

**Direct Enrollment Entities (CMS-10877/0938-NEW)**  
**60-Day Public Comment Response Summary (Ended 01/23/2024)**

*Adding and Amending Language to Ensure Web-brokers & DE Entities Operating in State Exchanges Meet Certain HHS Standards Applicable in the FFEs and SBE-FPs (45 CFR 155.220 & 155.221)*

Comment Type	Comment Summary	Response
Burden	One commenter suggested that the burden estimates could be substantially reduced if the State Exchanges leverage or choose to mirror the HHS requirements.	We appreciate the comment that the burden estimates could be substantially reduced if the State Exchanges leverage the HHS requirements. Although we agree with this comment, the flexibilities afforded to State Exchanges as part of this finalized policy, particularly with regards to implementation of web-broker programs and requirements, present the possibility of significant differences between web-broker programs in different States while also establishing baseline consumer protections across the State Exchanges. We formulated these burden estimates to account for a possible scenario of varied web-broker program requirements across State Exchanges. However, we encourage State Exchanges to leverage the HHS requirements and believe the implementation costs for both State Exchanges and web-brokers may be substantially reduced if the State Exchanges leverage the HHS requirements. However, the assumption that states can save money by mirroring HHS standards assumes that all entities participating have complied and met the HHS standards, as verified by HHS, and ignores the possibility that entities may participate in a given State’s web-broker or DE Entity program as a net new entity, with no experience or documented compliance at the Federal level. We carefully considered this commenter’s feedback and reduced relevant burden estimates for requirements where we believe there is a high likelihood that State Exchanges will adopt the same requirements as the FFE.

03/20/2024

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Direct Enrollment Entities

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Comment Type	Comment Summary	Response
Burden	One commenter noted concern that it is misleading to present a separate burden analysis for web-brokers and DE entities, as the majority of web-brokers are DE entities and the burden complying with web-broker standards on top of EDE standards is minimal.	We disagree where the commenter suggested it is misleading to present a separate burden analysis for web-brokers and DE entities. Although the majority of DE entities are web-brokers, there exist some DE entities that are not web-brokers (for example, Issuer DE Technology Providers). For that reason, we believed it was important to provide a comprehensive burden estimate for participating in web-broker programs and DE entity programs. However, we acknowledge there is significant overlap between the requirements for web-brokers and DE entities, and, accordingly, have reduced the entity burden estimates for DE Entities distinct from web-brokers. We note, however, given the State’s requirements for a DE Entity under § 155.221 may require a different burden for an entity to implement and comply with compared to the state’s requirements for a web-broker under § 155.220.

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Burden	Two commenters felt that the cost estimates for States to implement this finalized proposal are overstated and fail to incorporate the potential cost savings and additional user fee revenues that States could realize through utilization of web-brokers or DE entities, including reduced burdens on State call centers and State Exchanges.	We acknowledge the concern that the burden estimates for State Exchanges to implement web-broker/DE programs are overstated. As acknowledged, this finalized policy provides flexibility to State Exchanges in their implementation of web-broker/DE programs. These burden estimates account for the possibility that State Exchanges may implement web-broker programs differing from the FFE program. We encourage State Exchanges to leverage the HHS requirements when developing their web-broker/DE programs and we anticipate that doing so would substantially reduce the burden for State Exchanges to develop and implement these programs. In addition, we acknowledge the comment that web-broker/DE programs may provide additional user fee revenues and cost savings to State Exchanges associated with reduced burdens on State call centers and State Exchanges. Although we acknowledge that there could be cost savings associated with implementing web-broker/DE programs in State Exchanges, we have not conducted a detailed analysis on the cost savings associated with the implementation of web-broker programs in the FFE and, therefore, cannot quantify the extent of any such savings. Furthermore, these estimates are specific to defining the oversight policies and procedures, and the implementation of such oversight for web-brokers and DE entities under § 155.220 and § 155.221; these estimates are not intended to calculate the total cost—or savings—for any given State to implement a web-broker or DE program, including the costs of developing and maintaining the technical infrastructure to maintain a web-broker and DE entity program. However, we do recognize the potential for savings and are open to feedback as we continue to work with our State partners on implementation of these programs.

Comment Type	Comment Summary	Response
Burden	One commenter expressed concern that the burden estimates were based on salary information for Washington, DC, citing higher salaries for that locality as compared to employees in the majority of State Exchanges	We acknowledge the concern regarding the use of Washington, DC, labor rates in calculating these burden estimates. In the absence of a national average pay scale, we acknowledge there will be variations in regional pay scales among State Exchanges, including some which may be higher or lower than the rates used to calculate these estimates.
Burden	One commenter requested clarification for how the estimated hours for contractor oversight of State Exchanges were determined.	With regards to the estimates for contractor oversight of State Exchanges, we are clarifying that these estimates were calculated by mapping labor for the relevant requirements to GS categories based on the applicable FFE contractor support labor costs and hours for the applicable requirements and estimated number of entities. We acknowledge that any given State may experience a higher or lower cost for implementing these programs depending on the extent (that is, scope and frequency) of the State’s oversight mechanisms, the scope of the State’s specific requirements for these programs, and the general quality and compliance posture of web-brokers or DE entities intending to participate in the State.

Comment Type	Comment Summary	Response
Burden	One commenter provided detailed feedback on the estimated burden hours based on their experience as a web-broker and DE entity operating in the FFEs.	We appreciate the feedback on these burden estimates from a web-broker/DE entity currently operating in the FFEs. We recognize the value of feedback from an entity with experience implementing the FFE program requirements and we carefully considered this feedback and have adjusted the burden estimates where applicable. In making these adjustments, we considered that the commenter has considerable experience operating in the FFE. As the commenter acknowledged, other web-brokers/DE entities may have differing levels of technical expertise and capacity. We have accounted for the costs associated with implementing these requirements from the perspective of web-brokers/DE entities with limited experience. However, we agree that the burden may be substantially lower for web-brokers/DE entities with increased technical experience and capacity. In considering the feedback on these burden estimates, we note there were several assumptions made regarding the State Exchanges' provision of data to web-brokers/DE entities (for example, the provision of QHP data and agent or broker registration data). These burden estimates account for a scenario where there may be variability between the format of data provided across State Exchanges. We encourage State Exchanges to leverage the data formats used in the FFEs and are committed to providing technical assistance to State Exchanges to facilitate such standardization.

Comment Type	Comment Summary	Response
Burden	One commenter suggested that the burden estimates are inappropriately based on the premise that States will implement DE programs in the same manner as the FFEs.	We disagree with the comment that these burden estimates were inappropriately based on the premise that States will implement DE programs in the same manner as the FFEs. The nature of this policy requires a consideration of the baseline federal consumer protection requirements, while accounting for the potential variation in the ultimate DE requirements determined by each State Exchange. These requirements will provide baseline consumer protections across the State Exchanges but also allows flexibility with regards to State Exchange implementation of DE requirements. Accordingly, States may implement more stringent or less stringent standards and oversight processes; these estimates intend to strike a balance between the Federal implementation and the varied hypothetical possibilities for a State’s requirements and oversight process.
Burden	One commenter suggested that the burden estimates should be limited to the number of primary EDE entities expected to participate in State Exchanges.	We agree with the commenter’s suggestion that the burden estimates should be limited to the number of primary EDE entities expected to participate in State Exchanges. We have adjusted the burden estimates to reflect the current number of primary entities operating in the FFEs and to account for the possibility of new primary DE entities entering the State Exchanges.

*Mandating HealthCare.gov Changes to Be Reflected on DE Entity Non-Exchange Websites within a Notice Period Set by HHS (45 CFR 155.221(b))*

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Burden	One commenter noted they believe this proposal will propose little to no additional burden on most DE entities because it is believed that many of the applicable entities may already be complying with the proposed standards.	We appreciate this comment and agree, as described in the proposed rule, that the majority of DE entities are already complying with the requirements associated with this proposal because they are subject to the existing HHS-initiated change request outlined in the Third-Party Auditor Guidelines. However, we believe the provided burden estimates appropriately characterize the burden for the existing HHS-initiated change request process and for the expansion of this process to Classic DE entities and to DE entities operating in State Exchanges.