



Errors and Weaknesses in the Paragon Report

A CCLP issue brief

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Introduction: HHS Relies Inappropriately on Faulty Report for ACA Rulemaking

Historically, agencies' expertise in designing regulations has led courts to defer to that expertise, and the record created in the Federal Register has allowed the public, affected parties, and courts, to identify the factual and legal basis for rules or regulatory change. This year, however, the Department of Health and Human Services is relying inappropriately on a report, "The Great Obamacare Enrollment Fraud," (hereinafter "the Paragon report") for proposed changes¹ to operations of the federal and state Affordable Care Act (ACA) marketplaces, though it lacks objectivity, contains conclusions that are not supported by the data, and is inflammatory in tone.² The proposed rule cites that report at least eight times, despite the Paragon report's obvious bias and research failings. In additions to weaknesses described in a critique by Keep Americans Covered,³ our organization flagged several issues.

The Paragon report is overtly editorial, rather than objective.

Throughout the Paragon report, authors use non-objective and polemical language. The paramount example is repeated use of the words *fraud*, *fraudulent*, or *fraudulently* (38 mentions) to describe alleged discrepancies between actual income and attested income for those who applied for subsidized ACA plans. That term is inaccurate. Fraud, in the context of public benefits, is an intentional misrepresentation of facts made by a person, with knowledge of its falsity, for the purpose of getting benefits to which the person would otherwise not be entitled.⁴ There are a number of alternative explanations for the reported discrepancies. For example, many or most discrepancies identified in the Paragon report may well be errors that fall short of fraud. As the proposed rule itself states, fraud involves "willful misrepresentations" rather than error.⁵ Saying otherwise is either inflammatory or suggests the authors' lack of attention to accuracy.

¹ Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability. 90 FR 12942 (March 19 2025). <https://www.federalregister.gov/documents/2025/03/19/2025-04083/patient-protection-and-affordable-care-act-marketplace-integrity-and-affordability>

² Brian Blase & Drew Gonshorowski, Title: Subtitle The Great Obamacare Enrollment Fraud, (2024), https://paragoninstitute.org/wp-content/uploads/2024/06/The-Great-Obamacare-Enrollment-Fraud_FOR_RELEASE_V2.pdf (last visited Apr 9, 2025).

³ KAC Response to Paragon Paper: Full Report, (2025), <https://americanscovered.org/wp-content/uploads/2025/02/Paragon-Response-Report-FINAL.pdf> (last visited Apr 9, 2025).

⁴ Black's Law Dictionary 11th ed. (Bryan A. Garner ed., Thomson Reuters 2019) defines fraud as "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment."

⁵ *supra*, note 1.

The data used and data comparisons have limitations that would invalidate, or moderate conclusions drawn in the report.

The authors of the Paragon report fail to mention or account for limitations in the U.S. Census and Government Accountability Office data. These limitations, if considered, would have called into question the scope of the authors' conclusions about the population eligible for federal subsidies and cost-sharing reductions. Examples of these limitations include:

- The U.S. Census Bureau identifies a likely undercount for the South region, and when looking at a state level, undercounts for Arkansas, Florida, Mississippi, Tennessee, and Texas.⁶ All but Arkansas are states that the Paragon report identifies as having over-enrollment in subsidized ACA plans.
- The populations most likely to seek subsidized coverage, i.e. lower-income residents, are also most likely to be undercounted. The American Community Survey (ACS) reports that in 2010 and 2020, Black, Hispanic persons, and renters were undercounted, while white people, adults over 50, and homeowners were overcounted.⁷ The majority of the U.S. Black population lives in the South, where the authors found the greatest discrepancies between eligible and enrolled populations.⁸ Each of these undercounted groups is statistically more likely to have lower-than-median income, while those who are overcounted are more likely to have higher incomes.⁹ Conclusions made by the authors of the Paragon report, and by the authors of the proposed rule, about the number of individuals eligible for subsidies versus those who enrolled would need to account for those factors.
- Census data is self-reported and is not independently verified. Self-reported data about income may be inaccurate for a variety of reasons, ranging from the difficulty of estimating income for shift work to innumeracy to an individual's wish to present the household as higher- or lower-earning.

⁶ Census Bureau Today Releases 2020 Census Undercount, Overcount Rates by State. Census.gov. May 19, 2022. <https://www.census.gov/library/stories/2022/05/2020-census-undercount-overcount-rates-by-state.html>

⁷ Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census. Census. Gov, March 10, 2022. <https://www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html>

⁸ Gracie Martinez and Jeffrey S. Passel. Facts About the U.S. Black Population. Pew Research Center, Jan. 23, 2025. <https://www.pewresearch.org/race-and-ethnicity/fact-sheet/facts-about-the-us-black-population/#:~:text=More%20than%20half%20of%20the.state%2C%20at%20about%204.3%20million.>

⁹ Lisa Neidert, Reynolds Farley, Jeffrey Morenoff. How Census Undercount Became a Civil Rights Issue and Why It Is Increasingly Important. The Russell Sage Foundation Journal of the Social Sciences. January 2025. <https://www.rsjournal.org/content/11/1/26>

The authors also failed to acknowledge that income definitions for the ACS or the U.S. Census purposes and for ACA purposes are inconsistent, such that direct comparisons are like “apples to oranges.” The Census definition of income is “income received on a regular basis, before payments for income taxes, and includes social security income (SSI) and other payments,” which the ACS definition of income differs slightly from the Census definition.¹⁰ The definition of income for ACA purposes, Modified Adjusted Gross Income (MAGI), relies on the Internal Revenue Service (IRS) definitions of Adjusted Gross Income (AGI), and also differs from the ACS definition of income.

The period of time analyzed in the Paragon report fell within the COVID Public Health Emergency (PHE). Despite that, the Paragon authors fail to discuss the possible impact of the PHE and related economic factors on the target population: households who applied for coverage and alleged income between 100 and 150 Federal Poverty Level (FPL).

Whether or not the authors’ conclusions would have changed after considering limitations in the Census data, the differing definitions of income, and the impact of the COVID PHE, the failure to acknowledge limitations is a fundamental weakness.

The Paragon report contains factual errors.

Identified errors include the following:

- The decision, *City of Columbus v. Cochran*,¹¹ did not “effectively [gut] income verification requirements for exchange enrollees.”¹² In fact, applicants who apply through the federal exchange must provide documentation confirming income when a data matching issue arises.¹³
- It is false that advance premium tax credits (PTC) are “direct payments to qualifying individuals.”¹⁴ In fact, PTC are paid to insurance carriers.
- It is incorrect that people with incomes between 100 and 150 FPL who enroll in highly subsidized coverage through ACA marketplaces are “fully subsidized,” or get “generous coverage at zero cost to them.”¹⁵ Those enrollees still have to pay deductibles and cost-

¹⁰ About Income, census.gov (2023), <https://www.census.gov/topics/income-poverty/income/about.html> (last visited Apr 9, 2025).

¹¹ *City of Columbus, et al. v. Norris Cochran*, 523 F. Supp. 3d 731 (D. Md. 2021).

¹² *supra*, note 2, at 24

¹³ How do I resolve a data matching issue?, HealthCare.gov (2019), <https://www.healthcare.gov/help/how-do-i-resolve-an-inconsistency/-household-income> (last visited Apr 9, 2025).

¹⁴ *supra*, note 2, at 4, footnote 4.

¹⁵ *Id.*, at 7.

sharing, which may pose a significant financial burden.¹⁶ The maximum out-of-pocket amount is \$2000 and inpatient hospital costs require a 25 percent cost-share.¹⁷

The Paragon methods and conclusions are not reproducible.

There is consensus among the scientific community that valid and reliable findings need to be reproducible.¹⁸ Reproducibility refers to the ability for another researcher, using the same data, methods, and conditions of analysis, to get the same results the original researcher reported. The Paragon’s report would not pass this test in its current form. For a study to be reproducible, one would have to provide sufficient explanations of their methodology. The report’s *Data and Methodology* section is so lacking in detail about what choices were made and what steps were taken that it is nearly impossible to recreate their work, even with the data being widely available for public use. Whether intentional or accidental, the omission of a well-explained methods section is problematic.

A detailed methods section is essential, given the authors use the *2022 ACS 1-Year Public Use Microdata Sample (PUMS)* file as the source of the income data used. Unlike the ACS data, which is aggregate data (summary data that is weighted to produce accurate estimates of individual responses), the PUMS data is individual, de-identified data. Although using microdata has the potential advantage of more detailed results, it also has a much greater risk of being manipulated or used incorrectly. As the U.S. Census Bureau states, it is the user’s “responsibility for producing estimates from PUMS and judging their statistical significance.”¹⁹ Questions as to whether the authors adequately accounted for additional sampling error or applied the correct weights cannot be gleaned directly from the text. Given the implications of this report and its potential to substantially affect millions of people, brevity in this section is undesirable, if not irresponsible.

¹⁶ An individual at 100 FPL in 2024 would make just over \$15,000. 2024 Poverty Guidelines: 48 Contiguous States (all states except Alaska and Hawaii) Dollars Per Year, <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf> (last visited Apr 9, 2025).

¹⁷ Cost-Sharing Reductions, <https://www.healthreformbeyondthebasics.org/cost-sharing-charges-in-marketplace-health-insurance-plans-part-2/> (last visited Apr 9, 2025).

¹⁸ National Academies of Sciences, Engineering, and Medicine, *Reproducibility and Replicability in Science*. Washington (DC): National Academies Press (US); 2019 May 7. Summary, <https://www.ncbi.nlm.nih.gov/books/NBK547531/> (last visited Apr 9, 2025).

¹⁹ U.S. Census Bureau, *Understanding and Using the American Community Survey Public Use Microdata Sample Files: What Data Users Need to Know*, U.S. Government Printing Office, Washington, DC, 2021.

The report fails to account for limitations to data.

Not only are there flaws or errors in the selection of data and the data analyses, but authors fail to acknowledge limitations in the data, even though discussing limitations is a standard practice.²⁰ Inclusion of a limitations section, or of discussion of limitations within other sections, is an important indication of scientific integrity.²¹

The inclusion of a narrow set of recommendations suggests bias.

The Paragon report's narrow set of recommendations are more likely to reduce enrollment than to improve the accuracy of income projections. Many other changes might also decrease the alleged incentives for individuals or brokers to provide inaccurate income estimates, including the following:

- Urging all states to adopt Medicaid expansion, so that low-income households with adults have seamless access to low-cost coverage, either through Medicaid or an ACA marketplace. The goal of the ACA is to provide access to better health – not to deprive those with the fewest resources of access to coverage and care.
- Requiring that the federal marketplace, Healthcare.gov, adopts additional verification processes used by the state-based exchanges, including income verification through alternative data sources.
- Expanding funding of enrollment assistance through the navigator network and reducing reliance on brokers. Unlike brokers, navigators are not incentivized by commissions or bonuses. Doing so would require reversal of a recent decision to slash that funding.²²

Conclusion

Considering the methodological weaknesses of the Paragon report, its claims of widespread fraud and inadequate marketplace safeguards should be treated with skepticism. To the extent that the proposed rule cites its conclusions or refers to its analysis, we strongly recommend

²⁰ Research Guides: Organizing Your Social Sciences Research Paper: Limitations of the Study, Usc.edu (2018), <https://libguides.usc.edu/writingguide/limitations> (last visited Apr 9, 2025).

²¹ Dennis Drotar, Editorial: Thoughts on Establishing Research Significance and Preserving Scientific Integrity, 33 *Journal of Pediatric Psychology* 1 (2007), <https://academic.oup.com/jpepsy/article-abstract/33/1/1/967580?redirectedFrom=fulltext> (last visited Apr 9, 2025).

²² CMS Announcement on Federal Navigator Program Funding | CMS, Cms.gov (2025), <https://www.cms.gov/newsroom/press-releases/cms-announcement-federal-navigator-program-funding> (last visited Apr 9, 2025).

reconsideration. It is essential that federal agencies are faithful to the goals of relevant legislation – in this case, the ACA - and rely on concrete evidence when engaged in rulemaking.