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each key individual stating that he or she will comply with the requirements in § 31.217(b). In making this certification, the retained entity may rely on the information obtained pursuant to paragraph (b) of this section, unless the retained entity knows or should have known that the information provided is false or inaccurate.

§ 31.218 Enforcement.

(a) Compliance with these rules concerning conflicts of interest is of the utmost importance. In the event a retained entity or any individual or entity providing information pursuant to 31 U.S.C. part 31 violates any of these rules, Treasury may impose or pursue one or more of the following sanctions:

(1) Rejection of work tainted by an organizational conflict of interest or a personal conflict of interest and denial of payment for that work.

(2) Termination of the arrangement for default.

(3) Debarment of the retained entity for Federal government contracting and/or disqualification of the retained entity from future financial agency agreements.

(4) Imposition of any other remedy available under the terms of the arrangement or at law.

(5) In the event of violation of a criminal statute, referral to the Department of Justice for prosecution of the retained entity and/or its officers or employees. In such cases, the Department of Justice may make direct and derivative use of any statements and information provided by any entity, its representatives and employees or any individual, to the extent permitted by law.

(b) To the extent Treasury has discretion in selecting or imposing a remedy, it will give significant consideration to a retained entity's prompt disclosure of any violation of these rules.

PART 32—PAYMENTS IN LIEU OF LOW INCOME HOUSING TAX CREDITS

AUTHORITY: Public Law 111-5.

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§ 32.1 Timing of disbursements.

(a) State housing credit agencies that receive funds under section 1602 of Division B of the American Recovery and Reinvestment Tax Act of 2009 must make subawards to subawardees to finance the construction or acquisition and rehabilitation of low-income housing no later than December 31, 2010. Any funds that are not used to make subawards by December 31, 2010, must be returned to the Treasury by January 1, 2011.

(b) The requirement in subsection (a) above does not prevent State housing credit agencies from continuing to disburse funds to subawardees after December 31, 2010 provided:

(1) A subaward has been made to the subawardee on or before December 31, 2010;

(2) The subawardee has, by the close of 2010, paid or incurred at least 30 percent of the subawardee's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project; and

(3) Any funds not disbursed to the subawardee by December 31, 2011, must be returned to the Treasury by January 1, 2012.

[74 FR 44752, Aug. 31, 2009]

PART 33—WAIVERS FOR STATE INNOVATION

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AUTHORITY: Sec. 1332, Pub. L. 111-148, 124 Stat. 119.

SOURCE: 77 FR 11715, Feb. 27, 2012, unless otherwise noted.

§ 33.100 Basis and purpose.

(a) *Statutory basis.* This part implements provisions of section 1332 of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111-148, relating to Waivers for State Innovation, which the Secretary may authorize for plan years beginning on or after January 1, 2017. Section 1332 of the Affordable Care Act requires the Secretary to issue regulations that provide for all of the following:

(1) A process for public notice and comment at the State level, including public hearings, sufficient to ensure a meaningful level of public input.

(2) A process for the submission of an application that ensures the disclosure of all of the following:

(i) The provisions of law that the State involved seeks to waive.

(ii) The specific plans of the State to ensure that the waiver will meet all requirements specified in section 1332 of the Affordable Care Act.

(3) A process for the provision of public notice and comment after a waiver application is received by the Secretary of Health and Human Services, that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedures Act, or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance.

(4) A process for the submission of reports to the Secretary by a State relating to the implementation of a waiver.

(5) A process for the periodic evaluation by the Secretary of programs under waivers.

(b) *Purpose.* This part sets forth certain procedural requirements for Waivers for State Innovation under section 1332 of the Affordable Care Act.

§ 33.102 Coordinated waiver process.

(a) *Coordination with applications for waivers under other Federal laws.* A State may submit a single application to the Secretary of Health and Human Services for a waiver under section 1332 of the Affordable Care Act and a waiver under one or more of the existing waiver processes applicable under titles XVIII, XIX, and XXI of the Social Se-

curity Act, or under any other Federal law relating to the provision of health care items or services, provided that such application is consistent with the procedures described in this part, the procedures for demonstrations under section 1115 of the Social Security Act, if applicable, and the procedures under any other applicable Federal law under which the State seeks a waiver.

(b) *Coordinated process for section 1332 waivers.* A State seeking a section 1332 waiver must submit a waiver application to the Secretary of Health and Human Services. Any application submitted to the Secretary of Health and Human Services that requests to waive sections 36B, 4980H, or 5000A of the Internal Revenue Code, in accordance with section 1332(a)(2)(D) of the Affordable Care Act, shall upon receipt be transmitted by the Secretary of Health and Human Services to the Secretary to be reviewed in accordance with this part.

§ 33.104 Definitions.

For the purposes of this part:

Complete application means an application that has been submitted and for which the Secretary and the Secretary of Health and Human Services have made a preliminary determination that it includes all required information and satisfies all requirements that are described in § 33.108(f).

Public notice means a notice issued by a government agency or legislative body that contains sufficient detail to notify the public at large of a proposed action consistent with § 33.112.

Section 1332 waiver means a Waiver for State Innovation under section 1332 of the Affordable Care Act.

§ 33.108 Application procedures.

(a) *Acceptable formats for applications.* Applications for initial approval of a section 1332 waiver shall be submitted in electronic format to the Secretary of Health and Human Services.

(b) *Application timing.* Applications for initial approval of a section 1332 waiver must be submitted sufficiently in advance of the requested effective date to allow for an appropriate implementation timeline.

(c) *Preliminary review.* Each application for a section 1332 waiver will be

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subject to a preliminary review by the Secretary and the Secretary of Health and Human Services, who will make a preliminary determination that the application is complete. A submitted application will not be deemed received until the Secretary and the Secretary of Health and Human Services have made the preliminary determination that the application is complete.

(1) The Secretary and the Secretary of Health and Human Services will complete the preliminary review of the application within 45 days after it is submitted.

(2) If the Secretary and the Secretary of Health and Human Services determine that the application is not complete, the Secretary of Health and Human Services will send the State a written notice of the elements missing from the application.

(3) The preliminary determination that an application is complete does not preclude a finding during the 180-day Federal decision-making period that a necessary element of the application is missing or insufficient.

(d) *Notification of preliminary determination.* Upon making the preliminary determination that an application is complete, as defined in this part, the Secretary of Health and Human Services will send the State a written notice informing the State that the Secretary and the Secretary of Health and Human Services have made such a preliminary determination. That date will also mark the beginning of the Federal public notice process and the 180-day Federal decision-making period.

(e) *Public notice of completed application.* Upon receipt of a complete application for an initial section 1332 waiver, the Secretary of Health and Human Services will—

(1) Make available to the public the application, and all related State submissions, including all supplemental information received from the State following the receipt of a complete application for a section 1332 waiver.

(2) Indicate the status of the application.

(f) *Criteria for a complete application.* An application for initial approval of a section 1332 waiver will not be considered complete unless the application meets all of the following conditions:

(1) Complies with paragraphs (a) through (f) of this section.

(2) Provides written evidence of the State's compliance with the public notice requirements set forth in § 33.112, including a description of the key issues raised during the State public notice and comment period.

(3) Provides all of the following:

(i) A comprehensive description of the State legislation and program to implement a plan meeting the requirements for a waiver under section 1332 of PPACA. In analyzing whether the State has satisfied the requirement under section 1332(b)(2)(A) of PPACA that the State enact a law authorizing a waiver under section 1332 of PPACA, the Secretary and the Secretary of Health and Human Services, as applicable, may consider existing State legislation combined with duly-enacted State regulation or an executive order so long as the State legislation provides statutory authority to enforce PPACA provisions or the State plan;

(ii) A copy of the enacted State legislation that provides the State with authority to implement the proposed waiver, as required under section 1332(a)(1)(C) of the Affordable Care Act;

(iii) A list of the provisions of law that the State seeks to waive, including a description of the reason for the specific requests; and

(iv) The analyses, actuarial certifications, data, assumptions, targets, and other information set forth in paragraph (f)(4) of this section sufficient to provide the Secretary and the Secretary of Health and Human Services, as applicable, with the necessary data to determine that the State's proposed waiver satisfies the general requirements for approval under section 1332(b)(1) of the Affordable Care Act consistent with the provisions of this paragraph (f)(3)(iv):

(A) As required under section 1332(b)(1)(A) of the Affordable Care Act (the comprehensive coverage requirement), will provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) of the Affordable Care Act and offered through Exchanges established under the Affordable Care Act as certified by the Office

of the Actuary of the Centers for Medicare & Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by the Affordable Care Act and the provisions of the Affordable Care Act that the State seeks to waive. To satisfy the comprehensive coverage requirement, the Secretary and the Secretary of Health and Human Services, as applicable, must determine that the coverage under the State plan is forecasted to be at least as comprehensive overall for residents of the State as coverage absent the waiver;

(B) As required under section 1332(b)(1)(B) of the Affordable Care Act (the affordability requirement), will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of Title I of the Affordable Care Act would provide. To satisfy the affordability requirement, the Secretary and the Secretary of Health and Human Services, as applicable, must determine that the coverage under the State plan is forecasted to be as affordable overall for State residents as coverage absent the waiver;

(C) As required under section 1332(b)(1)(C) of the Affordable Care Act (the scope of coverage requirement), will provide coverage to at least a comparable number of its residents as the provisions of Title I of the Affordable Care Act would provide. To satisfy the scope of coverage requirement, the Secretary and the Secretary of the Health and Human Services, as applicable, must determine that the State plan will provide coverage to a comparable number of State residents under the waiver as would have coverage absent the waiver; and

(D) As prohibited under section 1332(b)(1)(D) of the Affordable Care Act (the Federal deficit requirement), will not increase the Federal deficit.

(4) Contains the following supporting information:

(i) *Actuarial analyses and actuarial certifications.* Actuarial analyses and actuarial certifications to support the State's estimates that the proposed waiver will comply with the comprehensive coverage requirement, the

affordability requirement, and the scope of coverage requirement.

(ii) *Economic analyses.* Economic analyses to support the State's estimates that the proposed waiver will comply with the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement, and the Federal deficit requirement, including:

(A) A detailed 10-year budget plan that is deficit neutral to the Federal government, as prescribed by section 1332(a)(1)(B)(ii) of the Affordable Care Act, and includes all costs under the waiver, including administrative costs and other costs to the Federal government, if applicable; and

(B) A detailed analysis regarding the estimated impact of the waiver on health insurance coverage in the State.

(iii) *Data and assumptions.* The data and assumptions used to demonstrate that the State's proposed waiver is in compliance with the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement, and the Federal deficit requirement, including:

(A) Information on the age, income, health expenses and current health insurance status of the relevant State population; the number of employers by number of employees and whether the employer offers insurance; cross-tabulations of these variables; and an explanation of data sources and quality; and

(B) An explanation of the key assumptions used to develop the estimates of the effect of the waiver on coverage and the Federal budget, such as individual and employer participation rates, behavioral changes, premium and price effects, and other relevant factors.

(iv) *Implementation timeline.* A detailed draft timeline for the State's implementation of the proposed waiver.

(v) *Additional information.* Additional information supporting the State's proposed waiver, including:

(A) An explanation as to whether the waiver increases or decreases the administrative burden on individuals, insurers, and employers, and if so, how and why;

(B) An explanation of how the waiver will affect the implementation of the

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provisions of the Affordable Care Act which the State is not requesting to waive in the State and at the Federal level;

(C) An explanation of how the waiver will affect residents who need to obtain health care services out-of-State, as well as the States in which such residents may seek such services;

(D) If applicable, an explanation as to how the State will provide the Federal government with all information necessary to administer the waiver at the Federal level; and

(E) An explanation of how the State's proposal will address potential individual, employer, insurer, or provider compliance, waste, fraud and abuse within the State or in other States.

(vi) *Reporting targets.* Quarterly, annual, and cumulative targets for the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement, and the Federal deficit requirement.

(vii) *Other information.* Other information consistent with guidance provided by the Secretary and the Secretary of Health and Human Services.

(g) *Additional supporting information.* (1) During the Federal review process, the Secretary may request additional supporting information from the State via the Secretary of Health and Human Services as needed to address public comments or to address issues that arise in reviewing the application.

(2) Requests for additional information, and responses to such requests, will be made available to the public in the same manner as information described in § 33.116(b).

[77 FR 11715, Feb. 27, 2012, as amended at 86 FR 6176, Jan. 19, 2021; 86 FR 53501, Sept. 27, 2021]

§ 33.112 State public notice requirements.

(a) *General.* (1) Prior to submitting an application for a new section 1332 waiver to the Secretary of Health and Human Services for review and consideration, a State must provide a public notice and comment period sufficient to ensure a meaningful level of public input for the application for a section 1332 waiver.

(2) Such public notice and comment period shall include, for a State with

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one or more Federally-recognized Indian tribes within its borders, a separate process for meaningful consultation with such tribes.

(b) *Public notice and comment period.* The State shall make available at the beginning of the public notice and comment period, through its Web site or other effective means of communication, and shall update as appropriate, a public notice that includes all of the following:

(1) A comprehensive description of the application for a section 1332 waiver to be submitted to the Secretary of Health and Human Services including information and assurances related to all statutory requirements and other information consistent with guidance provided by the Secretary and the Secretary of Health and Human Services.

(2) Information relating to where copies of the application for a section 1332 waiver are available for public review and comment.

(3) Information relating to how and where written comments may be submitted and reviewed by the public, and the timeframe during which comments will be accepted.

(4) The location, date, and time of public hearings that will be convened by the State to seek public input on the application for a section 1332 waiver.

(c) *Public hearings.* (1) After issuing the public notice and prior to submitting an application for a new section 1332 waiver, a State must conduct public hearings regarding the State's application.

(2) Such public hearings shall provide an interested party the opportunity to learn about and comment on the contents of the application for a section 1332 waiver.

(3) Such public hearings shall be conducted in an in-person, virtual (that is, one that uses telephonic, digital, and/or web-based platforms), or hybrid (that is, one that provides for both in-person and virtual attendance) format.

(d) *Submission of initial application.* After the State public notice and comment period has concluded, the State may submit an application to the Secretary of Health and Human Services

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for an initial waiver in accordance with the requirements set forth in § 33.108.

[77 FR 11715, Feb. 27, 2012, as amended at 89 FR 26418, Apr. 15, 2024]

§ 33.116 Federal public notice and approval process.

(a) *General.* The Federal public notice and approval process begins on the first business day after the Secretary and the Secretary of Health and Human Services determine that all elements for a complete application were documented and submitted to the Secretary of Health and Human Services.

(b) *Public notice and comment period.*

(1) Following a determination that a State's application for a section 1332 waiver is complete, the Secretary and the Secretary of Health and Human Services will provide for a public notice and comment period that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedures Act, or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance.

(2) At the beginning of the Federal notice and comment period, the Secretary of Health and Human Services will make available through its Web site and otherwise, and shall update as appropriate, public notice that includes all of the following:

(i) The complete application for a section 1332 waiver, updates for the status of the State's application, and any supplemental materials received from the State prior to and during the Federal public notice and comment period.

(ii) Information relating to where copies of the application for a section 1332 waiver are available for public review and comment.

(iii) Information relating to how and where written comments may be submitted and reviewed by the public, and the timeframe during which comments will be accepted.

(iv) Any public comments received during the Federal public notice and comment period.

(c) *Approval of a section 1332 waiver application.* The final decision of the Secretary and the Secretary of Health and Human Services on a State appli-

cation for a section 1332 waiver will be issued by the Secretary of Health and Human Services no later than 180 days after the determination by the Secretary and the Secretary of Health and Human Services that a complete application was received in accordance with § 33.108.

§ 33.118 Modification from the normal public notice requirements during an emergent situation.

(a) The Secretary and the Secretary of Health and Human Services may modify, in part, the State public notice requirements under § 33.112(a)(1), (b), (c), and (d) and the Federal public notice procedures under § 33.116(b) to expedite a decision on a proposed section 1332 waiver request during an emergent situation, when a delay would undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. These flexibilities are limited to emergent situations, including natural disasters; public health emergencies; or other emergent situations that threaten consumers' access to comprehensive coverage, consumers' access to health care, or human life.

(b) A State must meet all of the following criteria to request a modification under paragraph (a) of this section:

(1) The State must request a modification under paragraph (a) of this section, in the form and manner specified by the Secretaries.

(2) The State must have acted in good faith, and in a diligent, timely, and prudent manner in the preparation of the request for a modification under paragraph (a) of this section, and the waiver application request, as applicable.

(3) The State must, as applicable, detail in its request for a modification from State-level notice procedures under paragraph (a) of this section the justification for the request as it relates to the emergent situation and the alternative public notice procedures it proposes to implement at the State level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders

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that is practicable given the emergency circumstances underlying the State's request for a modification.

(4) The State must, as applicable, detail in its request for a modification from Federal-level notice procedures under paragraph (a) of this section the justification for the request as it relates to the public health emergency and the alternative public notice procedures it requests to be implemented at the Federal level.

(5) The State must explain in its request for a modification from State-level notice procedures under paragraph (a) of this section how the emergent circumstances underlying its request result from a natural disaster; public health emergency; or other emergent situations that threaten consumers' access to comprehensive coverage, consumers' access to health care, or human life could not reasonably have been foreseen and how a delay would undermine or compromise the purpose of the waiver and be contrary to the interests of consumers.

(c) The Secretary and the Secretary of Health and Human Services will evaluate a State's request for a modification under paragraph (a) of this section and issue their exemption determination within approximately 15 calendar days after the request is received.

(d) The Secretary of Health and Human Services will publish on the Centers for Medicare and Medicaid Services (CMS) website any modification determinations within 15 calendar days of the Secretary and the Secretary of Health and Human Services making such a determination, as well as the approved revised timeline for public comment under the approved alternative State or Federal public notice procedures, as applicable.

(e) The State must publish on its website any modification requests and determinations within 15 calendar days of receipt of the determination, as well as the approved revised timeline for public comment under the alternative State or Federal public notice procedures, as applicable.

(f) The State must, as applicable, implement the alternative public notice procedures at the State level if the State's exemption request is approved

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and, if required, amend the waiver application request.

(g) The Departments will consider circumstances to be emergent when they could not have been reasonably foreseen. The Departments will assess "reasonable foreseeability" based on the specific issues that a section 1332 waiver proposes to address and other relevant factors, and will not make this assessment based solely on the number of days a State may have been aware of such issues.

[85 FR 71196, Nov. 6, 2020, as amended at 86 FR 53501, Sept. 27, 2021]

§ 33.120 Monitoring and compliance.

(a) *General.* (1) Following the issuance of a final decision to approve a section 1332 waiver by the Secretary and the Secretary of Health and Human Services, as applicable, a State must comply with all applicable Federal laws and regulations, unless expressly waived. A State must, within the timeframes specified in law and regulation come into compliance with any changes in Federal law and regulation affecting section 1332 waivers, unless the provision being changed is expressly waived.

(2) The Secretary and the Secretary of Health and Human Services will examine compliance with Federal and regulatory requirements consistent with §155.1308(f)(3)(iv) when conducting implementation reviews under paragraph (b) of this section.

(b) *Implementation reviews.* (1) The terms and conditions of an approved section 1332 waiver will provide that the State will perform periodic reviews of the implementation of the section 1332 waiver.

(2) The Secretary and the Secretary of Health and Human Services will review documented complaints that a State is failing to comply with requirements specified in the terms and conditions of any approved section 1332 waiver.

(3) The Secretary and the Secretary of Health and Human Services will promptly share with a State any complaint that the Secretary and the Secretary of Health and Human Services has received and will also provide notification of any applicable monitoring and compliance issues.

(c) *Post award.* Within at least 6 months after the implementation date of a section 1332 waiver and annually thereafter, a State must hold a public forum to solicit comments on the progress of a section 1332 waiver. The State must hold the public forum at which members of the public have an opportunity to provide comments and must provide a summary of the forum to the Secretary as part of the quarterly report specified in § 33.124(a) that is associated with the quarter in which the forum was held, as well as in the annual report specified in § 33.124(b) that is associated with the year in which the forum was held. The public forum shall be conducted in an in-person, virtual (that is, one that uses telephonic, digital, and/or web-based platforms), or hybrid (that is, one that provides for both in-person and virtual attendance) format.

(1) *Notification requirements for public forum.* The State must publish the date, time, and location of the public forum in a prominent location on the State's public Web site, at least 30 days prior to the date of the planned public forum.

(2) *Modification from the normal post-award requirements during the public health emergency.* (i) The Secretary and the Secretary of Health and Human Services may modify, in part, State post award requirements under this paragraph (c)(2) for an approved section 1332 waiver request during an emergent situation, when the application of the post award public notice requirements would be contrary to the interests of consumers. These flexibilities are limited to emergent situations, including natural disasters; public health emergencies; or other emergent situations that threaten consumers' access to comprehensive coverage, consumers' access to health care, or human life.

(ii) A State must meet all of the following criteria to request a modification under paragraph (c) of this section:

(A) The State must request a modification under this paragraph (c)(2), in the form and manner specified by the Secretaries.

(B) The State must have acted in good faith, and in a diligent, timely, and prudent manner to comply with

the monitoring and compliance requirement under the waiver and the terms and conditions of the agreement between the Secretary and the Secretary of Health and Human Services, as applicable, and the State to implement a section 1332 waiver and to submit and prepare the request for a modification under this paragraph (c)(2).

(C) The State must detail in its request for a modification under this paragraph (c)(2) the alternative post award public notice procedures it proposes to implement at the State level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the State's request for a modification.

(D) The Secretary and the Secretary of Health and Human Services will evaluate a State's request for a modification under this paragraph (c)(2) and issue their modification determination within approximately 15 calendar days after the request is received.

(E) The State must publish on its website any modification requests and determinations within 15 calendar days of the receipt of the determination as well as information on the approved revised timeline for the state's post award public notice procedures, as applicable.

(F) The State must explain in its request for modification under this paragraph (c)(2) how the emergent circumstances underlying its request results from a natural disaster; public health emergency; or other emergent situations that threaten consumers' access to comprehensive coverage, consumers' access to health care, or human life and could not reasonably have been foreseen and how the application of the post-award public notice requirements would be contrary to the interests of consumers.

(iii) The Secretary and the Secretary of Health and Human Services will consider circumstances to be emergent when they could not have been reasonably foreseen. The Secretary and the Secretary of Health and Human Services will assess "reasonable foreseeability" based on the specific

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issues that a section 1332 waiver proposes to address and other relevant factors, and will not make this assessment based solely on the number of days a State may have been aware of such issues.

(d) *Terminations and suspensions.* The Secretary and the Secretary of Health and Human Services reserve the right to suspend or terminate a section 1332 waiver in whole or in part, at any time before the date of expiration, whenever the Secretaries determine that a State has materially failed to comply with the terms of a section 1332 waiver.

(e) *Closeout costs.* If all or part of a section 1332 waiver is terminated or suspended, or if a portion of a section 1332 waiver is withdrawn, Federal funding is limited to normal closeout costs associated with an orderly termination, suspension, or withdrawal, including service costs during any approved transition period, and administrative costs of disenrolling participants.

(f) *Federal evaluators.* (1) A State must fully cooperate with the Secretary, the Secretary of Health and Human Services, or an independent evaluator selected by the Secretary or the Secretary of Health and Human Services to undertake an independent evaluation of any component of a section 1332 waiver.

(2) As part of this required cooperation, a State must submit all requested data and information to the Secretary, the Secretary of Health and Human Services, or the independent evaluator.

[77 FR 11715, Feb. 27, 2012, as amended at 85 FR 71196, Nov. 6, 2020; 86 FR 53502, Sept. 27, 2021; 89 FR 26418, Apr. 15, 2024]

§ 33.122 Pass-through funding for approved waivers.

(a) *Pass-through funding.* With respect to a State's approved section 1332 waiver, under which, due to the structure of the approved State waiver plan, individuals and small employers in the State would not qualify for or would qualify for a reduced amount of premium tax credit under section 36B of the Internal Revenue Code, small business tax credit under section 45R of the Internal Revenue Code, or cost-sharing reductions under ACA part I of subtitle E for which they would otherwise be el-

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igible, the Secretary and the Secretary of the Health and Human Services shall provide for an alternative means by which the aggregate amount of such credits or reductions that would have been paid on behalf of participants in the Exchanges had the State not received such waiver shall be paid to the State for purposes of implementing the approved State waiver plan. Such amount shall be determined annually by the Secretary and the Secretary of Health and Human Services, taking into consideration the experience of other States with respect to participation in an Exchange and credits and reductions provided under such provisions to residents of the other States. This amount can be updated to reflect applicable changes in Federal or State law.

(b) [Reserved]

[86 FR 53502, Sept. 27, 2021]

§ 33.124 State reporting requirements.

(a) *Quarterly reports.* A State must submit quarterly reports to the Secretary of Health and Human Services in accordance with the terms and conditions of the State's section 1332 waiver. These quarterly reports must include, but are not limited to, reports of any ongoing operational challenges and plans for and results of associated corrective actions.

(b) *Annual reports.* A State must submit an annual report to the Secretary of Health and Human Services documenting all of the following:

(1) The progress of the section 1332 waiver.

(2) Data on compliance with section 1332(b)(1)(A) through (D) of the Affordable Care Act.

(3) A summary of the annual post-award public forum, held in accordance with § 33.120(c), including all public comments received at such forum regarding the progress of the section 1332 waiver and action taken in response to such concerns or comments.

(4) Other information consistent with the State's approved terms and conditions.

(c) *Submitting and publishing annual reports.* A State must submit a draft annual report to the Secretary of Health and Human Services no later

than 90 days after the end of each waiver year, or as specified in the waiver's terms and conditions.

(1) Within 60 days of receipt of comments from the Secretary of Health and Human Services, a State must submit to the Secretary of Health and Human Services a final annual report for the waiver year.

(2) The draft and final annual reports are to be published on a State's public Web site within 30 days of submission to and approval by the Secretary of Health and Human Services, respectively.

§ 33.128 Periodic evaluation requirements.

(a) The Secretary and the Secretary of Health and Human Services, as applicable, shall periodically evaluate the implementation of a program under a section 1332 waiver consistent with § 33.108(f)(3)(iv) and any terms and conditions governing the section 1332 waiver.

(b) Each periodic evaluation must include a review of the annual report or reports submitted by the State in accordance with § 33.124 that relate to the period of time covered by the evaluation.

[77 FR 11715, Feb. 27, 2012, as amended at 86 FR 53502, Sept. 27, 2021]

§ 33.130 Waiver amendment.

(a) *Amendment to an approved section 1332 waiver.* A State may request an amendment to an approved section 1332 waiver from the Secretary and the Secretary of Health and Human Services. A section 1332 waiver amendment is considered a change to an approved section 1332 waiver plan that is not otherwise allowable under the terms and conditions of an approved waiver, a change that could impact any of the section 1332 statutory guardrails or a change to the program design for an approved waiver. A State is not authorized to implement any aspect of the proposed amendment without prior approval by the Secretary and the Secretary of Health and Human Services.

(b) [Reserved]

[86 FR 53502, Sept. 27, 2021]

§ 33.132 Waiver extension.

(a) *Extension.* A State may request continuation of an approved section 1332 waiver, and such request shall be deemed granted unless the Secretary and the Secretary of Health and Human Services, within 90 days after the date of submission of a complete waiver extension request to the Secretary and the Secretary of Health and Human Services, either denies such request in writing or informs the State in writing with respect to any additional information that is needed in order to make a final determination with respect to the request.

(b) [Reserved]

[86 FR 53502, Sept. 27, 2021]

PART 34—RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

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