Exchange Eligibility

**Summary:** The Secretary shall establish a program for determining whether an individual applying for coverage in the individual market by a qualified health plan offered through an Exchange, or who is claiming a premium tax credit or reduced cost-sharing, is a citizen or national of the United States or an alien lawfully present in the United States and meets the income and coverage requirements; whether an individual’s coverage under an employer-sponsored health benefits plan is treated as unaffordable; and whether to grant a certification attesting that, for purposes of the individual responsibility requirement, an individual is entitled to an exemption from either the individual responsibility requirement or the penalty imposed by such section.

**Status Updates:**
- On July 11, 2011, the Department of Health and Human Services issued a proposed rule regarding Exchanges published in the Federal Register on July 15, 2011. Comments to the proposed rule are due by 5 pm on September 28, 2011.
- On August 17, 2011, HHS issued a proposed rule in the Federal Register, with comments due by 5 pm on October 31, 2011.

**Next steps:**
- July 15, 2011 – HHS issued proposed rule.
- August 17, 2011 – HHS issued proposed rule.
- September 28, 2011 (5 pm) – Comments due to proposed rule from July 15, 2011.
- October 31, 2011 (5 pm) – Comments due to proposed rule from August 17, 2011.
- January 1, 2013 -- The Secretary of HHS, in consultation with Treasury, is to provide a report to Congress with any recommendations on the procedures necessary to ensure protection of the rights of employees to preserve confidentiality of taxpayer return information and enroll in a plan through an Exchange if an employer does not provide affordable coverage, and the rights of employers to adequate due process and access to information necessary to determine any payment assessed on employers.

**Additional information:**
Long summary:

Sec. 1411. Procedures for determining eligibility for Exchange participation, premium tax credits and reduced cost-sharing, and individual responsibility exemptions.
The Secretary of HHS must establish a program for eligibility determination for participation in the individual market in the Exchange and for premium tax credits and cost sharing reductions. Determinations to include whether individuals are citizens or otherwise lawfully present. In the case of the premium tax credit or cost sharing reductions, the determination will also include whether they meet the income and coverage requirements, the amount of the premium tax credit or cost sharing reduction, whether the individual’s employer coverage is unaffordable, and whether to certify upon request an exemption from the personal responsibility requirement (individual mandate) or the associated penalty. To make such determinations, individuals are required to submit to the Secretary the information described below.

Citizenship status. All individuals must submit information confirming citizenship or being otherwise lawfully present in the United States.

Tax credit or reduced cost sharing. If an individual is requesting a tax credit or reduced cost sharing, the individual must submit information on income and family size (which will be verified by Treasury).

Tax credit or reduced cost sharing due to deficiencies in employer coverage. If an individual is requesting the tax credit or reduced cost sharing because the employer is not providing minimum essential coverage or affordable minimum essential coverage, then the individual must also submit information related to the employer (name, address, and employer identification number), employee status (full-time or part-time), whether the employer provides minimum essential coverage, lowest cost option for individual and the individual’s required contribution (if applicable), and information related to income and family size (which will be verified by Treasury) for claims of “unaffordable coverage.”

Exemption from individual responsibility. If an individual is requesting an exemption from the individual responsibility due to an individual’s status in a particular class (i.e., religious sect or division, a health care sharing ministry, an Indian, or eligible for a hardship exemption), then the Secretary shall prescribe the specific information requirements. If an individual is requesting an exemption based on the lack of affordable coverage or the individual’s status as a taxpayer with household income less than 100 percent of the poverty line, then the individual will submit applicable tax credit or cost sharing information described above.

Inconsistencies in information and penalties for misinformation. If an Exchange is notified of inconsistencies in other information, the Exchange to make reasonable effort to clarify, and provide notice and 90-day opportunity to correct the information. Provides for specific actions to be taken by the Exchange with respect to certain inconsistencies. HHS Secretary to establish a federal appeals process (in consultation with Secretaries of Treasury and Homeland Security and the Social Security Commissioner). Civil money penalties of up to $25,000 apply if an applicant’s failure to provide correct information is attributable to negligence or disregard of rules or regulations and for improper use or disclosure of information. No property liens or levies are permitted.


**Additional flexibility.** Secretary has flexibility to modify methods to reduce administrative costs and burdens on applicants if requirements for confidentiality, disclosure, maintenance and use of information are met. Secretary may delegate verification to Exchange in the case of information that is not contained in federal records. Processes to be established regarding appeals of eligibility determinations and for periodic redetermination of eligibility.

**Confidentiality and penalties for breach.** Provides for confidentiality of applicant information, limits use of information provided by applicants only for the purposes of efficient operation of the Exchange and prohibits disclosure except as provided.

**Employer appeals process.** A separate appeals process is to be established under which employers notified that they are subject to the tax under sec. 1513 are able to present information to the Exchange for review and have access to the data used to make the determination, to the extent allowable by law. This process to be separate from existing appeals under the tax code. Employers are not generally entitled to taxpayer return information used in determining whether the employer tax penalty applies except that the employer may be notified as to the employee’s name and whether the employee’s income is above or below the threshold for affordability. The Secretary may prescribe a process under which an employee may provide a waiver authorizing the employer to have access to the employee’s tax return.

**Report.** The Secretary of HHS, in consultation with Treasury, is to study and report by January 1, 2013 with any recommendations on the procedures necessary to ensure protection of the rights of employees to preserve confidentiality of taxpayer return information and enroll in a plan through an Exchange if an employer does not provide affordable coverage, and the rights of employers to adequate due process and access to information necessary to determine any payment assessed on employers.

**Legislative text:**

**SEC. 1411. PROCEDURES FOR DETERMINING ELIGIBILITY FOR EXCHANGE PARTICIPATION, PREMIUM TAX CREDITS AND REDUCED COST-SHARING, AND INDIVIDUAL RESPONSIBILITY EXEMPTIONS.**

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program meeting the requirements of this section for determining—

(1) whether an individual who is to be covered in the individual market by a qualified health plan offered through an Exchange, or who is claiming a premium tax credit or reduced cost-sharing, meets the requirements of sections 1312(f)(3), 1402(e), and 1412(d) of this title and section 36B(e) of the Internal Revenue Code of 1986 that the individual be a citizen or national of the United States or an alien lawfully present in the United States;

(2) in the case of an individual claiming a premium tax credit or reduced cost-sharing under section 36B of such Code or section 1402—

(A) whether the individual meets the income and coverage requirements of such sections; and

(B) the amount of the tax credit or reduced cost-sharing;

(3) whether an individual's coverage under an employer- sponsored health benefits plan is treated as unaffordable under sections 36B(c)(2)(C) and 5000A(e)(2); and

(4) whether to grant a certification under section 1311(d)(4)(H) attesting that, for purposes of the individual responsibility requirement under section 5000A of the Internal Revenue Code of 1986, an individual is entitled to an exemption from either the individual responsibility requirement or the penalty imposed by such section.

(b) INFORMATION REQUIRED TO BE PROVIDED BY APPLICANTS.—

(1) IN GENERAL.—An applicant for enrollment in a qualified health plan offered through an Exchange in the individual market shall provide—

(A) the name, address, and date of birth of each individual who is to be covered by the plan (in this subsection referred to as an “enrollee”); and

(B) the information required by any of the following paragraphs that is applicable to an enrollee.

(2) CITIZENSHIP OR IMMIGRATION STATUS.—The following information shall be provided with respect to every enrollee:—

(A) In the case of an enrollee whose eligibility is based on an attestation of citizenship of the enrollee, the enrollee’s social security number.

(B) In the case of an individual whose eligibility is based on an attestation of the enrollee’s immigration status, the enrollee’s social security number (if applicable) and such identifying information with respect to the enrollee’s immigration status as the Secretary, after consultation with the Secretary of Homeland Security, determines appropriate.

(3) ELIGIBILITY AND AMOUNT OF TAX CREDIT OR REDUCED COST-SHARING.—In the case of an enrollee with respect to whom a premium tax credit or reduced cost-sharing under section 36B of such Code or section 1402 is being claimed, the following information:
INFORMATION REGARDING INCOME AND FAMILY SIZE.—The information described in section 6103(l)(21) for the taxable year ending with or within the second calendar year preceding the calendar year in which the plan year begins.

CHANGES IN CIRCUMSTANCES.—The information described in section 1412(b)(2), including information with respect to individuals who were not required to file an income tax return for the taxable year described in subparagraph (A) or individuals who experienced changes in marital status or family size or significant reductions in income.

EMPLOYER-SPONSORED COVERAGE.—In the case of an enrollee with respect to whom eligibility for a premium tax credit under section 36B of such Code or cost-sharing reduction under section 1402 is being established on the basis that the enrollee’s (or related individual’s) employer is not treated under section 36B(c)(2)(C) of such Code as providing minimum essential coverage or affordable minimum essential coverage, the following information:

(A) The name, address, and employer identification number (if available) of the employer.
(B) Whether the enrollee or individual is a full-time employee and whether the employer provides such minimum essential coverage.
(C) If the employer provides such minimum essential coverage, the lowest cost option for the enrollee’s or individual’s enrollment status and the enrollee’s or individual’s required contribution (within the meaning of section 5000A(e)(1)(B) of such Code) under the employer-sponsored plan.

If an enrollee claims an employer’s minimum essential coverage is unaffordable, the information described in paragraph (3). If an enrollee changes employment or obtains additional employment while enrolled in a qualified health plan for which such credit or reduction is allowed, the enrollee shall notify the Exchange of such change or additional employment and provide the information described in this paragraph with respect to the new employer.

EXEMPTIONS FROM INDIVIDUAL RESPONSIBILITY REQUIREMENTS.—In the case of an individual who is seeking an exemption certificate under section 1311(d)(4)(H) from any requirement or penalty imposed by section 5000A, the following information:

(A) In the case of an individual seeking exemption based on the individual’s status as a member of an exempt religious sect or division, the lowest cost option for the individual’s enrollment status and the individual’s required contribution (within the meaning of section 5000A(e)(1)(B) of such Code) under the employer-sponsored plan.
(B) In the case of an individual seeking exemption based on the lack of affordable coverage or the individual’s status as a taxpayer with household income less than 100 percent of the poverty line, the information described in paragraphs (3) and (4), as applicable.

VERIFICATION OF INFORMATION CONTAINED IN RECORDS OF SPECIFIC FEDERAL OFFICIALS.—

INFORMATION TRANSFERRED TO SECRETARY.—An Exchange shall submit the information provided by an applicant under subsection (b) to the Secretary for verification in accordance with the requirements of this subsection and subsection (c).

CITIZENSHIP OR IMMIGRATION STATUS.—

COMMISSIONER OF SOCIAL SECURITY.—The Secretary shall submit to the Commissioner of Social Security the following information for a determination as to whether the information provided is consistent with the information in the records of the Commissioner:

(i) The name, date of birth, and social security number of each individual for whom such information was provided under subsection (b)(2).
(ii) The attestation of an individual that the individual is a citizen.

SECRETARY OF HOMELAND SECURITY.—

GENERAL.—In the case of an individual—

(I) who attests that the individual is an alien lawfully present in the United States; or
(II) who attests that the individual is a citizen but with respect to whom the Commissioner of Social Security has notified the Secretary under subsection (e)(3) that the attestation is inconsistent with information in the records maintained by the Commissioner; the Secretary shall submit to the Secretary of Homeland Security the information described in clause (i) for a determination as to whether the information provided is consistent with the information in the records of the Secretary of Homeland Security.

INFORMATION.—The information described in clause (ii) is the following:

(i) The name, date of birth, and any identifying information with respect to the individual’s immigration status provided under subsection (b)(2).

(ii) The attestation that the individual is an alien lawfully present in the United States or in the case of an individual described in clause (i)(II), the attestation that the individual is a citizen.

ELIGIBILITY FOR TAX CREDIT AND COST-SHARING REDUCTION.—The Secretary shall submit the information described in subsection (b)(3)(A) provided under paragraph (3), (4), or (5) of subsection (b) to the Secretary of the Treasury for verification of household income and family size for purposes of eligibility.

METHODS.—

GENERAL.—The Secretary, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Commissioner of Social Security, shall provide that verifications and determinations under this subsection shall be done—

(i) through use of an on-line system or otherwise for the electronic submission of, and response to, the information submitted under this subsection with respect to an applicant; or
(ii) by determining the consistency of the information submitted with the information maintained in the records of the Secretary of the Treasury, the Secretary of Homeland Security, or the Commissioner of Social Security through such other method as is approved by the Secretary.

FLEXIBILITY.—The Secretary may modify the methods used under the program established by this section for the Exchange and verification of information if the Secretary determines such modifications would reduce the administrative costs and burdens on the applicant, including allowing an applicant to request the Secretary of the Treasury to provide the information described in paragraph (3) directly to the Exchange or to the Secretary. The Secretary shall not make any such modification unless the Secretary determines that any applicable requirements under this section and section 6103 of the Internal Revenue Code of 1986 with respect to the confidentiality, disclosure, maintenance, or use of information will be met.

VERIFICATION BY SECRETARY.—In the case of information provided under subsection (b) that is not required under subsection (c) to be submitted to another person for verification, the Secretary shall verify the accuracy of such information in such manner as the Secretary determines appropriate, including delegating responsibility for verification to the Exchange.
(e) ACTIONS RELATING TO VERIFICATION.—

(1) IN GENERAL.—Each person to whom the Secretary provided information under subsection (c) shall report to the Secretary under the method established under subsection (c)(4) the results of its verification and the Secretary shall notify the Exchange of such results. Each person to whom the Secretary provided information under subsection (d) shall report to the Secretary in such manner as the Secretary determines appropriate.

(2) VERIFICATION.—

(A) ELIGIBILITY FOR ENROLLMENT AND PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS.—If information provided by an applicant under paragraphs (1), (2), (3), and (4) of subsection (b) is verified under subsections (c) and (d), the Exchange shall not be entitled to any taxpayer return information with respect to an employee for purposes of determining whether the employer is subject to the penalty under section 4980H of such Code.

(B) EXEMPTION FROM INDIVIDUAL RESPONSIBILITY.—If information provided by an applicant under subsection (b)(5) is verified under subsections (c) and (d), the Exchange shall notify the applicant of the amount (if any) of the credit or reduction that is determined on the basis of the records maintained by persons under subsection (c).

(i) IN GENERAL.—Except as provided in paragraph (2), the Exchange shall, during any period before the close of the period under subparagraph (A)(ii)(II), make any determination under paragraphs (2), (3), and (4) of subsection (a) on the basis of the information contained on the application.

(ii) ELIGIBILITY OR AMOUNT OF CREDIT OR REDUCTION.—If an inconsistency involving the eligibility for, or amount of, any premium tax credit or cost-sharing reduction is unresolved under this subsection as of the close of the period under subparagraph (A)(ii)(II), the Exchange shall notify the applicant of the amount (if any) of the credit or reduction that is determined on the basis of the records maintained by persons under subsection (c).

(C) APPEALS PROCESS.—The Exchange shall also notify each person receiving notice under this paragraph of the appeals processes established under subsection (f).
except that—

(i) the employer may be notified as to the name of an employee and whether or not the employee’s income is above or below the threshold by which the affordability of an employer’s health insurance coverage is measured; and

(ii) this subparagraph shall not apply to an employee who provides a waiver (at such time and in such manner as the Secretary may prescribe) authorizing an employer to have access to the employee’s taxpayer return information.

(g) CONFIDENTIALITY OF APPLICANT INFORMATION.—

(1) IN GENERAL.—An applicant for insurance coverage or for a premium tax credit or cost-sharing reduction shall be required to provide only the information strictly necessary to authenticate identity, determine eligibility, and determine the amount of the credit or reduction.

(2) RECEIPT OF INFORMATION.—Any person who receives information provided by an applicant under subsection (b) (whether directly or by another person at the request of the applicant), or receives information from a Federal agency under subsection (c), (d), or (e), shall—

(A) use the information only for the purposes of, and to the extent necessary in, ensuring the efficient operation of the Exchange, including verifying the eligibility of an individual to enroll through an Exchange or to claim a premium tax credit or cost-sharing reduction or the amount of the credit or reduction; and

(B) not disclose the information to any other person except as provided in this section.

(h) PENALTIES.—

(1) FALSE OR FRAUDULENT INFORMATION.—

(A) CIVIL PENALTY.—

(i) IN GENERAL.—If—

(I) any person fails to provide correct information under subsection (b); and

(II) such failure is attributable to negligence or disregard of any rules or regulations of the Secretary, such person shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not more than $25,000 with respect to any failures involving an application for a plan year. For purposes of this subparagraph, the terms “negligence” and “disregard” shall have the same meanings as when used in section 6662 of the Internal Revenue Code of 1986.

(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under clause (i) if the Secretary determines that there was a reasonable cause for the failure and that the person acted in good faith.

(B) KNOWING AND WILLFUL VIOLATIONS.—Any person who knowingly and willfully provides false or fraudulent information under subsection (b) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not more than $250,000.

(2) IMPROPER USE OR DISCLOSURE OF INFORMATION.—Any person who knowingly and willfully uses or discloses information in violation of subsection (g) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not more than $25,000.

(3) LIMITATIONS ON LIENS AND LIEVES.—The Secretary (or, if applicable, the Attorney General of the United States) shall not—

(A) file notice of lien with respect to any property of a person by reason of any failure to pay the penalty imposed by this subsection; or

(B) levy on any such property with respect to such failure.

(i) STUDY OF ADMINISTRATION OF EMPLOYER RESPONSIBILITY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall, in consultation with the Secretary of the Treasury, conduct a study of the procedures that are necessary to ensure that in the administration of this title and section 4980H of the Internal Revenue Code of 1986 (as added by section 1513) that the following rights are protected:

(A) The rights of employees to preserve their right to confidentiality of their taxpayer return information and their right to enroll in a qualified health plan through an Exchange if an employer does not provide affordable coverage.

(B) The rights of employers to adequate due process and access to information necessary to accurately determine any payment assessed on employers.

(2) REPORT.—Not later than January 1, 2013, the Secretary of Health and Human Services shall report the results of the study conducted under paragraph (1), including any recommendations for legislative changes, to the Committees on Finance and Health, Education, Labor and Pensions of the Senate and the Committees of Education and Labor and Ways and Means of the House of Representatives.