Appeals in the Health Insurance Marketplace

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ABA Section of Taxation
Low-Income Taxpayer Representation Workshop

Vermont Legal Aid
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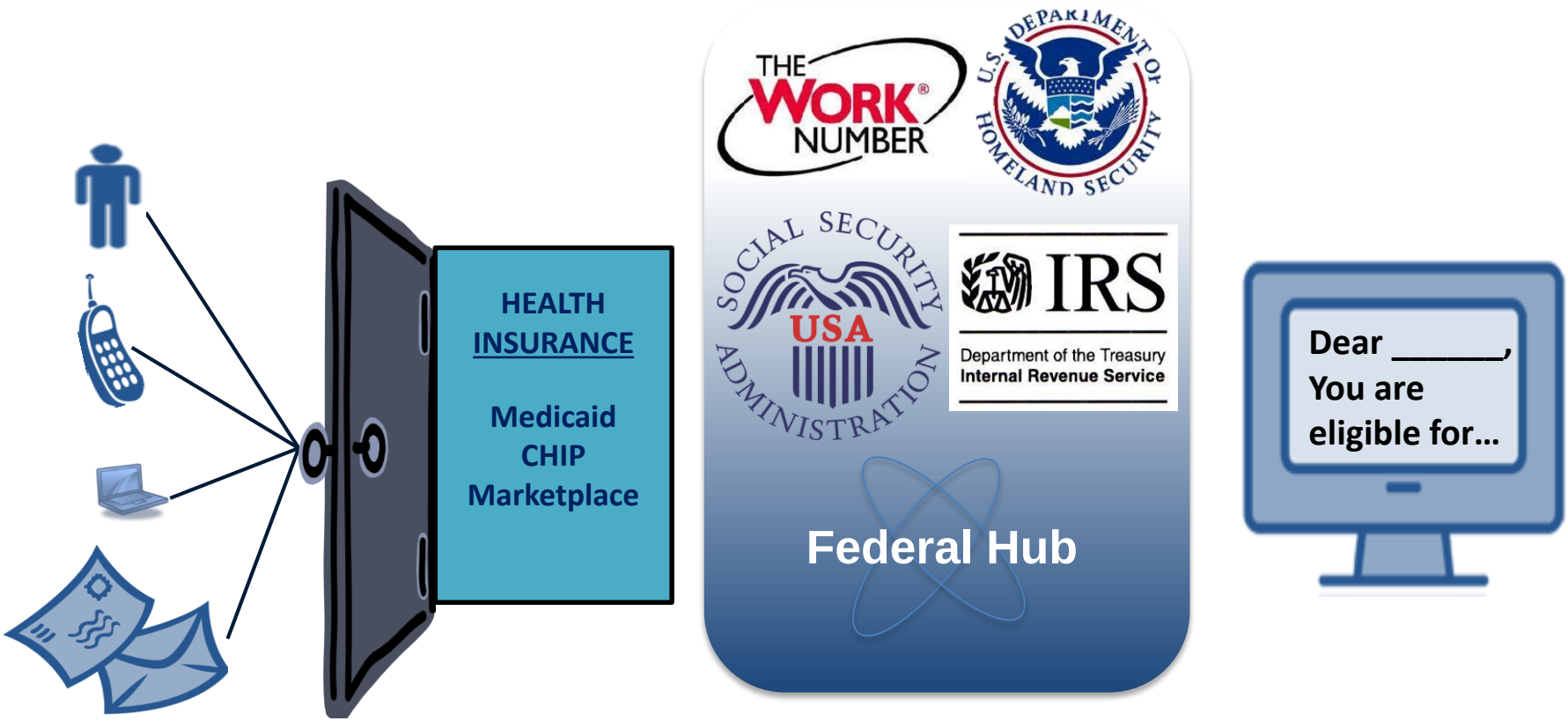
Data Matching Inconsistencies

Streamlined Enrollment



Multiple Ways to Enroll

Single Application for Multiple Programs

Use of Electronic Data to Verify Eligibility

Real-Time Eligibility Determinations

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Source: Kaiser Family Foundation

Attestations Often Can't Be Verified Through Data Matching

- Data **may not be available** through the federal data hub to verify attestations on an application, or

- Information available through the hub **may not be "reasonably compatible"** with attestations on the application.

- When information can't be verified, there is a "data-matching issue" (DMI) and an "inconsistency" period is activated.
  - Consumers have a 90 or 95 day inconsistency period from the date of the eligibility notice to send in documents to resolve a DMI
  - During the inconsistency period, the consumer receives APTC based on their attestation (in most cases)

Notice of a DMI and Inconsistency Period

Your Eligibility Results

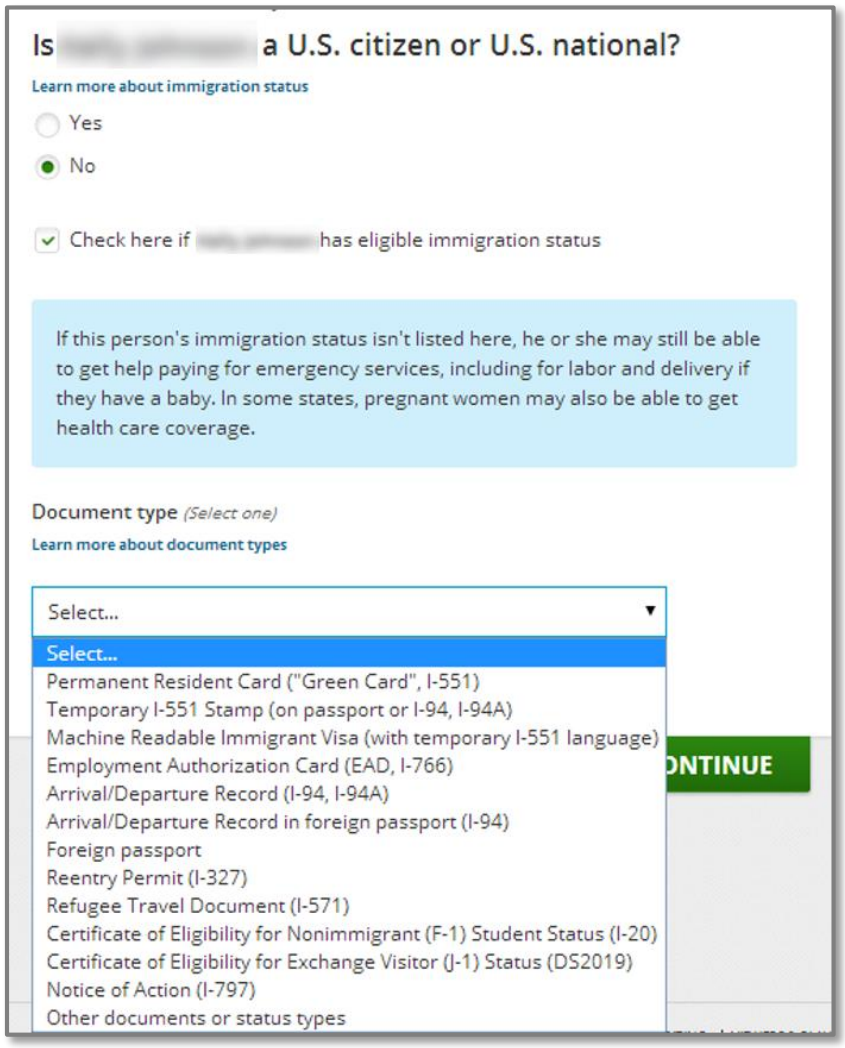
Review the table below for the results of your application.

Family member(s)	Results	Next steps
May Leon	• Eligible to purchase health coverage through the Marketplace • Can choose a health plan with lower copayments, coinsurance, and deductibles (06) • Eligible for a tax credit ($449.00 each month, which is $5,388.00 for the year, for your tax household), but we need more information from you. This calculation is based on the yearly household income of $30,135.00. This is the amount that you provided on your Marketplace application or the amount that came from the most recent income data sources available.	• Choose a health plan and make first month's payment • Send the Marketplace more information
Tommy Leon	• May be eligible for Medicaid. This calculation is based on the monthly household income of $2,511.25 that you provided on your Marketplace application.	• You will receive a final decision from the [Medicaid agency name]. If you qualify for Medicaid, you won't qualify for a tax credit and lower copayments, coinsurance, and deductibles for Health Insurance Marketplace coverage.

Source: Sample notice provided by CMS at https://marketplace.cms.gov/applications-and-forms/notices.html

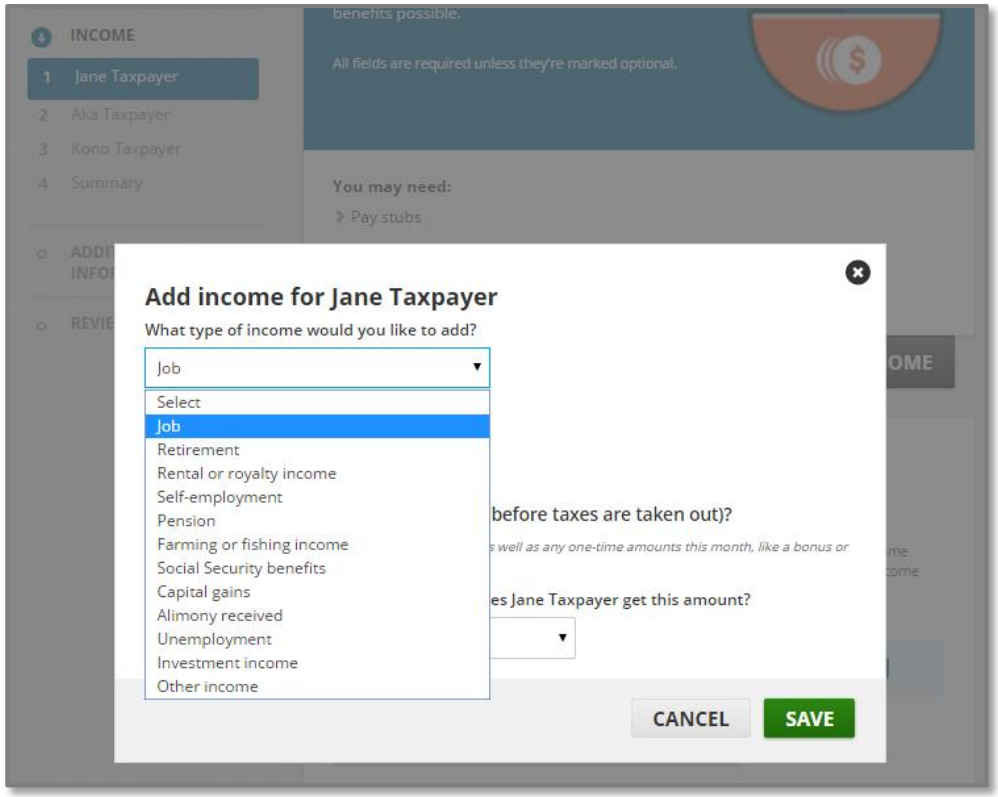
How the Marketplace Verifies Citizenship & Immigration Status

- Applicant provides Social Security number (SSN)
- Applicants attest to being U.S. citizens or having an "eligible immigration status"
- Applicants submit applicable document numbers, typically this will be an Alien Registration Number ("A number" or "USCIS number") or an I-94 number
- Marketplace tries to verify status through SAVE
- If DMI, the applicant is asked to submit additional documents



Application Process for Verification of Income

- Applicants are asked to provide information on the source and amount of income for each individual in the household
  - → Applicants must submit income information for everyone in the household with income even if they're not applying for coverage



- The attestations on the application are matched with data in the federal hub

- But the information in the hub may be outdated if the consumer has changed jobs, has irregular work, or has retired.

Income is Verified Through Data Matching: General Rules

↑ If the attestation is higher than the income in the data hub, the attestation is usually (but not always) accepted

↓ If the attestation is lower than the income in the data hub, it is accepted if it is within 10 percent of the income in the hub

! If the attestation is more than 10 percent less or if no data are available in the data hub, the applicant is awarded APTC and CSR based on the attestation but must provide documents to verify the attestation of income

Expected Marital Status and Family Size

- The marketplace eligibility decision is based on a projection of the following year's tax filing status and household size.
- Anticipated changes must be concrete and verifiable if an inconsistency is identified.
- **The marketplace will not accept a consumer's attestation that he or she will be divorced by the end of the year.**
  - An individual with a pending divorce action is treated as married unless he or she qualifies for an exception to the joint filing requirement.
- Tax household changes can verified through a guardianship order, foster child placement order, or a final divorce order.

What Consumers Are Told about Sending in Documents

- If there is a DMI, the consumer will receive instructions on next steps in their eligibility determination notice (EDN)
- It will include a list of documents that can be used to verify income

What should I do next?

Here's what each person in your household needs to do to take the "Next steps" shown in your **Eligibility Results**. If your "Next steps" tell you to send more information, follow instructions for sending it. If you don't, you could lose what you qualify for now because your information doesn't match the data we have, or we can't verify all of the information in your application.

- May Leon - You need to send the Marketplace proof of your yearly income for all members of your household that will earn income and are required to file a tax return. Send documents that closely match the income amount from your application. You don't need to send proof of income that you no longer receive. Examples of documents you can send include:
  - 1040 tax return (federal or state versions acceptable) - Must contain first and last name, income amount, and year.
  - W2 and/or 1099s (includes 1099 MISC, 1099G, 1099R, 1099SSA, 1099DIV, 1099S, 1099INT) - Must contain first and last name, income amount, year, and employer name (if applicable).
  - Pay stub documentation - Must contain first and last name, income amount, and pay period or frequency of pay with date of payment. If a pay stub includes overtime, please indicate average overtime amount per paycheck.
  - Self-employment documentation (includes 1040 Schedule C, most recent quarterly or year-to-date profit and loss statement, self-employment ledger) - Must contain first and last name, company name, and income amount. If submitting a self-employment ledger, include dates covered by the ledger, and the net amount from profit/loss.
  - Social Security statements (Social Security benefits letter) - Must contain first and last name, benefit amount, and frequency of pay.
  - Unemployment Benefits (Unemployment Benefits Letter) - Must contain first and last name, source/agency, benefits amount, and duration (start and end date, if applicable).

  These documents don't necessarily need to be dated for 2016. For example, you can provide recent pay stubs if you don't expect your income to change in 2016. If you expect your income to go up or down in 2016, you can provide other documents, like a document that states when contract work will end. If any of your income comes from freelance work, you can fill out a self-employment ledger that includes your expected income.

  If you don't send it by the following date, you may have to pay more for coverage because your tax credit and lower copayments, coinsurance, and deductibles may end: [date].

Source: Sample notice provided by CMS at https://marketplace.cms.gov/applications-and-forms/notices.html

What if Documents To Prove the Attestation Not Available?

- In some cases, such as when income is expected to change mid-year but no proof is available yet, a signed statement may be accepted
- This statement should include:

Part 1: Household Information

Household Contact:	Lydia Green
Other Household Members:	None
Application ID:	0000123456
State of Application:	FL
Phone Number:	555-423-1229
Today's Date:	7/23/2015

My household's projected annual income for 2015 as stated on my application is: **$16,000**

Part 2: Written Explanation

Is your household income as stated on your application close to the documented income provided above? If not, a written explanation may be needed to help verify your income. Are you working more, working less, got a raise, lost your job, retired, started getting unemployment, lost or added an income-producing member of the tax household?

Explanation for income change

I was employed cleaning houses until May 1, 2015 and made about $3,500 for the year. I lost my job and I'm now unsure of how much money I will make for the rest of the year.

Source: CMS, Consumer Guide for Annual Household Income Data Matching Issues, marketplace.cms.gov/outreach-and-education/household-income-data-matching-issues.pdf

The Ruiz Family – Enrollment in 2016 Coverage

- Roberto is self-employed. On the family's 2014 tax return, he reported self-employment income of $50,000 and Monica earned $25,000 at her part-time job.
- Roberto lost his best customer in late 2015 and he expects his income will be only $25,000 in 2016, after allowable deductions.
- The Ruiz family attests to projected annual income of $52,000 for 2016.

- **Next step:** The Marketplace verifies income

The Ruiz Family's Income Goes Down

- The Ruiz family attests to projected annual income of $52,000 for 2016

- The marketplace provides APTC based on the attestation, and gives the Ruiz family 90 days to submit documentation of their income

- If they fail to submit documentation, the marketplace will use their 2014 tax return as the basis for determining their premium tax credits

If DMIs Are Not Resolved

- **If an immigration/citizenship DMI cannot be resolved:**
  - the consumer's coverage is terminated.
  - It can be reinstated if the inconsistency is resolved. (A Special Enrollment Period is available.)

- **If an income DMI cannot be resolved:**
  - The marketplace will base the subsidy on the best available information (information in the data hub)
    - → If available information shows income under 100% of the poverty line or over 400%, subsidies are terminated
  - If income information is not available, subsidies are terminated
  - New premium amount may be withdrawn from consumer's bank account if they have authorized automatic payments
  - If consumers do not pay the full premium, 90-day grace period begins

How Consumers Can Restore Subsidies

- Can resolve the DMI and get subsidies restored prospectively
- Can appeal and if appeal is successful can obtain retroactive premium tax credits
- If don't appeal or appeal is unsuccessful, premium tax credits for gap months may still be available when consumes file taxes, as long as they were enrolled in a marketplace plan in those months and paid the premium

Marketplace Eligibility Appeals

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Marketplace Eligibility Appeals

- Consumers in the federal marketplace can appeal certain eligibility determinations to the **HHS Appeals Entity (Federal Appeals Entity, or FAE)**
  - Part of HHS separate from marketplace
  - Also handles Medicare appeals

- Consumers in state-based marketplaces (SBM) first appeal to their state's appeals entity
- Once they receive a decision from the SBM, consumers may appeal to the FAE if they disagree with:
  - ✓ The decision of the SBM eligibility appeals entity, or
  - ✓ The SBM appeals entity's refusal to reopen a dismissed appeal
  - ✗ State Medicaid agency decisions by an SBM (or after an FFM assessment) are **not** appealable to the FAE

Not All Determinations Can Be Appealed to the FAE

- A determination must be **final** and of **appropriate subject matter**
- Other types of issues that are not appealable to the FAE can be addressed in other ways:
  - Casework, after escalation by the Call Center
  - Appeal with the insurer
  - File a complaint with the State Department of Insurance

Marketplace Appeals

Appeal to the FFM or SBM

If consumer disagrees with a final marketplace eligibility determination

- Can file an appeal within 90 days of a final eligibility determination
- An eligibility determination that includes an inconsistency issue regarding the consumer's citizenship, immigration status and/or income is not considered final
- For more information, see www.healthcare.gov/marketplace-appeals/what-you-can-appeal

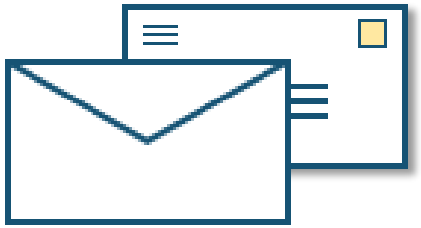
What types of decisions can be appealed to the FFM or SBM?

- Denial of APTCs or CSRs
- Amount of APTCs or CSRs
- Adjustment in APTCs or CSRs at end of 90-day inconsistency period
- Denial of eligibility to enroll in marketplace coverage
- Denial of a special enrollment period
- Termination of marketplace coverage
- Denial of coverage exemption
- Denial of eligibility for Medicaid/CHIP

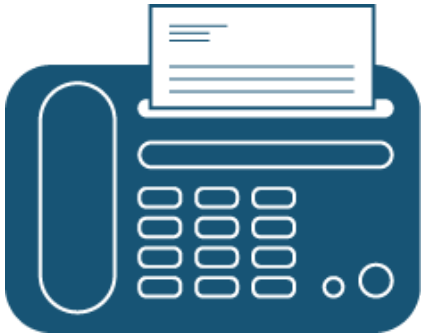
Requesting a Marketplace Eligibility Appeal

Ways to request a marketplace eligibility appeal:

- Complete an appeal request form (best option)
  (available here: www.healthcare.gov/marketplace-appeals/appeal-forms); OR
- Write a letter explaining the reason for the appeal



→ Mail to: Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd
London KY 40750-0061



→ Fax to: 1-877-369-0129

Timeframes for Requesting Appeals

In FFM states, appeals to the Federal Appeals Entity (FAE) must be submitted within:

- **90 days** of the contested eligibility determination; or
- **30 days** of a notice declining to reopen the appeal after it was dismissed

→ Appeal must be requested by consumer or by designated authorized representative

In SBM states, appeals to the FAE must be submitted within:

- **30 days** of the SBM appeals decision; or
- **30 days** of notice from the SBM declining to reopen the appeal

NOTE: *If 90 days has passed since the eligibility decision, consumers may be able to get an extension of time to file if they can provide a strong reason why they didn't file during the 90-day period.*

When a Marketplace Eligibility Appeal is Received

The Federal Appeals Entity (FAE) receives the appeal and determines the validity of the request

- ✓ If determined valid, the appeal is acknowledged in writing and the appeals process begins
- ✘ If determined invalid, a notice is mailed describing how to fix the problem and resubmit the appeal request

Why might an appeal be invalid?

- → Filed more than 90 days after the eligibility determination notice
- → Filed to contest a "temporary" eligibility determination rather than a final eligibility determination
- → Filed to resolve an issue outside the authority of the FAE to resolve (e.g. whether an insurer covers a particular service)

First Stage of an Appeal: Informal Resolution

The FAE works with appellants to resolve eligibility appeals informally:

- Reviews facts and evidence
- Phone conversation with consumer (and authorized representative)

Informal Resolution Notice:

Describes proposed resolution and decision

✓ ✗

If consumer is satisfied:

- Appeals decision follows (unless consumer voluntarily withdraws the appeal)

If the consumer is unsatisfied:

- The consumer may request a formal hearing

Second Stage of the Appeal: Formal Resolution/Hearing

If the consumer is dissatisfied with the outcome of the informal resolution, case proceeds to a formal hearing:

- Written notice will be provided by the FAE at least 15 days prior to the hearing date (unless appeal is expedited)
- Conducted by telephone
- Federal hearing officer presides over the hearing

The Federal Appeals Entity conducts a "de novo review," which means a fresh start for the consumer that doesn't defer to the marketplace's determinations

- Consumers can bring witnesses and present evidence
  - Have right to review the appeals record before and during the hearing (must request record in writing)
  - Consumer and witnesses provide testimony under oath

Expedited Appeals

- Appeals can be expedited when the standard timeframe "could jeopardize the appellant's life, health or ability to attain, maintain or regain maximum function"*

- **Request for an expedited appeal needs to be noted on appeal request**
  - If a consumer's circumstances change, can request expedited appeal after submitting an appeal request

- If a request to expedite is denied, the FAE must:
  - Provide written notice of the reason for the denial
  - Consider the appeal under the standard timelines

* Source: 45 CFR 155.540(a)

Eligibility Appeals Decisions

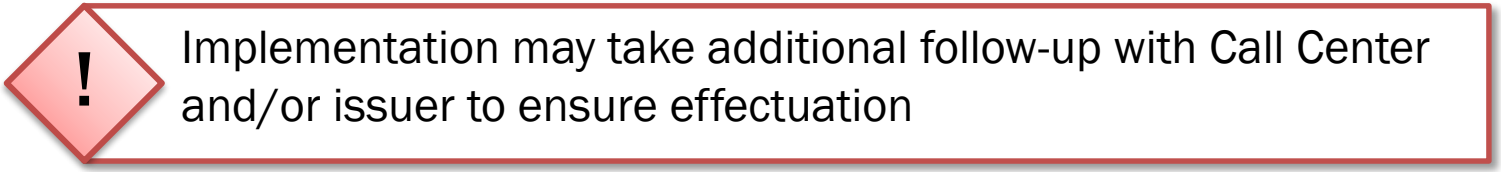
- Following the hearing, the Hearing Officer makes a decision based on the testimony, other evidence and the applicable legal rules
- The decision is in writing and must be issued within 90 days of the date the appeals request is received (as “administratively feasible”)

→ **The decision is final and binding but may be subject to judicial review**

Implementing the Eligibility Appeals Decision

If the appeal is successful, the consumer has two options:

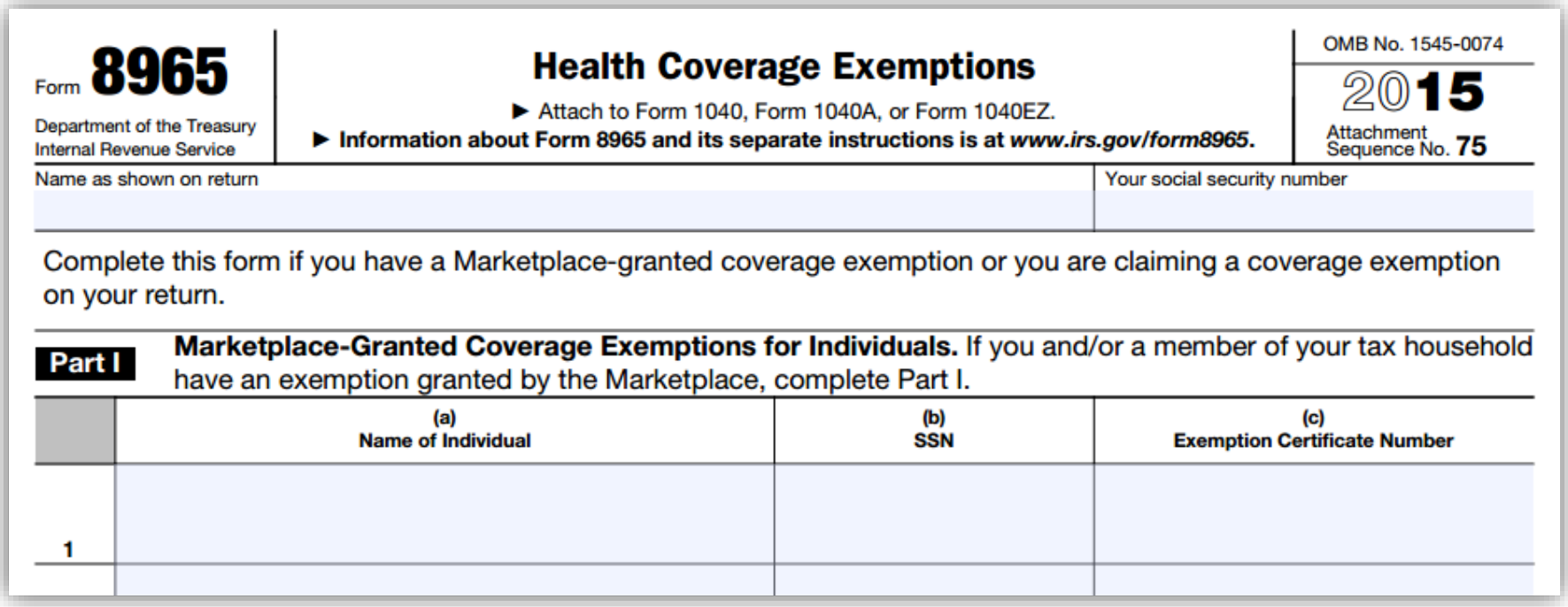
- Have the decision implemented on a **prospective** basis
  - Change would be effective following regular effective date rules (e.g. if select a plan prior to the 15th of the month, coverage effective on the 1st of the following month)
- Request **retroactive** implementation
  - Change would be effective back to the coverage effective date the consumer did receive or could have received if the consumer had enrolled in coverage under the initial eligibility determination
  - ***Note:*** For retroactive coverage, the consumer has to pay his share of the premiums and cannot choose a different retroactive date.



Marketplace Exemption Appeals

Marketplace Exemptions

- Certain exemptions from the individual shared responsibility provision can only be granted by the Marketplace.



Form **8965**
Department of the Treasury
Internal Revenue Service

Health Coverage Exemptions

▶ Attach to Form 1040, Form 1040A, or Form 1040EZ.
▶ **Information about Form 8965 and its separate instructions is at *www.irs.gov/form8965*.**

OMB No. 1545-0074
2015
Attachment Sequence No. **75**

Name as shown on return	Your social security number

Complete this form if you have a Marketplace-granted coverage exemption or you are claiming a coverage exemption on your return.

Part I **Marketplace-Granted Coverage Exemptions for Individuals.** If you and/or a member of your tax household have an exemption granted by the Marketplace, complete Part I.

	(a) Name of Individual	(b) SSN	(c) Exemption Certificate Number
1			

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Marketplace Exemptions

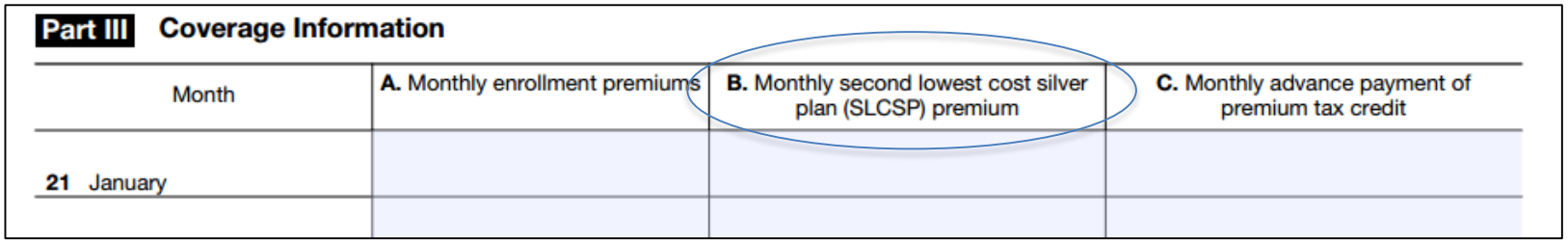
- **When to apply:** For general hardship exemptions, apply up to 3 years after the month of the hardship
  - documentation is required in most circumstances so earlier is better

- **If you disagree with the determination:** The Marketplace's decision on an exemption application can be appealed.
  - The appeals process and appeals regulations are the same as for Marketplace eligibility determinations

Form 1095-A Dispute Resolution

Form 1095-A Disputes

- Consumers cannot file a Marketplace appeal based on disagreement with their Form 1095-A
- Marketplaces have adopted informal dispute resolution processes specifically for tax forms
- Consumers who believe their Form 1095-A is wrong should call the Marketplace to request an explanation or a correction
- FAQ: healthcare.gov/tax-form-1095/
  - A corrected form is not issued if the only incorrect item on Form 1095-A is the benchmark plan premium



Part III **Coverage Information**

Month	**A.** Monthly enrollment premiums	**B.** Monthly second lowest cost silver plan (SLCSP) premium	**C.** Monthly advance payment of premium tax credit
21 January			

Contact

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