Agent/Broker Consent Information Collection (CMS-10840/0938-1438)
60-Day Public Comment Response Summary (Ended 02/13/2023)

Comment Type	Comment Summary	Response
Burden	One commenter suggested we did not estimate these costs properly. This commenter believed we underestimated these burden estimates by as much as six times.	After reviewing the regulatory changes and potential costs associated, we disagree with this commenter's suggestion that we underestimated these costs. HHS believes 5 minutes is a reasonable timeframe to meet these requirements. Under current § 155.220(j)(2)(i), agents, brokers, and web-brokers must "Provide consumers with correct information…regarding the Federally-facilitated Exchanges…". Additionally, current § 155.220(j)(2)(ii) states agents, brokers, and web-brokers must "Provide the Federally-facilitated Exchanges with correct information…". The new requirements in § 155.220(j)(2)(ii)(A) require the agent, broker, or web-broker to document and maintain these already existing requirements. Asking a consumer to respond to a text message, email, or verbal question stating they have reviewed their application information and it is accurate should not add a significant amount of time to the enrollment process. As discussed in the proposed rule, we did not propose to specify a method for documenting that eligibility application information has been reviewed and confirmed to be accurate by the consumer or their authorized representative. This flexibility will allow each individual agent, broker, or web-broker to establish protocols and methods that will meet their needs in the most efficient manner. We believe this flexibility will allow agents, brokers, and web-brokers to meet the requirements of § 155.220(j)(2)(ii) within the estimated five minutes. HHS only plans on obtaining this documentation when investigating fraudulent or noncompliant behavior. As agents, brokers, and web-brokers establish storage methods that best suit their needs, obtaining and submitting such documentation to HHS should be minimal. HHS

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		only requests documentation that concerns suspicious enrollments, meaning we likely would not be requesting an agent, broker, or web-broker's entire book of business. A 2-hour time window for submitting requested documentation is a reasonable assumption.
Burden	A few commenters suggested the proposed record retention period of 10 years is too long for agents, brokers, and web-brokers to maintain the documentation required by § 155.220(j)(2)(ii)(A). Another commenter stated we should have the record retention period match the required record retention period of the state where the consumer is enrolled.	We have considered these comments but continue to believe 10 years is an appropriate length of time to maintain the documentation required by § 155.220(j)(2)(ii)(A). As discussed in the proposed rule, this aligns with other Exchange maintenance of records requirements, including § 155.220(c)(3)(i)(E), which states internet websites of web-brokers used to complete QHP selections must "Maintain audit trails and records in an electronic format for a minimum of ten years and cooperate with any audit under this section." We believe being consistent within the regulation and with other Exchange maintenance of records requirements is important. Additionally, we do not agree that aligning with state record retention requirements is beneficial in this instance given the variability in retention periods that this approach would introduce. Mandating a standard 10-year retention period for all agents, brokers, and web-brokers assisting consumers in the FFEs and SBE-FPs will ensure we have a standard timeframe to work from for retrieving documentation from agents, brokers, and web-brokers related to a consumer reviewing and verifying their application information was accurate in response to monitoring, audit, and enforcement activities conducted consistent with § 155.220(c)(5), (g), (h), and (k).

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General	Some commenters stated this documentation should be part of the application process and maintained by the Federal government, making the documentation readily accessible and minimizing burden on the agents, brokers, and web-brokers.	We appreciate commenter's suggestions and agree there is merit to these ideas. However, it is not currently feasible to implement systematic changes of this nature. There are no plans to create a system that would allow the Federal government to store documentation for all enrollees. This type of systematic change would likely take years to implement, which would mean the protections we hope to implement with these new requirements would be severely delayed. Delaying these requirements means a longer time period during which consumers are vulnerable to fraudulent behavior, especially as it relates to incorrect income projections. If these requirements become part of the enrollment process that can simply be completed by the assisting agent, broker, or web-broker, there is still risk of fraudulent behavior. Our goal is to ensure consumers are not subject to fraudulent behavior that could lead to them owing large sums of money to the IRS if their initial APTC allotment was incorrect, which is why we are requiring the consumer or their authorized representative to take an action to produce a record that is retained by the assisting agent, broker, or web-broker. If we remove the consumer action from this process, which may happen if the system is changed in ways these commenters are suggesting, it may circumvent the purpose of these new requirements (i.e., consumers reviewing their information to ensure accuracy).

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Burden	Several commenters stated these new collection requests will impose more burden on independent and smaller agencies than larger agencies.	We agree that larger agencies may be better equipped to implement these new requirements. There will be upfront costs associated with implementing these new requirements, potentially including purchasing recording software, upgrading storage capacity, or hiring new personnel. Larger agencies typically have more resources to allocate towards meeting new industry standards, which is similar to other business fields. However, we do not believe these new requirements are cost prohibitive to smaller agencies or independent agents and brokers. As discussed above, we are not mandating the method by which agents, brokers, and web-brokers must meet these new requirements. Therefore, smaller agencies and independent agents/brokers have the flexibility to meet these requirements utilizing the method that is of least cost to them
Implementation	Some commenters suggested these records would be harder to obtain and maintain utilizing recording methods.	We do not believe that these requirements will be more difficult to implement over the phone than with respect to other enrollment methods. Where legally permissible, agents, brokers, and web-brokers can record phone conversations with consumers to meet the requirements of §§ 155.220(j)(2)(ii)(A) and 155.220(j)(2)(iii). During these conversations, an agent, broker, or web-broker may ask the consumer if they consent to the enrollment. A recording of the consumer's response to these questions, if it meets the requirements in § 155.220(j)(2)(ii)(A) and 155.220(j)(2)(iii), would be sufficient to meet these new requirements. We understand that saving recorded conversations may be more difficult than other mediums due to the digital space requirements and recording software needed, but is not an excessive burden as there are numerous recording software options to choose from and external hard drives are widely available for purchase. Where legally permissible, it will be the choice of the agent, broker, or web-broker if recording phone conversations is the best method for them to be compliant with these requirements.

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PII Release	Multiple commenters expressed concerns involving the disclosure of consumers' Personally Identifiable Information (PII). Commenters stated that they felt these new requirements would lead to more improper disclosures of PII as agents, brokers, and web-brokers will be storing more consumer information than in the past.	We do not believe these new requirements will lead to more improper disclosures of consumer PII. These new requirements do not require agents, brokers, and web-brokers to record or maintain any consumer PII in addition to the consumer PII an agent, broker, or web-broker currently records or maintains. The new requirements include ensuring a consumer or their authorized representative has reviewed and attested that their application information is correct prior to submission and that this is documented and maintained by the agent, broker, or web-broker for a minimum of 10 years. This documentation must include the date the information was reviewed, the name of the consumer or their authorized representative, an explanation of the attestations at the end of the eligibility application, and the name of the assisting agent, broker, or web-broker. The only piece of PII required for this documentation is the consumer's name, which an agent, broker, or web-broker would already be recording and maintaining in their files. There is no documentation requirement asking an agent, broker, or web-broker to record what the consumer's application information is. A recorded conversation, during an over-the-phone enrollment or otherwise, could potentially contain more consumer PII than what the regulations require, as additional consumer information may be revealed during the conversation and the enrollment process. However, we do not believe this will lead to more improper disclosures of consumer PII. Agents, brokers, and web-brokers are required to adhere to applicable State or Federal laws concerning the safeguarding of consumer PII, including HIPAA. Additionally, an agent, broker, or web-broker would have the ability to solely record the portion of the conversation where the new requirements are being discussed and fulfilled, which would reduce the amount of consumer PII in the recorded conversation, further reducing or eliminating the potential of improper disclosures of consumer PII.

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Flexibility	Several commenters stated HHS should be flexible in monitoring compliance with these new documentation requirements and should allow agents, brokers, and web-brokers to meet these new requirements under §§ 155.220(j)(2)(ii) and the new requirements related to documenting consumer consent under (j)(2)(iii) during the same consumer enrollment.	As stated above, we have not mandated a specific method that agents, brokers, and web-brokers will need to utilize to meet these documentation requirements. Furthermore, agents, brokers, and web-brokers are not prohibited from documenting that eligibility application information has been reviewed by and confirmed to be accurate by the consumer or the consumer's authorized representative and documenting the receipt of consent from the consumer or the consumer's authorized representative pursuant to §§ 155.220(j)(2)(ii) and (j)(2)(iii), respectively, during the same conversation with the consumer, or within the same document, as long as the documentation complies with the requirements set forth in § 155.220(j)(2)(ii)(A-B) and § 155.220(j)(2)(iii)(A-C). We do not plan on asking for consumer documentation from every agent, broker, or web-broker utilizing the Exchanges. We are particularly concerned about agents, brokers, and web-brokers that, after investigation, seem to have extreme patterns of noncompliant and/or fraudulent behavior.