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POLICY & ACTION FROM CONSUMER REPORTS

February 28, 2013

Office of Information and Regulatory Affairs
Attention: CMS Desk Officer

Submitted via e-mail: OIRA_submissions@omb.eop.gov

> Re: **CMS –10440** Data Collection to Support Eligibility Determinations
> for Insurance Affordability Programs and Enrollment Through
> Affordable Insurance Exchanges, Medicaid, and Children's Health
> Insurance Program Agencies

Dear CMS/CCIIO and OMB Staff:

Consumers Union, the policy and advocacy division of Consumer Reports,
submits these comments regarding the proposed Federal application for the
insurance affordability programs, including the online and paper applications.
Given the short time frame, Consumers Union is not able to comment on every
aspect of the various proposed model applications. Our comments below are
particular to the model applications (online and paper) for the individual
exchange.

We commend HHS and its agency partners in designing applications that strive
to fulfill the promise of the Affordable Care Act (ACA) through a single,
streamlined application, eligibility and enrollment process for individuals seeking
health coverage. To that end, Consumers Union supports the following features
incorporated throughout the proposal for data collection:

- **Pre-population** into the online form of previously entered or known data,
  allowing the applicant to affirm or correct the information;
- **Dynamic questioning** to adapt questions based on the applicant's
  previous answers, tailoring the process to the individual circumstances
  and reducing the time burden for the applicant;
- **Collection of optional demographic information**, including
  comprehensive race and ethnicity data, to establish health care data
  baselines to measure and track access gaps and disparities, as well as
  the extent to which states' outreach strategies are reaching eligible
  populations. (See below for further recommendations regarding details of
  implementing this important provision.);
- **Up-front information about privacy** at the very beginning of the
  application before the consumer enters any personal information. Privacy
  is a distinct, overarching issue and applies regardless of whether the

applicant is seeking financial assistance, so we commend the movement of the initial privacy statement to the front of the application process.

- **Early questions about contact preferences** on the online and paper applications that request applicant's preferred written and spoken languages, as well as preferred communication modes, e.g., e-mail, snail mail, text, etc. (See below for concerns about limiting this information to only the person filling out the applicant);
- **Inclusion of visual images** of the kinds of documents that are acceptable, rather than just names of documents in the online application;
- **Summary page for online application** after each major section, providing applicants a chance to review portions of the application as they move forward;
- **Opening reminders about documents needed to process applications** that applicants will want in front of them before answering the online questions in each section; and
- **Click through to "How did we get this information"** to obtain the source and underlying data used for pre-populating the online application.

In addition to the items that we support above, there also are a number of provisions that we would like to comment on in detail below.

Usability

Consumers Union supports the efforts that HHS has already undertaken to test both the paper and online applications with consumers. We have conducted user testing of health coverage information and have learned a great deal from these experiences. After reviewing the proposed model applications, there are a number of further steps HHS should take to ensure consumer-friendly and usable applications:

- Further consumer testing that reviews the applications with English *and* non-English speakers, which allows testers to apply their specific family circumstances to the online application process, rather than a pre-defined scenario. Consumer testing should include individual applicants, as well as community-based organizations and other assisters who are likely to help people obtain coverage;
- Opportunity for the public to review and comment on draft language that HHS is developing for help language, terms, explanations, and other online tools;
- A robust glossary of terms that explains concepts in plain English, available for both the paper application and in online tools such as click throughs, roll overs, etc. Defining terms such as "contact," "cost-sharing,"

"family" v. "household," "offer of coverage," "income," are important to ensure consumer's understand what they are applying for;

- More user-friendly formatting for the paper application. Use consumer testing to determine if changes suggested would improve the experience for consumers. For example, the paper application asks many questions that are unnumbered, making it hard to reference them or find them on a page. This would include better use of pull-out boxes and visual signs (such as "stop" signs indicating an important term or concept that an applicant will need to understand). For example, on Step 2 of the paper application for those seeking financial assistance, the "yearly income" section applies only to people who have unsteady income – rather than have the small text under the header, this might be a good place to put something like "Stop: Do you have irregular or unsteady income?"
- Use of pop-up work sheets (or roll over/hover tool) that provide tips and tools for applicants to use to help them to fill-out the application (for example, a work sheet that identifies the list of income that should not be included in reportable income, such as child support, pre-tax deductions, etc.) The outcome of the worksheet should be pre-populated back into the actual application;
- Use of consistent terminology throughout the document, for example, uniform language used in both the paper and online applications about how SSNs will be used; and
- Additional options for an applicant to check "don't know."

We look forward to partnering with HHS as the next steps of consumer testing move forward.

General comments that apply to both online and paper applications

Privacy

At each point where personally identifiable information is required (such as SSNs), the online and paper applications should provide explanatory text (either a pop-up box or flag in the online application or a stop sign or warning on a paper application) that provides specific information about privacy protections. Specific language about privacy protections should be consistent throughout both applications.

Preferred language information

As stated earlier, we commend HHS for asking early in the application process for preferred language, both spoken and written. As currently proposed, these questions are only asked of the person filling out the form, rather than for all applicants on the form. In some households, the person filling-out the application

may have a different preferred language than other household members. Both the paper and online applications should be designed to allow language preferences to be specified for each applicant. For the online version, this could be a dynamic question that asks a "yes/no" question whether other applicants on the form might have different language preferences. When "yes" is checked, then an additional drop-down menu should be added to indicate language preferences (written and spoken) for each applicant in the household.

Clear message about use of Social Security Numbers (SSNs)

For SSNs, throughout the online and paper applications, the model applications do not provide a uniform message about the use of SSNs that is used consistently in the paper and/or online application. SSNs should only be asked where necessary, in accordance with the ACA principle that only minimally necessary information should be requested on the application. There should be different messages about collection of SSNs for applicants versus non-applicants. In each and every place where SSNs are required, the application needs the same language that tells the applicant that the collection of SSNs will only be used for eligibility and financial assistance for health coverage. For example, on page 39 of Appendix A, the explanatory information should state that the SSN won't be used for immigration enforcement. It should provide a specific short explanation on how the SSN will be used (e.g., delete "other information" and be very clear that it will be used to check income to see if applicants can get help paying for health insurance) and shared to determine eligibility for those seeking health coverage.

Further, there are multiple instances where SSNs are requested. Again, in line with the ACA requirement that data collected should be that *minimally necessary* to process an application, SSNs should not be requested for inclusion in an online account, nor should they be requested of anyone not applying for coverage (except from a non-applicant tax filer when applying for advance premium tax credits).

Optional Demographic Information: Ethnicity and Race

Consumers Union suggests that the applications include some explanatory language that optional demographic information will be used in the aggregate for monitoring of how the exchanges, Medicaid/CHIP are serving specific populations and the extent to which states' outreach strategies are reaching the intended populations. The explanation should be clear that providing race/ethnicity data is not required in order to apply. Studies have shown that applicants are more likely to respond and complete self-reported data on race, ethnicity and primary

language when they are provided an explanation on how the data will be used.[*] The application language should inform applicants that the data is being collected to monitor and improve the quality of care for everyone and to make sure exchanges are reaching all populations. HHS could use the adapted wording as part of the Health Research and Education Trust (HRET) Disparities Toolkit[†] for this purpose:

"We want to make sure that all [applicants] get the best [coverage] possible. We would like you to tell us your racial/ethnic background so that we can review the [coverage] that all [applicants and enrollees] receive and make sure that everyone gets the highest quality of care."

Other model language, recommended by Georgetown Center for Children and Families (CCF): "We ask for your race and ethnicity so that we can review application information to make sure that everyone gets the same access to health care. This information is confidential and it will not be used to decide what health program you are eligible for. You do not have to provide your race and ethnicity to complete the application."

Income

As drafted, the sections on income collection are confusing and sometimes unnecessary. First and foremost, the application should make clear what is meant by "income." The financial eligibility calculation, focusing on modified adjusted gross income (MAGI), will be a new concept to most applicants.   Tools throughout these sections will be necessary to help people report accurate income information. As we recommend above, online tools should be designed with worksheets that allow applicants to enter in their gross income and then identify income that is not counted toward MAGI such as pre-tax income (employee health insurance premiums, child care, transportation and retirement plan contributions), child support, and certain veteran's benefits. The tools are necessary to guide and help applicants to ensure that they only report income countable for MAGI.

Other areas in the income section that require further development include:

- A way to assess seasonal work;
- A means to indicate irregular income; and

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[*] "Race, Ethnicity and Language Data: Standardization for Health Care Quality Improvement," Institute of Medicine (IOM), August 31
, 2009, http://iom.edu/Reports/2009/RaceEthnicityData.aspx
[†] Original language from the toolkit: ""We want to make sure that all our patients get the best care possible. We would like you to tell us your racial/ethnic background so that we can review the treatment that all patients receive and make sure that everyone gets the highest quality of care."

- Online tools to convert hourly, weekly or monthly income if a user would like to do the conversion.

Health coverage

The applications should provide a simple explanation about why HHS is asking about health insurance coverage. An applicant may not know what her policy number is, so it may be clearer if the text was reworded: "Policy numbers from your current health insurance card(s) if any." In addition, the term "COBRA" needs to be defined and applicants should be provided information about how to opt out of COBRA coverage and become eligible for Exchange or Medicaid.

Employer coverage

Consumers Union is concerned with the amount of information that is being requested from applicants about employer health coverage. For the online application, only those applicants whose income is above Medicaid eligibility should be asked about employer coverage. For the paper application, HHS should conceive of some explanatory text that would indicate to those potentially eligible for Medicaid that they would not need to fill out this part of the form.

The level of detailed information that is requested in this section is not information an employee should be expected to know about an employer, including things such as an employer identification number (EIN). We understand that that many employers have agreed to fill-out the Employer Coverage Form and make it available to their employees. We think that, in instances where the employee does not have readily available access to employer information through a pre-filled out Employer Coverage Form, it should not be the obligation of the employee to provide that information.

This section should be simplified to ask whether an applicant is eligible for coverage through a job and when the answer is "yes," request basic information such as the employer name and address and employer contact person for health insurance coverage issues. Questions about health plans (even the name of a health plan), minimum value, lowest cost health plan, and the subjective question about whether the coverage is affordable, should all be deleted.

Special Enrollment

If this application will be used for special enrollment, we presume there will be follow-up for any applicant applying outside of open enrollment, to determine if s/he meets any of the special enrollment triggers. As it is currently drafted, there is no place on the paper application that asks about circumstances that might trigger a special enrollment. More needs to be done here.

Premium tax credits and tax reconciliation

There is no place that we were able to identify in either the online or paper applications where, during the application process, there is any information that lets people know that they may get help paying premiums, depending on their income. We understand that for the paper application, there is no plan to provide specific information about advance premium tax credits (APTCs) until after the application is submitted, but communicated only during the enrollment process where eligible individuals can use the call center or go online to choose a plan to enroll and learn about the availability of premium assistance. And yet, individuals filling out the application should be informed that there is federal help with premiums and reducing cost-sharing to make health care more affordable.

For the online plan enrollment process, the applications also should have a place that specifies that a change of financial circumstances mid-year may implicate the amount of help paying premiums at the end of the year.

We think it critical that for the online application section where the eligibility results are displayed, there needs to be an explanation of APTCs and the end of the tax year reconciliation process. At some point when the eligibility results are displayed (e.g., page 47, Appendix A) the person needs to be asked if s/he wants the tax credits in advance (they can be eligible and prefer to get the tax credits at tax time in whole or in part). This seems to be completely missing from the application and results pages and doesn't come up until plan enrollment (Page 49 of Appendix A). We think basic information about premium tax credits and tax reconciliation needs to be explained before the section where the person needs to sign and agree to coverage.

Supporting Statement

Identity proofing

We are in support of the comments that Center for Democracy & Technology (CDT) has submitted, which we think strike a good balance between "a process for credentialing that provides as high assurances as possible without imposing too much burden" on individuals seeking health coverage from the Exchange, Medicaid, and CHIP. Our goal is to ensure that people who are applying for health coverage online are who they say they are and that no fraud occurs by providing less than robust security for online applications.

The Supporting Statement indicates that HHS is contemplating some type of knowledge-based identify proofing, asking of computer users a series of

questions that the user would need to know, rather than find on a card or piece of paper in her wallet. However, the statement provides no specific articulation of what standard will be used to authenticate individuals. We look forward to further information from HHS about identity proofing.

Authentication

As currently proposed, the supporting statement and application materials provide no details as to how the online system will authenticate an applicant's identity after the proofing process is complete. As well articulated in CDT's comments, it is important for HHS to explicitly address authentication of identity, not only for the FFE, but to establish a standard that state-based exchanges would be required to meet for their online application systems.

<u>The online application</u> (Appendix A)

Ability to browse anonymously

While we support the ability for consumers to be able to start, stop and return to their application, HHS should provide the ability to *anonymously* browse the application and the Exchange website, before applying or setting up an account, to learn more about the health coverage programs and plans available to them, including insurance affordability programs. Consumers should be able to explore the website without first being required to consent to any sharing of information. Further, no information regarding such exploration (including the consumer's internet provider address) should be collected or saved (a.k.a. "cached") without the person affirmatively consenting to begin the application process. The technical design of the site should support this policy.

Welcoming Page

Consumers Union supports messaging on the cover page, specifically for immigrants and limited-English proficient users. Most important is that information is clear and simple and provides specific information about how a person can obtain help.

Collection of SSNs and other personally identifiable information (PII) for online accounts

Consumers Union appreciates the ability for a user to establish an online account. However, we do not support the collection (optional or otherwise) of personally identifiable information (PII) such as SSNs, in a person's online account early in the application process, before the user is provided assurances about how the

information is collected, how it will be used, and the protections on how it will be shared.

Initial privacy statement

In addition to the language already drafted, applicants should be able to learn more (perhaps using a click through or roll over) about how their information will be used including: a plain English description of what information will be collected, how it will be used, who it will be shared with, how it will be stored and for how long. Consumer testing will be important to determine the best content and format for explanatory privacy text and to identify where, in the application, specific privacy statements should be placed.

The initial privacy statement also asks the person filling out the form to waive the privacy rights of anyone they are filling out the account for. We query whether a person establishing an online account can legally waive someone else's privacy rights without express legal authority (other than a parent, who has legal authority of a child).

Need for further specific privacy information

In addition to the general privacy statement, when SSNs or other sensitive information is requested, a specific privacy statement should provide an assurance of confidentiality. This could be presented in a pop-up box, flag (such as a iconic stop sign) or highlighted area that would allow the applicant to click through for more detailed information. The same specific information should be used consistently throughout the applications, both online and paper.

Authorized representatives

While we appreciate the new language in proposed regulations that clarifies the process for establishing authorized representatives, Consumers Union would like to see language that informs people about the availability of free assistance from trained and certified Navigators who can help them apply for coverage. This way, applicants can be advised of the availability of free, professional application assistance. The language for authorized representatives should be clear that an authorized representative is not necessarily the same as a trained and certified Navigator.

Paper application (Appendix C and D)

In addition to the general comments (above), specific comments related to the paper application (both for financial assistance and otherwise) include:

- Cover page should include information about the availability of help with translation or interpretation at no cost to the applicant;
- Cover page should provide tag lines for other languages;
- Cover page may be premature to state "You can still apply even if you don't file a federal income tax return." It may be more appropriate to include in Step 2; and
- We recommend that HHS include a statement that tells the applicant/s to make and keep a copy of the application before sending it in.

Paper application – FA (Appendix C)

- Step 1: "Tell us about yourself" should be changed to "tell us about the person completing the application;"
- Step 1: Since Step 2 also suggests "tell us about yourself" perhaps alter the introductory phrase in Step 1 to say "Tell us the best way to contact you."
- "Step 2: Person 1" should be changed to "Self" or "Yourself"
- Step 2: "Person 1" The first set of questions on this page should not request SSN of the person filling out this section. SSN should only be requested in the subsequent section when asking if Person 1 ("Yourself") is applying for health coverage;
- "Step 2: Tell us about your family" should include a privacy message that is clear and detailed at the top of the page that states that the information on the form will only be used to see if someone qualifies for health insurance and help paying for it. It should also provide explanatory text about the SSN at the place where the application filer is being requested SSN for applicants, before the spacing that actually requests the SSN; and
- Step 2 should include questions about disability status from the American Community Survey (ACS), to include a more particular and easily understood listing of those conditions or circumstances that can result in a person being considered disabled;

Paper application – non-FA (Appendix D)

- Step 1: If the SSN request stays in this section, it should be reworded: We need your social security number (SSN) if you have one;
- Keep language on this page 2nd person. The application text sometimes lapses into 3rd person, even though it clearly says at top: "Tell us about yourself. " For example: "If not a U.S. citizen or national, do they have eligible immigration status? " change "they" to "you;"
- Step 2: Perhaps restrict the first statement by adding the underlined phrase "Tell us about anyone in your family who needs insurance;"

- Step 3: it isn't clear what "AI" and "AN" represent in the table. Instead of using these acronyms, test an overarching title to the table that says "List Family Members who are American Indian or Alaska Native" (above person 1, person 2, etc);
- Step 4: Indicate who should sign in the second box;
- Step 5: More explanatory information is needed for "eligible immigration status list." It isn't clear what this is a list represents. The instructions in Steps 1 and 2 say "go to page 8 for a list of eligible immigration statuses and add the information below" and then provides the field "Document type "to fill in. Assuming the list on page 8 a list of document types? Since we aren't clear on this list, we can't provide specific language but at a minimum keep the references consistent. Refer back to Steps 1 and 2 in the instructions on page 8.

<u>Alternative applications</u>

It is our understanding that States have the option to adopt the model application wholesale or submit for HHS approval an alternate application. We look forward to HHS providing guidance and standards on alternate applications to ensure that proposed State alternative applications request only minimally necessary information and are no more onerous than and as clear as the model federal application.

On behalf of Consumers Union, we welcome the opportunity to comment on these important model applications and look forward to continuing to working with CMS and CCIIO as the federal applications are revised and consumer tested.

Sincerely,

Julie Silas
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