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## **Reporting and Reviewing Data Inaccuracy Reports in State-based Exchanges (SBE) Frequently Asked Questions (FAQs)**

August 14, 2024

### **Overview**

These FAQs are intended to clarify how State-based Exchanges (SBEs) and issuers operating in an SBE (hereinafter referred to as “SBE issuers”) meet the submission deadline requirements for describing enrollment data inaccuracies and resolving them in a timely manner.

### **Background**

45 CFR § 156.1210(a) generally requires SBE issuers to describe all enrollment data inaccuracies, including those that impact advance payments of the premium tax credit (APTC), to the Department of Health and Human Services (HHS) or the SBE, as applicable, in a manner and format specified by HHS or the SBE, within 90 calendar days of the payment and collections report (“90 calendar day deadline”).<sup>1</sup>

In 45 CFR § 156.1210(b), HHS acknowledges that in limited circumstances, HHS may receive and consider an SBE issuer’s enrollment data inaccuracy submission after the 90 calendar day deadline to resolve an enrollment data inaccuracy, when:

1. the SBE issuer notifies the SBE or HHS, as applicable, within 15 calendar days after identifying the enrollment data inaccuracy; and
2. the SBE issuer’s failure to identify the enrollment data inaccuracy and describe it to HHS or the SBE within the required 90 calendar day period was reasonable and not due to the issuer’s misconduct or negligence.

As required under 45 CFR § 155.400(d), SBEs must reconcile enrollment information with SBE issuers and with HHS no less than once per month. The SBE’s monthly reconciliation with HHS is the mechanism by which enrollment data inaccuracies identified by SBE issuers, after being corrected in the SBE’s enrollment data, are transmitted to HHS for APTC payment adjustments.

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<sup>1</sup> 45 CFR § 156.1210(a) states that issuers must describe inaccuracies, “Within 90 calendar days of the date of a payment and collections report from HHS.” We interpret this to mean SBE issuers must submit enrollment data and APTC payment inaccuracies to the SBE or HHS (as required by the SBE and explained in Question 1) within 90 calendar days after the date HHS sends a payment and collections report to SBEs and SBE issuers.

**Question 1: To which government entity should SBE issuers submit their inaccuracies?**

45 CFR § 156.1210(a) provides that SBE issuers must submit their enrollment data inaccuracies in the manner and format prescribed by their SBE. This means, for example, that if an SBE directs SBE issuers to submit certain types of inaccuracies, such as enrollment discrepancies without APTC impact to the SBE, and other types of discrepancies, such as APTC related discrepancies to HHS and the SBE (or to HHS only), the SBE issuer should follow the SBE's instructions.

Because the SBE provides the enrollment data that HHS uses as the basis for its APTC payments to a SBE issuer, the SBE must update its enrollment data before HHS makes any APTC payment adjustments to an SBE issuer, even if the SBE directs its issuers to submit inaccuracies to HHS only. HHS therefore always requires the SBE issuer to work with its SBE to ensure resolution of any inaccuracy impacting APTC payment. For example, if an SBE issuer is directed by its SBE to submit inaccuracies to HHS, the SBE issuer should follow those submission instructions, but any information HHS shares in response to the submission is informational. If the issue remains unresolved, the SBE issuer must follow up with its SBE to identify and rectify the reason for non-resolution.

**Question 2: Can SBE issuers fulfill their obligations to submit inaccuracies by submitting all inaccuracies directly to HHS?**

No. If an SBE directs an SBE issuer to submit an inaccuracy to the SBE, submitting the inaccuracy to HHS will not satisfy the requirement to submit the enrollment data inaccuracy to the SBE as directed by the SBE. However, unless directed otherwise by the SBE, 45 CFR § 156.1210(a) permits SBE issuers to submit inaccuracies to both the SBE and HHS. For all inaccuracies received, HHS will review and provide informational guidance to the SBE and SBE issuer to help guide resolution. SBE issuers directed by the SBE to submit inaccuracies to HHS should submit only to HHS as directed by the SBE.

**Question 3: Are SBE issuers required to submit inaccuracies within 90 calendar days after the date HHS sends a payment and collections report to SBEs and SBE issuers?**

Yes, as described in 45 CFR § 156.1210(a), SBE issuers generally must submit enrollment data and APTC payment inaccuracies to the SBE or HHS (as required by the SBE and explained in Question 1) within 90 calendar days after the date HHS sends a payment and collections report to SBEs and SBE issuers.

**Question 4: Are there any exceptions to the 90 calendar day deadline?**

Yes, but rarely should an SBE issuer miss the 90 calendar day deadline. As explained in 45 CFR § 156.1210(b), HHS acknowledges there may be limited circumstances where HHS may consider submissions received from the issuer or the State Exchange (as applicable) to resolve an inaccuracy after the 90 calendar day deadline, specifically when:

1. an issuer submits the inaccuracy to HHS or its SBE (as required by the SBE and explained in Question 1) within 15 calendar days of identifying the inaccuracy; and

2. the issuer's failure to identify the inaccuracy and submit to HHS or its SBE within the 90 calendar day deadline was reasonable and not due to the issuer's misconduct or negligence.

To further illustrate, the following is an example in which HHS would consider a submission received after the 90 calendar day deadline:

- HHS sends a payment and collections report to the SBE issuer on June 25, 2024. The SBE issuer reviews the payment and collections report but does not identify any enrollment data inaccuracies; therefore, the SBE issuer does not describe any inaccuracies to the SBE or HHS at that time. Several months later, on November 11, 2024, the SBE issuer discovers a system issue that resulted in the miscalculation of APTC for prorated policies. The SBE issuer's failure to discover the system issue was reasonable and not due to the issuer's misconduct or negligence. The SBE issuer notifies HHS, as directed by the SBE, of the enrollment data inaccuracies on November 16, 2024 (which satisfies the requirement to submit an inaccuracy to HHS or the SBE within 15 calendar days after identifying the inaccuracy, if the 90 calendar-day deadline is not met). Because the SBE issuer reported the inaccuracy within 15 calendar days after identifying the inaccuracy, and because the SBE issuer's failure to discover the system issue in time to report the inaccuracy during the initial 90 calendar days was reasonable and not due to the SBE issuer's negligence or misconduct, HHS would consider and work with the SBE issuer to determine if payment adjustment is appropriate to resolve the inaccuracy.

However, the following is an example in which HHS would not consider a submission received after the 90 calendar day deadline:

- HHS sends a payment and collections report to the SBE issuer on June 25, 2024. Without any reason for the delay, the SBE issuer reviews the payment and collections report for the first time on October 24, 2024 and discovers an error which it submits to the SBE on the same day (which would have satisfied the requirement to submit an inaccuracy to HHS or SBE within 15 calendar days after identifying the inaccuracy, if the 90 calendar day deadline is not met). However, because the issuer's failure to submit the inaccuracy within the 90 calendar day deadline was due to their untimely review of the payment and collections report, and the issuer did not provide any reasonable justification for its failure to review the report and submit inaccuracies within the 90 calendar day deadline, the SBE issuer's failure to meet the 90 calendar day deadline is unreasonable and HHS and the SBE may not consider and work with the SBE issuer to resolve the inaccuracy.

For inaccuracies resulting in an APTC overpayment, please review Question 6.

**Question 5: In the rare exceptions to the 90 calendar day deadline, is there a limit to how long an SBE issuer can submit an inaccuracy after the 90 calendar day deadline that would result in APTC payments from HHS and, if so, what is required in these exceptions?**

Yes, there is a limit to how long an SBE issuer can submit an inaccuracy after the 90 calendar day deadline that would result in APTC payments from HHS. As described in 45 CFR § 156.1210(c), for 2015-2019 plan years, HHS will not make any APTC payments to SBE issuers for enrollment data inaccuracies submitted to their SBE or HHS (as directed by the SBE and

explained in Question 1) after December 31, 2023. Beginning with the 2020 plan year and beyond, HHS will not make any APTC payments to SBE issuers for inaccuracies submitted after the 3-year period beginning at the end of the plan year to which the inaccuracy relates.<sup>2</sup> This means that even if an SBE issuer submits an enrollment data inaccuracy for the 2015-2019 plan year within 15 calendar days of identifying it, and its failure to timely identify the inaccuracy and submit it to HHS or the SBE (as applicable) was not unreasonable or due to the issuer's misconduct or negligence, HHS will not consider the inaccuracy if it was submitted after December 31, 2023. For example, even if an SBE issuer reasonably identified a 2019 plan year inaccuracy on January 2, 2024, and submitted the inaccuracy on January 3, 2024, no additional APTC payments from HHS will be made to that issuer.

Further, if an SBE issuer submits a high volume of inaccuracies shortly before the 3-year deadline, this may suggest to an SBE or HHS that the issuer's failure to submit within the 90 calendar day deadline was unreasonable or due to the issuer's negligence or misconduct or that the issuer did not submit the inaccuracies within 15 calendar days of identifying them. For example, it may be unreasonable for an SBE issuer to wait to take any actions to identify 2021 plan year inaccuracies until November 2024, resulting in the submission of multiple inaccuracies in December 2024, unless the SBE issuer can justify its delay in taking action. In this case, HHS and the SBE may not consider and work with the SBE issuer to resolve the inaccuracies.

**Question 6: Is there a deadline by which SBE issuers must report an APTC overpayment?**

Yes, SBE issuers must always notify HHS or the SBE and repay any APTC overpayment regardless of when a payment error is identified, including after the 3-year deadline described in Q5. This requirement aligns with obligations under the False Claims Act.<sup>3</sup>

**Question 7: When an SBE directs its SBE issuers to submit any inaccuracies to the SBE (instead of HHS), how quickly should an SBE review and resolve inaccuracies and send them to HHS?**

To be timely, SBEs should review and resolve data inaccuracies and send them to HHS within 60 calendar days after receipt of a complete<sup>4</sup> inaccuracy submission from an SBE issuer. SBEs should send all enrollment data inaccuracies to HHS via the State Based Marketplace Inbound File (SBMI).

For example, if an SBE issuer submits a complete enrollment data inaccuracy to the SBE on March 31, 2025, in accordance with § 156.1210, the SBE should include the resolution of the submission, if applicable, in an SBMI file to HHS by June 1, 2025. For SBE issuers that submit an enrollment data inaccuracy to the SBE and also to HHS for informational purposes, the SBE issuer should review and resolve the enrollment data inaccuracy within 60 calendar days after the date the SBE issuer submitted the inaccuracy to the SBE and not HHS.

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<sup>2</sup> 45 CFR § 156.1210(c).

<sup>3</sup> See 88 Fed Reg, 25740, 25887 (“Consistent with section 1313(a)(6) of the ACA and 31 U.S.C. 3729, et seq., payments made by, through, or in connection with an Exchange are subject to the False Claims Act if those payment include any Federal funds”).

<sup>4</sup> A complete inaccuracy submission includes all information that an SBE requires or requests to properly assess the amount of APTCs paid to the issuer and receipt of submission of the Dispute Disposition Report from HHS.

When an SBE directs its SBE issuers to submit an enrollment data inaccuracy directly to HHS,<sup>5</sup> HHS will submit the inaccuracy to the SBE on a Dispute Disposition Report (DDR). HHS sends DDRs to SBEs monthly with the enrollment data inaccuracies submitted by the applicable SBE issuers for the prior month. In these situations, SBEs must submit an SBMI file to HHS that corrects all enrollment data inaccuracies eligible for resolution on the DDR within 60 calendar days of receipt of the DDR.

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<sup>5</sup> See Question 1 explaining where SBE issuers should submit their APTC inaccuracies.