

## Dept. of Health and Human Services

## § 155.555

(i) Prospectively, on the first day of the month following the date of the notice of appeal decision, or consistent with §155.330(f)(2), (3), (4), or (5), if applicable; or

(ii) Retroactively, to the coverage effective date the appellant did receive or would have received if the appellant had enrolled in coverage under the incorrect eligibility determination that is the subject of the appeal, at the option of the appellant.

(2) Redetermine the eligibility of household members who have not appealed their own eligibility determinations but whose eligibility may be affected by the appeal decision, in accordance with the standards specified in §155.305.

[78 FR 54136, Aug. 30, 2013, as amended at 81 FR 12345, Mar. 8, 2016]

### § 155.550 Appeal record.

(a) *Appellant access to the appeal record.* Subject to the requirements of all applicable Federal and State laws regarding privacy, confidentiality, disclosure, and personally identifiable information, the appeals entity must make the appeal record accessible to the appellant at a convenient place and time.

(b) *Public access to the appeal decision.* The appeals entity must provide public access to all appeal decisions, subject to all applicable Federal and State laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

### § 155.555 Employer appeals process.

(a) *General requirements.* The provisions of this section apply to employer appeals processes through which an employer may, in response to a notice under §155.310(h), appeal a determination that the employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide that coverage but it is not affordable coverage with respect to an employee.

(b) *Exchange employer appeals process.* An Exchange may establish an employer appeals process in accordance with the requirements of this section and §§155.505(f) through (h) and 155.510(a)(1) and (2) and (c). Where an Exchange has not established an em-

ployer appeals process, HHS will provide an employer appeals process that meets the requirements of this section and §§155.505(f) through (h) and 155.510(a)(1) and (2) and (c).

(c) *Appeal request.* The Exchange and appeals entity, as applicable, must—

(1) Allow an employer to request an appeal within 90 days from the date the notice described under §155.310(h) is sent;

(2) Allow an employer to submit relevant evidence to support the appeal;

(3) Allow an employer to submit an appeal request to—

(i) The Exchange or the Exchange appeals entity, if the Exchange establishes an employer appeals process; or

(ii) The HHS appeals entity, if the Exchange has not established an employer appeals process;

(4) Comply with the requirements of §155.520(a)(1) through (3); and

(5) Consider an appeal request valid if it is submitted in accordance with paragraph (c)(1) of this section and with the purpose of appealing the determination identified in the notice specified in §155.310(h).

(d) *Notice of appeal request.* (1) Upon receipt of a valid appeal request, the appeals entity must—

(i) Send timely acknowledgement of the receipt of the appeal request to the employer, including an explanation of the appeals process;

(ii) Send timely notice to the employee of the receipt of the appeal request, including—

(A) An explanation of the appeals process;

(B) Instructions for submitting additional evidence for consideration by the appeals entity; and

(C) An explanation of the potential effect of the employer's appeal on the employee's eligibility.

(iii) Promptly notify the Exchange of the appeal, if the employer did not initially make the appeal request to the Exchange.

(2) Upon receipt of an invalid appeal request, the appeals entity must promptly and without undue delay send written notice to the employer that the appeal request is not valid because it fails to meet the requirements of this section. The written notice must inform the employer—

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(i) That the appeal request has not been accepted;

(ii) About the nature of the defect in the appeal request; and

(iii) That the employer may cure the defect and resubmit the appeal request by the date determined under paragraph (c) of this section, or within a reasonable timeframe established by the appeals entity.

(iv) Treat as valid an amended appeal request that meets the requirements of this section, including standards for timeliness.

(e) *Transmittal and receipt of records.*

(1) Upon receipt of a valid appeal request under this section, or upon receipt of the notice under paragraph (d)(1)(iii) of this section, the Exchange must promptly transmit via secure electronic interface to the appeals entity—

(i) The appeal request, if the appeal request was initially made to the Exchange; and

(ii) The employee's eligibility record.

(2) The appeals entity must promptly confirm receipt of records transmitted pursuant to paragraph (e)(1) of this section to the entity that transmitted the records.

(f) *Dismissal of appeal.* The appeals entity—

(1) Must dismiss an appeal under the circumstances specified in § 155.530(a)(1) or if the request fails to comply with the standards in paragraph (c)(4) of this section.

(2) Must provide timely notice of the dismissal to the employer, employee, and Exchange including the reason for dismissal; and

(3) May vacate a dismissal if the employer makes a written request within 30 days of the date of the notice of dismissal showing good cause as to why the dismissal should be vacated.

(g) *Procedural rights of the employer.* The appeals entity must provide the employer the opportunity to—

(1) Provide relevant evidence for review of the determination of an employee's eligibility for advance payments of the premium tax credit or cost-sharing reductions;

(2) Review—

(i) The information described in § 155.310(h)(1);

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(ii) Information regarding whether the employee's income is above or below the threshold by which the affordability of employer-sponsored minimum essential coverage is measured, as set forth by standards described in 26 CFR 1.36B; and

(iii) Other data used to make the determination described in § 155.305(f) or (g), to the extent allowable by law, except the information described in paragraph (h) of this section.

(h) *Confidentiality of employee information.* Neither the Exchange nor the appeals entity may make available to an employer any tax return information of an employee as prohibited by section 6103 of the Code.

(i) *Adjudication of employer appeals.* Employer appeals must—

(1) Be reviewed by one or more impartial officials who have not been directly involved in the employee eligibility determination implicated in the appeal;

(2) Consider the information used to determine the employee's eligibility as well as any additional relevant evidence provided by the employer or the employee during the course of the appeal; and

(3) Be reviewed *de novo*.

(j) *Appeal decisions.* Employer appeal decisions must—

(1) Be based exclusively on the information and evidence described in paragraph (i)(2) of this section and the eligibility standards in 45 CFR part 155, subpart D;

(2) State the decision, including a plain language description of the effect of the decision on the employee's eligibility; and

(3) Comply with the requirements set forth in § 155.545(a)(3) through (5).

(k) *Notice of appeal decision.* The appeals entity must provide written notice of the appeal decision within 90 days of the date the appeal request is received, as administratively feasible, to—

(1) The employer. Such notice must include—

(i) The appeal decision; and

(ii) An explanation that the appeal decision does not foreclose any appeal rights the employer may have under subtitle F of the Code.

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(2) The employee. Such notice must include—

- (i) The appeal decision; and
- (ii) An explanation that the employee and his or her household members, if applicable, may appeal a redetermination of eligibility that occurs as a result of the appeal decision.

(3) The Exchange.

(1) *Implementation of the appeal decision.* After receipt of the notice under paragraph (k)(3) of this section, if the appeal decision affects the employee's eligibility, the Exchange must promptly:

(1) Redetermine the employee's eligibility and the eligibility of the employee's household members, if applicable, in accordance with the standards specified in § 155.305; or

(2) Notify the employee of the requirement to report changes in eligibility as described in § 155.330(b)(1).

(m) *Appeal record.* Subject to the requirements of § 155.550 and paragraph (h) of this section, the appeal record must be accessible to the employer and to the employee in a convenient format and at a convenient time.

[78 FR 54136, Aug. 30, 2013, as amended at 79 FR 30349, May 27, 2014; 81 FR 12345, Mar. 8, 2016; 81 FR 94179, Dec. 22, 2016]

### Subpart G—Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions

SOURCE: 78 FR 39523, July 1, 2013, unless otherwise noted.

#### § 155.600 Definitions and general requirements.

(a) *Definitions.* For purposes of this subpart, the following terms have the following meaning:

*Applicant* means an individual who is seeking an exemption for him or herself through an application submitted to the Exchange.

*Application filer* means an applicant, an individual who is liable for the shared responsibility payment in accordance with section 5000A of the Code for an applicant, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for an applicant.

*Exemption* means an exemption from the shared responsibility payment.

*Health care sharing ministry* has the same meaning as it does in section 5000A(d)(2)(B)(ii) of the Code.

*Indian tribe* has the same meaning as it does in section 45A(c)(6) of the Code.

*Required contribution* has the same meaning as it does in section 5000A(e)(1)(B) of the Code.

*Required contribution percentage* means the product of eight percent and the rate of premium growth over the rate of income growth for the calendar year, rounded to the nearest one-hundredth of one percent.

*Shared responsibility payment* means the payment imposed with respect to a non-exempt individual who does not maintain minimum essential coverage in accordance with section 5000A(b) of the Code.

*Tax filer* has the same meaning as it does in § 155.300(a).

(b) *Attestation.* For the purposes of this subpart, any attestation that an applicant is to provide under this subpart may be made by the application filer on behalf of the applicant.

(c) *Reasonably compatible.* For purposes of this subpart, the Exchange must consider information through electronic data sources, other information provided by the applicant, or other information in the records of the Exchange to be reasonably compatible with an applicant's attestation if the difference or discrepancy does not impact the eligibility of the applicant for the exemption or exemptions for which he or she applied.

(d) *Accessibility.* Information, including notices, forms, and applications, must be provided to applicants in accordance with the standards specified in § 155.205(c).

(e) *Notices.* Any notice required to be sent by the Exchange to an individual in accordance with this subpart must be provided in accordance with the standards specified in § 155.230.

[78 FR 39523, July 1, 2013, as amended at 79 FR 30349, May 27, 2014]

#### § 155.605 Eligibility standards for exemptions.

(a) *Eligibility for an exemption through the Exchange.* Except as specified in