

## **Supporting Statement for Information Collection Requirements for Non-Exchange Entities – CMS-10666**

### **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”), expanded access to health insurance for individuals and employees of small businesses through the establishment of new Affordable Insurance Exchanges (Exchanges), also called Marketplaces, including the Small Business Health Options Program (SHOP). The Exchanges, which became operational on January 1, 2014, 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.

Section 1312(e) of the Affordable Care Act directs the Secretary of the Department of Health and Human Services (HHS) to establish procedures under which a State may permit agents and brokers to enroll qualified individuals and employers into qualified health plans (QHPs) offered through an Exchange and to enable these agents and brokers to assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions.

The *HHS Notice of Benefit and Payment Parameters for 2017; Final Rule* (2017 Payment Notice) finalized the definition of standardized options as well as one set of standardized options at § 155.20. It also codified the authority for HHS to differentially display standardized options on consumer-facing plan comparison and shopping tools, such as those on HealthCare.gov, at § 155.205(b)(1).

The *HHS Notice of Benefit and Payment Parameters for 2018; Final Rule* (2018 Payment Notice) finalized several updated sets of standardized options at § 155.20. In accordance with section 1312(e) of the Affordable Care Act, the 2018 Payment Notice also finalized requirements for web-brokers and issuers that use the Classic Direct Enrollment (Classic DE) and Enhanced Direct Enrollment (EDE) pathways to differentially display standardized options in a manner consistent with that adopted by HHS for display on HealthCare.gov, at §§ 155.220(c)(3)(i)(H) and 156.265(b)(3)(iv), respectively. It also finalized that a web-broker or issuer that utilizes the Classic DE and EDE pathways could submit a request to deviate from the differential display of standardized options on HealthCare.gov with approval from HHS at §§ 155.220(c)(3)(i)(H) and 156.265(b)(3)(iv), respectively.

The original information collection request (ICR) that provided the authority for HHS to collect the information necessary for these requests to deviate was titled *Non-Exchange Entities* (0938-1329) and was approved on 5/23/2017. The original ICR was discontinued on 3/4/2020 due to the concurrent discontinuation of standardized options in the *HHS Notice of Benefit and Payment Parameters for 2019; Final Rule* (2019 Payment Notice).

This ICR serves as the formal request for a reinstated data collection clearance associated with the *HHS Notice of Benefit and Payment Parameters for 2023 Proposed Rule* (2023 Proposed Payment Notice) regarding the authority to allow HHS to collect the necessary information to enable web-brokers and issuers using the Classic DE and EDE pathways to submit a request to deviate from the manner in which standardized options are differentially displayed on HealthCare.gov, if they so choose.

## **B. Justification**

### **1. Need and Legal Basis**

Section 1312(e) of the Affordable Care Act directs the Secretary of HHS to establish procedures under which a State may permit agents and brokers to enroll qualified individuals and employers into QHPs offered through an Exchange and to enable these agents and brokers to assist individuals in applying for advance payments of the premium tax credit and cost sharing reductions.

In the 2018 Payment Notice, at §§ 155.220(c)(3)(i)(H) and 156.265(b)(3)(iv), HHS codified the authority to require web-brokers and issuers that use the Classic DE and EDE pathways to differentially display standardized options in a manner consistent with that adopted by HHS for display on HealthCare.gov in order to promote consistent messaging across all enrollment platforms, including those of web-brokers and direct enrollment issuers.

In the 2018 Payment Notice, HHS noted that it anticipated that the differential display of standardized options would not require significant modification of web-broker and issuer platforms but that such display would provide an important service for consumers seeking to enroll in a standardized option. However, HHS noted that system constraints may prevent web-brokers and issuers from precisely mirroring the differential display of standardized options on HealthCare.gov.

For this reason, in the 2018 Payment Notice, HHS noted it would not require the manner of differentiation of standardized plans on non-Exchange web sites to be identical to that adopted on HealthCare.gov. Instead, HHS noted that the display must have the same level of differentiation and clarity as is provided on HealthCare.gov. To allow web-brokers and issuers using the DE and EDE pathways additional flexibility, HHS allowed these entities to submit a request to deviate from the manner in which standardized options are differentially displayed on HealthCare.gov. HHS stated that these requests would be reviewed based on whether the same level of differentiation and clarity is being provided under the requested deviation as is provided on HealthCare.gov.

The current ICR provides the authority for HHS to request information from these entities to submit a request to deviate from the manner in which standardized options are differentially displayed on HealthCare.gov, if these entities so choose. This flexibility will ensure that web-brokers and issuers using the DE and EDE pathways can continue to enroll qualified consumers into QHPs offered through the Exchanges without disruption.

## 2. Information Users

This ICR will provide HHS the authority necessary to request information from web-brokers and QHP issuers using the Classic DE and EDE pathways to request to deviate from the manner in which standardized options are differentially displayed on HealthCare.gov, if they so choose.

## 3. Use of Information Technology

HHS anticipates that a majority of the systems, notices, and information collection required will be automated. A majority of the information that is required by the collection of information will be submitted electronically. HHS staff will analyze or review the data in the same manner by which it was submitted and communicate 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, HHS will be unable to allow web-brokers and QHP issuers using a DE or an EDE pathway to request to deviate from the manner in which standardized options are differentially displayed on HealthCare.gov, which could impede the enrollment of qualified individuals into QHPs through these enrollment pathways. Therefore, this information must be collected on an annual basis to allow these web-brokers and issuers to submit a request to deviate, if they so choose.

## 7. Special Circumstances

There are no anticipated special circumstances.

## 8. Federal Register/Outside Consultation

The Notice of Proposed Rulemaking published on January 5, 2022 (87 FR 584, 0938-AU65).

No additional outside consultation was sought.

## 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)

We used the web site ([https://www.bls.gov/oes/current/oes\\_stru.htm](https://www.bls.gov/oes/current/oes_stru.htm)) of the Bureau of Labor Statistics (BLS) to estimate the burden for this collection. The mean hourly wage for web developers and digital interface designers is \$41.10, plus a 100% fringe benefit rate of \$41.10, for an adjusted hourly wage of \$82.20 per hour. The mean hourly wage for compliance officers is \$36.35, plus a 100% fringe benefit rate of \$36.35, for an adjusted hourly wage of \$72.70 per hour. See Table 1.

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

| Occupational Title                             | Occupational Code | Mean Hourly Wage (\$/hour) | Fringe Benefits & Overhead (100%) (\$/hour) | Adjusted Hourly Wage (\$/hour) |
|--|-------------------|----------------------------|---|--------------------------------|
| Web Developers and Digital Interface Designers | 15-1257           | \$41.10                    | \$41.10                                     | \$82.20                        |
| Compliance Officer                             | 13-1041           | \$36.35                    | \$36.35                                     | \$72.70                        |

#### ICR Regarding Differential Display of Standardized Options on the Web Sites of Agents and Brokers (§ 155.220) and QHP Issuers (§ 156.265)

The 2023 Payment Notice proposes to resume enforcement of the standardized options differential display requirements at §§ 155.220(c)(3)(i)(H) and 156.265(b)(3)(iv). As such, web-brokers and QHP issuers that utilize the Classic DE and EDE pathways would be required to differentially display standardized options consistent with the approach adopted by HHS for display on HealthCare.gov, unless HHS approves a deviation.

Similar to the approach that was taken in the 2018 Payment Notice, HHS does not anticipate that the differential display of standardized options would require significant modification of web-broker and issuer platforms but that such display would provide an important service for consumers seeking to enroll in a standardized option.

We estimate a total of 110 web-brokers and QHP issuers participating in the FFEs and SBE-FPs would be required to comply with these requirements. We estimate that it would take a web developer/digital interface designer two hours annually, at an average hourly cost of \$82.20 per hour, to implement these changes, at a total annual cost of \$164.40 per entity. We therefore estimate a total annual burden of 220 hours at a total annual cost of \$18,084 for all applicable web-brokers and QHP issuers.

**Table 2. Burden for Web-Brokers and Issuers Utilizing Classic DE/EDE Pathways to Differentially Display Standardized Options Consistent with the Display on HealthCare.gov.**

| Year | Number of Respondents | Hours Per Respondent | Total Burden Hours | Total Burden Cost Per Respondent | Total Burden Costs (All Respondents) |
|------|-----------------------|----------------------|--------------------|----------------------------------|--------------------------------------|
| 2023 | 110                   | 2                    | 220                | \$164.40                         | \$18,084                             |
| 2024 | 110                   | 2                    | 220                | \$164.40                         | \$18,084                             |
| 2025 | 110                   | 2                    | 220                | \$164.40                         | \$18,084                             |

However, HHS is aware that system constraints may prevent web-brokers and issuers from precisely mirroring the differential display of standardized options on HealthCare.gov. For this reason, HHS would not require the differential display of standardized plans on non-Exchange web sites to be identical to that of HealthCare.gov. Instead, HHS would require that the display must have the same level of differentiation and clarity as is provided on HealthCare.gov.

To allow web-brokers and issuers using the Classic DE and EDE pathways additional flexibility, HHS would allow these entities to submit a request to deviate from the manner in which standardized options are differentially displayed on HealthCare.gov. These requests would be reviewed based on whether the same level of differentiation and clarity is being provided under the requested deviation as is provided on HealthCare.gov.

Of the 110 total entities, we estimate that 55 web-brokers and QHP issuers would submit a request to deviate from the manner in which standardized options are differentially displayed on HealthCare.gov. We estimate it would take a compliance officer (at a rate of \$72.70 per hour) approximately one hour annually to complete and submit the request to deviate. We therefore estimate an annual cost burden of \$72.70 per applicable direct enrollment entity. This amounts to an annual burden of 55 hours at a total annual cost of \$3,998.50 for all web-brokers and QHP issuers submitting a request to deviate from the manner in which standardized options are differentially displayed on HealthCare.gov.

**Table 3. Burden for Web-Brokers and QHP Issuers Utilizing Classic DE/EDE Pathways Submitting a Request to Deviate from the Manner in which Standardized Options are Displayed on HealthCare.gov**

| Year | Number of Respondents | Hours Per Respondent | Total Burden Hours | Total Burden Cost Per Respondent | Total Burden Costs (All Respondents) |
|------|-----------------------|----------------------|--------------------|----------------------------------|--------------------------------------|
| 2023 | 55                    | 1                    | 55                 | \$72.70                          | \$3,998.50                           |
| 2024 | 55                    | 1                    | 55                 | \$72.70                          | \$3,998.50                           |
| 2025 | 55                    | 1                    | 55                 | \$72.70                          | \$3,998.50                           |

**Table 4. Summary of Annual Total Burden**

| Table   | CFR Section   | Total Annual Burden Hours | Total Annual Burden Costs |
|---|---|---------------------------|---------------------------|
| Table 2. Burden for Web-Brokers and Issuers Utilizing Classic DE/EDE Pathways to Differentially Display Standardized Options Consistent with the Display on HealthCare.gov.                     | 45 CFR §§ 155.220(c)(3)(i)(H) and 156.265(b)(3)(iv) | 220                       | \$18,084                  |
| Table 3. Burden for Web-Brokers and QHP Issuers Utilizing Classic DE/EDE Pathways Submitting a Request to Deviate from the Manner in which Standardized Options are Displayed on HealthCare.gov | 45 CFR §§ 155.220(c)(3)(i)(H) and 156.265(b)(3)(iv) | 55                        | \$3,998.50                |
| Total   |   | 275                       | \$22,082.50               |

### 13. Capital Costs

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

### 14. Cost to Federal Government

We estimate that the operations and maintenance costs for the data collection tool and the data collection support to have a total cost to the federal government of \$2,462.70 per year. The calculations for CCIIO employees' hourly salary was obtained from the OPM website:

[https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS_h.pdf)

**Table 5. Administrative Burden Costs for the Federal Government Associated with the Collection**

| <b>Task</b>   | <b>Estimated Cost</b> |
|---|-----------------------|
| Operations, maintenance, and data collection support  |                       |
| 2 GS-13 (step 7): 2 x \$91.38 <sup>1</sup> x 10 hours | \$1,827.60            |
| Managerial review and oversight                       |                       |
| 1 GS-15 (step 7): \$127.02 <sup>2</sup> x 5 hours     | \$635.10              |
| Total Costs to Government                             | \$2,462.70            |

15. Changes to Burden

The estimate for web-brokers and QHP issuers utilizing the Classic DE and EDE pathways to differentially display standardized options consistent with HealthCare.gov in the current collection is lower than the estimate in the previously discontinued collection, primarily due to the lower number of entities subject to this requirement in the current collection. Additionally, the previous collection calculated the burden for Web Developers and Digital Interface Designers using the labor category for Software Developers, which had a higher wage rate. Thus, there is a reduction in the burden estimate for Web Developers and Digital Interface Designers from the previous collection to the current collection.

The burden estimate in the previously discontinued collection did not include an estimate for allowing web-brokers and QHP issuers utilizing the Classic DE and EDE pathways to submit a request to deviate from the manner in which standardized options are differentially displayed on HealthCare.gov, so this aspect of the burden estimate is slightly higher in the current collection.

Altogether, the total annual burden estimate reduced from \$30,982 in the previous package to \$22,082.50 in the current package, a change of \$8,899.50. The total burden hours estimate reduced from 320 to 275 annually, a change of 45 hours.

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 number will appear on the first page of the instrument in the top, right corner.

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1 Hourly basic rate + 100% fringe benefit rate.

2 Hourly basic rate + 100% fringe benefit rate.