
Date: July 28, 2015

Subject: Frequently Asked Questions on State-based Marketplace Options for Implementing Exemptions from the Shared Responsibility Payment

1. Can a State-based Marketplace (SBM) continue to utilize the option provided for under 45 CFR 155.625(b) to have the Department of Health and Human Services (HHS) process exemption applications for the shared responsibility payment?

Yes. In the *Eligibility for Exemptions* final rule (78 FR 39494, July 1, 2013), HHS established in 45 CFR 155.625(b) an option under which a SBM could adopt eligibility determinations for exemptions from the shared responsibility payment made by HHS, provided certain conditions are met by the SBM, for any applications submitted prior to October 15, 2014.¹ The May 27, 2014 *Exchange and Insurance Market Standards for 2015 and Beyond* final rule extended the §155.625(b) option for exemption applications submitted before the start of the open enrollment period for 2016.

Based on HHS's operation of this service, we have determined that the HHS exemption option is an efficient process for SBMs that has minimized confusion for consumers. We, therefore, intend to propose regulations that would authorize this option on a permanent basis, and, in the interim, will not take any enforcement action against SBMs that continue to use the HHS service for exemptions beyond the start of open enrollment for 2016.

2. Does 45 CFR 155.625(b) apply only to SBMs?

This option applies only to SBMs utilizing their own eligibility and enrollment platform. States that did not establish SBMs or use their own eligibility platforms do not have the option to process their own exemptions.

3. How does an SBM notify HHS that it intends to elect the HHS exemptions option under 45 CFR 155.625(b)?

An SBM must inform HHS in writing whether it will process its own exemption applications or adopt HHS exemption eligibility determinations. An SBM should contact its CCIIO State Officer for more information.

¹ <http://www.gpo.gov/fdsys/pkg/FR-2013-07-01/pdf/FR-2013-07-01.pdf>

If electing to use the HHS exemption option, the SBM must meet the conditions under 45 CFR 155.625(b), which include:

1. adhering to the HHS eligibility determination;
2. furnishing to HHS any information available through the Exchange that is necessary for an applicant to utilize the process administered by HHS; and
3. providing information to a consumer via the SBM call center and Internet Web site specified in 155.205(a) and (b) regarding the exemption eligibility process.

If an SBM elects to develop the capacity to grant certificates of exemption, HHS remains committed to providing technical assistance to SBMs to support their implementation of these capabilities. HHS has developed and released a set of model paper applications that can be adopted by SBMs², and will consider providing additional guidance, such as example standard operating procedures, to assist SBMs as they develop their own exemption processing capabilities.

4. If electing to use the HHS option for exemptions under 45 CFR 155.625(b), what information must an SBM furnish to HHS?

As a condition of using the HHS exemption option, the SBM must furnish HHS with “any information available through the Exchange that is necessary for an applicant to utilize the process administered by HHS” under 45 CFR 155.625(b)(2).

For example, a consumer submitting a prospective affordability exemption application to HHS under §155.605(g)(2) may need information including the cost of the lowest cost bronze plan net of advance payments of the premium tax credit (APTC). We encourage SBMs to make information available to consumers about the applicable lowest cost bronze plan and any applicable APTC to help facilitate affordability exemption processing. However, if a consumer cannot access this information directly, the SBM may need to provide the information to HHS directly.

5. Must an SBM that elects to set up its own exemption process use an electronic system?

Electronic exemption application capabilities are not a requirement. At this time, an SBM may use a paper and manual process to handle exemption applications.

² <https://marketplace.cms.gov/applications-and-forms/exemption-applications.html>