

**COMPUTER MATCHING AGREEMENT
BETWEEN
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES
AND
THE DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
FOR THE
VERIFICATION OF HOUSEHOLD INCOME AND FAMILY SIZE FOR INSURANCE
AFFORDABILITY PROGRAMS AND EXEMPTIONS**

**CMS Computer Matching Agreement No. 2019-08
HHS Computer Matching Agreement No. 1908**

**Effective Date: April 5, 2020
Expiration Date: October 4, 2021**

I. PURPOSE, LEGAL AUTHORITIES, AND DEFINITIONS

A. Purpose

The purpose of this Computer Matching Agreement (Agreement) is to establish the terms, conditions, safeguards, and procedures by which Return Information will be provided by the Department of the Treasury (Treasury) Internal Revenue Service (IRS) to the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), for use by CMS and Administering Entities (AEs) in verifying Household Income and Family Size for an Applicant receiving an Eligibility Determination. AEs include the Federally-facilitated Exchange (FFE), State-based Exchanges (SBEs), state Basic Health Programs (BHPs), and approved State Medicaid or Children's Health Insurance Program (CHIP) Agencies.

Return Information will be matched by AEs for the purpose of determining initial eligibility for enrollment and making eligibility redetermination and renewal decisions for the following benefits: (1) advance payments of the premium tax credit (APTC) under §§ 1401, 1411 and 1412 of the Patient Protection and Affordable Care Act (ACA) (Public Law No. 111-148); (2) a cost-sharing reduction (CSR) under § 1402 of the ACA; (3) Medicaid and the Children's Health Insurance Program (CHIP), under Titles XIX and XXI of the Social Security Act (the Act), pursuant to § 1413 of the ACA; or (4) a State's BHP, if applicable, under § 1331 of the ACA. Return Information may also be used for determining eligibility for certain certificates of exemption.

The Privacy Act of 1974, as amended (5 U.S.C. § 552a), requires the Parties participating in a matching program to execute a written agreement specifying the terms and conditions under which the matching will be conducted. CMS has determined that verifications conducted by the Federal Data Services Hub (Hub) and AEs accessing IRS data constitutes a "matching program" as defined in the Privacy Act.

The terms and conditions of this Agreement will be carried out by authorized employees

and contractors of CMS and IRS. (CMS and IRS are each a Party, and collectively the Parties). The responsible component for CMS is the Center for Consumer Information & Insurance Oversight (CCIIO). CMS will serve as the Recipient Agency. The IRS component responsible for the disclosure of information is the Submission Processing, Customer Account Services, Wage and Investment Division. The IRS will serve as the Source Agency.

IRS acknowledges that AEs will use IRS data accessed through the Hub to make Eligibility Determinations. The Parties acknowledge that CMS will enter into separate matching agreements and information exchange agreements, consistent with the terms and conditions set forth in this Agreement with AEs other than the FFE, through which AEs will access IRS data through the Hub to perform Eligibility Determinations.

B. Legal Authorities

The following statutes govern or provide legal authority for the uses, including disclosures, under this Agreement:

1. This Agreement is executed pursuant to the Privacy Act (5 U.S.C. § 552a) and the regulations and guidance promulgated thereunder, including Office of Management and Budget (OMB) Circular A-108 “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act” published at 81 Fed. Reg. 94424 (Dec. 23, 2016), and OMB guidelines pertaining to computer matching published at 54 Fed. Reg. 25818 (June 19, 1989). The Privacy Act at 5 U.S.C. § 552a(b)(3) authorizes a federal agency to disclose information about an individual that is maintained in a system of records, without the individual’s prior written consent, when the disclosure is pursuant to a routine use published in a System of Records Notice (SORN) as required by 5 U.S.C. § 552a(e)(4)(D). The Parties have published routine uses for their applicable systems of records which authorize the disclosures made under this Agreement.
2. Under the Affordable Care Act (ACA), certain individuals are eligible for certain financial assistance in paying for private insurance coverage under a Qualified Health Plan (QHP) when enrollment is through an Exchange. This assistance includes advance payments of the premium tax credit (APTC), under 26 U.S.C. § 36B and § 1412 of the Affordable Care Act, and cost-sharing reductions (CSR) under § 1402 of the Affordable Care Act.
3. Section 1414 of the ACA amended 26 U.S.C. § 6103 to add paragraph (l)(21), which authorizes the disclosure of certain items of Return Information as part of the eligibility requirements for certain programs: any APTC under Section 36B of the Internal Revenue Code; CSR under Section 1402 of the ACA; Medicaid and CHIP, under titles XIX and XXI of the Social Security Act; or a BHP, under Section 1331 of the ACA.
4. Section 1413 of the ACA establishes a system under which individuals may apply for enrollment in and receive an Eligibility Determination for participation in an Insurance Affordability Program. The program established by the Secretary of HHS under 1413 of the ACA provides for the Secretary of HHS to transmit information through a secure interface to the Secretary of the Treasury from individuals applying for participation

using a single streamlined form. Under the authority of Section 1413(a) and based on the authorized uses and disclosures of Return Information, the Secretary of HHS adopted regulations (42 CFR §§ 435.940, 435.945, 435.948, 435.949, 435.952, 435.956 and 45 CFR part 155 subpart D), which address the procedure for verification of Household Income and Family Size based on coordination between CMS and IRS.

5. Sections 1411(c)(3) and (4) and (e) of the ACA require that CMS and IRS must be able to communicate Return Information to support the verification of Household Income and Family Size for an Applicant seeking an Eligibility Determination for APTC and CSR.
6. Section 1411(f)(1) of the ACA also requires the Secretary of HHS, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Commissioner of Social Security to establish procedures for re-determining eligibility for enrollment in a QHP through an Exchange, APTC and CSR on a periodic basis. Periodic renewal of eligibility for Medicaid and CHIP are required by 42 CFR §§ 435.916, 457.343 and 457.960. Periodic review and renewal of BHP eligibility is required by 42 CFR §600.340.
7. Under the authority of §§ 1311, 1321, and 1411(a) of the ACA, the Secretary of HHS adopted regulations, 45 C.F.R. §§ 155.330 and 155.335, which further address the requirements for an Exchange to re-determine eligibility for enrollment in a QHP through an Exchange and for APTC and CSRs during the Benefit Year based on certain types of changes in circumstances as well as on an annual basis.
8. Sections 1311(d)(4)(H) and 1411(a)(4) of the ACA specify that the Exchange will determine eligibility for, and issue certificates of Exemption.
9. Section 1943(b) of the Act (as added by § 2201 of the ACA) requires Medicaid and CHIP agencies to use the same streamlined enrollment system and secure electronic interface established under §1413 of the ACA to verify information, including Household Income and Family Size, needed to make an Eligibility Determination and facilitate a streamlined eligibility and enrollment system among all Insurance Affordability Programs. 42 CFR §600.310(a) requires BHP to use the same single streamlined application as Medicaid and the Exchange.
10. Sections 1411(f)(1) of the ACA also requires the Secretary of HHS, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Commissioner of Social Security to establish procedures for hearing and deciding appeals of Eligibility Determinations for enrollment in a QHP through an Exchange, APTCs and CSRs, and Exemptions. Appeals of denials of Medicaid and CHIP eligibility are required by, respectively, § 1902(a)(3) of the Act and 42 CFR part 431, subpart E and 42 CFR part 457, subpart K. Appeals of BHP eligibility are required by 42 CFR § 600.335.

C. Definitions

1. “ACA” means Patient Protection and Affordable Care Act (Public Law No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), codified at 42 U.S.C. 18001 (collectively, the ACA);
2. “Administering Entity” means a state Medicaid agency, state Children’s Health Insurance Program (CHIP), a state Basic Health Program (BHP), or an Exchange (either Federally-facilitated or State-Based) administering an Insurance Affordability Program;
3. “Applicant” means an individual who is seeking an Eligibility Determination for Insurance Affordability Programs or for an Exemption for him or herself through an application;
4. “APTC” means advance payment of the premium tax credit specified in § 36B of the Internal Revenue Code (as added by § 1401 of the ACA) which are provided on an advance basis to an eligible individual enrolled in a QHP through an Exchange in accordance with Sections 1401, 1411 and 1412 of the ACA;
5. “Basic Health Program” or BHP means an optional state program established under Section 1331 of the ACA;
6. “Benefit Year” means the calendar year of coverage provided by a QHP offered through an Exchange;
7. “Breach” is defined by OMB Memorandum M-17-12, Preparing for and Responding to a Breach of Personally Identifiable Information, January 3, 2017, as the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (a) a person other than an Authorized User accesses or potentially accesses personally identifiable information (PII); or (b) an Authorized User accesses or potentially accesses PII for an other than authorized purpose;
8. “CHIP” means the Children’s Health Insurance Program, the state program established under Title XXI of the Act;
9. “CMS” means the Centers for Medicare & Medicaid Services;
10. “CSR” means cost sharing reductions for an eligible individual enrolled in a silver level plan in an Exchange or for an individual who is an Indian enrolled in a QHP offered in an Exchange;
11. “Enrollee” means a qualified individual enrolled in a QHP under title I of the ACA for the enrollment in QHP offered through an Exchange, or an individual enrolled in a state BHP;

12. "Exchange" means an American Health Benefit Exchange established under §§ 1311(b), 1311(d)(1), or 1321(c)(1) of the ACA, including both SBE and FFE;
13. "Exemption" means an exemption from the individual shared responsibility provisions under 26 U.S.C. § 5000A;
14. "Family Size" means Family Size as defined under 26 U.S.C. § 36B(d)(1) and 42 CFR § 435.603(b);
15. "FFE" means Federally-facilitated Exchange, which is an Exchange established by HHS and operated by CMS under § 1321(c)(1) of the ACA;
16. "HHS" means the Department of Health and Human Services;
17. "Household Income" means Household Income as defined under 26 U.S.C. § 36B(d)(2)(A) in determining eligibility for APTC and CSR and 42 CFR § 435.603(e) for purposes of MAGI conversion within Medicaid;
18. "Hub" or the Federal Data Services Hub is the CMS managed service to interface among connecting entities;
19. "Insurance Affordability Programs" means a program that is one of the following: (1) a State Medicaid program under title XIX of the Act; (2) a State CHIP under title XXI of such Act; (3) a state BHP established under § 1331 of the ACA; (4) a program that makes coverage in a QHP through the Exchange with APTC; or (5) a program that makes available coverage in a QHP through the Exchange with CSR;
20. "MAGI" means modified adjusted gross income as defined under 26 U.S.C. § 36B(d)(2)(B);
21. "Medicaid" means the state program established under Title XIX of the Act;
22. "Medicaid/CHIP Beneficiary" means an individual who has been determined eligible and is currently receiving Medicaid or CHIP benefits;
23. "NIST" means the National Institute of Standards and Technology;
24. "Personally Identifiable Information" or "PII" is defined by OMB M-17-12 (January 3, 2017), and means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.;
25. "QHP" means a qualified health plan as defined by 45 CFR § 155.20;

26. “Redetermination” means the process by which an Exchange determines eligibility for APTC or CSR, and/or an Exemption after the initial Eligibility Determination in one of two circumstances: (1) on an annual basis prior to open enrollment; and/or (2) a change in circumstances occurs, such as when an individual communicates an update to an Exchange that indicates a change to the individual’s Household Income or Family Size, or when the Exchange discovers a change in circumstances under 45 CFR § 155.330;
27. “Reference Tax Year” means the first calendar year or, if no Return Information is available for that year, the second calendar year, prior to the Benefit Year;
28. “Relevant Taxpayer” means any individual listed, by name and SSN (“taxpayer identity information”), on the application for an Insurance Affordability Program or for an Exemption whose income may affect the Eligibility Determination of an individual for an Insurance Affordability Program or an Exemption;
29. “Renewal” means the annual process for a Medicaid/CHIP beneficiary to be considered for continued coverage under a state Medicaid program or CHIP, or the annual process for a BHP enrollee to be considered for continued coverage under a state BHP;
30. “Return Information” is as defined under 26 U.S.C. § 6103(b)(2) and has the same meaning as Federal Tax Information (FTI) as used in IRS Publication 1075, “Tax Information Security Guidelines for Federal, State and Local Agencies”;
31. “Security Incident” means the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent;
32. “SOR” means “System of Records”, a group of any records about an individual under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;
33. “SORN” means a “System of Records Notice”, a notice published in the Federal Register of each system of records being maintained by the Department, as required by the Privacy Act;
34. “SSR” means “Safeguard Security Report” required by 26 U.S.C. § 6103(p)(4)(E) and filed in accordance with IRS Publication 1075 to detail the safeguards established to maintain the confidentiality of Return Information received from the Hub or in an account transfer;
35. “TIGTA” means Treasury Inspector General for Tax Administration which provides independent oversight of IRS activities and the federal tax system.

II. RESPONSIBILITIES OF THE PARTIES

A. CMS Responsibilities

1. Submission of Data (from an AE): Prior to submitting a request to IRS, CMS must validate the SSN of each Applicant, Medicaid/CHIP Beneficiary, Enrollee, or Relevant Taxpayer with the Social Security Administration (SSA) or through documentation of SSN provided by the Applicant, Medicaid/CHIP Beneficiary, Enrollee, or Relevant Taxpayer. Un-validated SSN will not be included in the request to IRS.
2. To submit a request for Household Income and Family Size to the IRS through the Hub, an AE must include the Relevant Taxpayer's name, SSN, and the taxpayer relationship (primary, spouse, or dependent) to any Applicant, Enrollee, or Medicaid/CHIP Beneficiaries listed on an application.
3. As part of the initial application for Insurance Affordability Programs, the AE will give Applicants, Enrollees and/or Medicaid/CHIP beneficiaries the option to authorize the AE to make future eligibility determinations based on the initial application as part of the annual Redetermination and Renewal processes, for a period not to exceed 5 years based on a single application, in accordance with Treas. Reg. §301.6103(l)(21)-1. The Redetermination and Renewal process includes obtaining the updated Return Information of relevant taxpayers to compare with the information provided on the application. Such option will be provided on the single-streamlined application for Eligibility Determinations. Applicants, Enrollees and Medicaid/CHIP Beneficiaries may also discontinue, change, or renew their authorization. Current Medicaid/CHIP Beneficiaries renewing coverage will be provided the option to authorize the AE to make future eligibility determinations based on their initial application as part of the renewal Eligibility Determination. CMS will ensure AEs maintain records that properly account for the option elected by each Applicant, Enrollee or Medicaid/CHIP Beneficiary, and will not obtain updated Return Information for use in annual Redeterminations for years in which the Applicant, Enrollee or Medicaid/CHIP Beneficiary did not authorize.
4. For each Enrollee or Medicaid/CHIP Beneficiary, at the time of his or her annual or periodic eligibility Redetermination or Renewal, the Relevant Taxpayer's name, SSN, and the taxpayer relationship to any Applicants, Enrollees, or Medicaid/CHIP Beneficiaries on the application (primary, spouse, or dependent) must be submitted to IRS through the Hub.
5. Each AE must be uniquely identified when requesting Return Information so that authorization to receive Return Information is validated by IRS prior to disclosure to CMS. AEs are authorized to receive Return Information via the Hub pursuant to this matching Agreement and through separately executed CMA with CMS.
6. For each individual who submits an application for certain Exemptions under

§ 1311(d)(4)(H) of the ACA to an AE and for whom the AE seeks to use Return Information for verification, the Relevant Taxpayer's name, SSN, and the taxpayer relationship to any other individuals seeking an Exemption (primary, spouse, or dependent) must be submitted to IRS through the Hub.

7. CMS must not disclose any Return Information to any AE that is not approved to receive Return Information as evidenced by a letter of acceptance from the IRS of an approved Safeguard Security Report (SSR) and maintained on the authorized list provided by the IRS.
8. When both the HHS Data Integrity Board (DIB) and the Treasury DIB approve this agreement, CMS will submit a report of the Matching Program to Congress and OMB for their advance review and will provide a copy of such notification to IRS. Upon completion of OMB's advance review, CMS will publish the Federal Register notice required by 5 U.S.C. § 552a(e)(12)
9. CMS will require, by means of a written agreement, that each AE will:
 - a. Not retain any Return Information longer than necessary to conduct the AE's functions related to Eligibility Determinations or Exemption determinations, appeals, and submission of notices or longer than is otherwise required by applicable law. Each AE will comply with 26 U.S.C. § 6103(p)(4) and IRS Publication 1075 with respect to all retained Return Information; and
 - b. Comply with Section IX of this Agreement.

B. CMS Hub Responsibilities

1. The Hub will coordinate the transmission of requests and responses between the AEs and IRS. A request for verification of Household Income or Family Size may be initiated by an AE sending a request to the Hub.
2. The Hub will transmit to IRS the full name, SSN, and taxpayer relationship (primary, spouse, or dependent), for each Relevant Taxpayer in the Applicant's tax or Medicaid household.
3. The Hub will not permanently maintain/retain any Return Information. Some temporary persistence of the data at the Hub will be necessary. The Hub will comply with 26 U.S.C. § 6103(p)(4) and IRS Publication 1075 with respect to all temporarily maintained/retained Return Information.
4. The Hub will erase the matching file generated through this matching operation as soon as the information has served the matching program's purpose and all legal retention requirements established in conjunction with the National Archives and Records Administration under applicable procedures have been met.

5. Household Income and Family Size verification for a new application for Insurance Affordability Programs and self-reported changes in income during the Benefit Year will be performed in accordance with separately executed service level agreements between CMS and IRS.
6. Household Income and Family Size verifications for annual Redeterminations for Insurance Affordability Programs will generally occur between August and October in accordance with separately executed service level agreements between CMS and IRS. Annual Renewals for individuals enrolled in Medicaid or CHIP will occur throughout the year in accordance with separately executed service level agreements between CMS and IRS. At the election of the AE administering a BHP, annual renewals for individuals enrolled in a BHP will generally occur between August and October or throughout the year in accordance with separately executed service level agreements between CMS and IRS.
7. Household Income and Family Size verifications performed for the purposes of determining eligibility for Medicaid, CHIP, or BHP will be performed throughout the year in accordance with separately executed service level agreements between CMS and IRS.
8. Household Income and Family Size verifications performed for the purposes of determining eligibility for Exemptions will be performed throughout the year in accordance with separately executed service level agreements between CMS and IRS.
9. CMS and IRS will exchange information via the Hub, and in near real-time during normal service hours in accordance with separately executed service level agreements between CMS and IRS.
10. CMS will transmit the records through the Hub to IRS electronically and encrypted using Transport Layer Security (TLS) communication protocol with mutual authentication.

C. IRS Responsibilities

1. Upon receipt of a request from the Hub, in accordance with 26 U.S.C. § 6103(l)(21) and its implementing regulations, IRS will extract Return Information as described in Section IV.C. See Section II.B.5-II.B.8. for details regarding the timing of this process for Applicants, Enrollees or Medicaid/CHIP Beneficiaries.
2. IRS will transmit the extracted records to the Hub to CMS electronically and encrypted using Transport Layer Security (TLS) communication protocol with mutual authentication.
3. IRS will maintain a list of AEs which have established the safeguards required by 26 U.S.C. §6103(p)(4) as a condition for receipt of Return Information from CMS. IRS Safeguards, Office of Governmental Liaison, Disclosure and Safeguards (GLDS),

hereafter referred to as IRS Safeguards, will provide the list of authorized entities to CMS and notify CMS of any additions or deletions from the list.

4. CMS and IRS will exchange information via the Hub and in real-time during normal service hours in accordance with separately executed service level agreements between CMS and IRS.

III. JUSTIFICATION AND ANTICIPATED RESULTS

A. Cost Benefit Analysis

As required by § 552a(u)(4) of the Privacy Act, a cost benefit analysis (CBA) is included as Attachment 1, covering this and seven other matching programs which CMS conducts with other Federal agencies for the purpose of implementing Insurance Affordability Programs. The CBA demonstrates that monetary costs to operate the eight matching programs exceed \$30.5 million but does not quantify direct governmental cost saving benefits sufficient to estimate whether they offset such costs. The CBA, therefore, does not demonstrate that the matching program is likely to be cost-effective and does not provide a favorable benefit/cost ratio.

However, other supporting justifications and mitigating factors which support approval of this Agreement are provided below in Section B. Further, OMB guidance provides that when a matching program is being negotiated for re-establishment, pursuant to OMB Circular A-108, the Privacy Act “does not require the showing of a favorable ratio for the match to be continued. The intention is to provide Congress with information to help evaluate the cost-effectiveness of statutory matching requirements with a view to revising or eliminating them where appropriate.” See OMB Guidelines, 54 Fed. Reg. at 25828.

B. Other Supporting Justifications

Although the cost benefit analysis does not demonstrate that this matching program is likely to be cost effective, the program is justified for other reasons, as explained in this section. In accordance with 5 U.S.C. § 552a(u)(4)(B), the DIB may waive the requirements of a cost-benefit analysis if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

1. Certain matching programs (such as this matching program with IRS) are required and are not discretionary. However, some other matching programs are based on permissive routine use disclosure authority, not a statutory obligation.
2. The matching programs’ verification service results in improved accuracy of consumer Eligibility Determinations, which CMS anticipates will continue to produce expedited Eligibility Determinations while minimizing administrative burdens and achieving operational efficiencies.
3. The matching programs provide a significant net benefit to the public by accurately determining eligibility for insurance affordability programs.

4. An efficient eligibility and enrollment process contributes to greater numbers of consumers enrolling in QHP coverage on the exchanges, resulting in a reduction of the uninsured population, therefore improving overall health care delivery.
5. Continuing to use the current matching program structure, which is less costly than any alternative structure, is expected to increase the public's trust in the participating agencies as stewards of taxpayer dollars.

C. Specific Estimate of Any Savings

In sum, the optimal result is attained by limiting the cost by using a matching program operational structure and technological process that is more efficient than any alternatives.

IV. RECORDS DESCRIPTION

A. Systems of Records

1. The CMS SOR that supports this matching program is the "Health Insurance Exchanges System (HIX)", CMS System No. 09-70-0560 Routine Use No. 3, last published in full at 78 Fed. Reg. 63211 (October 23, 2013), as amended at 83 Fed. Reg. 6591 (February 14, 2018).
2. IRS will extract specified Return Information from the Customer Account Data Engine (CADE) Individual Master File, Privacy Act SOR Treasury/IRS 24.030, published at 80 Fed. Reg. 54064 (September 8, 2015).

B. Number of Records Involved

The total number of Household Income and Family Size transactions in FY 2018 was 55,125,144, with the highest month (November) having 10,543,346 transactions. The estimated transaction volume for FY 2019 is 56,029,278, with the highest month estimated to see 11,799,260 transactions. These estimates use current business assumptions, and do not de-duplicate records if applicants submit multiple application updates. These estimates are subject to change as business assumptions or estimates are updated and/or refined.

C. Specific Data Elements Used in the Match

When IRS is able to match SSN and name provided from the Hub and Return Information is available, IRS will disclose to CMS through the Hub the following items of Return Information with respect to each Relevant Taxpayer:

1. SSN;
2. Family Size;
3. Filing status;
4. MAGI;
5. Taxable year with respect to which the preceding information relates or, if applicable,

the fact that such information is not available; and

6. Any other specified item of Return Information authorized pursuant to 26 U.S.C. § 6103(l)(21) and its implementing regulations.

D. Projected Starting and Completion Dates of the Matching Program

Effective Date – April 5, 2020

Expiration Date – October 4, 2021 (October 4, 2022 if renewed for 1 year)

V. NOTICE PROCEDURES

The matching notice which CMS will publish in the Federal Register as required by the Privacy Act (5 U.S.C. § 552a (e)(12)) will provide constructive notice of the matching program to affected individuals.

At the time of application or change of circumstances, an AE will, on behalf of CMS, provide a notice to Applicants for enrollment in a QHP or an Insurance Affordability Program on the streamlined eligibility application. The AE will ensure provision of a Redetermination or Renewal notice in accordance with applicable law. These notices will inform Applicants that the information they provide may be verified with information in the records of other Federal agencies.

VI. VERIFICATION PROCEDURES AND OPPORTUNITY TO CONTEST FINDINGS

The Privacy Act requires that each matching agreement specify procedures for verifying information produced in the matching program and an opportunity to contest findings, as required by 5 U.S.C. § 552a(p).

A. APTC and CSR

1. The Exchange may verify Return Information provided by the IRS with certain information provided by an Applicant on the application and information used for Redeterminations for an Enrollee with Return Information provided by the IRS to determine reasonable compatibility in accordance with 45 CFR §§ 155.320; 155.330(e); and 155.335(f). Pursuant to the verification process in 45 CFR §§ 155.320(c), 155.315(f), 155.330(e) and 155.335(f), the Exchange will provide notice to and an opportunity to resolve the inconsistency for the Applicant or Enrollee if there is an inconsistency between the Applicant/Enrollee's attestation and the Return Information obtained from the IRS through the Hub in connection with Eligibility Determinations and Redeterminations for APTC and CSR. See also § 1411(e)(3)-(4) of the ACA.
2. In addition, the Exchange will provide notice of appeals procedures with a notice of Eligibility Determination and Redetermination pursuant to 45 CFR §§ 155.230 and 155.355. An Applicant or Enrollee will be provided the opportunity to appeal denials

of eligibility for APTC and CSR pursuant to § 1411(f)(1) of the ACA. Return Information may be disclosed to an Applicant or Enrollee only upon proper authorization of each Relevant Taxpayer for whom Return Information was disclosed.

B. Exemptions

The Exchange may verify certain information provided by an Applicant for an Exemption with Return Information provided by the IRS to determine reasonable compatibility in accordance with 45 CFR §§ 155.615(f) and (g) and 155.620(c). Pursuant to the verification process in 45 CFR §§ 155.615(f) and (g) and 155.620(c), the Exchange will provide notice to and an opportunity to resolve the inconsistency for the Applicant if there is an inconsistency between the Applicant's attestation and the Return Information obtained from the IRS through the Hub in connection with Eligibility Determinations for Exemptions. See also § 1411(e)(3)-(4) of the ACA. In addition, the Exchange will provide Applicants with notice of appeals procedures with a notice of Eligibility Determination pursuant to 45 CFR §§ 155.230 and 155.635. An Applicant will be provided the opportunity to appeal denials of eligibility for an Exemption pursuant to § 1411(f)(1) of the ACA. Return Information may be disclosed to an Applicant only upon proper authorization of each Relevant Taxpayer for whom Return Information was disclosed.

C. Medicaid and CHIP

A State Medicaid or CHIP program must determine or renew eligibility based on information provided in accordance with 42 CFR §§ 435.916 and 457.380. An Applicant, or Medicaid/CHIP Beneficiary seeking to contest any information used for verification of an application or Renewal determination that results in an adverse Eligibility Determination may file an appeal with the agency that issued the Eligibility Determination. Return Information may be disclosed to an Applicant or Medicaid/CHIP Beneficiary only upon proper authorization of each Relevant Taxpayer for whom Return Information was disclosed.

D. BHP

To determine reasonable compatibility in accordance with 42 CFR §600.345, the AE administering a BHP may verify Return Information provided by the IRS with certain information provided by an Applicant on the application. The AE may also verify information used for Renewals for an Enrollee with Return Information provided by the IRS. Pursuant to the verification process in 42 CFR §600.345, and in connection with Eligibility Determinations and Renewals for BHP, the AE administering a BHP will notify the Applicant or Enrollee if there is an inconsistency between the Applicant/Enrollee's attestation and the Return Information obtained from the IRS through the Hub and will provide an opportunity for the Applicant/Enrollee to resolve the inconsistency.

In addition, the AE administering a BHP will provide notice of appeal rights and

procedures with a notice of Eligibility Determination and Renewal pursuant to 42 CFR § 600.335. Return Information may be disclosed to an Applicant or Enrollee only upon proper authorization of each Relevant Taxpayer for whom Return Information was disclosed.

- E. Individuals may use tax administration procedures established by the IRS to correct or amend tax records on file with the IRS. Information provided to an AE to resolve an inconsistency will be used only for an Eligibility Determination, Redetermination or Renewal and will not be used to amend or change the Return Information held by the IRS.

VII. DISPOSITION OF MATCHED ITEMS

A. All AEs authorized by CMS and the Hub will:

1. Maintain all Return Information received from IRS in accordance with applicable law, including 26 U.S.C. § 6103(p)(4) and IRS Publication 1075, which are available at <http://www.irs.gov>. The Hub will not permanently maintain Return Information;
2. Not create a separate file or SOR consisting of information concerning only those individuals who are involved in this specific matching program, except as is necessary to control or verify the information for purposes of this program; and
3. Erase the matching file generated through this matching operation as soon as the information has served the matching program's purpose and all legal retention requirements, including those established in conjunction with the National Archives and Records Administration under applicable procedures have been met.

B. The information provided by CMS is not used by the IRS for any purpose other than this matching program. The IRS Office of Records & Information Management has deemed this information to be of a transitory nature, or 'transitory records', specifically 'intermediate input files' as defined in General Records Schedule 5.2, Item 010. The IRS will protect transitory records in the same manner that CMS protects IRS records under this agreement.

VIII. SAFEGUARD REQUIREMENTS AND SECURITY PROCEDURES

A. CMS will give IRS information the same protection as information protected by IRS systems of records under the Privacy Act of 1974, as amended.

B. IRS and CMS will:

1. Comply with OMB loss reporting guidelines per OMB M-17-12 (January 3, 2017). In the event of an incident involving the loss or potential loss of PII, the agency experiencing the event is responsible for following its established procedures, including notification to the proper organizations (i.e., US-CERT), conducting a

breach and risk analysis, and making a determination of the need for notice and/or remediation to individuals affected by the loss. If the agency analysis indicates that an individual notice is appropriate, the agency that had the incident will be the one to provide such notice. CMS must report incidents of suspected unauthorized inspections or disclosures of Return Information to the Treasury Inspector General for Tax Administration and IRS Safeguards.

2. Comply with Section 3544(a)(1)(A)(ii) of the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, which requires agencies and their contractors to ensure their computer systems are FISMA compliant. In this regard, NIST standards and guidance must be implemented and adhered to by IRS and CMS contractor(s).
- C. CMS will maintain all Return Information sourced from the IRS in accordance with IRC § 6103(p)(4) and comply with the safeguards requirements set forth in IRS Publication 1075, “Tax Information Security Guidelines for Federal, State and Local Agencies”, which is the IRS published guidance for security guidelines and other safeguards for protecting Return Information pursuant to 26 CFR § 301.6103(p)(4)-1. IRS safeguarding requirements require CMS, the Hub, and all AE to which CMS provides Return Information to:
1. Establish a central point of control for all requests for and receipt of Return Information, and maintain a log to account for all subsequent disseminations and products made with/from that information, and movement of the information until destroyed, in accordance with Publication 1075.
 2. Establish procedures for secure storage of Return Information consistently maintaining two barriers of protection to prevent unauthorized access to the information, including when in transit, in accordance with Publication 1075.
 3. Consistently label Return Information obtained under this agreement to make it clearly identifiable and to restrict access by unauthorized individuals. Any duplication or transcription of Return Information creates new records which must also be properly accounted for and safeguarded. Return Information should not be commingled with other records unless the entire file is safeguarded in the same manner as required for Return Information and the Return Information within is clearly labeled in accordance with Publication 1075.
 4. Restrict access to Return Information solely to officers, employees and contractors of CMS whose duties require access for the purposes of carrying out this agreement. Prior to access, CMS must evaluate which employees require such access. Authorized individuals may only access Return Information to the extent necessary to perform services related to this agreement, in accordance with Publication 1075.
 5. Prior to initial access to Return Information and annually thereafter, CMS will ensure that employees, officers, and contractors that will have access to Return Information receive awareness training regarding the confidentiality restrictions applicable to

Return Information and certify acknowledgement in writing that they are informed of the criminal penalties and civil liability provided by IRC Sections 7213, 7213A, and 7431 for any willful disclosure or inspection of Return Information not authorized by the IRC, in accordance with Publication 1075.

6. Prior to initial receipt of Return Information, CMS and each AE must have an IRS approved SSR. CMS and each AE must annually thereafter submit an SSR to the IRS Safeguards by the submission deadline specified in Publication 1075. CMS and each AE's Head of Agency must certify the SSR fully describes the procedures established for ensuring the confidentiality of Return Information, addresses all Outstanding Actions identified by the IRS Safeguards from a prior year's SSR submission; accurately and completely reflects the current physical and logical environment for the receipt, storage, processing and transmission of Return Information; accurately reflects the security controls in place to protect the Return Information in accordance with Publication 1075 and the commitment to assist the IRS Safeguards in the joint effort of protecting the confidentiality of Return Information; report all data incidents involving Return Information to the IRS Safeguards and TIGTA timely and to cooperate with TIGTA and IRS Safeguards investigators, providing data and access as needed to determine the facts and circumstances of the incident; support the IRS Safeguards' on-site review to assess compliance with Publication 1075 requirements by means of manual and automated compliance and vulnerability assessment testing, including coordination with information technology (IT) divisions to secure pre-approval, if needed, for automated system scanning and to support timely mitigation of identified risk to Return Information in a Corrective Action Plan (CAP) for as long as Return Information is received or retained. SSRs will be transmitted in electronic format and on the template provided by IRS Safeguards using an IRS-approved encryption method in accordance with Publication 1075.
 7. CMS will ensure that Return Information is properly destroyed or returned to the IRS when no longer needed in accordance with Publication 1075.
 8. CMS will conduct periodic internal inspections of facilities where Return Information is maintained to ensure IRS safeguarding requirements are met and will permit the IRS access to such facilities as needed to review the extent to which CMS is complying with the IRC Section 6103(p)(4) requirements of this section.
- D. CMS and each AE must ensure information systems processing Return Information are compliant with § 3544(a)(1)(A)(ii) of the Federal Information Security Management Act of 2002 (FISMA). CMS and each AE will maintain an SSR which fully describes the systems and security controls established at the moderate impact level in accordance with National Institute of Standards and Technology (NIST) standards and guidance. Required security controls for systems that receive, process, store and transmit federal tax returns and Return Information are provided in Publication 1075.
- E. CMS and each AE agrees to report suspected unauthorized inspection or disclosure of Return Information within 24 hours of discovery to the appropriate Agent-in-Charge,

Treasury Inspector General for Tax Administration (TIGTA), and to the IRS Safeguards in accordance with as specified in Publication 1075.

- F. CMS must ensure that contracts with contractors and subcontractors performing work involving Return Information under this agreement contain specific language requiring compliance with IRC Section 6103(p)(4) and Publication 1075 safeguard requirements and enforces CMS' right to, and permits IRS access to, contractor and subcontractor facilities to conduct periodic internal inspections where Return Information is maintained to ensure IRS safeguarding requirements are met.
- G. CMS officers, employees and contractors who inspect or disclose Return Information obtained pursuant to this agreement in a manner or for a purpose not so authorized by IRC are subject to the criminal sanction provisions of IRC §§ 7213 and 7213A, and 18 U.S.C. § 1030(a)(2), as may be applicable. In addition, CMS could be required to defend a civil damages action under IRC Section 7431.
- H. IRS will conduct periodic safeguard reviews of CMS to assess whether security and confidentiality of Return Information is maintained consistent with the safeguarding protocols described in Publication 1075, CMS' SSR and in accordance with the terms of this agreement. Periodic safeguard reviews will involve the inspection of CMS facilities and contractor facilities where Return Information is maintained; the manual and automated compliance and vulnerability assessment testing, including automated system scanning of technical controls for computer systems storing, processing or transmitting Return Information; review of CMS recordkeeping and policies and interviews of CMS employees and contractor employees as needed, to verify the use of Return Information and assess the adequacy of procedures established to protect Return Information.
- I. CMS recognizes and treats all IRS Safeguards documents and related communications as IRS official agency records; that they are property of the IRS; that IRS records are subject to disclosure restrictions under Federal law and IRS rules and regulations and may not be released publicly under state Sunshine or Information Sharing/Open Records provisions and that any requestor seeking access to IRS records should be referred to the Federal Freedom of Information Act (FOIA) statute. If CMS determines that it is appropriate to share Safeguard Documents and related communications with another governmental function/branch for the purposes of operational accountability or to further facilitate protection of Return Information that the recipient governmental function/branch must be made aware, in unambiguous terms, that Safeguard Documents and related communications are property of the IRS; that they constitute IRS official agency records; that any request for the release of IRS records is subject to disclosure restrictions under federal law and IRS rules and regulations and that any requestor seeking access to IRS records should be referred to the federal Freedom of Information Act (FOIA) statute. Federal agencies in receipt of FOIA requests for safeguards documents must forward them

to IRS for reply.

IX. RECORDS USAGE, DUPLICATION, AND REDISCLOSURE RESTRICTIONS

CMS and IRS will comply with the following limitations on use, duplication, and disclosure of the electronic files, and data provided by each Party under this Agreement:

- A. CMS and IRS will use and disclose the data only for the purposes described in this Agreement or required by Federal law.
- B. CMS and IRS will not use the data to extract information concerning individuals therein for any purpose not specified by this Agreement or permissible under applicable Federal law.
- C. The matching data exchanged under this Agreement remain the property of each Party and will be destroyed after match activity involving the data has been completed or after relevant retention periods have expired under applicable law as described under this matching program.
- D. CMS and AEs will restrict access to the data matched to authorized officers, employees, contractors who require access to Return Information under this Agreement. CMS FFE will disclose Return Information only as authorized under 26 U.S.C. § 6103 to Applicants, Enrollees or Medicaid/CHIP Beneficiaries and their properly Authorized Representatives to support Eligibility Determinations.
- E. Any individual who knowingly and willfully uses or discloses information obtained pursuant to this Agreement in a manner or for a purpose not authorized by 45 CFR § 155.260 and § 1411(g) of the ACA are potentially subject to the civil penalty provisions of § 1411(h)(2) of the ACA, which carries a fine of not more than \$25,000 per person or entity, per use or disclosure.

X. RECORDS ACCURACY ASSESSMENTS

- A. CMS will validate all SSN and names provided by an AE via the Hub against the records at the SSA or through documentation of SSN provided by the Applicant prior to initiating a request to IRS for the verification of Household Income and Family Size.
- B. IRS provides Return Information from filed returns. The accuracy of such Return Information is dependent on the information included on the return.

XI. COMPTROLLER GENERAL ACCESS

The Government Accountability Office (Comptroller General) may have access to IRS and CMS records, to the extent authorized by 26 U.S.C. § 6103 and 5 U.S.C. § 552a(o)(1)(K), for

purposes of monitoring and verifying compliance with this Agreement.

XII. REIMBURSEMENT/FUNDING

CMS will not reimburse IRS for any costs associated with this Agreement. If, at a future date, both parties agree that CMS will reimburse IRS for any activities described herein, a separate Interagency Agreement will be executed to address relevant costs.

XIII. DURATION OF AGREEMENT

- A. **Effective Date:** The Effective Date of this Agreement will be April 5, 2020, provided that CMS reported the proposal to re-establish this matching agreement to the Congressional committees of jurisdiction and OMB in accordance with 5 U.S.C. § 552a(o)(2)(A) and (r) and OMB Circular A-108 and, upon completion of their advance review period, CMS published notice of the matching program in the Federal Register for a minimum of thirty days as required by 5 U.S.C. 552a(e)(12).
- B. **Term:** The initial term of this Agreement will be eighteen (18) months.
- C. **Renewal:** The DIBs of HHS and Treasury may, within three (3) months prior to the expiration of this Agreement, renew this Agreement for a period not to exceed twelve (12) months if CMS and the IRS certify the following to the DIBs:
 - 1. The matching program will be conducted without change; and
 - 2. The parties have conducted the matching program in compliance with this agreement.
- D. **Modification:** The parties may modify this Agreement at any time by a written modification, mutually agreed to by both parties. The proposed modified Agreement must be reviewed by HHS DIB counsel in OGC and IRS Chief Counsel to determine if the change is significant and requires a new agreement.
- E. **Termination:** This Agreement may be terminated at any time upon the mutual written consent of the parties. Either party may unilaterally terminate this Agreement upon written notice to the other party, in which case the termination will be effective ninety (90) days after the date of the notice, or at a later date specified in the notice.

XIV. PERSONS TO CONTACT

A. The IRS contacts are:

1. Project Coordinator

Patricia Grasela, Acting Reimbursable Program Analyst
Internal Revenue Service
Governmental Liaison, Disclosure and Safeguards
Data Services
BLN: 2-Q08.124
2970 Market Street
Philadelphia, PA 19104
Telephone: 267-466-5564
Fax: 855-207-0455
E-mail: Patricia.Grasela@irs.gov

2. Safeguards and Recordkeeping Procedures

Joyce H. Peneau, Associate Director
Internal Revenue Service
Governmental Liaison, Disclosure and Safeguards
Safeguards
1332 Anacapa Street
Santa Barbara, CA 93101
E-mail: Joyce.H.Peneau@irs.gov

3. Program Information

Melissa Cummings-Niedzwiecki
Special Projects Director
Wage & Investment
Individual Stakeholder Engagement and Strategy Branch
75 Perseverance Way
Hyannis, MA 02601
Telephone: (202) 603-2484
Email: Melissa.Cummings-Niedzwiecki@irs.gov

4. System Operations

Lisa S. Wilson
Deputy Director
Submission Processing, Information Technology
5000 Ellin Rd
Lanham-Seabrook, MD 20706-1348
Telephone: 240-613-4620
Email: lisa.s.wilson@irs.gov

B. The CMS contacts are:

1. Program Issues:

Terence Kane
Acting Director, Verifications Policy & Operations Division
Eligibility and Enrollment Policy and Operations Group
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
7501 Wisconsin Avenue
Bethesda, MD 20814
Telephone: (301) 492-4449/ Fax: (443) 380-5531
E-mail: Terence.Kane@cms.hhs.gov

2. Medicaid/CHIP Issues:

Julie Boughn, Director
Data and Systems Group
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Mail Stop: S2-22-27
Location: S2-23-06
Baltimore, MD 21244-1850
Telephone: (410) 786-9361
E-mail: julie.boughn1@cms.hhs.gov

3. Privacy and Agreement Issues:

Walter Stone, CMS Privacy Act Officer
Division of Security, Privacy Policy & Governance
Information Security & Privacy Group
Office of Information Technology
Centers for Medicare & Medicaid Services
Location: N1-14-56
7500 Security Boulevard

Baltimore, MD 21244-1850
Telephone: (410) 786-5357
E-mail: Walter.Stone@cms.hhs.gov

Barbara Demopulos, Privacy Advisor
Division of Security, Privacy Policy & Governance
Information Security & Privacy Group
Office of Information Technology
Centers for Medicare & Medicaid Services
Location: N1-14-40
7500 Security Boulevard
Baltimore, MD 21244-1850
Telephone: (410) 786-6340
E-mail: Barbara.Demopulos@cms.hhs.gov

XV. LIMITATIONS

The terms of this Agreement are not intended to alter, amend, or rescind any other current agreement or provision of federal law now in effect. Any provision of this Agreement that conflicts with federal law is invalid.

XVI. LIABILITY

- A. Each Party shall be liable for acts and omissions of its own employees.
- B. Neither Party shall be liable for any injury to the other Party's personnel or damage to the other Party's property, unless such injury or damage is compensable under the Federal Tort Claims Act (28 U.S.C. § 1346(b)), or pursuant to other federal statutory authority.
- C. Neither Party shall be responsible for any financial loss incurred by the other, whether caused directly or indirectly through the use of any data furnished pursuant to this Agreement.

XVII. CONTINGENCY CLAUSE

This Agreement is contingent on CMS meeting the federal safeguard requirements specified in Section VII of this Agreement. Matches with CMS under this Agreement will be suspended or discontinued immediately if, at any time, IRS determines that CMS or its contractor has failed to meet the federal safeguard requirements or any Privacy Act requirements. See the regulations at 26 CFR § 301.6103(p)(7)-1 regarding procedures for administrative review of such a determination.

XVIII. APPROVALS**A. Centers for Medicare & Medicaid Services Program Official**

The authorized program official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits the organization to the terms of this Agreement.

Name	Date
Approved by (Signature of Authorized CMS Program Official)	Date:
Jeff Grant Deputy Center and Operations Director Center for Consumer Information and Insurance Oversight Centers for Medicare & Medicaid Services	Date:

B. Centers for Medicare & Medicaid Services Program Official

The authorized program official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits the organization to the terms of this Agreement.

Name	Date
Approved by (Signature of Authorized CMS Program Official)	Date:
Karen Shields Deputy Director Centers for Medicaid and CHIP Services Centers for Medicare & Medicaid Services	Date:

C. Centers for Medicare & Medicaid Services Approving Official

The authorized approving official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits the organization to the terms of this Agreement.

Name	Date
Approved by (Signature of Authorized CMS Approving Official)	Date:
Michael Pagels Director, Division of Security, Privacy Policy and Governance, and Acting Senior Official for Privacy Information Security and Privacy Group Office of Information Technology Centers for Medicare & Medicaid Services	Date:

D. Department of Health and Human Services Data Integrity Board Official

The authorized Data Integrity Board (DIB) official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits the organization to the terms of this Agreement.

Name	Date
Approved by (Signature of Authorized HHS DIB Official)	Date:
Scott W. Rowell Assistant Secretary for Administration, and Chairperson, Data Integrity Board United States Department of Health and Human Services	Date:

E. Internal Revenue Service Approving Official

Electronic Signature Acknowledgement: By clicking the SIGN button, you are signing the document electronically. You agree that your electronic signature has the same legal validity and effect as your handwritten signature on the document, and that it has the same meaning as your handwritten signature.

The authorized approving official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits the organization to the terms of this Agreement.

Name	Date
Approved By (Signature of Authorized IRS Approving Official)	Date:
Phyllis T. Grimes Director Office of Governmental Liaison, Disclosure and Safeguards Internal Revenue Service	Date:

F. Department of the Treasury Data Integrity Board Official

Electronic Signature Acknowledgement: By clicking the SIGN button, you are signing the document electronically. You agree that your electronic signature has the same legal validity and effect as your handwritten signature on the document, and that it has the same meaning as your handwritten signature.

The authorized approving official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits the organization to the terms of this Agreement.

Name	Date
Approved By (Signature of Authorized Treasury Approving Official)	Date:
Ryan Law Chairperson, Treasury Data Integrity Board Deputy Assistant Secretary for Privacy, Transparency, and Records	Date: