

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**THE FEDERAL MARKETPLACE PROPERLY
DETERMINED INDIVIDUALS' ELIGIBILITY
FOR ENROLLMENT IN QUALIFIED
HEALTH PLANS BUT IMPROPERLY
DETERMINED THAT AN ESTIMATED
3 PERCENT OF INDIVIDUALS WERE
ELIGIBLE FOR INSURANCE
AFFORDABILITY PROGRAMS**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



Christi A. Grimm
Principal Deputy
Inspector General

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Office of Inspector General

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Report in Brief

Date: February 2020

Report No. A-09-18-01000

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

Under the Affordable Care Act, the Centers for Medicare & Medicaid Services (CMS) operates the federally facilitated marketplace (Federal marketplace) in States that chose not to operate their own marketplaces. Prior OIG audits of the Federal marketplace covering the 2014 coverage year determined that not all of the marketplace's internal controls were effective in ensuring that individuals were properly determined eligible for qualified health plans (QHPs) and insurance affordability programs. Further, since 2014, additional eligibility verification requirements have become effective. The results of our prior audits and these additional requirements led us to review the marketplace's eligibility determinations for the 2018 coverage year.

Our objective was to determine whether the Federal marketplace determined individuals' eligibility for enrollment in QHPs and for insurance affordability programs in accordance with Federal requirements.

How OIG Did This Audit

We reviewed a sample of 110 of 7.5 million individuals whom the Federal marketplace determined eligible for enrollment in QHPs and for insurance affordability programs during the open enrollment period (November 1 through December 15, 2017) for the 2018 coverage year. We reviewed supporting documentation related to the eligibility determinations.

The Federal Marketplace Properly Determined Individuals' Eligibility for Enrollment in Qualified Health Plans but Improperly Determined That an Estimated 3 Percent of Individuals Were Eligible for Insurance Affordability Programs

What OIG Found

For our sample of 110 individuals, the Federal marketplace properly determined that all 110 individuals were eligible for enrollment in QHPs and that 102 individuals were eligible for insurance affordability programs. However, for the remaining eight individuals, the marketplace improperly determined that three individuals were eligible for insurance affordability programs and may have improperly determined that five individuals were eligible for those programs.

On the basis of our sample results, for the 2018 coverage year, we estimated that the Federal marketplace (1) improperly determined that 191,896 (3 percent) of the 7.5 million individuals were eligible for insurance affordability programs and (2) may have improperly determined that 402,207 individuals (5 percent) of the 7.5 million were eligible for those programs. These individuals elected to receive an estimated \$40.8 million and \$180.1 million, respectively, in monthly advance premium tax credit payments when they were determined eligible. We also identified a weakness in the Federal marketplace's procedures related to determining eligibility for insurance affordability programs. This audit covering the marketplace's fifth year of operation did not identify any deficiencies similar to those we previously identified during our audits covering its first year of operation, except for a deficiency related to resolving income inconsistencies.

What OIG Recommends and CMS Comments

We recommend that CMS redetermine, if necessary, the eligibility of the sampled individuals and take steps to ensure that the Federal marketplace (1) revises its written guidance and establishes new guidance and (2) corrects errors and implements a change in its eligibility and enrollment system. We also made two recommendations related to a weakness in the procedures for determining eligibility for insurance affordability programs. (The full text of our nine specific recommendations is shown in the report.)

CMS concurred with six of our nine recommendations but did not concur with the remaining three recommendations. After reviewing CMS's comments, we maintain that our recommendations are valid.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Patient Protection and Affordable Care Act (ACA)¹ required the establishment of a health insurance exchange (marketplace) in each State and the District of Columbia. A marketplace is designed to serve as a “one-stop shop” where individuals obtain information about their health insurance options; are evaluated for eligibility for a qualified health plan (QHP) and, when applicable, eligibility for insurance affordability programs; and if eligible, enroll in the QHP of their choice. Within the U.S. Department of Health and Human Services (HHS), the Centers for Medicare & Medicaid Services (CMS) operates the federally facilitated marketplace (Federal marketplace) in States that chose not to operate their own marketplaces. Individuals in these States may enroll in QHPs through the Federal marketplace’s HealthCare.gov website.

Prior Office of Inspector General (OIG) audits of the Federal marketplace covering its first year of operation (the 2014 coverage year) determined that not all of the marketplace’s internal controls were effective in ensuring that individuals were properly determined eligible for QHPs and insurance affordability programs.² Further, since the 2014 coverage year, additional eligibility verification requirements have become effective (e.g., the requirement to verify whether individuals complied with Federal tax filing requirements). The results of our prior audits and these additional requirements led us to conduct this audit of the Federal marketplace’s eligibility determinations for its fifth year of operation (the 2018 coverage year). (See “Affordable Care Act Reviews” on the OIG website for a list of related OIG reports on marketplace operations.³)

OBJECTIVE

Our objective was to determine whether the Federal marketplace determined individuals’ eligibility for enrollment in QHPs and for insurance affordability programs in accordance with Federal requirements.

¹ P.L. No 111-148 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (Mar. 30, 2010).

² *Not All Internal Controls Implemented by the Federal, California, and Connecticut Marketplaces Were Effective in Ensuring That Individuals Were Enrolled in Qualified Health Plans According to Federal Requirements* ([A-09-14-01000](http://oig.hhs.gov/reports-and-publications/aca/A-09-14-01000)), issued June 30, 2014, and *Not All of the Federally Facilitated Marketplace’s Internal Controls Were Effective in Ensuring That Individuals Were Properly Determined Eligible for Qualified Health Plans and Insurance Affordability Programs* ([A-09-14-01011](http://oig.hhs.gov/reports-and-publications/aca/A-09-14-01011)), issued August 6, 2015.

³ <http://oig.hhs.gov/reports-and-publications/aca/>.

BACKGROUND

Patient Protection and Affordable Care Act

The ACA established marketplaces to allow individuals and small businesses to shop for health insurance in all 50 States and the District of Columbia. A goal of the ACA is to provide more Americans with access to affordable healthcare by, for example, providing financial assistance through insurance affordability programs for people who cannot afford insurance without that assistance.

Health Insurance Marketplaces

Under the ACA, States had the option to establish and operate their own marketplaces, called State-based marketplaces. In States that chose not to operate their own marketplaces and for State-based marketplaces that choose to use the Federal platform, CMS operates the Federal marketplace.⁴ These States rely on the Federal marketplace to perform certain marketplace functions, such as determining eligibility and enrolling individuals. During the 2018 coverage year, 39 States used the Federal marketplace, and 12 States, including the District of Columbia, operated State-based marketplaces.⁵

Qualified Health Plans and Insurance Affordability Programs

Qualified Health Plans

QHPs are private health insurance plans that each marketplace recognizes and certifies as meeting certain participation standards. QHPs are required to cover a core set of benefits (known as essential health benefits) and are classified into “metal” levels: bronze, silver, gold, and platinum. These levels are determined by the percentage that each QHP expects to pay, on average, for the total allowable costs of providing essential health benefits.

Insurance Affordability Programs: Premium Tax Credit and Cost-Sharing Reductions

The ACA provides for two types of insurance affordability programs to lower individuals’ insurance premiums or out-of-pocket costs for QHPs—the premium tax credit and cost-sharing reductions (CSRs):

⁴ The Federal platform includes the Federal marketplace’s information technology systems and consumer call center.

⁵ Kaiser Family Foundation, “State Health Insurance Marketplace Types.” Available online at <https://www.kff.org/health-reform/slide/state-decisions-for-creating-health-insurance-exchanges/>. Accessed on January 30, 2019.

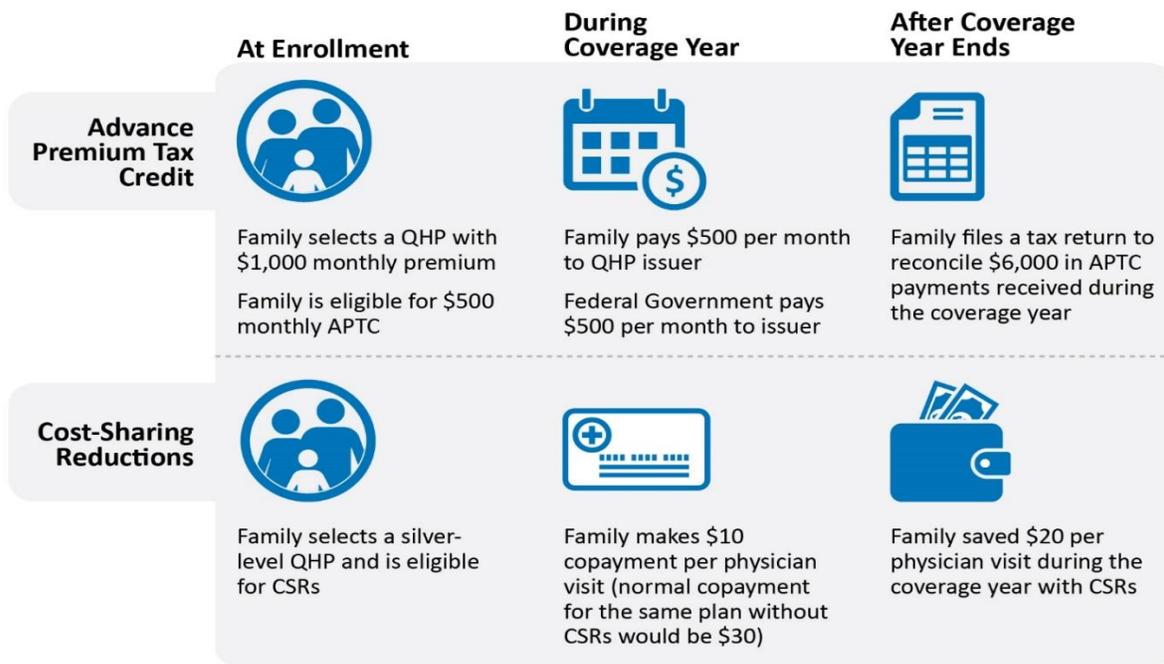
- **Premium tax credit:** The premium tax credit reduces the cost of a QHP’s premium and is available at tax-filing time or in advance. Generally, the premium tax credit is available on a sliding scale to an individual or a family with annual household income from 100 percent through 400 percent of the Federal poverty level (FPL). When paid in advance, the credit is referred to as the “advance premium tax credit” (APTC). The Federal Government pays the APTC amount monthly to the QHP issuer (i.e., insurance company) on behalf of the taxpayer to offset a portion of the cost of the premium of any metal-level plan.⁶ The taxpayer is required to include on his or her Federal income tax return (Federal tax return) the amount of any APTC payments made on his or her behalf and to reconcile the APTC payments with the maximum allowable amount of the premium tax credit using Internal Revenue Service (IRS) Form 8962, Premium Tax Credit. If the APTC is more than the premium tax credit, the taxpayer has excess APTC and must repay the excess amount, subject to certain limitations. If the APTC is less than the premium tax credit, the taxpayer can get a credit for the difference, which reduces the tax payment or increases his or her refund.
- **Cost-sharing reductions:** CSRs help qualifying individuals with out-of-pocket costs, such as deductibles, coinsurance, and copayments. In most cases, an individual must select a silver-level QHP to qualify for CSRs. Generally, CSRs are available to an individual or a family with annual household income from 100 percent through 250 percent of the FPL.⁷

Figure 1 on the following page provides an example of a family that is determined eligible for the APTC and CSRs for an entire coverage year.

⁶ The monthly APTC payment amount may change during the year if an individual reports a change in circumstance (e.g., a change in household income) or stops paying the monthly premium.

⁷ Previously, the Federal Government made monthly payments to QHP issuers to cover the estimated costs of CSRs provided to individuals. As of October 12, 2017, the Federal Government stopped making these payments. However, the issuers are still required to provide CSRs to individuals who are eligible to receive them.

Figure 1: Example of a Family Determined Eligible for Insurance Affordability Programs for an Entire Coverage Year



An individual may be eligible for either or both types of insurance affordability programs if he or she meets specified Federal requirements.

Federal Eligibility Requirements for Qualified Health Plans and Insurance Affordability Programs

To be eligible to enroll in a QHP, an individual must be a U.S. citizen, a U.S. national,⁸ or lawfully present in the United States;⁹ not be incarcerated;¹⁰ and meet applicable residency standards.¹¹

To be eligible for insurance affordability programs, an individual must meet additional requirements related to annual household income¹² and must not be eligible for minimum

⁸ The term “national” may refer to a person who, though not a citizen of the United States, owes permanent allegiance to the United States. All U.S. citizens are U.S. nationals, but only a relatively small number of people acquire U.S. nationality without becoming U.S. citizens (8 U.S.C. § 1101(a)).

⁹ An individual may be considered “lawfully present” if his or her immigration status meets any of the categories defined in 45 CFR § 152.2.

¹⁰ An individual must not be incarcerated, other than incarceration pending the disposition of charges (45 CFR § 155.305(a)(2)).

¹¹ ACA §§ 1312(f) and 1411(b) and 45 CFR § 155.305(a)(3).

¹² ACA §§ 1401 and 1402 and 45 CFR §§ 155.305(f) and (g).

essential coverage (through employer-sponsored insurance (ESI) and non-employer-sponsored insurance (non-ESI))¹³ that is not coverage under a health plan in the individual market within a State.¹⁴ Further, if a tax filer¹⁵ received APTC payments during a prior coverage year, he or she must file a Federal tax return and reconcile that coverage year's APTC payments to be eligible for the upcoming coverage year's insurance affordability programs.¹⁶ For example, if a tax filer received APTC payments during the 2016 coverage year, he or she must have reconciled those payments when filing a 2016 tax return in 2017 to be eligible for insurance affordability programs for the 2018 coverage year.¹⁷

To determine an individual's eligibility for enrollment in a QHP and for insurance affordability programs, the Federal marketplace verifies the information submitted by the individual using available electronic data sources. Through this verification process, the marketplace determines whether the individual's information matches the information from available electronic data sources and the individual meets certain Federal requirements.

Enrollment and Re-enrollment Process for Qualified Health Plans and Insurance Affordability Programs for the Federal Marketplace

To enroll in a QHP, an individual who was not enrolled in a QHP during the prior coverage year must complete an application during an open or a special enrollment period¹⁸ and meet eligibility requirements defined by the ACA. (CMS refers to this process as "active enrollment.") An individual who was enrolled in a QHP during the prior coverage year can update information on his or her application to re-enroll for the upcoming year during the open enrollment period. (CMS refers to this process as "active re-enrollment.") Individuals can actively enroll or re-enroll through a website, by phone, by mail, or in person. In addition, certain individuals can be re-enrolled in a QHP without being required to update information on their applications. (CMS refers to this process as "passive re-enrollment.")

¹³ 45 CFR § 155.320. For the purpose of this report, we use the term "non-ESI" to include Government-sponsored programs (e.g., Medicare, Medicaid, the Children's Health Insurance Program (CHIP), TRICARE, and Peace Corps), grandfathered plans, and other plans.

¹⁴ 45 CFR § 155.20 and 26 U.S.C. § 5000A(f).

¹⁵ Generally, a "tax filer" is an individual or a married couple who indicate that they are filing a Federal tax return for the coverage year (45 CFR § 155.300(a)).

¹⁶ 45 CFR § 155.305(f)(4). IRS Form 8962, Premium Tax Credit, is used to calculate the amount of the premium tax credit and reconcile it with any APTC payments.

¹⁷ The Federal marketplace verifies income data from the IRS up to 2 years before the coverage year for which eligibility is determined.

¹⁸ For coverage year 2018, the Federal marketplace's open enrollment period was November 1 through December 15, 2017. The marketplace created a special enrollment period to allow an applicant to complete the application and enrollment process if he or she started but did not complete an application by December 15, 2017.

Verification of Applicant Information

An applicant begins the application process by providing basic personal information, such as name, birth date, and Social Security number (which are required only for applicants and non-applicant tax filers who have a Social Security number) for each individual in the applicant's household. The applicant also provides information on citizenship, incarceration status, and residency. If the applicant is applying for insurance affordability programs, he or she must provide additional information, such as annual household income and eligibility for other health coverage.¹⁹

To verify the information submitted by the applicant, the Federal marketplace uses multiple electronic data sources, including sources available through the Federal Data Services Hub (Data Hub). The Data Hub is a single conduit for marketplaces to send electronic data to and receive electronic data from multiple Federal agencies and commercial entities, and it does not store data. Federal agencies connected to the Data Hub are HHS, the Social Security Administration, the U.S. Department of Homeland Security, and the IRS, among others (ACA § 1411(c)). The marketplace also checks whether the applicant previously submitted documentation that could be used to verify the information. After verifying the applicant's information, the marketplace determines whether the applicant is eligible to enroll in a QHP and, when applicable, for insurance affordability programs.

Resolution of Inconsistencies in Applicant Information

Generally, when the Federal marketplace cannot verify information that an applicant submitted or the information is inconsistent with information available through the Data Hub or other sources, the marketplace must attempt to resolve the inconsistencies. Applicant information is considered to be consistent with information from other sources if the information from the applicant and other sources is reasonably compatible.²⁰ Information is considered reasonably compatible if any difference between the applicant information and information from other sources does not affect the eligibility of the applicant.

The Federal marketplace must make a reasonable effort to identify and address the causes of an inconsistency by contacting the applicant to confirm the accuracy of the information on the application. If the marketplace is unable to resolve the inconsistency through reasonable efforts, it must generally provide the applicant 90 days to submit satisfactory documentation or otherwise resolve the inconsistency. (This 90-day period is referred to as "the inconsistency period.") The marketplace may extend the inconsistency period if the applicant demonstrates that a good-faith effort has been made to obtain required documentation.

¹⁹ An applicant may apply for enrollment in a QHP without applying for insurance affordability programs.

²⁰ 45 CFR § 155.300(d). For purposes of determining reasonable compatibility, "other sources" include information obtained through electronic data sources, other information provided by the applicant, or other information in the records of the marketplace.

During the inconsistency period, the applicant may still enroll in a QHP and, when applicable, may choose to receive the APTC and CSRs. An applicant may enroll during this period only if the applicant is otherwise eligible to enroll in a QHP. Further, an applicant may choose to receive the APTC and CSRs if (1) the applicant meets other eligibility requirements and (2) the tax filer attests that he or she understands that the APTC is subject to reconciliation.

Expiration of Inconsistencies in Applicant Information

After the inconsistency period, if the Federal marketplace is unable to resolve the inconsistency, it determines the applicant's eligibility for enrollment in a QHP and, when applicable, for insurance affordability programs on the basis of available data sources and, in certain circumstances, the applicant's attestation. For the Federal marketplace, CMS refers to this procedure as "expiring the inconsistency."

Re-enrollment Process for Individuals Who Were Enrolled in a QHP During the Prior Coverage Year

The Federal marketplace follows re-enrollment procedures established in CMS guidance for individuals who were enrolled in a QHP. The marketplace separates these individuals into two groups: actively re-enrolled individuals and passively re-enrolled individuals. (See Appendix B for detailed information on the re-enrollment process.)

Transmission of Individuals' Enrollment Information to the Qualified Health Plan Issuer

If an individual is determined to be eligible to enroll in a QHP and selects a QHP, the Federal marketplace transmits enrollment information to the QHP issuer. Generally, the individual must pay the first month's QHP premium for the insurance coverage to be effective. If a change to the individual's coverage occurs after the coverage becomes effective, the marketplace and the QHP issuer must reconcile the revised enrollment records.

Oversight and Administration of the Federal Marketplace

CMS established the Federal marketplace and is responsible for implementing many ACA provisions governing all marketplaces.²¹ CMS operates [HealthCare.gov](https://www.healthcare.gov), the official website for the Federal marketplace. The Federal marketplace verifies applicant information using its eligibility and enrollment system to determine eligibility for enrollment in QHPs and for insurance affordability programs.

²¹ Within CMS, the Center for Consumer Information and Insurance Oversight oversees implementation of the ACA with respect to marketplaces.

HOW WE CONDUCTED THIS AUDIT

Our audit covered approximately 7.5 million individuals whom the Federal marketplace determined eligible for enrollment in QHPs and for insurance affordability programs during the open enrollment period, which was November 1 through December 15, 2017 (audit period). For these individuals, coverage was effective beginning on January 1, 2018.²² These individuals elected to receive total monthly APTC payments of approximately \$4.1 billion when they were determined eligible.²³

We reviewed a stratified random sample of 110 individuals for our audit period: 85 individuals who were actively enrolled or re-enrolled in QHPs and 25 individuals who were passively re-enrolled in QHPs.²⁴ For all 110 individuals, we reviewed supporting documentation (e.g., eligibility verification data) to determine whether the Federal marketplace determined the individuals' eligibility for enrollment in QHPs and for insurance affordability programs in accordance with Federal requirements. Based on our sample results, we estimated (1) the number of individuals for whom the marketplace improperly or may have improperly determined eligibility for insurance affordability programs and (2) the total dollar value of the monthly APTC payments those individuals elected to receive when they were determined eligible. We did not estimate the CSR payments because the Federal Government, as of October 12, 2017, no longer makes CSR payments to QHP issuers.²⁵

Our audit included only insurance affordability programs available through the Federal marketplace. We did not review other types of insurance affordability programs. We limited our audit of the Federal marketplace's internal controls to those applicable to our objective.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology, Appendix C contains our statistical sampling methodology, and Appendix D contains our sample results and estimates.

²² Our audit included individuals who started but did not complete applications on or before December 15, 2017. The marketplace allowed these individuals to be eligible for coverage starting January 1, 2018. Further, these individuals resided in the 39 States that used the Federal marketplace.

²³ The actual amount of monthly APTC payments received could have changed because of changes in individuals' enrollment and eligibility for the APTC during the year (e.g., a change in household income).

²⁴ We stratified 7.5 million individuals in our sampling frame into three strata based on the type of enrollment and re-enrollment process (i.e., active vs. passive) and the monthly APTC payments. (See Appendix C.)

²⁵ Since October 2017, there has been ongoing litigation in Federal courts regarding whether the issuers are entitled to unpaid CSR payments.

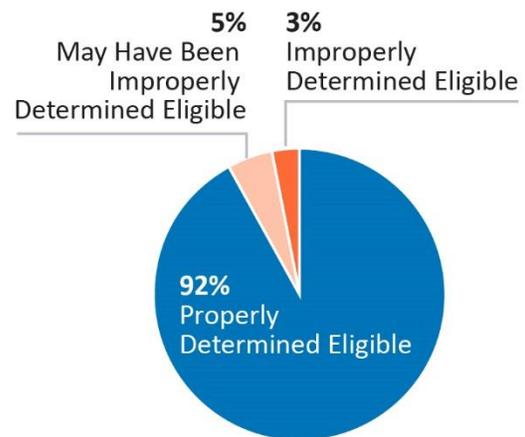
FINDINGS

The Federal marketplace determined individuals' eligibility for enrollment in QHPs and most individuals' eligibility for insurance affordability programs in accordance with Federal requirements. Specifically, for our sample of 110 individuals, the marketplace properly determined that all 110 individuals were eligible for enrollment in QHPs and that 102 individuals were eligible for insurance affordability programs. However, for the remaining eight individuals, the marketplace:

- improperly determined that three individuals were eligible for insurance affordability programs (e.g., it did not properly expire an individual's income inconsistency in accordance with its procedures) and
- may have improperly determined that five individuals were eligible for insurance affordability programs (e.g., it did not maintain documentation to support that it had verified that an individual was not already eligible for minimum essential coverage through non-ESI).²⁶

On the basis of our sample results, we estimated that for the 2018 coverage year the Federal marketplace improperly determined that 191,896 individuals were eligible for insurance affordability programs. These individuals elected to receive an estimated \$40.8 million in monthly APTC payments when they were determined eligible.²⁷ We also estimated that the marketplace may have improperly determined that 402,207 individuals were eligible for insurance affordability programs. These individuals elected to receive an estimated \$180.1 million in monthly APTC payments when they were determined eligible.^{28, 29} (See Figure 2 for the percentages of total estimated individuals who were properly, improperly, and may have been improperly determined eligible for insurance affordability programs.)

Figure 2: The Federal Marketplace Improperly or May Have Improperly Determined That an Estimated 8 Percent of Individuals Were Eligible for Insurance Affordability Programs



²⁶ Of these eight individuals, seven were actively enrolled or re-enrolled, and one was passively re-enrolled.

²⁷ The total estimated monthly APTC payments were \$40,811,111.

²⁸ The total estimated monthly APTC payments were \$180,078,827.

²⁹ Because of the nature of the sampling process, it is possible that the actual elected APTC payment amounts, as well as the numbers of individuals, are either higher or lower than reported here. The confidence intervals reported in Appendix D provide a measure of this imprecision.

These deficiencies occurred because (1) CMS’s written guidance permitted the Federal marketplace to improperly extend the income inconsistency period and lacked specific instructions related to resolving income inconsistencies and (2) the marketplace’s eligibility and enrollment system had errors in its design or functionality that affected proper verification of individuals’ eligibility for insurance affordability programs and proper expiration of inconsistencies.

We also identified a weakness in the Federal marketplace’s procedures related to verifying whether individuals complied with the requirement to file a Federal tax return and reconcile the APTC payments for a prior coverage year. Although this weakness did not result in noncompliance with Federal requirements, the procedures could be improved to ensure that individuals meet eligibility requirements for insurance affordability programs.

This audit covering the marketplace’s fifth year of operation did not identify any deficiencies similar to those we previously identified during our audit covering its first year of operation, except for a deficiency related to resolving income inconsistencies.³⁰ However, we identified other deficiencies and a procedural weakness related to determining individuals’ eligibility for insurance affordability programs, which are described in the following sections.

THE FEDERAL MARKETPLACE PROPERLY DETERMINED MOST INDIVIDUALS’ ELIGIBILITY FOR INSURANCE AFFORDABILITY PROGRAMS

The Federal marketplace determined most individuals’ eligibility for insurance affordability programs in accordance with Federal requirements. However, for our sample of 110 individuals, the Federal marketplace improperly determined 3 individuals’ eligibility for insurance affordability programs. Specifically, the marketplace (1) improperly extended inconsistency periods or improperly expired income inconsistencies for two individuals and (2) improperly determined one individual eligible for insurance affordability programs under the special rule for noncitizens.

The Federal Marketplace Improperly Extended Inconsistency Periods or Improperly Expired Income Inconsistencies for Two Individuals

For 2 of the 110 sampled individuals, the Federal marketplace improperly extended an income inconsistency period (1 individual) and improperly expired an income inconsistency (1 individual).

Federal Requirements

The Federal marketplace must make a reasonable effort to identify and address the causes of an inconsistency by contacting the applicant to confirm the accuracy of the information on the

³⁰ See the deficiency related to resolving income inconsistencies on page 16 of this report and the seventh recommendation on page 21.

application. If the marketplace is unable to resolve the inconsistency through reasonable efforts, it must generally provide the applicant 90 days to submit satisfactory documentation or otherwise resolve the inconsistency. The marketplace may extend the inconsistency period if the applicant demonstrates that a good-faith effort has been made to obtain required documentation. Generally, if the marketplace remains unable to verify the attestation after the inconsistency period, it must determine the applicant's eligibility based on the information available from the electronic data sources (i.e., expire the inconsistency) (45 CFR § 155.315(f)).

CMS's standard operating procedures state that inconsistencies are expired as soon as possible on or after the first of the month following the month in which the 90-day inconsistency period ended.³¹ According to CMS officials, to align with the processing of enrollments by QHP issuers, the Federal marketplace implemented a procedure to expire inconsistencies by the 15th of the month following the month in which the 90-day inconsistency period ended. For example, inconsistencies in an inconsistency period that ended on February 10 would be expired in the eligibility and enrollment system by March 15.

An Inconsistency Period Was Improperly Extended

For 1 of the 110 sampled individuals, the Federal marketplace improperly extended the individual's income inconsistency period when the individual did not demonstrate a good-faith effort to obtain the required documentation. The sampled individual had an income inconsistency period that began on November 13, 2017, when the marketplace determined this individual eligible for the APTC and CSRs.³² According to CMS, the marketplace mailed a notice to the individual regarding the income inconsistency,³³ but the notice was undeliverable and returned to the marketplace. The marketplace also attempted to contact the individual twice by phone, but both calls went to voicemail. The individual did not submit any supporting documentation to the marketplace to resolve the inconsistency during the inconsistency period, which ended on February 11, 2018.

Because the inconsistency period ended, the Federal marketplace should have expired the inconsistency and determined the individual ineligible for insurance affordability programs by March 15, 2018, according to its own procedure to expire inconsistencies by the 15th of the month following the month in which the 90-day inconsistency period ended. However, it did not expire the inconsistency until April 14, 2018.

³¹ CMS ES SOP [Eligibility Support Standard Operating Procedure] *Inconsistency Expiration and Application Re-Determination*, February 13, 2015. This procedures document was limited to CMS's internal use and was not made publicly available.

³² This individual elected to receive a monthly APTC payment of \$194 when the individual was determined eligible.

³³ According to CMS, this notice also contained specific information on how to resolve the inconsistency.

CMS officials stated that the Federal marketplace granted the individual a 60-day good-faith-effort extension on March 2, 2018, in accordance with CMS's guidance,³⁴ which included returned mail as a reason to grant the extension. However, an extension based on returned mail did not comply with the Federal regulation that required an individual to demonstrate a good-faith effort to obtain required documentation. The returned mail supported that the marketplace made a reasonable effort to contact the individual but did not support that the individual demonstrated a good-faith effort to obtain the required documentation. The Federal regulation does not provide for an extension based on the marketplace's reasonable effort (i.e., its attempt to contact the individual). The marketplace should not have extended the inconsistency period because the individual would not have been able to demonstrate a good-faith effort to obtain required documentation if the individual had never received the notification.

An Income Inconsistency Was Not Expired in Accordance With the Established Procedure

For 1 of the 110 sampled individuals, the Federal marketplace did not expire the individual's income inconsistency in accordance with its established procedure. The sampled individual had an income inconsistency period that began on November 11, 2017, when the marketplace determined this individual eligible for the APTC and CSRs.³⁵ Because the individual did not submit any supporting documentation to resolve the income inconsistency, the 90-day inconsistency period expired on February 15, 2018. According to the marketplace's procedure, the inconsistency should have been expired by March 15, 2018. However, it was not expired until October 15, 2018.

According to CMS, the eligibility and enrollment system had an error, which incorrectly showed that this individual was no longer enrolled in a QHP.³⁶ Because CMS prioritized expiring inconsistencies for enrolled individuals, there was a delay in expiring inconsistencies for disenrolled individuals.

³⁴ *CMS ES SOP Good Faith Extensions for Unresolved Data Matching Issues and Special Enrollment Period Verification Issues*, January 31, 2016. This procedures document was for CMS's internal use and was not made publicly available.

³⁵ This individual elected to receive a monthly APTC payment of \$961 when the individual was determined eligible. If the Federal marketplace had expired this individual's inconsistency in a timely manner, the individual would have still been eligible for a monthly APTC payment of \$833 on the basis of income from available data sources.

³⁶ As of March 2019, CMS stated that it was reviewing the eligibility and enrollment system to determine why the error occurred and to correct the error in this case and similar cases.

The Federal Marketplace Improperly Determined One Individual Eligible for Insurance Affordability Programs Under the Special Rule for Noncitizens

Federal Requirements

An individual is eligible for the APTC if the Federal marketplace determines that he or she is expected to have a household income of greater than or equal to 100 percent but not more than 400 percent of the FPL for the benefit year for which coverage is requested (45 CFR § 155.305(f)). Further, an individual is eligible for CSRs if he or she meets the requirements for the APTC and is expected to have a household income that does not exceed 250 percent of the FPL (45 CFR § 155.305(g)). Therefore, if an individual has a household income of less than 100 percent of the FPL, he or she is generally ineligible for insurance affordability programs.³⁷

However, under a special rule for noncitizens who are lawfully present and ineligible for Medicaid because of their immigration status, the Federal marketplace must determine these individuals eligible for insurance affordability programs even if they have household incomes of less than 100 percent of the FPL (ACA § 1401(a) and 45 CFR § 155.305(f)(2)).³⁸ Specifically, qualified immigrants who entered the United States on or after August 22, 1996, must generally wait 5 years after obtaining a qualified status before becoming eligible for Medicaid. (This is referred to as “the 5-year bar.”) Consequently, under the special rule, qualified immigrants who do not meet the 5-year bar can be determined eligible for insurance affordability programs even if they have household incomes of less than 100 percent of the FPL.

Eligibility Was Improperly Determined Under the Special Rule for Noncitizens

For 1 of the 110 sampled individuals, the Federal marketplace improperly determined the individual eligible for insurance affordability programs under the special rule. For the sampled individual, although these data showed that he had a household income of less than 100 percent of the FPL, they also showed that he had met the 5-year bar (i.e., had a qualified immigration status for 5 years). Specifically, because these data showed that the individual had a qualified immigration status beginning on December 8, 2010, he met the 5-year bar on December 8, 2015, 2 years before the Federal marketplace determined his eligibility for the 2018 coverage year. However, the marketplace applied the special rule to this individual and determined him eligible for the APTC and CSRs.³⁹ Although his income was less than 100 percent of the FPL, the special rule was not applicable to him because he had met the 5-year bar before his eligibility determination.⁴⁰

³⁷ The individual may be eligible for Medicaid.

³⁸ For the purposes of determining eligibility, the Federal marketplace treats these individuals as though their household incomes are equal to 100 percent of the FPL.

³⁹ This individual elected to receive a monthly APTC payment of \$335 when he was determined eligible.

⁴⁰ This individual may have been eligible for Medicaid.

According to CMS, the eligibility and enrollment system automatically carries over information on whether an individual met the 5-year bar from a previous year's application. As a result, an individual who did not meet the 5-year bar in a previous coverage year would continue to show in the system as not meeting the 5-year bar for the current coverage year. This erroneous information could cause the marketplace to improperly determine an individual eligible for insurance affordability programs under the special rule.

THE FEDERAL MARKETPLACE MAY HAVE IMPROPERLY DETERMINED SOME INDIVIDUALS' ELIGIBILITY FOR INSURANCE AFFORDABILITY PROGRAMS

The Federal marketplace may have improperly determined five sampled individuals' eligibility for insurance affordability programs. Specifically, for our sample of 110 individuals, the marketplace did not (1) maintain documentation for 3 individuals when verifying minimum essential coverage through non-ESI, (2) place 1 individual in an inconsistency period when she had attested to being eligible for minimum essential coverage through ESI, or (3) properly resolve 1 individual's income inconsistency. As a result, the marketplace could not support that the individuals were eligible for insurance affordability programs.

The Federal Marketplace Did Not Maintain Documentation When Verifying Three Individuals' Eligibility for Minimum Essential Coverage Through Non-Employer-Sponsored Insurance

Federal Requirements

To determine eligibility for insurance affordability programs, the marketplace must verify that an individual is not already eligible for minimum essential coverage through non-ESI (45 CFR §§ 155.305(f) and (g)). Non-ESI includes government-sponsored programs (e.g., Medicare, Medicaid, CHIP, TRICARE, and Peace Corps) and other plans (26 U.S.C. § 5000A(f)). If an individual is eligible for one of these programs, such as Medicaid or CHIP, the individual is not eligible for the APTC and CSRs.

The Federal marketplace must maintain records sufficient to show its compliance with Federal requirements, including records relating to eligibility verifications (45 CFR § 155.1210).

Documentation Was Not Maintained for Verifying Eligibility for Minimum Essential Coverage Through Non-Employer-Sponsored Insurance

For 3 of the 110 sampled individuals, the Federal marketplace did not maintain documentation to support that it had verified whether the individuals were eligible for minimum essential coverage through non-ESI. Specifically, the Federal marketplace did not maintain application data showing that it had verified the individuals' eligibility for Medicaid and CHIP, and the marketplace determined them eligible for the APTC and CSRs.⁴¹

⁴¹ These three individuals and their households elected to receive monthly APTC payments of \$1,539, \$377, and \$1,492 when they were determined eligible.

CMS officials stated that when verifying eligibility for minimum essential coverage through non-ESI, the Federal marketplace did not receive a response through the Data Hub for all of the data sources. CMS officials also stated that the eligibility and enrollment system was designed so that if responses were not received through the Data Hub from some of the data sources (e.g., Medicaid), the system did not record that the verification for those data sources was performed.

The Federal Marketplace Did Not Place One Individual in an Inconsistency Period When She Attested to Being Eligible for Minimum Essential Coverage Through Employer-Sponsored Insurance

Federal Requirements

To determine eligibility for insurance affordability programs, the Federal marketplace must verify that an individual is not already eligible for minimum essential coverage (45 CFR § 155.305(f) and (g)). Minimum essential coverage includes coverage under ESI if such coverage is affordable and meets the minimum value standard (26 U.S.C. § 5000A(f) and 26 CFR § 1.36B-2(c)(3)).

If an applicant's attestation is not reasonably compatible with other information provided by the applicant, the Federal marketplace must follow inconsistency procedures (45 CFR § 155.320(d)(3)(i)).

An Individual Was Not Placed in an Inconsistency Period

For 1 of the 110 sampled individuals, the Federal marketplace did not place an individual in an inconsistency period when she attested to being eligible for minimum essential coverage through ESI. The application data showed that she attested to being eligible for employer-sponsored health coverage and that her employer offered minimum essential coverage, but she did not include information on her employer. The marketplace incorrectly determined that the lack of employer information indicated that the individual was not eligible for minimum essential coverage through ESI. As a result, the marketplace determined this individual eligible for the APTC and CSRs.⁴² Instead, the marketplace should have placed the individual in an inconsistency period, as required.

CMS officials stated that the eligibility and enrollment system allowed an individual to continue with the application even if the individual did not complete the required fields related to attestation for minimum essential coverage through ESI, such as employer information. The system was not designed to generate an inconsistency in these circumstances.

⁴² This individual elected to receive a monthly APTC payment of \$448 when she was determined eligible.

The Federal Marketplace Did Not Properly Resolve One Individual's Income Inconsistency

Federal Requirements

If the Federal marketplace is unable to resolve an inconsistency through reasonable efforts, it must generally provide the applicant 90 days to submit satisfactory documentation or otherwise resolve the inconsistency. Generally, if after the inconsistency period, the marketplace remains unable to verify the attestation, it must determine the applicant's eligibility based on the information available from the electronic sources (45 CFR § 155.315(f)). According to CMS's procedures,⁴³ the Federal marketplace uses a reasonable threshold when resolving income inconsistencies. Generally, the inconsistency is considered resolved and the attested annual household income is verified if the income on supporting documentation (documented income), such as a pay stub, is within \$6,000 or 25 percent of the attested income. Further, the inconsistency is considered resolved if the documented income is less than attested income and more than 100 percent of the FPL. CMS stated that the marketplace does not resolve income inconsistencies when the documented income is less than 100 percent of the FPL, because the individual may be eligible for Medicaid.

Additional CMS procedures⁴⁴ state that when a marketplace verifies an individual's household income, it treats capital gains⁴⁵ as one-time events, and they are not projected to future years. CMS stated that the marketplace treats capital gains in this way because assets can be sold only once.

An Income Inconsistency Was Improperly Resolved

For 1 of the 110 sampled individuals, the Federal marketplace did not properly resolve her income inconsistency. Specifically, she attested to having a household income of \$68,416 and had an income inconsistency period that began on November 24, 2017, when the marketplace determined her eligible for a monthly APTC payment of \$992.⁴⁶ To resolve the inconsistency, the individual submitted supporting documentation (i.e., the 2016 Federal tax return), which showed a total income of \$99,981, including capital gains of \$57,054. According to CMS, the marketplace excluded the capital gains on the tax return in accordance with CMS's procedures, which resulted in documented income of \$42,927. Because this documented income was less

⁴³ CMS, *CMS ES SOP DMI [Data Matching Issue] Verifications Processing*, March 19, 2015. This procedures document was for CMS's internal use and was not made publicly available.

⁴⁴ CMS, *Marketplace Income Verification Tool 2.0*, January 31, 2019. This procedures document was for CMS's internal use and was not made publicly available.

⁴⁵ According to the IRS, capital gains include income from selling capital assets, such as a home, personal-use items (such as household furnishings), and stocks or bonds held as investments.

⁴⁶ The marketplace did not determine the individual and her household eligible for CSRs.

than the individual's attested income and more than 100 percent of the FPL for a household of three (\$20,420), the marketplace resolved the income inconsistency on March 14, 2018.

However, the income on the Federal tax return also included \$34,422 from other gains.⁴⁷ Because other gains are classified as income from the sale or exchange of assets, similar to capital gains, they can also be sold only once. Therefore, if the Federal marketplace had treated other gains the same as capital gains and excluded income from other gains when resolving the income inconsistency, the individual's documented income would have been \$8,505, which is less than 100 percent of the FPL for a household of three (\$20,420). As a result, this income inconsistency would not have been resolved because the documented income was below 100 percent of the FPL.⁴⁸ According to CMS, the marketplace does not resolve income inconsistencies when an individual's documented income is less than 100 percent of the FPL, because the individual may be eligible for Medicaid.

CMS officials stated that the Federal marketplace did not exclude income from other gains when resolving the inconsistency because CMS did not establish any specific guidance on how to treat this type of income.

PROCEDURES COULD BE IMPROVED FOR VERIFYING COMPLIANCE WITH THE REQUIREMENT TO FILE A FEDERAL TAX RETURN AND RECONCILE ADVANCE PREMIUM TAX CREDIT PAYMENTS

We identified a weakness in the Federal marketplace's procedures related to verifying whether individuals complied with the requirement to file a Federal tax return and reconcile APTC payments. We considered this to be a weakness, not a deficiency, because it did not result in the marketplace's noncompliance with Federal requirements. Improving these procedures could help ensure that the marketplace properly determines individuals' eligibility for insurance affordability programs.

Federal Requirements

The Federal marketplace may not determine an individual eligible for the APTC if IRS data indicate that APTC payments were made on behalf of the individual and the applicable tax filer did not comply with the requirement to file a Federal tax return for that year and reconcile the APTC payments for that period (45 CFR § 155.305(f)(4)). An individual is eligible for CSRs if the individual meets the eligibility requirements for the APTC under 45 CFR § 155.305(g).

⁴⁷ According to the IRS, "other gains" on a Federal tax return include income from selling or exchanging assets used in trade or business.

⁴⁸ After the inconsistency period ended, the Federal marketplace should have relied on the income from electronic data sources to expire the income inconsistency. Because income from available data sources was 490 percent of the FPL for a household size of three, which was above 400 percent of the FPL, the individual would not have been eligible for the APTC unless the individual submitted other income documentation to resolve the inconsistency.

According to CMS’s guidance “Failure to File and Reconcile for Open Enrollment 2018: Overview for Assistants, Agents, & Brokers,”⁴⁹ the Federal marketplace allows an individual to attest that he or she has reconciled a prior year’s APTC to continue to be eligible for insurance affordability programs when the marketplace has received a failure to file and reconcile (FTR) indicator⁵⁰ from the IRS during the eligibility determination performed before a coverage year. The individual can attest to having reconciled the APTC payments by checking a box on the application. The marketplace performs subsequent verifications during the coverage year and if it continues to receive an FTR indicator for the individual, the eligibility for insurance affordability programs is redetermined, and APTC payments are discontinued.⁵¹

The Federal Marketplace Allowed Individuals To Attest to Having Filed a Federal Tax Return and Reconciled Advance Premium Tax Credit Payments Without Verifying Their Attestations

The Federal marketplace relied on the individuals’ attestations on their applications that they had reconciled prior years’ APTC payments; however, information from electronic data sources indicated and, in some cases, continued to indicate that individuals had not reconciled APTC payments.

For four of the six sampled individuals for whom the Federal marketplace received the FTR indicator, the marketplace’s reliance on attestations resulted in the following:

- Three sampled individuals continued to be eligible for the APTC until April 14, 2018, which according to CMS was the date that the Federal marketplace discontinued APTC payments for these individuals. The marketplace originally determined all three individuals eligible for the APTC and two of them eligible for CSRs based on the individuals’ attestations of having reconciled the prior year’s APTC payments.⁵²
- One sampled individual continued to be eligible for insurance affordability programs for the entire 2018 coverage year. Although the initial FTR verification performed on November 14, 2017, showed that a tax-filing extension for the 2016 tax year was granted and APTC payments had not been reconciled, the marketplace did not perform

⁴⁹ Available at <https://marketplace.cms.gov/technical-assistance-resources/failure-to-file-and-reconcile-2018.pdf>. Accessed on February 21, 2019.

⁵⁰ The IRS sends an indicator (i.e., a code) to the Federal marketplace during the income verification process to show that APTC payments were made on behalf of an individual but that the individual did not comply with the requirement to file an income tax return and reconcile APTC payments. CMS refers to this condition as a “failure to file and reconcile.”

⁵¹ According to CMS, the Federal marketplace performed two subsequent FTR verifications on February 28 and April 14, 2018.

⁵² These three individuals and their households elected to receive monthly APTC payments of \$194, \$535, and \$1,318 when they were determined eligible.

subsequent FTR verifications for this individual.⁵³ The marketplace originally determined this individual eligible for the APTC and CSRs based on the individual's attestation of having reconciled the prior year's APTC payments.⁵⁴

According to CMS, it permitted individuals to attest to having reconciled a prior year's APTC payments to account for IRS delays in processing Federal tax returns and updating the FTR data made available to the marketplaces. However, CMS did not require individuals to submit any documentation to support the attestation. In addition, CMS stated that the eligibility and enrollment system did not perform subsequent FTR checks for individuals who received the FTR indicator for a tax-filing extension.⁵⁵ Although Federal regulations do not specify procedures for verifying the requirement to file a tax return and reconcile the APTC payments, there is a risk that individuals who do not meet this requirement will be improperly determined eligible for insurance affordability programs in subsequent coverage years.

CONCLUSION

The Federal marketplace determined individuals' eligibility for enrollment in QHPs and most individuals' eligibility for insurance affordability programs in accordance with Federal requirements. However, on the basis of our sample results, we estimated that for the 2018 coverage year the marketplace improperly determined that 191,896 individuals were eligible for insurance affordability programs (3 percent of the 7.5 million individuals who were determined eligible). These individuals elected to receive an estimated \$40.8 million in monthly APTC payments when they were determined eligible. We also estimated that the marketplace may have improperly determined that 402,207 individuals were eligible for insurance affordability programs (5 percent of the 7.5 million individuals who were determined eligible). These individuals elected to receive an estimated \$180.1 million in monthly APTC payments when they were determined eligible.

These deficiencies occurred because (1) CMS's written guidance permitted the Federal marketplace to improperly extend the income inconsistency period and lacked specific instructions related to resolving income inconsistencies and (2) the marketplace's eligibility and enrollment system had errors in its design or functionality that affected proper verification of individuals' eligibility for insurance affordability programs and proper expiration of inconsistencies.

According to CMS, the Federal marketplace implemented the recommendations related to deficiencies identified during our prior audits of eligibility determinations for enrollment in

⁵³ The tax-filing deadline for the 2016 tax year was October 16, 2017.

⁵⁴ This individual elected to receive a monthly APTC payment of \$1,322 when the individual was determined eligible.

⁵⁵ CMS stated that it planned to update the eligibility and enrollment system to address this issue by May 2019. We did not independently verify whether the system issue was corrected.

QHPs and for insurance affordability programs for coverage year 2014, the first year of the marketplace's operation. During this audit, for the marketplace's fifth year of operation, we did not identify any deficiencies similar to those we previously identified for its first year of operation, except for a deficiency related to resolving income inconsistencies. However, we identified other deficiencies and a procedural weakness related to determining individuals' eligibility for insurance affordability programs. If the marketplace does not determine individuals' eligibility for insurance affordability programs according to Federal requirements, there is an increased risk that the marketplace will make APTC payments on behalf of ineligible individuals.

RECOMMENDATIONS

Although the Federal marketplace properly determined most individuals' eligibility for insurance affordability programs, to address the specific deficiencies that we identified, we recommend that the Centers for Medicare & Medicaid Services:

- redetermine, if necessary, the eligibility of the eight sampled individuals for whom eligibility for insurance affordability programs was not or may not have been determined in accordance with Federal requirements (first recommendation) and
- take steps to ensure that the Federal marketplace:
 - revises its written guidance so that it does not extend an individual's inconsistency period when the marketplace receives returned mail (second recommendation);
 - corrects an error in its eligibility and enrollment system so that the system does not incorrectly show that an individual is no longer enrolled in a QHP (third recommendation);
 - corrects an error in its eligibility and enrollment system so that information on whether an individual met the 5-year bar does not automatically carry over from a previous coverage year (fourth recommendation);
 - implements a change in its eligibility and enrollment system so that the system maintains data showing that verifications of minimum essential coverage through non-ESI were performed, even if responses were not received from some of the electronic data sources (fifth recommendation);
 - corrects an error in its eligibility and enrollment system so that the marketplace generates an inconsistency when an individual's attested information related to eligibility for minimum essential coverage through ESI is not completed (sixth recommendation); and

- establishes guidance to exclude income from other gains on a Federal tax return submitted by an individual when resolving an income inconsistency (seventh recommendation).

To improve procedures related to verifying whether individuals complied with the requirement to file a Federal tax return and reconcile APTC payments, we recommend that the Centers for Medicare & Medicaid Services:

- require an individual to submit supporting documentation (e.g., a Federal tax return with IRS Form 8962) when he or she attests to having filed a tax return to reconcile a previous year's APTC payments (eighth recommendation) and
- ensure that the Federal marketplace's eligibility and enrollment system performs subsequent FTR verifications for an individual who received an FTR indicator for a tax-filing extension (ninth recommendation).

CMS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, CMS concurred with our third through seventh recommendations and our ninth recommendation and provided information on actions that it had taken or planned to take to address those recommendations. However, CMS did not concur with our first, second, and eighth recommendations. In addition, CMS did not concur with a recommendation that appeared only in our draft report related to eligibility for certain noncitizens. CMS also provided technical comments on our draft report, which we addressed as appropriate. CMS's comments, excluding the technical comments, appear as Appendix E.

After reviewing CMS's comments, we maintain that our first, second, and eighth recommendations are valid. However, we removed the recommendation related to eligibility of certain noncitizens because CMS stated that it had appropriately implemented the relevant statute as required.

RECOMMENDATIONS WITH WHICH CMS CONCURRED

CMS concurred with our third through seventh recommendations and our ninth recommendation and provided information on actions that it had taken or planned to take to address those recommendations:

- Regarding our third recommendation, CMS stated that the application for the sampled individual was processed in error because of a system issue, which will be addressed by early 2020.
- Regarding our fourth recommendation, CMS stated that the system issue that contributed to this finding was addressed in May 2019 so that individuals who have met the immigration status requirements for Medicaid (including the 5-year requirement)

and who have household incomes of less than 100 percent of the FPL will not be eligible for the APTC.

- Regarding our fifth recommendation, CMS stated that, consistent with Federal requirements, it accepts individual attestation of minimum essential coverage through non-ESI when information is not available through electronic data sources. CMS stated, however, that it would look for a technological solution to record when the Data Hub's non-ESI service is unavailable. CMS also stated that it had added periodic data-matching checks during the year for individuals who may be dually enrolled in Medicare, Medicaid, or CHIP.
- Regarding our sixth recommendation, CMS stated that the system issue that contributed to this finding was addressed in May 2019 to prevent individuals from proceeding through an application for eligibility for insurance affordability programs or being determined eligible for the APTC without providing complete information on their offer of coverage through an employer.
- Regarding our seventh recommendation, CMS stated that as of October 2019, it had updated guidance to its eligibility support workers on how to address income reported as other gains when reviewing individuals' supporting documentation and resolving income inconsistencies.
- Regarding our ninth recommendation, CMS stated that the system issue that contributed to this finding was addressed in spring 2019 and that all individuals who receive a tax-filing extension that has expired are now included as part of the FTR verification process.

RECOMMENDATIONS WITH WHICH CMS DID NOT CONCUR

CMS did not concur with our first, second, and eighth recommendations. After reviewing CMS's comments, we maintain that these recommendations are valid. The sections below summarize CMS's comments and our responses. In addition, CMS did not concur with a recommendation that appeared only in our draft report, which related to treating citizens and certain noncitizens who are not eligible for Medicaid consistently when the Federal marketplace determines their eligibility for insurance affordability programs. CMS stated that it had appropriately implemented the relevant statute as required. Therefore, we removed the recommendation.

First Recommendation: Redetermination of Eligibility for Sampled Individuals

CMS Comments

CMS stated that it has considered the necessity of retroactively redetermining the eligibility of the sampled individuals, but because these individuals would have already reconciled the APTC for the 2018 coverage year, CMS would be redetermining eligibility based on old information.

CMS also stated that the appropriate method for addressing issues with an individual's eligibility for the premium tax credit is the Federal tax return filing process and reconciliation with the IRS, so whether these individuals would have been required to pay back their APTC is "within the purview of the IRS."

Office of Inspector General Response

Although the sampled individuals should have already reconciled the APTC payments for 2018, some of them may have continued to be determined eligible for insurance affordability programs in subsequent coverage years. Therefore, CMS should redetermine the eligibility of the sampled individuals to ensure that the APTC payments are made to these individuals only when they are eligible. For example, the sampled individual who was improperly determined eligible for insurance affordability programs under the special rule for noncitizens would continue to be eligible in subsequent years if all other requirements for insurance affordability programs continued to be met, unless CMS redetermined the eligibility of the individual.

Second Recommendation: Revision of Written Guidance for Extension of Inconsistency Period

CMS Comments

CMS stated that, consistent with 45 CFR §§ 155.310(g) and 155.315(f)(2)(i), the Federal marketplace is required to notify and provide an applicant the opportunity to submit documentary evidence to prove eligibility within 90 days, beginning on the date on which the notice is sent to the applicant. CMS also stated that, in accordance with 45 CFR § 155.315(f)(3), the inconsistency period may be extended for reasons such as returned mail, which results in notices not being received by an individual. CMS stated that, because of the returned mail for the sampled individual, CMS knew that the individual had not received the required notification and proactively provided an extension for the individual to address the inconsistency.

Office of Inspector General Response

According to 45 CFR § 155.315(f)(3), the Federal marketplace may extend the inconsistency period if an applicant demonstrates that a good-faith effort has been made to obtain required documentation during that period. The regulation does not mention returned mail as a reason to extend an inconsistency period. Although the marketplace made a reasonable effort to contact the sampled individual by both mail and phone, the individual could not have demonstrated a good-faith effort to obtain the required documentation if the individual had never received the written notice or phone call. CMS should not have proactively provided an extension without successfully contacting the individual.

Eighth Recommendation: Requirement To Submit Supporting Documentation When an Individual Attests to Having Filed a Federal Tax Return

CMS Comments

CMS stated that the “ultimate source of truth” as to whether a tax filer has met the requirement to file a Federal tax return and reconcile the APTC is the IRS, because collecting a tax return with IRS Form 8962 from the tax filer does not prove that the documents were submitted to the IRS. CMS also stated that tax transcripts⁵⁶ are not available until several weeks after tax filing, and tax filers are instructed to wait 6 to 8 weeks after mailing in a paper return and 2 to 4 weeks when filing an electronic return before requesting a tax transcript. Further, CMS stated that significant operational barriers exist in communicating directly with tax filers about their filing status because of applicable requirements for safeguarding Federal tax information. Finally, CMS stated that the Federal marketplace has an existing process for checking whether a tax filer has filed a Federal tax return and reconciled a past APTC.

Office of Inspector General Response

We acknowledge that the Federal marketplace has an existing process. However, we found that it allowed three of six sampled individuals to be eligible for insurance affordability programs in the current year based solely on the individuals’ attestations, even though IRS information showed that none of the individuals had filed a tax return to reconcile the prior year’s APTC payments. Under the marketplace’s existing process, ineligible individuals will continue to be determined eligible for insurance affordability programs for part of the year.

Although requiring a tax filer to submit supporting documentation, such as a Federal tax return, does not prove that the individual submitted a tax return to the IRS, this requirement would provide greater assurance that the tax filer had filed a tax return than relying solely on the individual’s attestation. In addition, although tax transcripts are not available until several weeks after tax filing, requiring tax transcripts would provide even greater assurance than relying solely on an individual’s attestation. During our audit, we noted that the Federal marketplace accepted a Federal tax return as supporting documentation when there was an inconsistency related to income and used the tax return to resolve the inconsistency. Also, the marketplace sent notices to tax filers related to the failure to file and reconcile despite significant operational barriers to communication, as mentioned by CMS.

⁵⁶ An individual can order a tax transcript from the IRS, which summarizes Federal tax return information, including any forms and schedules. Tax transcripts are available for the most current tax year and for returns processed during the prior 3 years.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered 7,514,943 individuals whom the Federal marketplace determined eligible for enrollment in QHPs and for insurance affordability programs during the open enrollment period (November 1 through December 15, 2017) for coverage beginning on January 1, 2018.⁵⁷ These individuals elected to receive total monthly APTC payments of \$4,088,782,220 when they were determined eligible.

We reviewed a stratified random sample of 110 individuals for our audit period: 85 individuals who were actively enrolled or re-enrolled in QHPs and 25 individuals who were passively re-enrolled in QHPs. For all 110 individuals, we reviewed supporting documentation (e.g., eligibility verification data) to determine whether the Federal marketplace determined the individuals' eligibility for enrollment in QHPs and for insurance affordability programs in accordance with Federal requirements.

Our audit included only insurance affordability programs available through the Federal marketplace. We did not review other types of insurance affordability programs. We limited our audit of the Federal marketplace's internal controls to those applicable to our objective. Specifically, we gained an understanding of the Federal marketplace's policies and procedures for determining eligibility for individuals.

We performed fieldwork from March 2018 through March 2019, which included contacting CMS in Bethesda, Maryland.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- obtained an understanding of the Federal marketplace's eligibility determination procedures by interviewing marketplace officials and reviewing documentation they provided;
- obtained from the Federal marketplace the enrollment records for individuals who were determined eligible for enrollment in QHPs and for insurance affordability programs during our audit period;

⁵⁷ Our audit included individuals who started but did not complete applications on or before December 15, 2017. The marketplace allowed these individuals to be eligible for coverage starting January 1, 2018. Further, these individuals resided in the 39 States that used the Federal marketplace.

- performed data reliability testing on the enrollment data;
- selected a stratified random sample of 110 individuals, consisting of 3 strata based on enrollment type and elected monthly APTC payments;
- obtained and reviewed eligibility data for each sampled individual to determine whether the Federal marketplace performed the required eligibility verifications and determined eligibility according to Federal requirements;⁵⁸
- estimated the total number of individuals for whom the Federal marketplace improperly or may have improperly determined eligibility;
- estimated the total monthly APTC payments elected to be received on behalf of those individuals when they were determined eligible; and
- discussed the results of our audit with CMS officials.

Appendix C contains our statistical sampling methodology, and Appendix D contains our sample results and estimates.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁵⁸ We reviewed Federal taxpayer information from the IRS for our sampled individuals when it was available.

APPENDIX B: RE-ENROLLMENT PROCESS

The Federal marketplace follows re-enrollment procedures established in CMS guidance⁵⁹ for individuals who were enrolled in QHPs through the end of the prior coverage year.⁶⁰ The marketplace separates these individuals into two groups: actively re-enrolled individuals and passively re-enrolled individuals.

First, the Federal marketplace uses updated income data from the IRS to identify individuals who must actively re-enroll to continue to be eligible for insurance affordability programs in the upcoming year. For example, if these data show that an individual's income was too high to be eligible for insurance affordability programs or an individual did not file a Federal tax return and reconcile the prior year's APTC, the marketplace notifies the individual to update information on his or her application to continue to be eligible for insurance affordability programs. Further, if the marketplace passively re-enrolled an individual for two consecutive coverage years and there was no updated income data available from the IRS, the marketplace notifies the individual to update information on his or her application or insurance affordability programs will be discontinued in the upcoming year. The marketplace sends all individuals a notice to re-enroll, which explains the need to actively re-enroll to continue to be eligible for insurance affordability programs, if necessary. For all actively re-enrolling individuals, the marketplace uses the same verification processes that it uses for new applicants when determining eligibility for enrollment in QHPs and for insurance affordability programs.

For individuals who do not actively re-enroll, the Federal marketplace attempts to automatically (i.e., passively) re-enroll them in the same or a similar QHP for the upcoming coverage year and determines their eligibility for insurance affordability programs. For these passively re-enrolled individuals, the marketplace uses the most recently verified income information available, information from the prior application (e.g., family size), the upcoming year's health plan premium information, and updated FPL tables to recalculate the APTC and redetermine eligibility for CSRs. If an individual who can be passively re-enrolled chooses to update information on his or her application or submits a new application, the individual is considered to be actively re-enrolling.

⁵⁹ CMS, *Guidance on Annual Eligibility Redeterminations and Re-Enrollments for Marketplace Coverage for 2016*, April 22, 2015. Available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/annual-redeterminations-for-coverage-42215.pdf>. Accessed on February 21, 2019. CMS issues similar guidance annually to provide updates on the re-enrollment process for the upcoming coverage year.

⁶⁰ The marketplace performs these procedures twice before the start of the coverage year.

APPENDIX C: STATISTICAL SAMPLING METHODOLOGY

SAMPLING FRAME

We obtained from CMS a text file containing enrollment data for individuals who were determined eligible for enrollment in QHPs and for insurance affordability programs and imported the text file into a database. We filtered this database to create our sampling frame, which consisted of 7,514,943 individuals who were determined eligible for enrollment in QHPs and for insurance affordability programs beginning on January 1, 2018, and who elected to receive a total of \$4,088,782,220 in monthly APTC payments when they were determined eligible for coverage beginning January 1, 2018.

SAMPLE UNIT

The sample unit was an individual determined eligible by the Federal marketplace for enrollment in a QHP and for insurance affordability programs.

SAMPLE DESIGN

We used a stratified random sample to determine whether the Federal marketplace determined individuals' eligibility for enrollment in QHPs and for insurance affordability programs in accordance with Federal requirements. Because the eligibility determination process for passively re-enrolled individuals is different from that process for new applicants (i.e., actively enrolled individuals) or actively re-enrolled individuals, we divided the 7,514,943 individuals into two groups: (1) passively re-enrolled individuals and (2) actively enrolled or actively re-enrolled individuals. The passively re-enrolled individuals were the first stratum. To improve the sampling efficiency, we further divided actively enrolled or re-enrolled individuals into two strata based on the elected monthly APTC payments per individual.

We used the following three strata:

- Stratum 1: individuals who were passively (i.e., automatically) re-enrolled (1,264,903 individuals who elected to receive \$676,653,710 in total monthly APTC payments).
- Stratum 2: individuals who were actively enrolled or re-enrolled in a QHP in which the elected monthly APTC payment, when divided by the number of individuals on the policy, was \$650 or less (4,348,445 individuals who elected to receive \$1,651,030,360 in total monthly APTC payments).
- Stratum 3: individuals who were actively enrolled or re-enrolled in a QHP in which the elected monthly APTC payment, when divided by the number of individuals on the

policy, was more than \$650 (1,901,595 individuals who elected to receive \$1,761,098,150 in total monthly APTC payments).⁶¹

SAMPLE SIZE

We selected 110 individuals: 25 individuals from stratum 1, 50 individuals from stratum 2, and 35 individuals from stratum 3.

SOURCE OF RANDOM NUMBERS

We generated the random numbers using the OIG, Office of Audit Services, statistical software.

METHOD OF SELECTING SAMPLE UNITS

We consecutively numbered the individuals within strata 1 through 3. After generating the random numbers for each stratum, we selected the corresponding frame items.

ESTIMATION METHODOLOGY

We used the empirical likelihood approach, which we programmed using Microsoft Excel software, to calculate the point estimates and the 90-percent confidence intervals shown in Appendix D.

⁶¹ Because the elected APTC payment is associated with a QHP's policy and there could be multiple individuals on a policy, for strata 2 and 3 we divided the elected APTC payment by the number of individuals to calculate the APTC payment per individual.

APPENDIX D: SAMPLE RESULTS AND ESTIMATES

Table 1: Sample Detail and Results for Individuals Who Were Improperly Determined Eligible for Insurance Affordability Programs

Stratum	No. of Individuals in Frame	Sample Size	Value of Elected Monthly APTC Payments for Sample	Individuals Who Were Improperly Determined Eligible	
				No. of Individuals	Value of Elected Monthly APTC Payments for Individuals
1	1,264,903	25	\$14,786	1	\$335
2	4,348,445	50	18,402	1	194
3	1,901,595	35	33,755	1	128
Total	7,514,943	110	\$66,943	3	\$657

Table 2: Sample Detail and Results for Individuals Who May Have Been Improperly Determined Eligible for Insurance Affordability Programs

Stratum	No. of Individuals in Frame	Sample Size	Value of Elected Monthly APTC Payments for Sample	Individuals Who May Have Been Improperly Determined Eligible	
				No. of Individuals	Value of Elected Monthly APTC Payments for Individuals
1	1,264,903	25	\$14,786	0	\$0
2	4,348,445	50	18,402	4	1,605
3	1,901,595	35	33,755	1	746
Total	7,514,943	110	\$66,943	5	\$2,351

**Table 3: Estimated Totals
(Limits Calculated at the 90-Percent Confidence Level)**

	Lower Limit	Point Estimate	Upper Limit
Total No. of Individuals Who Were Improperly Determined Eligible	61,425	191,896	446,293
Total Value of Elected Monthly APTC Payments for Individuals Who Were Improperly Determined Eligible	\$12,732,545	\$40,811,111	\$95,655,697
Total No. of Individuals Who May Have Been Improperly Determined Eligible	176,072	402,207	754,174
Total Value of Elected Monthly APTC Payments for Individuals Who May Have Been Improperly Determined Eligible	\$78,414,650	\$180,078,827	\$342,587,841

APPENDIX E: CMS COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator

Washington, DC 20201

DATE: October 17, 2019

TO: Joanne Chiedi
Acting Inspector General
Office of Inspector General

FROM: Seema Verma
Administrator
Centers for Medicare & Medicaid Services

SUBJECT: Office of Inspector General (OIG) Draft Report: The Federal Marketplace Properly Determined Individuals' Eligibility for Enrollment in Qualified Health Plans but Improperly Determined That an Estimated 3 Percent of Individuals Were Eligible for Insurance Affordability Programs (A-09-18-01000)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report. CMS is committed to accurately verifying the eligibility of individuals who apply for enrollment in qualified health plans (QHPs) or insurance affordability programs through the Federally-facilitated Exchanges (for convenience, referred to here as the Exchange).

CMS has instituted strong program safeguards to ensure that only individuals who are eligible are enrolled in Exchange coverage and that they are only receiving the amount of financial assistance they are eligible for. OIG's 2018 review of 110 individuals indicated that the Exchange properly determined that all individuals in their sample were eligible for enrollment in QHPs and only eight individuals in their sample were or may have been improperly determined eligible for financial assistance. However, as part of CMS's continuous efforts to improve the verification process, we make regular updates to the system, and when system issues are identified, CMS expeditiously works to resolve them. Many of the issues OIG identified in its 2018 sample that relate to errors in system logic were fixed in the spring of 2019.

CMS's primary goal for the Exchange is to provide a seamless enrollment experience for consumers while safeguarding taxpayer funds. CMS uses technology that allows the federal government to provide individuals with real-time, electronic eligibility verification via Trusted Data Sources (TDS) available through the Federal Data Services Hub (Hub) to determine whether an applicant is eligible for enrollment in a QHP and/or for insurance affordability programs. The Hub provides a secure electronic connection between the Exchange or State Medicaid/CHIP agencies with federal and private databases, which are used to verify eligibility. The Hub supported hundreds of millions of data verifications during the first five open enrollment periods and continues to do so effectively.

Sometimes an applicant's eligibility information cannot be verified in real time by the TDS. These situations often involve individuals who have gained or lost a job, have divorced, or have

changed their name. For example, Internal Revenue Service (IRS) data is the primary source of income information, as required by the Patient Protection and Affordable Care Act (PPACA), and such data may be up to two years old, depending on the most recent federal income tax return filed by the applicant. When submitting the application information required by the PPACA, individuals attest, under penalty of perjury, that the information they submit is accurate. Knowingly and willfully providing false or fraudulent information is a violation of federal law and subject to a fine of up to \$250,000.

During the inconsistency resolution period, PPACA Section 1411 (e)(4)(B)(i) provides applicants with eligibility for coverage through the Exchange or for an insurance affordability program based on the information they attested to in their application. In these cases, the statute also requires that the Exchange make a reasonable effort to identify and address the cause of the inconsistency, including by contacting the application filer to confirm the accuracy of the information submitted. If an applicant provides information that cannot be verified by the trusted data sources, this does not necessarily mean the individual is ineligible for enrollment in a QHP and/or insurance affordability programs.

Consistent with statute and regulations, to resolve such an inconsistency, the Exchange provides the applicant the opportunity to submit documentary evidence to prove eligibility within 90 or 95 days (as applicable, depending on the category of inconsistency) beginning on the date on which the notice is sent to the applicant. In limited circumstances, the time period may be extended if the applicant demonstrates that a good faith effort has been made to obtain the required documentation during the period. Staff review the supporting documentation submitted by applicants to check that it is valid and sufficient to verify the application information before resolving the inconsistency. If an applicant does not provide satisfactory documentation within the required time to resolve their inconsistency, the Exchange will subsequently determine the applicant's eligibility based on the information contained within the trusted data sources, as required by the PPACA and, if necessary, will end enrollment through the Exchange and/or adjust the advance payments of the premium tax credit (APTC) as appropriate.

During open enrollment, those individuals enrolled in QHPs who do not return to the Exchange to actively re-enroll for the upcoming coverage year are generally automatically re-enrolled in the same QHP or another QHP intended to be similar to their current QHP. The Exchange re-determines such individuals' eligibility for APTC based on the most recent income information available through trusted data sources and updated premium information. Individuals who are determined under this process to no longer be eligible for APTC are required to submit new application information to re-determine eligibility, or they are re-enrolled without APTC.

To further protect the integrity of the Exchange, and in accordance with the eligibility process created by the PPACA, at the end of the tax year, every tax filer on whose behalf APTC was paid must file a federal income tax return and Form 8962 to reconcile the APTC received based on the tax filer's final actual household income for the year. The IRS, through the tax filing process, reconciles the difference between the APTC paid to the QHP issuer on the tax filer's behalf and the actual amount of the premium tax credit that the tax filer was entitled to claim. If individuals enrolled in Exchange coverage with APTC do not file their tax return and reconcile APTC previously paid on their behalf, they are not eligible to continue to receive APTC.

The Exchange has a process for verifying whether a tax filer has filed a federal income tax return and reconciled past APTC in order to determine future eligibility for APTC. As part of this process, referred to as Failure to File and Reconcile (FTR) the Exchange receives data from IRS for current enrollees indicating tax filer(s) who received APTC in the prior coverage year, but have not taken the necessary steps to file a federal income tax return and reconcile APTC. CMS understand that it takes the IRS 3 to 12 weeks to process a tax return, depending on how and when it is filed (paper vs. electronic), so the IRS data available to the Exchange is not always current. Because of these tax return processing delays, tax filers are able to attest on their application to having filed their federal income taxes and reconciled their APTC, under penalty of perjury, in order to remain eligible for APTC. However, if IRS data indicates that a tax filer has not filed and reconciled and they have not attested to doing so on their application, the Exchange will end their APTC. Shortly after the Open Enrollment period ends, the Exchange re-checks IRS data to confirm the tax filing and reconciliation status for those tax filers who attested to having filed and reconciled APTC, and if the IRS data indicates the tax filer has still not done so, the Exchange ends APTC for the tax household going forward.

OIG's recommendations and CMS's responses are below.

OIG Recommendation

We recommend that CMS redetermine, if necessary, the eligibility of the eight sampled individuals for whom eligibility for insurance affordability programs was not or may not have been determined in accordance with Federal requirements.

CMS Response

CMS non-concurs with this recommendation. CMS has considered the necessity of retroactively redetermining the eligibility of the sampled individuals, but given these individuals would have already received their 2018 1095-A forms and filed 2018 federal income taxes, reconciling any APTC, CMS would be redetermining eligibility based on old information that has been overcome by events. Per PPACA Sec. 1401 (section 36B of the Internal Revenue Code) the amount of premium tax credit for which the tax filer is eligible based on the tax household's actual modified adjusted gross income for the year as well as compliance with other APTC eligibility factors. The appropriate method for addressing issues of a consumer's eligibility for premium tax credits at this point is the federal income tax filing process and reconciliation with the IRS. Therefore, whether or not these individuals would have been required to pay back their APTC is within the purview of the IRS.

OIG Recommendation

We recommend that CMS take steps to ensure that the Federal marketplace revises its written guidance so that it does not extend an individual's inconsistency period when the marketplace receives returned mail.

CMS Response

CMS non-concurs with this recommendation. In instances where an applicant's eligibility information cannot be verified in real time by a trusted data source, PPACA Section 1411 (e)(4)(A)(i) requires the Exchange to make a reasonable effort to identify and address the cause

of the inconsistency by contacting the application filer to confirm the accuracy of the information submitted.

During this inconsistency resolution period, the PPACA provides the applicant with eligibility for coverage through the Exchange or for an insurance affordability program based on the information they attested to in their application. Consistent with 45 C.F.R. §155.310(g) and 45 C.F.R. §155.315(f)(2)(i), the Exchange is required to notify and provide the applicant the opportunity to submit documentary evidence to prove eligibility within 90 days, beginning on the date on which the notice is sent to the applicant.

In accordance with 45 C.F.R. §155.315(f)(3), the time period may be extended for reasons such as returned mail, which results in required notices not being received. In this instance, CMS had knowledge that the applicant did not receive required notification and proactively provided an extension for the applicant to address the inconsistency.

OIG Recommendation

We recommend that CMS take steps to ensure that the Federal marketplace corrects an error in its eligibility and enrollment system so that the system does not incorrectly show that an individual is no longer enrolled in a QHP.

CMS Response

CMS concurs with this recommendation. This application was processed in error due to a system issue. The system issue that contributed to this finding is being addressed by early 2020. In this instance, the application was updated to show that the individual elected to enroll in a QHP and the inconsistency was processed in accordance with CMS policies and procedures.

OIG Recommendation

We recommend that CMS take steps to ensure that the Federal marketplace corrects an error in its eligibility and enrollment system so that information on whether an individual met the 5-year bar does not automatically carry over from a previous coverage year.

CMS Response

CMS concurs with this recommendation. In May 2019, CMS addressed the system issue that contributed to this finding. Per PPACA Sec. 1401(c)(1)(B) and IRS regulation 26 C.F.R. §1.36B-2(b)(5), if an individual has a household income of less than 100 percent of the federal poverty level (FPL) and the individual is lawfully present in the United States, but is not eligible for Medicaid by reason of immigration status, the individual must be treated as though their household income is equal to 100 percent FPL for purposes of determining eligibility for APTC. Lawfully present individuals with certain immigration statuses must wait five years before becoming eligible for enrollment in Medicaid. Individuals who have met the immigration requirements for Medicaid, including the 5 year requirement, and who have a household income of less than 100 percent FPL will not be eligible for APTC. The individual identified by OIG who was affected by this system defect was required to file a 2018 tax return so that IRS could determine their final eligibility for the premium tax credit in accordance with their policies.

OIG Recommendation

We recommend that CMS take steps to ensure that the Federal marketplace implements a change in its eligibility and enrollment system so that the system maintains data showing that verifications of minimum essential coverage through non-ESI were performed, even if responses were not received from some of the electronic data sources.

CMS Response

CMS concurs with this recommendation. CMS will explore ways to address the system issue that contributed to this finding. Consistent with 45 C.F.R. §155.320(d)(4), CMS accepts individual attestation of minimum essential coverage through non-employer sponsored insurance (ESI) in instances where information is not available through electronic data sources; however, CMS will look for a technology solution to record instances when the Hub non-ESI service is unavailable. For the small number of individuals who applied for coverage while the service was unavailable, CMS has also added periodic data matching checks during the year for individuals who may be dually enrolled in Medicare or Medicaid/CHIP to ensure they are not unnecessarily dually enrolled in coverage.

OIG Recommendation

We recommend that CMS take steps to ensure that the Federal marketplace corrects an error in its eligibility and enrollment system so that the marketplace generates an inconsistency when an individual's attested information related to eligibility for minimum essential coverage through ESI is not completed.

CMS Response

CMS concurs with this recommendation. In May 2019, CMS addressed the system issue that contributed to this finding. The Exchange now prevents individuals from proceeding through an application for eligibility for insurance affordability programs or being determined eligible for APTC without providing complete information on their offer of coverage through an employer. The individual identified by OIG who was affected by this system defect was required to file a 2018 federal income tax return so that IRS could determine the individual's final eligibility for the premium tax credit in accordance with their policies.

OIG Recommendation

We recommend that CMS take steps to ensure that the Federal marketplace establishes guidance to exclude income from other gains on a Federal tax return submitted by an individual when resolving an income inconsistency.

CMS Response

CMS concurs with this recommendation. As of October 2019, CMS has updated guidance to its Eligibility Support Workers on how to address income reported as other gains, which could include income from selling or exchanging assets used in trade or business, when reviewing applicants' supporting documentation and resolving income inconsistencies.

OIG Recommendation*

We recommend that CMS work with the IRS, as necessary, to determine whether a statutory change is appropriate to ensure that citizens and noncitizens who are not eligible for Medicaid

OIG Note: We removed this recommendation from the final report.

are treated consistently when the Exchange determines their eligibility for insurance affordability programs.

CMS Response

CMS non-concurs with this recommendation. OIG incorrectly characterized the current Exchange functionality as a procedural weakness of the Exchange. Rather, CMS has appropriately implemented the statute as required and developed associated regulations in line with IRS tax code. Per PPACA Sec. 1401(c)(1)(B) and IRS regulation 26 C.F.R. §1.36B-2(b)(5), if an individual has a household income of less than 100 percent of the FPL and the individual is lawfully present in the United States, but is not eligible for Medicaid by reason of immigration status, the individual must be treated as though their household income is equal to 100 percent FPL for purposes of determining eligibility for APTC. Any statutory changes to the tax code would need to be addressed by Congress.

OIG Recommendation

We recommend that CMS require an individual to submit supporting documentation (e.g., a Federal tax return with IRS Form 8962) when he or she attests to having filed a tax return to reconcile a previous year's APTC payments.

CMS Response

CMS non-concurs with this recommendation. The ultimate source of truth as to whether a tax filer has met the requirement to file and reconcile their APTC is IRS, as collecting a tax return with IRS Form 8962 from the tax filer does not prove that the documents were submitted to IRS. In addition, tax transcripts are not available until several weeks after tax filing and tax filers are instructed to wait 6-8 weeks after mailing in a paper return and 2-4 weeks when filing an electronic return before requesting a tax transcript. Lastly, significant operational barriers exist in communicating directly with tax filers about their filing status due to applicable requirements for safeguarding federal tax information (FTI).

The Exchange has an existing process for checking whether a tax filer has filed a federal income tax return and reconciled past APTC in order to determine future eligibility for APTC. The Exchange receives data from IRS for current enrollees indicating when their tax filer(s) received APTC in the prior coverage year, but has not taken the necessary steps to file a federal income tax return and reconcile APTC. Given it takes IRS 3 to 12 weeks to process a tax return, depending on how and when it is filed (paper vs. electronic), tax filers have the opportunity to attest to tax filing and reconciliation status on their application in order to remain eligible for APTC. If a tax filer is found to have not filed and reconciled past APTC, and has not attested to filing and reconciling on their application, the Exchange will end their APTC. Shortly after the Open Enrollment period ends, the Exchange re-checks IRS data to confirm the tax filing and reconciliation status for those tax filers who attested to having filed and reconciled APTC, and if the IRS data indicates the tax filer has still not done so, the Exchange ends APTC for the tax household going forward.

OIG Recommendation

We recommend that CMS ensure that the Federal marketplace's eligibility and enrollment system performs subsequent FTR verifications for an individual who received an FTR indicator for a tax-filing extension.

CMS Response

CMS concurs with this recommendation. In the spring of 2019, CMS addressed the system issue that contributed to this finding. All individuals who receive a tax-filing extension that has expired are now included as part of the failure to file and reconcile verification process.