

# Assister Do's and Don'ts

*September 2021*

*The information provided in this document is intended only to be a general informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance upon which it is based. This document summarizes current policy and operations as of the date it was presented. We encourage readers to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information. This communication was produced and disseminated at U.S. taxpayer expense. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.*

# Agenda

---

- Application and Enrollment Assistance
- Consumer Outreach and Education
- Avoiding Conflicts of Interest
- Culturally and Linguistically Appropriate Services
- Helping People with Disabilities

# A Note about this Presentation

This presentation addresses specific requirements for Navigators and certified application counselors (CACs) (collectively referred to as “assisters” or “you” in this presentation) in Federally-facilitated Marketplaces (FFMs).



# Application and Enrollment Assistance



## Do:

- Provide information in a fair, accurate, and impartial manner.
- Ensure financial integrity and high-quality assistance.
- Comply with applicable privacy and security standards.



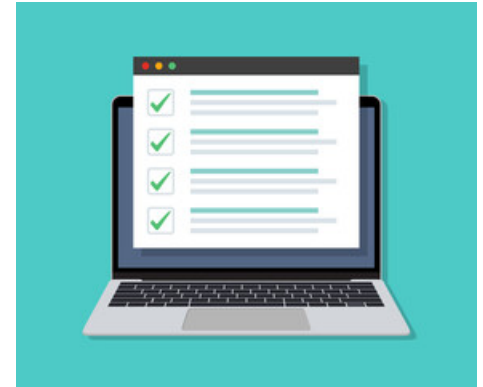
## Don't:

- Charge any applicant or enrollee, or request or receive any form of remuneration for application or other assistance related to assister duties.
- Provide to an applicant or potential enrollee gifts of any value as an inducement for enrollment.

# Provide Information in a Fair, Accurate, and Impartial Manner

To provide fair, accurate, and impartial information, you must:

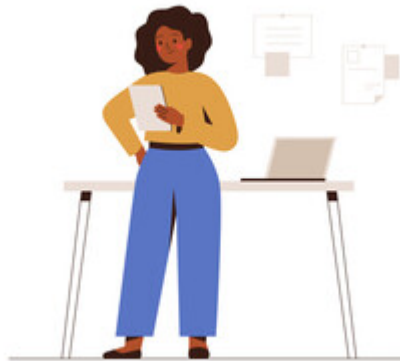
- Provide information on all qualified health plans (QHPs), and help consumers submit a Marketplace eligibility application for coverage and financial assistance.
- Provide comprehensive information about the substantive benefits and features of each plan, including any specific consumer needs, such as the availability of and distance to a preferred provider, prescription drug coverage, proximity to an in-network hospital, etc.
- Help consumers find plans with cost-sharing reductions or other federal financial assistance, if they are eligible.
- Clarify distinctions among coverage types, including QHPs, Medicaid, and the Children's Health Insurance Program (CHIP).



# Providing Information in a Fair, Accurate, and Impartial Manner

## *The Do's*

- Do make sure consumers make their own informed choices about which coverage option best meets their needs and budget.
- Do make sure consumers perform the acts of selecting, applying for, and enrolling in a plan.



# Providing Information in a Fair, Accurate, and Impartial Manner (Cont.)

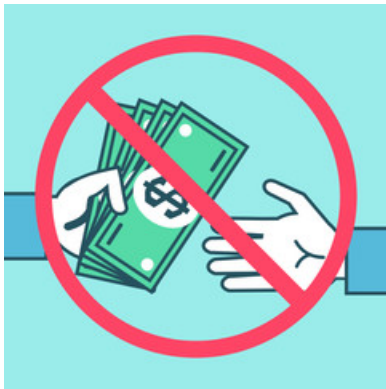
## *The Don'ts*

- Don't log into the consumer's online Marketplace account, fill out the Marketplace application, or select a plan for the consumer.
- Don't recommend that a consumer selects a specific plan or set of plans.
- Don't refer a consumer to a specific agent or broker or any specific set of agents or brokers if a consumer asks to work with an agent or broker.



# Ensuring Financial Integrity and High-quality Assistance

## Assisters **must not**:



- Charge consumers or receive any compensation from consumers for your assistance.
- Receive compensation from your organization on a per-application, per-individual-assisted, or per-enrollment basis.
- Receive consideration directly or indirectly from a health insurance issuer (or issuer of stop loss insurance) in connection with enrolling a consumer in a QHP or non-QHP.



# Comply with Applicable Privacy and Security Standards

Note: There is a separate webinar on this topic. However, it is vital that assisters comply with these standards whenever assisting consumers for any reason.

- For Navigators, these standards are a part of their grant terms and conditions.
- For CACs, they are outlined in the CDO-CMS agreement.



# Consumer Outreach and Education

When conducting outreach and education, keep in mind that as assisters, there are things you can and cannot do (more specifics on upcoming slides):



- Providing gifts – only of nominal value and not with Marketplace (grant or other federal) funds.
- Door-to-door and other direct-contact activities - not to solicit consumers for application or enrollment assistance if they haven't requested or initiated the contact, or if you or your organization doesn't already have a relationship with the consumer.
- Robo-calls – only after relationship with consumer and consent. You must not call consumers using an automatic telephone dialing system or an artificial or prerecorded voice (frequently referred to as robo-calls) unless the consumer has an existing relationship with you or your organization.

# Gifts

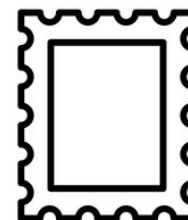


- “Gifts” are defined in 45 C.F.R. § 155.210(d)(6) as:
  - Gift items, gift cards, cash cards, or cash.
  - Promotional items that market or promote the products or services of a third party.
- Gifts **do not** include the reimbursement of legitimate expenses incurred by a consumer to receive Exchange application assistance, such as travel or postage expenses.

# Allowed Uses of Gifts

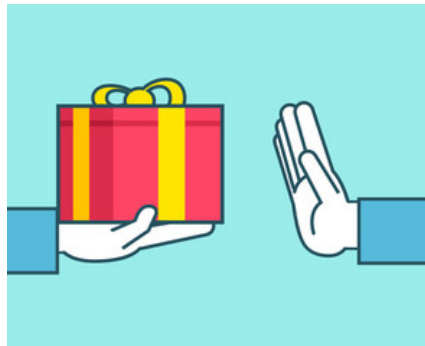
*As long as Marketplace funds **aren't** used:*

- You **may** provide gifts that do not exceed a nominal (\$15) value to encourage consumers to seek or receive information, application assistance, or other authorized assistance as long as receiving the gift is not conditioned on actual enrollment and Marketplace funds are not used to acquire the gift.
- You **may** reimburse legitimate expenses incurred by a consumer in an effort to receive Exchange application assistance, such as travel or postage expenses. These types of expenses are not considered gifts. (Navigators must ensure that these expenses were prior-approved by CMS as part of its grant budget – check with your Project Director.)
- You **may** provide food and beverages at an outreach, education, and/or enrollment event as long as they are donated or you use non-federal funds.



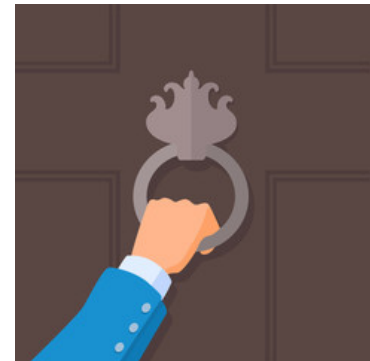
# Overview: Prohibited Uses of Gifts

- You **must not** use Marketplace (grant or other federal) funds to purchase gifts of any value.
- You **must not** use funds from any source to provide gifts of any value to an applicant or potential enrollee as an inducement for enrollment.
  - By “inducing enrollment,” we mean conditioning receipt of the gift(s) on a consumer actually enrolling in coverage, as opposed to encouraging consumers to seek or receive information, application assistance, or other authorized assistance.



# Door-to-door and Other Direct-contact Activities

- You **may** conduct outreach and education activities by going door to door or through other unsolicited means of direct contact, such as a direct phone call to consumers' homes.
- If, while you are conducting outreach and education, a consumer requests help with application and enrollment assistance, you **may** provide it.
  - A best practice is to schedule a follow-up appointment with the consumer to provide that assistance later.
- You **must not** go door to door or use other unsolicited means of direct contact for the purpose of soliciting consumers for application or enrollment assistance if they haven't requested or initiated the contact, or if you or your organization doesn't already have a relationship with the consumer.



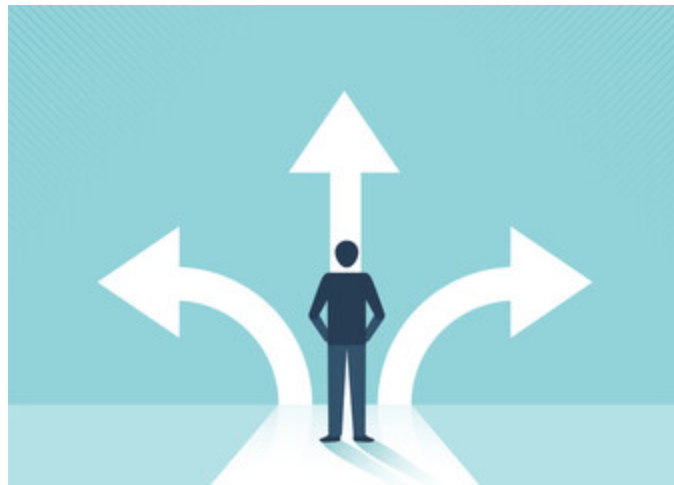
# Robo-calls



- You **must not** call consumers using an automatic telephone dialing system or an artificial or prerecorded voice (frequently referred to as robo-calls) unless the consumer already has a relationship with you or your organization and other applicable state and federal laws are otherwise complied with.
- If you or your organization already has a relationship with a consumer and they gave consent to be contacted after enrollment assistance was provided, you **may** use this type of tool to reach out to those consumers for things like reminding these consumers of upcoming events.

# Avoiding Conflicts of Interest

- Navigators
- CACs





# Avoiding Conflicts of Interest: Navigators

Navigator organizations and individual Navigators **cannot**:

- Be a health insurance issuer or issuer of stop loss insurance;
- Be a subsidiary of a health insurance issuer or issuer of stop loss insurance;
- Be an association that includes members of, or lobbies on behalf of, the insurance industry; or
- Receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with enrolling a consumer in a QHP or non-QHP.



# Avoiding Conflicts of Interest: Navigators (Cont.)

Navigators **must** disclose to the Marketplace and, in plain language, to each consumer they assist:

- Any non-prohibited lines of insurance business (typically non-health-related insurance) that the Navigator or their organization intends to sell while serving as a Navigator.
- Any existing employment relationships or any former employment relationships within the last five years with any health insurance issuers or issuers of stop loss insurance or subsidiaries of health insurance issuers or issuers of stop loss insurance.
  - This includes any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance or subsidiaries of health insurance issuers or issuers of stop loss insurance.
- Any existing or anticipated financial, business, or contractual relationships with one or more health insurance issuers or stop loss insurance issuers or their subsidiaries.



# Avoiding Conflicts of Interest: CACs

- CACs **cannot** receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals in a QHP or a non-QHP.
- CACs **must** disclose any relationships the CAC or sponsoring agency has with QHPs, insurance affordability programs, or other potential conflicts of interest to the certified application counselor designated organization (CDO), the Marketplace if directly certified by a Marketplace, and every consumer the CAC assists.



# Providing Culturally and Linguistically Appropriate Services (CLAS)

## Nondiscrimination:

- All assisters are prohibited from discriminating based on:
  - Race
  - Color
  - National origin
  - Disability
  - Age
  - Sex
  - Gender identity
  - Sexual orientation
- All assisters must also comply with any other applicable state or federal nondiscrimination laws.



# Providing CLAS

To provide services that are culturally and linguistically appropriate to the consumers they are helping, including consumers with Limited English Proficiency (LEP), Navigators **must**:

- Develop and maintain general knowledge of the racial, ethnic, and cultural groups in their service area.
- Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken.
- Provide oral and written notice in a consumer's preferred language of their right to receive translation or other language assistance services and guidance on how to obtain these services.



# Providing CLAS (Cont.)

To provide services that are culturally and linguistically appropriate to the consumers they are helping, including consumers with LEP, Navigators **must** (cont.):



- Provide consumers with information and assistance in their preferred language at no cost to the consumer and provide oral interpretation services and translation of written documents if necessary.
  - This could also mean assisting the consumer with contacting the Marketplace Call Center for an interpreter.
  - A consumer's family or friends may provide oral interpretation for the consumer only if the consumer requests such family member or friend to interpret in lieu of oral interpretation services offered by the Navigator.
- Receive ongoing education and training on how to provide culturally and linguistically appropriate services.
- Take steps to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities you are approved to serve.

# Helping Consumers with Disabilities: Navigators

Navigators must take appropriate steps to provide effective communication to consumers with disabilities, which may include:

- Making reasonable modifications where necessary to avoid discrimination based on disability.
- Ensuring that consumer education materials, websites, and other consumer assistance tools are accessible.
- Providing appropriate auxiliary aids and services for consumers with disabilities, if necessary or requested, at no cost to the consumer.
- Providing assistance in a location and manner that is physically and otherwise accessible to consumers with disabilities.



# Helping Consumers with Disabilities: Navigators (Cont.)

Navigators must take appropriate steps to provide effective communication to consumers with disabilities, which may include (cont.):

- Allowing authorized representatives to help consumers with disabilities make informed decisions.
- Knowing enough about local, state, and federal long-term services and support programs so that you can refer consumers to these programs when appropriate.
- Being able to work with all individuals regardless of age, disability, or culture.
- Seeking advice or experts when needed.





# Helping Consumers with Disabilities and Language Access: CACs

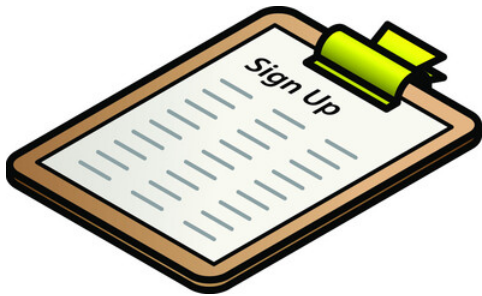
- CACs **are required** to provide assistance that is accessible to individuals with disabilities. CACs can meet this requirement through appropriate referrals to Navigators or the Marketplace Call Center.
- CACs **are not required**, but are encouraged, to provide translation and other language access services to the extent that not providing language access services might operate as an artificial barrier to full and meaningful participation in the program or activity by LEP individuals.
- Many organizations are required by federal, state, or local laws to provide accessible and appropriate services to the consumers they serve. Check with your organization if you are unsure of your responsibilities.



# Scenario #1: Question

Imagine your assister organization is participating in an outreach or enrollment event. The organizers want to:

- Create a sign-up sheet so that consumers can leave their names and contact information if they want to receive a follow-up contact from one of the assister organizations, and
- Provide consumers a gift card worth \$20.



***Is this permissible?***

# Scenario #1: Answer



No, this is not permissible.

- Assisters cannot provide gifts that exceed a \$15 value to encourage consumers to seek or receive information or application assistance or as an incentive for enrollment. As long as receiving the gift is not conditioned on actual enrollment and Marketplace funds are not used to acquire the gift, assisters may provide gifts that do not exceed a \$15 value.
- Assisters can provide items like coffee shop gift cards, pens, magnets, or key chains worth \$15 or less each. These items may bear the name or logo of a local business, community organization, or social service program. These items may also be provided to consumers at outreach and education events or at other forums attended by members of the general public as long as they are not being provided as an inducement to enrollment and have not been purchased using Marketplace funds.

# Scenario #1: Answer (Cont.)

- FFM Navigators cannot use HHS Navigator grant funds to purchase promotional t-shirts, sweatshirts, or other clothing for their staff.
- Assisters can reimburse legitimate expenses incurred by a consumer in an effort to receive Exchange application assistance, such as travel or postage expenses. These types of expenses are not considered gifts.



# Scenario #2: Question

Consider a scenario related to assisters working with consumers.

- Imagine your assister organization is planning to host a large outreach and education event with a community hospital.
- The hospital's event organizers suggest inviting several local insurance brokers with whom they have worked in the past to provide additional education and enrollment assistance at the event.
- You're concerned that inviting these brokers to an event that your organization is co-hosting will imply that you endorse them.



***Can you and your co-host invite these individuals to the event without violating the legal requirements that apply to you in your assister role?***

# Scenario #2: Answer



Yes, you can invite these individuals to an event you are hosting or co-hosting without violating the legal requirements that apply to you in your assister role as long as you take certain steps:

- You must extend invitations to all agents and brokers in that particular area. In addition, consider having all agents and brokers in a physically separate area of the event.
- If a select group of agents and brokers attends the event despite reaching out to all agents and brokers in that area, you should be careful not to express or imply—by words or actions—an endorsement of, or preference for, the services of the group of agents and brokers that attend or for a specific attendee.
- Do not substitute an agent or broker to perform any of the services required of you as an assister.

# Scenario #2: Answer (Cont.)

- You should not help consumers complete an application and then refer the consumer to an agent or broker at the event to complete plan selection (unless the consumer specifically asks to be assisted by an agent or broker).
- Whether agents and brokers attend Navigator-hosted events does not affect a Navigator's ability to use grant funds for the event as long as the costs are allowable and reasonable. The Navigator's duty of impartiality and using grant funds appropriately are what matters most in this scenario.



# Contact information

- The examples discussed are not exhaustive.
- If you have specific questions, please contact:
  - Certified Application Counselors:  
[CACQuestions@cms.hhs.gov](mailto:CACQuestions@cms.hhs.gov)
  - Navigators:
    - Your Navigator grant’s Project Director who can then reach out to the CMS Project Officer, if needed
    - [NavigatorGrants@cms.hhs.gov](mailto:NavigatorGrants@cms.hhs.gov)





# Resources

- Training materials for Navigators and other assisters: [Marketplace.cms.gov/technical-assistance-resources/training-materials/training](https://Marketplace.cms.gov/technical-assistance-resources/training-materials/training)
- Assister webinars: [Marketplace.cms.gov/assister-webinars](https://Marketplace.cms.gov/assister-webinars)

