

Tip Sheet: Federally-facilitated Marketplace Assister Conflict of Interest Requirements

May 9, 2016

This tip sheet addresses specific conflict of interest requirements for Navigators, in-person assisters,¹ and certified application counselors (CACs) in Federally-facilitated Marketplaces (FFMs)² (collectively, “assisters”).³ These consumer assistance programs are designed to ensure that assisters and assister organizations do not have relationships that could interfere with their ability to provide unbiased outreach and enrollment assistance to consumers. Specifically, certain relationships with health insurance issuers or stop loss insurance issuers could affect, or appear to affect, the impartiality of the help these assisters provide to consumers. Staying free from these conflicts of interest helps assisters satisfy their duty to provide fair, accurate, and impartial information and avoid steering a consumer toward a certain plan.⁴

Navigators and In-Person Assisters

Unless otherwise specified below, the following duties, prohibitions, and disclosure requirements apply to individual Navigators and in-person assisters, and Navigator and in-person assister organizations, in an FFM, including:

¹ By “in-person assister,” we mean non-Navigator assistance personnel carrying out consumer assistance functions under 45 CFR 155.205(d) and (e). “In-person assister” does not include an individual certified application counselor or his or her designated certified application counselor organization.

² The terms “Federally-facilitated Marketplace” and “FFM,” as used in this document, include FFMs where the state performs plan management functions and State Partnership Marketplaces.

³ We note that some, but not all, of the requirements discussed below also apply to Navigators, in-person assisters, and certified application counselors in State-based Marketplaces, but this tip sheet is addressed only to assisters in FFMs.

⁴ This Tip Sheet is current as of the date it was posted to Marketplace.cms.gov and is intended to serve as an overview of the conflict-of-interest requirements that apply to Navigators, in-person assisters, and certified application counselors in FFMs under the Affordable Care Act and CMS regulations. We encourage readers to review the applicable statutes and regulations for a complete and current statement of their contents. Individual assisters such as government employees or licensed professionals should take appropriate steps to ensure compliance with any additional requirements that may apply to them.

- Both **staff and volunteers** of a Navigator or in-person assister organization who perform work related to Navigator or in-person assister program activities or who perform Navigator or in-person assister services.
- A **subgrantee or subcontractor** of a Navigator or in-person assister organization that performs work related to Navigator or in-person assister program activities or that performs Navigator or in-person assister services, and anyone who performs work related to the subgrantee's or subcontractor's Navigator or in-person assister program activities or who performs Navigator or in-person assister services for a subgrantee or subcontractor of a Navigator grantee or in-person assister organization.
- Anyone working for a Navigator or in-person assister organization in roles **supervising Navigator or in-person assister program activities**, even if they are not performing on-the-ground application and enrollment assistance.
- Anyone working for a Navigator or in-person assister organization who is engaged in Navigator or in-person assister **outreach and education activities**.

These duties, prohibitions, and disclosure requirements **do not** apply to persons working for a Navigator or in-person assister organization, including the organization's subgrantee(s) or subcontractor(s) and persons working for the organization's subgrantee(s) or subcontractor(s), **who are in no way involved with the organization's Navigator or in-person assister programs**. Those individuals are not required to comply with Navigator or in-person assister conflict of interest requirements.⁵

- For example, John has several marketing and outreach responsibilities at a Navigator grantee organization, one of which is to help oversee the marketing and outreach activities related to the Navigator program. However, he is not involved in day-to-day decision-making related to that program. Because John helps oversee the marketing and outreach activities related to the Navigator program, he is considered to be working on that program. Therefore, he must comply with all of the Navigator conflict of interest requirements.
- On the other hand, Sue serves on the advisory board of a Navigator grantee organization, but she recuses herself from board discussions of the organization's work on the Navigator grant and therefore has no oversight or decision-making authority over,

⁵ See Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors; Final Rule, 78 FR 42824, 42833 (July 17, 2013) (hereinafter Navigator Standards Final Rule).

or other connection with, the organization's Navigator program. Sue would not be required to comply with the Navigator conflict of interest requirements.

Individuals or entities subject to the conflict of interest requirements for Navigators and in-person assisters in FFMs must:

- **Provide information and services to consumers in a fair, accurate, and impartial manner.** This includes providing information that helps consumers submit their eligibility applications; clarifying the distinctions among health coverage options, including qualified health plans (QHPs); and helping consumers make informed decisions during the health coverage selection process.⁶ These assisters also have a duty to provide information to consumers about the full range of QHP options for which they are eligible, as well as about Medicaid, the Children's Health Insurance Program (CHIP), advance payments of the premium tax credit (APTC), or cost-sharing reductions (CSRs), if they are eligible for those programs.⁷

✓ TIP: For more information about providing fair, accurate, and impartial application and enrollment assistance, please see the Assister Tip Sheet: Dos and Don'ts for Providing Application and Enrollment Assistance in Federally-facilitated and State Partnership Marketplaces, available at <https://marketplace.cms.gov/technical-assistance-resources/dos-and-donts-application-and-enrollment.pdf>.

Individuals or entities that perform Navigator or in-person assister services, and individuals or entities that perform work related to Navigator or in-person assister program activities on behalf of a Navigator or in-person assister organization, must not:

1. **Be a health insurance issuer or issuer of stop loss insurance.**⁸ For example, a company that sells QHPs is not eligible to receive a Navigator grant.
2. **Be a subsidiary of a health insurance issuer or issuer of stop loss insurance.**⁹ For example, a company that is owned or controlled (even partially) by a company selling QHPs is not eligible to be a Navigator or in-person assister organization.

⁶ See 45 CFR 155.210(e)(2) and 155.215(a)(2)(i).

⁷ See 45 CFR 155.215(a)(1)(iii) and 155.215(a)(2)(iv). Additionally, if the state in which the assister is active establishes a Basic Health Program, the assister also must provide eligible consumers with information about the Basic Health Program. See definitions of "insurance affordability program" at 42 CFR 435.4 and 45 CFR 155.300.

⁸ See 45 CFR 155.210(d)(1) ("[A] Navigator must not . . . [b]e a health insurance issuer or issuer of stop loss insurance"); applies to non-Navigator assistance personnel in FFMs through 45 CFR 155.215(a)(2)(i).

⁹ See 45 CFR 155.210(d)(2) ("[A] Navigator must not . . . [b]e a subsidiary of a health insurance issuer or issuer of stop loss insurance"); applies to non-Navigator assistance personnel in FFMs through 45 CFR 155.215(a)(2)(i).

3. **Be an association that includes members of, or lobbies on behalf of, the insurance industry.**¹⁰ For example, an association that represents insurance companies cannot operate as a Navigator or in-person assister organization. However, associations that a wide variety of businesses join in connection with civic and community matters unrelated to the nature of their business, such as bona fide Chambers of Commerce, can be Navigator or in-person assister organizations.¹¹
4. **Receive direct or indirect consideration, including any form of compensation (monetary or in-kind), from a health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any consumer in a QHP or non-QHP.**¹² For example, an agent or broker who is paid a commission for enrolling consumers into QHPs or non-QHPs cannot be a Navigator or in-person assister. For more about what this means, see the section below on “Prohibition on Compensation and Other Consideration.”

✓ TIP: A health care provider is not prohibited from operating as a Navigator or in-person assister organization in an FFM just because it receives payment from a health insurance issuer for health care services it provides.¹³

Navigator and in-person assister organizations in FFMs must attest in writing that the organization and anyone who performs work related to the organization’s Navigator or in-person assister program activities or who performs Navigator or in-person assister services for the organization does not have any of the above four prohibited relationships.¹⁴ Before making this attestation, the organization should carefully evaluate the relationships of anyone who performs work related to Navigator or in-person assister program activities or who performs Navigator or

¹⁰ See 45 CFR 155.210(d)(3) (“[A] Navigator must not . . . [b]e an association that includes members of, or lobbies on behalf of, the insurance industry”); applies to non-Navigator assistance personnel in through 45 CFR 155.215(a)(2)(i).

¹¹ See Navigator Standards Final Rule, 78 FR 42835.

¹² See 45 CFR 155.210(d)(4) (“[A] Navigator must not . . . [r]eceive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or a non-QHP. Notwithstanding the requirements of this paragraph (d)(4), in a Federally-facilitated Exchange, no health care provider shall be ineligible to operate as a Navigator solely because it receives consideration from a health insurance issuer for health care services provided”); applies to non-Navigator assistance personnel in FFMs through 45 CFR 155.215(a)(2)(i). See also Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers; Final Rule and Interim Final Rule, 77 FR 18310, 18333 (Mar. 27, 2012). We interpret the prohibition on receiving direct or indirect consideration from a health insurance or stop loss insurance issuer to apply to consideration received for enrolling individuals or employees in health insurance plans or stop loss insurance inside or outside the Marketplaces (see Navigator Standards Final Rule, 78 FR 42832). A “non-QHP,” for purposes of this prohibition, would not include, for example, auto, life, or homeowners’ policies.

¹³ See 45 CFR 155.210(d)(4) and 155.215(a)(2)(i); see also Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond; Final Rule, 79 FR 30240, 30281 (May 27, 2014).

¹⁴ See 45 CFR 155.215(a)(1)(i) and 155.215(a)(2)(ii).

in-person assister services for the organization (including a subgrantee or subcontractor). CMS Navigator grant applicants must make this attestation during the grant application process.

Navigators and in-person assisters must disclose to the Marketplace and, in plain language, to each consumer they assist, whether they, their Navigator or in-person assister organization, or anyone who performs work related to the organization's Navigator or in-person assister program activities or who performs Navigator or in-person assister services for the organization, has any of the following non-prohibited relationships:¹⁵

- 1. Any non-prohibited lines of insurance business that the person or organization intends to sell while performing Navigator or in-person assister services or performing work related to the organization's Navigator or in-person assister program activities.¹⁶** (This disclosure requirement does not apply, of course, if the person or organization is selling a QHP or non-QHP, because that is prohibited conduct.) For example, if a Navigator has a part-time job selling life insurance, this would not be prohibited, but this information must be disclosed to the Marketplace and to every consumer she assists as a Navigator.
- 2. Certain non-prohibited employment relationships¹⁷ that the person, or their spouse or domestic partner, has with a health insurance or stop loss insurance issuer or its subsidiary.** This includes:
 - **Current employment relationships and former employment relationships within the last 5 years** between the person and a health insurance or stop loss insurance issuer, or its subsidiary.
 - Current employment relationships between the person's **spouse or domestic partner** and a health insurance issuer or stop loss insurance issuer, or its subsidiary.¹⁸

¹⁵ Generally, the disclosure to the Marketplace should be made by the Navigator or in-person assister organization. Additionally, while any subgrantees and subcontractors of Navigator or in-person assister organizations that are subject to this requirement may make these disclosures directly to the consumers they or their staff and volunteers assist, CMS expects subgrantee or subcontractor disclosures to the Marketplace to be made by the parent Navigator or in-person assister organization.

¹⁶ See 45 CFR 155.215(a)(1)(iv)(A) and 155.215(a)(2)(v)(A).

¹⁷ See Navigator Standards Final Rule, 78 FR 42834 ("It is intended that any existing employment relationships disclosed would be non-prohibited relationships, because receipt of any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or a non-QHP would already be prohibited by § 155.210(d)(4).")

¹⁸ See 45 CFR 155.215(a)(1)(iv)(B) and 155.215(a)(2)(v)(B).

For example, if a Navigator has a part-time job as an administrative assistant for a health insurance issuer, and is not receiving payments from the health insurance issuer in connection with enrolling consumers in the issuer's QHPs or non-QHPs, she would not be barred from serving as a Navigator under the prohibitions above. However, the fact that she is employed by a health insurance issuer must be disclosed to the Marketplace and to every consumer she assists as a Navigator.

- 3. Any non-prohibited financial, business, or contractual relationships that the person or organization has with a health insurance issuer or stop loss insurance issuer or its subsidiary.**¹⁹ This includes both existing and anticipated financial, business, or contractual relationships.

Finally, all Navigator and in-person assister organizations must submit to the Marketplace a written plan to remain free of prohibited conflicts of interest while carrying out Navigator or in-person assister duties.²⁰ Depending on the specific relationships that the organization and persons working for the organization have with health insurance and stop-loss insurance issuers, and on whether these relationships change over the course of the organization's involvement in the Navigator or in-person assister program, the Marketplace might require organizations to update this plan or to include specific topics and mitigation strategies in it. For example, the Marketplace might require that the organization outline in its plan the specific measures it would take to ensure that persons with prohibited conflicts of interest are fully screened from, and do not perform any work related to, Navigator or in-person assister program activities for the organization.

Certified Application Counselors (CACs)

Unless otherwise specified below, the following duties, prohibitions, and disclosure requirements apply to CACs and CAC designated organizations in an FFM. This includes:

- **All staff and volunteers certified by a CAC designated organization to perform CAC services**, including certified staff and volunteers of a CAC designated organization **engaged in outreach and education activities**. (Reminder: CACs are permitted but not required to perform outreach and education activities.)
- Anyone who performs work related to CAC program activities **on a CAC designated organization's behalf**, even if they are not performing on-the-ground application and enrollment assistance, including anyone **supervising a CAC designated organization's CAC program activities** on the organization's behalf.

¹⁹ See 45 CFR 155.215(a)(1)(iv)(C) and 155.215(a)(2)(v)(C).

²⁰ See 45 CFR 155.215(a)(1)(ii) and 155.215(a)(2)(iii).

These duties, prohibitions, and disclosure requirements do **not** apply to persons working for a CAC designated organization who are in no way involved with the CAC program. Those individuals are not required to comply with CAC conflict of interest requirements. See the discussion above related to Navigators and in-person assisters for more information and examples about what it means to be in no way involved with an assister program.

Like Navigators and in-person assisters, individuals or entities subject to the conflict of interest requirements for CACs in FFMs must:

- **Provide fair, accurate, and impartial information to consumers.** This includes providing information that assists consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping consumers make informed decisions during the health coverage selection process.²¹ CACs also have a duty to provide information to consumers about the full range of QHP options for which they are eligible, as well as about Medicaid, the Children’s Health Insurance Program (CHIP), advance payments of the premium tax credit (APTC), or cost-sharing reductions (CSRs), if they are eligible for those programs.²² In addition, CACs must act in the best interests of the applicants they are helping.²³

✓ TIP: For more information about providing fair, accurate, and impartial application and enrollment assistance, please see the Assister Tip Sheet: Dos and Don’ts for Providing Application and Enrollment Assistance in Federally-facilitated and State Partnership Marketplaces, available at <https://marketplace.cms.gov/technical-assistance-resources/dos-and-donts-application-and-enrollment.pdf>.

Like Navigators and in-person assisters, CACs and CAC designated organizations, including anyone who performs CAC services or who performs work related to CAC program activities on a CAC designated organization’s behalf, must not:

- **Receive direct or indirect consideration, including any form of compensation (monetary or in-kind), from a health insurance issuer or issuer of stop loss**

²¹ See 45 CFR 155.225(c)(1).

²² See 45 CFR 155.225(c)(1). Additionally, if the state in which the CAC is active establishes a Basic Health Program, the CAC also must provide eligible consumers with information about the Basic Health Program. See definitions of “insurance affordability program” at 42 CFR 435.4 and 45 CFR 155.300.

²³ See 45 CFR 155.225(d)(4).

insurance in connection with the enrollment of any consumer in a QHP or non-QHP.²⁴

- For example, **an agent or broker who makes a commission for enrolling consumers into QHPs or non-QHPs cannot be a CAC.** Similarly, **an agent or broker business organization** cannot be a CAC organization if it receives any form of direct or indirect payment in connection with enrolling consumers in QHPs or non-QHPs.
- If a CAC has a part-time job as an **administrative assistant for a health insurance issuer**, and is not receiving payments from the health insurance issuer in connection with enrolling consumers in the issuer's QHPs or non-QHPs, she would not be barred from serving as a CAC under the prohibitions above, as long as she complied with all of the CAC duties and prohibitions, including providing fair, accurate, and impartial information and disclosing potential conflicts of interest.
- **A health insurance issuer or stop loss insurance issuer is prohibited from serving as a CAC designated organization**, since these entities receive compensation in connection with enrolling consumers in a QHP or non-QHP.

✓ TIP: A health care provider is not prohibited from operating as a CAC or as a CAC organization in an FFM just because it receives payment from a health insurance issuer for health care services it provides.

In addition, persons certified as CACs must:

- **Disclose to the CAC organization, and to every consumer the CAC assists, any non-prohibited relationships the CAC has with QHPs, Medicaid, the Children's**

²⁴ See 45 CFR 155.225(g)(2) ("Organizations designated by the Exchange . . . and certified application counselors must not . . . [r]eceive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals in a QHP or a non-QHP. In a Federally-facilitated Exchange, no health care provider shall be ineligible to operate as a certified application counselor or organization designated by the Exchange . . . solely because it receives consideration from a health insurance issuer for health care services provided"). We interpret the prohibition on receiving direct or indirect consideration from a health insurance or stop loss insurance issuer to apply to consideration received for enrolling individuals or employees in health insurance plans or stop loss insurance inside or outside the Marketplaces (see Navigator Standards Final Rule, 78 FR 42832). A "non-QHP," for purposes of this prohibition, would not include, for example, auto, life, or homeowners' policies.

Health Insurance Program (CHIP), or other potential non-prohibited conflicts of interest.²⁵

- For example, if a CAC organization is a health care provider that contracts with a Medicaid managed care organization to receive payment for health care services it provides, this relationship must be disclosed to every consumer assisted.
- As another example, a CAC who works part-time as an administrative assistant for a health insurance issuer (and who is not prohibited from serving as a CAC because she is not receiving payments from the health insurance issuer in connection with enrolling consumers in the issuer's QHPs or non-QHPs), must disclose this relationship to her CAC organization and to every consumer she assists as a CAC.

In Depth: Prohibition on Compensation and Other Consideration

As discussed above, all individuals in FFM who **perform assister services or who perform work related to an assister program's activities** on behalf of an assister organization (including supervising those activities), as well as their respective assister organizations, **must not receive any consideration, including any form of compensation (monetary or in-kind), directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any consumers in a QHP or non-QHP.**²⁶ We will refer to this requirement as the **prohibition on compensation**. This section provides guidance on how CMS interprets this requirement with respect to assisters in FFM.

What does the prohibition on compensation include?

Prohibited compensation means any financial compensation or other consideration from a health insurance issuer or stop loss insurance issuer that is connected with the enrollment of any consumers in a QHP or non-QHP, including monetary or in-kind compensation of any type, including grants, as well as any other type of influence a health insurance or stop-loss insurance

²⁵ See 45 CFR 155.225(d)(2) ("An organization designated by the Exchange to provide certified application counselor services . . . may certify a staff member or volunteer to perform [CAC duties] only if the staff member or volunteer . . . [d]iscloses to the organization . . . and potential applicants any relationships the certified application counselor or sponsoring agency has with QHPs or insurance affordability programs, or other potential conflicts of interest"). Additionally, if the state in which the CAC is active establishes a Basic Health Program, any non-prohibited relationships the CAC has with the Basic Health Program also must be disclosed to the CAC organization and to every consumer the CAC assists. See definitions of "insurance affordability program" at 42 CFR 435.4 and 45 CFR 155.300.

²⁶ See 45 CFR 155.210(d)(4), 155.215(a)(2)(i), and 155.225(g)(2).

issuer could use, including but not limited to things like gifts and free travel, which may create incentives for assisters to steer individuals to particular QHPs or non-QHPs.²⁷

What does the prohibition on compensation not include?

The prohibition on compensation does not include compensation received from a health insurance or stop loss insurance issuer that is not connected with the enrollment of any consumer(s) in a QHP or non-QHP.

For example:

- Health care providers are not prohibited from operating as assisters in an FFM solely because they receive compensation from a health insurance issuer for health care services they provide.²⁸
- An assister organization may host an annual fundraising event that is sponsored by a health insurance issuer or stop loss insurance issuer, as long as the funds raised are not allocated towards the assister organization's application and enrollment assistance activities, and application and enrollment activities or issuer marketing activities are not performed during the fundraising event. As long as these criteria are met, CMS would not consider the issuer's sponsorship of the fundraising event to be compensation connected with enrollment in a QHP or non-QHP.

In Depth: Staff Members of Health Insurance Issuers or Stop Loss Insurance Issuers

As discussed above, while health insurance and stop loss insurance issuers cannot serve as assister organizations in FFMs, individuals who are staff members of health insurance issuers or stop loss insurance issuers may be interested in serving as assisters. If they otherwise meet eligibility requirements, these individuals may become Navigators, CACs, or in-person assisters in an FFM (and thereby **perform assister services**), or **perform work related to those assister programs' activities** (including supervising those activities) for a Navigator, in-person assister, or CAC organization in an FFM, provided that any direct or indirect compensation they might receive from the issuer is not in connection with the enrollment of any consumers in a QHP or non-QHP. Here are a few examples of activities that (1) do and (2) do not fall under the prohibition on compensation.

²⁷ See discussion of 45 CFR 155.210(d)(4) at 77 FR 18333. Please note that although this prohibition originally applied only to Navigators, we later extended it to in-person assisters in FFMs and CACs by finalizing 45 CFR 155.215(a)(2)(i) and 155.225(g)(2). We would apply the same interpretation of "consideration" to the rules that apply to in-person assisters in FFMs and CACs.

²⁸ See 45 CFR 155.210(d)(4), 155.215(a)(2)(i) and 155.225(g)(2).

1. Activities that would prohibit issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities):

- **Actively licensed "captive" agents employed by a health insurance or stop loss insurance issuer.** These individuals would be ineligible to become assisters if they receive any commissions or salary in connection with the enrollment of any consumers in a QHP or non-QHP.
- **An individual who is a marketing or outreach strategy consultant under contract with a health insurance or stop loss insurance issuer.** Because there is a strong connection between marketing an issuer's QHPs or non-QHPs and enrolling consumers into those products, this individual would be not be eligible to become an assister if he or she receives compensation from the issuer for marketing and outreach activities.
- **An individual who is employed by a health insurance or stop loss insurance issuer as a customer service representative or member services representative.** Because this individual receives a salary or wages from the issuer in part for answering questions from consumers about their enrollment or potential enrollment in QHPs or non-QHPs, this individual would be ineligible to become an assister if he or she receives compensation from the issuer for customer or member services activities.

2. Activities that would not prohibit issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities):

- **Issuer staff members whose activities and compensation are not connected with the enrollment of consumers into an issuer's QHPs or non-QHPs, which might include administrative assistants, facilities managers, or nurses or social workers who perform case management or care coordination work.** As long as these individuals' scope of work does not include activities that are connected with enrollment and their compensation is not connected with enrollment in QHPs or non-QHPs, they would be considered eligible to serve as assisters, provided they meet all other eligibility requirements. However, if these individuals work as Navigators or in-person assisters, their relationship with the issuer must be disclosed to the Marketplace and to all consumers assisted. If these individuals are certified as CACs, they must disclose their relationship with

the issuer to their CAC organization and to all consumers to whom they provide assistance.²⁹

Frequently Asked Questions

Q: I work for a health insurance issuer. Can I be an assister?

A: It depends. As long as the scope of your work with the issuer does not include activities that are connected with enrollment and your compensation is not connected with enrollment in QHPs or non-QHPs, you would be considered eligible to serve as an assister, provided you meet all other eligibility requirements. For example, issuer staff such as administrative assistants, facilities managers, and nurses or social workers who perform case management or care coordination work are likely not receiving direct or indirect compensation from the issuer in connection with the enrollment of consumers in a QHP or non-QHP. On the other hand, issuer staff would not be eligible to become assisters if they receive consideration (e.g. salaries) from the issuer for marketing, outreach, customer service, or member service activities, since these activities are connected with enrolling consumers into QHPs or non-QHPs. If any Navigator or in-person assister has a current, non-prohibited employment relationship with an issuer, this relationship must be disclosed to the Marketplace and to every consumer assisted. A CAC must disclose this type of relationship to the CAC organization and to every consumer assisted.

Q: My spouse works for a health insurance issuer. Can I still be an assister?

A: Yes, as long as this relationship is disclosed either to the Marketplace or your CAC organization (depending on whether you are a Navigator, in-person assister, or CAC) and to each consumer you assist. Current employment relationships between a Navigator or in-person assister's spouse or domestic partner and a health insurance issuer or stop loss insurance issuer, or its subsidiary, are not prohibited. However, if you are a Navigator or in-person assister, this relationship must be disclosed to the Marketplace and to each consumer assisted. CACs, similarly, are required to disclose potential non-prohibited conflict of interests such as this one to their CAC organization, and to every consumer the CAC assists.

Q: I'm an agent or broker actively engaged in selling health insurance or stop loss insurance. Can I be an assister?

A: No. Agents or brokers who receive commissions or other consideration from a health insurance or stop loss insurance issuer as a result of their active involvement in selling health insurance or stop loss insurance receive consideration in connection with the enrollment of consumers in a QHP or non-QHP, and therefore cannot serve as Navigators, CACs, or in-person assisters.

Q: Can a hospital be a CAC designated organization or receive a Navigator grant?

²⁹ See 45 CFR 155.215(a)(1)(iv)(B) and (a)(2)(v)(B); 45 CFR 155.225(d)(2).

A: Yes. A health care provider is not prohibited from operating as a Navigator, in-person assister, or CAC organization in an FFM just because it receives payment from a health insurance issuer for health care services it provides. However, because this would be a non-prohibited financial, business, or contractual relationship that a Navigator or in-person assister organization has with a health insurance issuer, it must be disclosed to the Marketplace and to every consumer assisted by the organization's Navigators or in-person assisters. Similarly, CAC organizations, either directly or through their CACs, must disclose potential non-prohibited conflicts of interest such as this one to each consumer assisted.

Q: I sell auto insurance, but do not sell health insurance or stop loss insurance. Can I be an assister?

A: Yes, as long as this activity is disclosed either to the Marketplace or your CAC organization (depending on whether you are a Navigator, in-person assister, or CAC) and to each consumer you assist. Selling lines of insurance that are not health or stop loss insurance (e.g. auto, life, or homeowners insurance) is not prohibited. However, Navigators and in-person assisters must disclose this relationship to the Marketplace (generally, this is done by their organization) and to each consumer they assist. CACs, similarly, are required to disclose potential non-prohibited conflicts of interest such as this one to their CAC organization, and to every consumer the CAC assists.

Q: Can an assister organization receive a grant or other funds from a health insurance issuer for activities that are not connected with enrollment in a QHP or non-QHP?

A: Yes. An entity that receives a grant or other funding from a health insurance issuer would not be prohibited from serving as an assister organization unless the grant or funding is related to the enrollment of individuals or employees in a QHP or non-QHP.³⁰ However, a Navigator or in-person assister entity would need to disclose the receipt of the grant or funding from the issuer to the Marketplace and to each consumer assisted, because it would be an existing or anticipated financial, business, or contractual relationship with an issuer. Similarly, CAC organizations, either directly or through their CACs, must disclose this potential non-prohibited conflict of interest to each consumer assisted.

Q: Can I invite health insurance issuers to share plan information with consumers or with my organization's assisters?

A: Yes. Assister organizations may invite issuers in their area to share information or attend education sessions regarding plan benefits and details. As long as all health insurance issuers in the Marketplace service area are invited and all applicable assister conflict-of interest provisions are followed, including the rule prohibiting assisters from receiving any consideration directly or indirectly from any health insurance issuer or stop-loss insurance issuer in connection with the enrollment of any individuals or employees in a QHP or non-QHP, such an event would

³⁰ See Navigator Standards Final Rule, 78 FR 42833.

not represent a conflict of interest or violate an assister's duty to provide information and services in a fair, accurate, and impartial manner.³¹

Note: The examples above are not exhaustive. If you have specific questions, please contact the following:

Certified Application Counselors in FFMs: CACQuestions@cms.hhs.gov

HHS Navigators: Your Navigator grant Project Officer or NavigatorGrants@cms.hhs.gov

³¹ See Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017; Final Rule, 81 FR 12204, 12256 (March 8, 2016).

