



BEFORE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
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**Comments of Project Vote, Dēmos, and the League of Women Voters on Updated Standards for  
Exchange Consumer Assistance Programs**

**I. INTRODUCTION:**

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Through its research, advocacy, and direct legal services, Project Vote works to ensure that these constituencies are able to participate fully in American civic life by registering and voting. In pursuit of this goal, Project Vote has also been a national leader in increasing implementation and enforcement of Section 7 of the National Voter Registration Act (NVRA), 52 USC §20506, which requires that certain offices providing public assistance also offer voter registration services. Working with other civil rights organizations, Project Vote has improved Section 7 compliance in 19 states through investigation, cooperative efforts, and litigation.

Dēmos is a research, public policy, and advocacy organization dedicated to building a more democratic and equitable America that promotes the common good. Dēmos combines original research, focused advocacy, and multi-platform communications strategies to advance four fundamental changes to American society: 1) to rebuild pathways to the middle class for all Americans; 2) to reduce the role of wealth and corporate power in politics and policy; 3) to develop a new, reformed economic model for capitalism that promotes the common good; 4) and to reduce racial and class inequities in power, representation, and participation. Dēmos' work has brought about real progress toward political and economic equality for all Americans, with recent successes including the facilitation of voter registration applications by approximately 3 million new, primarily low-income voters through work to implement the oft-neglected National Voter Registration Act.

The League of Women Voters is a nonpartisan, community-based organization that encourages Americans to participate actively and knowledgeably in government and the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 150,000 members and supporters, and is organized in approximately 800 communities and in every State. For over 90 years, the League has led efforts to protect and enhance every American citizen's right to vote.

Project Vote, Dēmos, and the League of Women Voters submit the following comments addressing the Proposed Rule regarding Updated Standards for Exchange Consumer Assistance Programs issued by Centers for Medicare & Medicaid ("CMS"), Department of Health and Human Services ("HHS"), published at 80 FR 75487-75588. CMS has requested comments on this proposed Rule.

This proposed Rule updates many different areas but relevant to these comments, CMS recommends a number of changes to the regulations in part 155, including amending the standards applicable to the consumer assistance functions performed by Navigators, non-Navigator assistance personnel, and certified application counselors. Also relevant is the proposed addition of a Federal platform agreement through which a state exchange may rely on the federally-facilitated exchange for certain functions as an SBE-FP.

With respect to consumer assistance functions, the proposed Rule would add provisions to § 155.210 (e) specifying that Navigators duties include providing other types of assistance, beyond just enrollment assistance, such as post-enrollment assistance. The proposed Rule, while not requiring that non-Navigator assistance personnel or certified application counselors be required to perform these additional functions, notes that nothing would prevent non-Navigator assistance personnel from helping with these activities. The proposed Rule also recommends that the training for Navigators, non-Navigator assistance personnel in FFEs and non-Navigator assistance personnel funded through Exchange Establishment grants, required by § 155.215(b) be expanded to address the additional subjects.

Similar to these proposed changes, we propose adding another additional requirement to the responsibilities of Navigators. In a final rule published in the July 17, 2013 Federal Register (78 FR 42823), CMS established standards for Navigators, non-Navigator assistance personnel in FFEs and non-Navigator assistance personnel funded through an Exchange establishment grant. This final rule, and the subsequent regulations, however, fail to address voter registration. For reasons explained herein, Navigators are required pursuant to Section 7 of the NVRA to provide assistance with voter registration equivalent to the assistance provided in completing eligibility applications.

With respect to the Federal Platform Agreement, the proposed Rule would add to § 155.20 a definition for “Federal Platform Agreement,” add a paragraph (c) to § 155.106 to establish requirements for a State that elects to operate an SBE-FP, and add a paragraph (f) to §155.200 to allow a SBE-FP to rely on HHS services for certain Exchange functions, particularly eligibility and enrollment functions as well as certain consumer call center functions, casework processes, and maintenance of related information technology infrastructure. As explained below, we proposed that the requirements of SBE-FPs and the sharing of functions should include adoption of procedures to comply with Section 7 of the NVRA.

Project Vote, Dēmos, and the League of Women Voters, therefore, urge CMS to further amend part 155 to clarify that Navigators are required to provide assistance with voter registration as required by the NVRA, and also urge CMS to include within new § 155.106(c) and new §155.200(f) the requirement that SBE-FPs must comply with Section 7 of the NVRA. We also urge CMS to modify §155.215 to require training addressing the subject of providing the required NVRA voter registration services. And finally, we requested that it be made clear that even if non-Navigator assistance personnel are not required to provide these voter registration services, nothing prohibits them from helping with these activities.

## II. THE INTERSECTION OF THE NVRA AND THE AFFORDABLE CARE ACT:

### Section 7 of the NVRA:

The National Voter Registration Act was enacted in 1993 with the express purpose of expanding voter registration by making it both simpler to apply and more accessible to demographic groups previously under-represented in the electorate. Section 7 of the NVRA sets forth specific requirements about how voter registration services shall be offered by public assistance offices. Under Section 7, public assistance offices shall: (i) distribute a voter registration application form **with each application for public assistance and with each recertification, renewal or application for a change of address** unless the individual applicant or client affirmatively opts out of voter registration by declining in writing to register to vote; (ii) inquire of the applicant, in writing, whether he or she would like to register to vote or change his or her voter registration address; and **(iii) provide assistance in completing the voter registration forms to the same degree that assistance is provided in completing own benefits applications (“equal assistance”)** See 52 U.S.C. § 20506 (a)(6) (emphasis added).

### Affordable Care Act and Section 7:

The Patient Protection and Affordable Care Act (“ACA”) requires the creation of a unitary application system that will allow any individual applying for health insurance and seeking one of the many forms of health subsidies available under the ACA to complete a “single streamlined application” for whichever program is appropriate for that individual. 45 C.F.R. § 155.405(a). This application system is operated by an entity called a Health Benefit Exchange (“Exchange”). (The Exchanges are governed by sections 1311 to 1321 of the ACA, as implemented by 45 C.F.R. § 155.) States may choose to operate their own Exchange (“State-based Exchange”), be part of an Exchange operated by the federal government (“Federally-facilitated Exchange”), or as a partnership between the federal government and that state (“Partnership Exchange”). Under this proposed Rule, states will also have the option to operate their own exchange using a federal platform for certain functions, particularly eligibility and enrollment (“SBE-FP”).

Each of these types of Exchanges is responsible for administering insurance affordability programs, including premium tax credits, Medicaid and the Children’s Health Insurance Program (“SCHIP”), 45 C.F.R. §§ 155.300-335, and consumers apply to these programs through the one streamlined application (herein after “eligibility application”). 45 C.F.R. § 155.405(a). These insurance affordability programs are public assistance. See, e.g., U.S. Department of Justice, *The National Voter Registration Act of 1993: Questions and Answers*, available at [http://www.justice.gov/crt/about/vot/nvra/nvra\\_faq.php](http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php) (establishing that both Medicaid and SCHIP are public assistance programs covered by the NVRA).

Because there is one streamlined application for *all* consumers using all Exchanges, both Federally-facilitated Exchanges (through Healthcare.gov) and State-based Exchanges, the applications all include consideration of eligibility for all programs, and therefore, all applications are for consideration of the insurance affordability programs, which are public assistance. Therefore, through the single streamline application system, all Exchanges—including the new SBE-FP—are administering applications for public assistance and are subject to the National Voter Registration Act of 1993. 52 U.S.C. § 20506. Section 7

of the NVRA requires “all offices in [a] State that provide public assistance” to help certain applicants register to vote. 52 U.S.C. § 20506 (a)(2) & (a)(6).

Navigators:

Sections 1311(d)(4)(K) and 1311(i) of the Affordable Care Act, and the regulations implementing those provisions, 45 C.F.R. § 155.210, direct all Exchanges to award grants to Navigators who provide fair and impartial information to consumers about health insurance, the Exchange, Qualified Health Plans (“QHPs”), and insurance affordability programs, including premium tax credits, Medicaid and SCHIP. Thus, “Navigators . . . help consumers through the eligibility and enrollment process.” 78 FR at 20583. While Navigators do not determine eligibility and enroll applications in Qualified Health Plans, “Navigators . . . play an important role in facilitating a consumer’s enrollment in a QHP by providing fair, impartial and accurate information that **assists** consumers with submitting the eligibility application, clarifying the distinctions among QHPs, and helping qualified individuals make informed decisions during the health plan selection process.” 78 FR at 20583 (emphasis added); *see also* 45 C.F.R. §155.210.

Given these regulatory requirements, Navigators clearly provide assistance to individuals applying for public assistance, such as the premium tax credits, Medicaid and SCHIP. Because the Navigators are providing consumers with assistance in completing the Exchange eligibility application, they are providing assistance with public assistance applications and, therefore, pursuant to the requirements of Section 7, must provide consumers with the same degree of assistance in completing voter registration application forms, unless the consumer refuses such assistance. We, therefore, urge CMS to further amend part 155 to clarify that Navigator’s obligations include providing assistance with voter registration.

### **III. PROPOSED TRAINING FOR NAVIGATORS:**

As noted, the final rule published in the July 17, 2013 Federal Register (78 FR 42823), establishing standards for Navigators and non-Navigator assistance personnel in FFEs and for non-Navigator assistance personnel funded through an Exchange establishment grant, does not mention training related to voter registration. As explained, to comply with the requirements of Section 7 of the NVRA, Navigators and other non-Navigator assistance personnel must provide assistance to consumers regarding voter registration that is equal to the assistance they provide to consumers in completing the eligibility applications. We, therefore, recommend that a training module regarding voter registration be included in the Navigator training.

This training regarding voter registration should include instruction to Navigators that voter registration is part of the eligibility application and that they must provide consumers the same level of assistance in completing voter registration application forms as they provide with completing the eligibility applications unless the consumer specifically refuses such assistance. This instruction should be part of the standard training.

To ensure the provision of equal assistance, the content of the voter registration component of the training should also include, among other things, instruction about how to complete and submit a voter

registration application and should provide such instruction in a culturally and linguistically appropriate way (including through the use of foreign-language assistance). More specifically, there should be instruction regarding the elements of a voter registration application and the different options for consumers to receive voter registration application forms. For example, instruction should include information as to whether online voter registration is offered by the consumer's home state; if so, who is eligible to use that option; and instruction on how to provide a consumer the voter registration application form if there is no online voter registration available or the consumer cannot use the online voter registration (for example because they do not have a driver's license). The training should also include information about how a consumer can submit a voter registration application form once it is completed. Additionally, if the consumer is able to download and print-out the voter registration application form while the Navigator is assisting the consumer, the Navigator should be trained to review the voter registration application form to ensure that required information, including the signature, is provided.

#### **IV. IMPORTANCE OF INCLUDING VOTE REGISTRATION IN TRAINING:**

In addition to ensuring that Navigators are trained so that they can comply with Section 7, including voter registration as a topic in the content standards for the Navigator training is important for two policy reasons.

##### *Purpose of the NVRA and Navigators is similar:*

The purpose of Section 7 of the NVRA is to ensure that voter registration is offered to individuals applying for public assistance because these individuals are not likely to have an opportunity to register to vote through other means. *See* H.R. Rep. No. 103-66, at 15 (1993) (House-Senate Conference Report). Similarly, "Navigators are an important resource for all consumers, particularly communities that are under-represented in the current health insurance market." 78 FR at 20583. The goal of both these statutes is to provide assistance to individuals with limited access to other resources. It is consistent with the purpose of Section 7 of the NVRA to have the Navigators provide assistance with voter registration to ensure that the voter registration opportunity including in the eligibility application is a meaningful opportunity. And similarly, it is consistent for the purpose of having Navigators as part of the Exchange system if they are trained to provide assistance *with every part* of the eligibility application, including voter registration.

##### *States with State-based Exchanges look to the Federal Training Standards for Guidance:*

The proposed addition of clarifying the voter registration requirements and training proposed here are also important to Navigators operating in states with State-based Exchanges. State-based Exchanges look to CMS and the federal Navigator programs to provide guidance for what these programs should look like, and what is required by the NVRA for the Exchanges. As previously noted by CMS, "we believe that State-based Exchanges may find the federal standards to be useful models, and could draw upon them as they develop and disseminate conflict-of-interest and training standards for Navigators [for State-based Exchanges], or when establishing standards for any non-Navigator assistance program

that is established by the State-based Exchange that is not funded by federal 1311(a) Exchange Establishment grants.” 78 FR at 20585.

## **V. CONCLUSION**

Project Vote, Dēmos and the League of Women Voters urge CMS to amend part 155 as necessary to clarify that the new SBE-FPs must provide voter registration services and that Navigators are required to provide assistance with voter registration as required by the NVRA, and to ensure that the required training addresses NVRA voter registration services. These additions are important because they will ensure that required voter registration services are provided and that the services being provided by the Navigators are consistent both with the NVRA and the Navigator program, namely to assist currently under-represented and under-served populations. Moreover, the State-based Exchanges are likely, and in fact encouraged, to rely upon the federal training standards for their own training programs. This underscores the necessity for CMS to create training standards for Navigators that are in full compliance with the NVRA.