate National Producer Number, email address, and website uniform resource locator (URL). In order for HHS to monitor compliance, web-brokers will also be required to provide access to their direct enrollment testing environment(s) via testing credentials, and other documentation as requested in response to emerging compliance issues.

We estimate that it will take two (2) hours at an hourly cost of \$72.62 for a business operations specialist to review and update the annual data collection tool. Based on current year-to-date participation and potential market size, we project that 30 web-brokers will participate. We estimate that this data collection has an annual burden of approximately \$4,357.20.

Pursuant to §155.220(c)(3), web-brokers are required to annually collect data to establish to HHS that it is in compliance with the Internet website requirements in that section. The table below displays the burden for web-brokers to annually collect that data to provide to HHS



**Table 7: Burden to Web-brokers to Confirm Compliance with Internet Website Requirements through Annual Data Collection**

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)
Business Operations Specialist	30	\$72.62	2	\$145.24	\$4,357.20

We estimate that it will take up to one hour at an hourly cost of \$72.62 for a business operations specialist to provide periodic updates to the data collection for a total cost of approximately \$72.62 per web-broker. Assuming that 20% of the web-broker population will experience changes to their privacy and security processes outside of the annual data collection period, we estimate that six (6) web-brokers will need to provide periodic updates, increasing the annual burden estimate to approximately \$435.72.

Pursuant to §155.220(c)(3), web-brokers are required to periodically update data to reflect changes to their privacy and security processes to establish to HHS that they remain in compliance with the Internet website requirements. The table below displays the burden for web-brokers to implement the collection of data to provide to HHS.

**Table 8: Burden to Web-brokers to Confirm Compliance with Internet Website Requirements through Periodic Data Collection**

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)
Business Operations Specialist	6	\$72.62	1	\$72.62	\$435.72

Section 155.220(c)(4) requires a web-broker to comply with several standards when the web-broker permits other agents and brokers to use its website to enroll a consumer through the FFE, pursuant to a contractual or other arrangement between the web-broker and the other agent or broker. One of the standards requires the web-broker to provide to the FFE a list of agents or brokers who enter into such an arrangement, if requested by HHS. We understand that web-brokers who work with other agents and brokers typically obtain and manage information on each of their agents or brokers as part of an agent onboarding process. As a result, web-brokers already have the necessary data to list each of their agents or brokers that it contracts with under such arrangements. We estimate that it will take up to 48 hours at an

hourly cost of \$89.06 for a computer programmer to perform the necessary programming, and 4 hours at an hourly cost of \$118.30 for a senior manager to develop a listing of affiliated third-party agents and brokers, \$4,748.08 per web-broker. Assuming that approximately 24 web-brokers elect to access the FFE’s application programming interface and that each allows third-party agents to access their websites, we estimate that this provision would increase the annual burden estimate to \$113,953.92.

Pursuant to §155.220(c)(4)(i), web-brokers who permit other agents and brokers to use its website to enroll consumers in QHPs through the FFE must provide a list of those agents and brokers. The table below displays the burden for web-brokers to provide this list of contracted agents and brokers to the FFE.

**Table 9: Burden to Web-Brokers to Provide the FFE a List of Agents or Brokers**

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)
Computer Programmer	24	\$89.06	48	\$4,274.88	
Senior Manager	24	\$118.30	4	\$473.20	
Total			52	\$4,748.08	\$113,953.92

The aggregate annual cost across all respondents is \$17,808,142.58. The table below provides a summary of the estimates within this package.

**Table 10: Summary of Total Burden**

Table Number: Name	C.F.R. Section	Burden Hours	Burden Cost
Table 2: Burden to Agents, Brokers, and Web-brokers to Respond to Notices of Intent to Terminate, of Temporary Suspension, and of Termination of FFE Agreements	45 C.F.R. §155.220(g)(3)(i) and §155.220(g)(5)(i)(A)	420	\$27,375.60
Table 3: Burden to Agents and Brokers to Respond to Immediate Termination for Non-Licensure	45 C.F.R. §155.220(g)(3)(ii)	250	\$16,295.00
Table 4: Burden to Agents and Brokers to Respond to Immediate Termination for Non-Licensure	45 C.F.R §155.220(h) and §155.220(k)(2),	420	\$27,375.60
Table 5: Burden to Agents and Brokers to Respond to HHS Feedback Request regarding Training	45 C.F.R. §155.220(d)	153	\$9,972.54

<b>Table Number: Name</b>	<b>C.F.R. Section</b>	<b>Burden Hours</b>	<b>Burden Cost</b>
Table 6: Burden to Agents, Brokers, and Web-brokers to Develop and Adhere to Privacy and Security Policies and Procedures	45 C.F.R. §155.260(b)	270,150	\$17,608,377.00
Table 7: Burden to Web-brokers to Confirm Compliance with Internet Website Requirements through Annual Data Collection	45 C.F.R. §155.220(c)(3)	60	\$4,357.20
Table 8: Burden to Web-brokers to Confirm Compliance with Internet Website Requirements through Periodic Data Collection	45 C.F.R. §155.220(c)(3)	6	\$435.72
Table 9: Burden to Web-Brokers to Provide the FFE a List of Agents or Brokers	45 C.F.R. §155.220(c)(4)(i)	1,248	\$113,953.92
<b>Total</b>		<b>272,707</b>	<b>\$17,808,142.58</b>

### 13. Capital Costs

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

### 14. Cost to Federal Government

The burden to the Federal government for the continuing the established systems and policies associated with this information collection is \$32,257.40. The calculations for CMS employees' hourly salary was obtained from the OPM website: [Salary Table 2020-GS](#).

Table 1 – Administrative Burden Costs for the Federal Government Associated with the Program Integrity and Additional State Collections

<b>Task</b>	<b>Estimated Cost</b>
Technical Assistance to States	
15 GS-13: 15 x \$ 37.70 x 50 hours	\$28,275.00
Managerial Review and Oversight	
2 GS-15: 2 x \$ 52.40 x 38 hours	\$3,982.40
Total Costs to Government	\$32,257.40

#### 15. Changes to Burden

The total annual burden hours have changed from 680,381 hours to 272,707 hours, a reduction in burden of 407,674 hours. This change is due in part to the removal of the burden for navigators and certified assistance counselors, which is now approved under OMB control number 0938-1215. In addition, the number of agents and brokers that will develop and adhere to privacy and security policies and procedures has decreased from 100,000 in the previously approved package to 54,000 in this current request. The number of web-brokers that will develop and adhere to privacy and security policies and procedures and confirm compliance with internet website requirements through annual data collection has decreased from 113 in the previously approved package to 30 in the current request.

#### 16. Publication/Tabulation Dates

There are no plans to publish the outcome of the data collection.

#### 17. Expiration Date

The expiration date and OMB control will be displayed on the first page of each instrument (top right-and corner).