
November 15, 2013

Office of Management and Budget
Office of Information and Regulatory Affairs
Attention: CMS Desk Officer

**RE: Document Identifiers CMS–10466**

To Whom It May Concern:

The Georgetown University Center for Children and Families appreciates the opportunity to provide comment on the Paperwork Reduction Act notice submitted by the Centers for Medicare and Medicaid Services regarding applications for exemptions from the individual responsibility payment under the Affordable Care Act. The Center for Children and Families is an independent, nonpartisan policy and research center whose mission is to expand and improve health coverage for America's children and families.

**Recommendations for streamlining online and paper application for exemptions:**

To the greatest extent possible the online applications for exemptions should be dynamic so that answers to earlier questions can reduce the number of subsequent questions and customize those that are asked. Additionally, unlike the exemption-specific paper exemption applications, we recommend that there be one online application covering all exemptions. Dynamic questions can tailor the questions based on the specific exemption or exemptions the consumer selects.

In developing the online application for an exemption from the shared responsibility penalty, the experience of developing the online application for insurance affordability programs, provides important lessons:

* If possible, do not require consumers to set up an account in order to submit their applications online. If an account is required, keep the process as straightforward and simple as possible. Avoid asking for information in setting up the account that can be collected later in the application and do not require consumers to re-enter information they enter in the account set-up process once they begin the application process. Do not require consumers to have an email address in order to set up an account. This requirement has proven to be a barrier for consumers using the online application for insurance affordability programs.
* Instructions for setting up an account should be clear and concise. Password requirements should strike a balance between protecting consumers and limiting burdensome and confusing requirements for passwords. For example, the website should offer tools such as check marks to show consumers whether they have satisfied password requirements.
* Allow consumers to provide a mailing address as an alternative to a physical address to ensure that people who are homeless can still apply for an exemption using this mode of application.

**Electronic verification of eligibility for exemptions should be maximized to reduce the burden on consumers.**

The Federally Facilitated Marketplace (FFM) and any State Based Marketplace (SBM) that opts to issue certificates of exemption should electronically verify information to the greatest extent possible to reduce the burden on both consumers and the FFM and SBMs. Some of the paper applications instruct consumers to electronically upload or mail in documents to prove certain factors that should already be known to marketplaces through data sharing and/or review of marketplace case files. Examples include:

* The application for exemption for recognized religious sects or divisions asks consumers to include a copy of an approved IRS Form 4029. HHS should accept the application with attestation from consumers. The IRS is ultimately responsible for ensuring integrity and can do back end checks on these applications as it sees necessary.
* The application for exemption on the basis of certain categories of hardships asks consumers to provide copies of Medicaid and CHIP denials or copies of marketplace appeals decisions. In many cases, this information should be available to the marketplace in its own case records or through data sharing with the state Medicaid and CHIP agencies and the SBMs. Applicants in states that do not expand Medicaid who claim hardship category 12 should not be required to submit documentation of Medicaid denial—based on the applicant’s income and state of residence, HHS should be able to determine whether Medicaid is available to individuals at their income level. If HHS does require documentation of Medicaid denial, it should require that when an exchange receives an application that claims category 12 and does not include documentation, the exchange must provide to the applicant a Medicaid application and appropriate assistance in completing it.
* The application for an exemption on the basis of affordability for consumers in states with an SBM asks applicants to provide a copy of the notice of eligibility for the premium tax credit and a copy of the screen that shows the cost of the lowest cost bronze plan. Not all consumers will be able to easily produce these documents. They may not know to keep the eligibility notice and would have to request a copy—adding burden to the marketplaces and/or potentially delaying or deterring them from completing the application process. They may also not have access to a computer and printer to make a screen print showing the lowest cost bronze plan. This information is available to the FFM through data sharing with the SBMs.

**As written, the hardship exemption application form does not fully capture the exemption criteria defined in 45 CFR 155.605(g).**

The regulations require exchanges to grant a hardship exemption to an individual when:

(i) He or she experienced financial or domestic circumstances, including an unexpected natural or human-caused event, such that he or she had a significant, unexpected increase in essential expenses that prevented him or her from obtaining coverage under a qualified health plan;

(ii) The expense of purchasing a qualified health plan would have caused him or her to experience serious deprivation of food, shelter, clothing or other necessities; or

(iii) He or she has experienced other circumstances that prevented him or her from obtaining coverage under a qualified health plan.

The 12 categories of hardships defined in the draft application are likely to cover most situations that would fall under (i) above. Category 6, however, should be revised to include loss of property as well as damage—individuals who experience theft or other losses should be able to claim this category.

The 12 categories, however, do not cover all circumstances that might lead to serious deprivation as defined under (ii). For instance, an individual may have non-medical debts that lead to garnished wages, potentially depriving him or her of food, shelter, clothing, or other necessities when the costs of purchasing a qualified health plan are added. Or unpredictable hardships such as repair of a vehicle needed for work or an increase in childcare expenses could challenge families’ ability to meet necessary expenses without impacting their income level. Many families will risk deprivation even if the cost of premiums is less than 8% of family income. An exemption based on affordability will not be available to these families, so the hardship exemption application should have a category that allows them to demonstrate the risk of deprivation under paragraph (ii). To minimize burden for both applicants and exchanges, applicants should not be required to document every household expense in order to demonstrate the risk of serious deprivation.

Because families’ financial situations are widely varied and difficult to predict, the regulations at paragraph (iii) recognize that other circumstances may lead to a hardship. The draft application forms, however, do not allow for “other circumstances” to be described or claimed as the basis for a hardship. The form should be revised to allow for at least one additional category of hardship, ‘Other,’ which allows applicants to describe the circumstances that prevent them from obtaining coverage.

Further, this application does not include information about when a hardship application can be submitted. This is important information, especially since the hardship application is the only one which may be submitted to the Marketplace any time during the three calendars years after the hardship occurred (45 C.F.R. 155.610(h)(2)).

**Recommendations for improving paper applications:**

***In general***:

* Currently, the paper applications have a bullet point on the first page that references other categories of exemptions. We strongly support alerting consumers to the availability of other exemptions, and we recommend expanding this information to include a list of exemptions and information on how and when to apply for them.
* The instructions for Step 2 are confusing in all applications (though the application for exemption for individuals who are unable to afford coverage and are in a state with an FFM is confusing for different reasons. See below.), For example, in the application for an exemption due to incarceration, under the section title “Tell us about your household,” the first question directs the application to list only people in the household who need an exemption but the second question asks for information about all adults in the household, whether or not they are requesting an exemption, as well as any dependent who requests an exemption. It is unclear why any information about other adults or dependents in the home is relevant to the question of whether a person was incarcerated. We recommend gathering only information about the individual(s) seeking an exemption. If information about other people in the household is necessary to assess whether an exemption should be granted, the Step 2 instructions and questions should be clarified to better indicate who should be included on the form and why that person’s information is necessary.
* We support including a tagline in Spanish on every page that directs consumers to the call center. However, we believe that the application should be improved by including taglines in multiple languages to meet the needs of people with limited English proficiency (LEP). Title VI of Civil Rights Act of 1964 requires the provision of language services by federal fund recipients and HHS’ Office for Civil Rights has longstanding “LEP Guidance” which defines the expectations for language services. Following these guidelines is important to ensure that people with LEP have equal access to these exemptions. The HHS marketplace exemption applications should include taglines in no less than the 15 most prevalent languages instructing consumers on how to access applications and phone assistance in their language. The 15 taglines do not have to appear on every page, but they should at least appear on the first page.
* We also recommend that HHS translate the exemption applications to at least the 15 most prevalent languages. HHS has a significant opportunity to reduce the costs and ensure the quality of the translation. Because states can choose to use the HHS developed application, they would avoid having to pay for the translation individually. This would also ensure that terms are being translated consistently and accurately.
* The application needs to be specific about timeframes. When asking about plans to file federal tax returns in the next year, the application should indicate the year, since “next year” is vague and confusing.
* The wording of the question “If Hispanic/Latino, ethnicity (OPTIONAL—check all that apply)” is unclear. We recommend revising this to read: “Check all that apply if person 1 is Hispanic/Latino. (optional)” In addition, we recommend that the check off options provided to those persons indicating they or Hispanic/Latino include Central and South American, which are two places or origin for a large number of people who would identify themselves as Hispanic/Latino. When requesting ethnicity and race data, consumers should be told that the information is used to ensure that there is equal access to health coverage and not to make the eligibility determination.

***Recommendations for the application for an exemption on the basis of affordability in states with a State Based Marketplace (SBM):***

* In general, it is unclear why the applications for exemption due to lack of affordable insurance are different for the Federally Facilitated Marketplace and the SBM. The Step 2 instructions are different even though they presumably seek to identify the same tax family. Additionally, the SBM application fails to ask the same detailed questions on income and deductions that are needed to establish MAGI. We recommend that the applications be combined.
* The directions on the second page at the start of Step 2, are unclear about who to include in the application. They direct consumers to include each person in their family without defining what is meant by “family.” There is no reference to tax unit so the consumer may not include someone they do claim as a dependent such as an aging parent that the consumer is supporting financially, but they may include someone that should not be included like a child being claimed by a noncustodial parent. On the top of the next page the directions do refer to the tax unit. The language on these two pages should be consistent.
* The “current job and income information” section should include a question that allows consumers to indicate that they have seasonal employment, or that their hours and/or pay varies seasonally.
* In the “other income” section there is a note indicating that consumers do not have to include information about “veteran’s payments.” MAGI excludes veteran’s disability payments but not normal military retirement. This should be clarified since the term “veteran’s payments” may be interpreted to mean that all veteran’s payments are excluded.

***Recommendations for the application for an exemption on the basis of affordability for those in states with a FFM:***

* The instructions for Step 2 lists categories of people that should or should not be listed on an application. While the list is intended to be helpful, the guideposts it establishes may be misleading. For example, the applicant is directed to include their children under 21 who live with them; however, age 21 is not significant under tax dependency rules. A child is a dependent until age 19 or until age 24 if a full-time student or any age if disabled. The list also directs the applicant to include an unmarried partner who needs health coverage, but “unmarried partner” is not defined, nor is it clear whether the person must be living with the applicant or whether their income should be counted. Further, the final category (“anyone else under 21 who you take care of and who lives which you”) again reflects an arbitrary age of 21, whereas someone of any age can be a dependent if certain income and support tests are met. Any of the people these bullets intend to cover are more simply and accurately included by asking people to list anyone they expect to claim on their tax return. The application also lists people you should not include on the application. Here, parents who live with you but file their own return and other adult relatives who file their own taxes are singled out; however, it’s more accurate to say that the applicant should not list *anyone* who files their own taxes and claims their own personal exemption, regardless of whether they live in the same home. Further, the applicant is directed to exclude an unmarried partner’s children; however, if the children lived with the applicant all year and he or she paid more than half of their support, the children may qualify as dependents and the applicant may be responsible for a penalty if they lack coverage and do not have an exemption.

**The cost estimates underestimate the time necessary to complete applications for an exemption as well as the time it will take to develop and implement the process of determining eligibility for exemptions.**

In general, the cost estimates assume that the vast majority of consumers will apply for exemptions online and have their circumstances verified electronically, and that they will opt for electronic notification. These assumptions lead to estimates of relatively higher upfront costs for developing the electronic systems and lower ongoing costs to maintain the process.

It is difficult to predict the share of consumers who will use the online application to apply for an exemption; however, the estimate that 90 percent of applicants will submit exemption applications online seems far too high especially in the absence of evidence to support such a high estimate, the need for many consumers to submit supporting documentation, which many people may choose to mail, and the widespread attention to consumer difficulty in accessing Healthcare.gov. While access to the internet continues to grow, 15% of American adults still do not use the internet or email and this percentage is higher among adults with annual incomes less than $30,000 (24%), for Hispanics (24%) and for people who have not graduated from high school (41%)[[1]](#footnote-1). Given many Americans still do not access the internet, it is doubtful that 90 percent of applicants will apply online.

**The costs associated with the development and ongoing implementation of notices should be revised to ensure the adequacy and sufficiency of consumer notices.**

According to the PRA notice, the exemption eligibility determination notices will be dynamic and tailored to individual circumstances and one notice will convey all decisions regarding a household’s application. While we strongly support this type of notice, we know that creating dynamic notices poses technical challenges because HHS officials have reported they were not able to create such notices for the FFM health coverage application at least in the short-term. Dynamic notices are well worth the investment because they can provide consumers with vital information that protects their rights, but programming costs associated with creating this type of dynamic notice should not be underestimated.

The final cost estimate should include the costs for the time of policy staff to review initial drafts, drafts that are completed after consumer testing and drafts that are completed after literacy and communication experts provide their input. Policy experts need to be part of each step in the notice development process. Estimates should also reflect the costs of experts needed to ensure that consumer testing and literacy testing is completed.

It’s not clear that the costs for the translation of the notices and these eight applications have been taken into account. As we recommended earlier, HHS should translate these applications into at least 15 languages and it should also translate eligibility notices into the same 15 languages.

Thank you for your consideration. Any questions about these comments may be directed to Joe Touschner at jdt38@georgetown.edu.

Sincerely,

Georgetown University Center for Children and Families

1. Kathryn Zickuhr. Who’s not online and why 15% of American adults do not use the internet at all, and another 9% of adults use the internet but not at home. Pew Research Center. September 23, 2013 [↑](#footnote-ref-1)