

**Health Insurance Premium Tax Credit:
Summary of Proposed Rule
Internal Revenue Service, Treasury Department**

August 22, 2011

On August 17, 2011, the Internal Revenue Service (IRS) in the Treasury Department published in the *Federal Register* a notice of proposed rulemaking (NPRM) implementing the Health Insurance Premium Tax Credit provisions of the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) (together, these laws are referred to by the Department as the Affordable Care Act (ACA)), along with several subsequent amendments to the laws.

The NPRM provides guidance to individuals who enroll in qualified health plans (QHPs) and claim the premium tax credit, and to Exchanges that make QHPs available, along with specific examples. **Comments must be submitted by October 31, 2011.** Alternative methods of submission are set out in the NPRM. A public hearing on the proposed rule is scheduled for November 17, 2011 at 10 a.m.

The NPRM is one of three NPRMs published on August 17, 2011, noted in the text box below. Health Policy Alternatives has prepared a summary of each of the three.

August 17, 2011 Rules Implementing Eligibility and Subsidy Provisions of the ACA
<p>Medicaid: CMS issued an NPRM “Medicaid Program; Eligibility Changes under the Affordable Care Act of 2010.” That proposed rule addresses the:</p> <ul style="list-style-type: none">• Expansion of Medicaid eligibility in 2014 to non-elderly adults who are not otherwise eligible and who have income below 133 percent of the federal poverty level (FPL)• Modifications of existing eligibility rules so that eligibility for Medicaid and CHIP would be simplified and coordinated with eligibility for the premium tax credits available through the Exchanges starting in 2014. These modifications require that Medicaid eligibility standards be based on Modified Adjusted Gross Income (MAGI).• Changes regarding the Federal Medical Assistance Percentage (FMAP) for the newly eligible individuals.
<p>Tax credits: The Internal Revenue Service (IRS) issued an NPRM “Health Insurance Premium Tax Credit,” That proposed rule addresses:</p> <ul style="list-style-type: none">• Eligibility standards and computations for receipt of the sliding scale advance payment premium tax credits for individuals enrolled in qualified health plans (QHPs) in the Exchange;• Year-end reconciliation provisions and information reporting requirement.
<p>Exchanges: CMS issued an NPRM “Exchange Functions in the Individual Market: Eligibility Determinations; Exchange Standards for Employers.” That rule provides standards and processes for Exchange functions for determining eligibility for participation in the Exchange, for subsidies for affordability, including Exchange implementation of the standards for Medicaid and Tax Credits proposed in the other two proposed rules. It also proposes standards for small employer participation in the Small Business Health Options Program (SHOP).</p>

BACKGROUND

Section 1401 of the ACA amended the Internal Revenue Code (Code) to add section 36B, which provides an advanceable and refundable premium tax credit to help individuals and families afford health insurance coverage through an Exchange. An Exchange determines (1) whether the individual meets the requirements for advance credit payments and (2) the amount of the advance payments. The payments are made monthly to the issuer of the QHP in which the individual enrolls.

The IRS reviews in the background section the ACA provisions for eligibility, computation of the credit, end-of-year reconciliation, and information reporting requirements.

EXPLANATION OF PROVISIONS

Premium tax credit definitions (§1.36B-1)

The NPRM proposes definitions for the terms used in the proposed rule.

Eligibility for premium tax credit (§1.36B-2)

In general, eligibility is allowed for those who are:

- “Applicable taxpayers,” and their spouses or dependents;
- Not eligible for minimal essential coverage through a government- or employer-sponsored plan or program; and
- Enrolled in one or more QHPs through an Exchange

Applicable taxpayer

An applicable taxpayer is a taxpayer whose household income (modified adjusted gross income) is at least 100 percent but not more than 400 percent of the federal poverty line (FPL). If married, they must file a joint return. There are several special provisions.

If household income is less than 100 percent of the FPL, there are two provisions that still treat such a taxpayer as an “applicable taxpayer” for that year:

- If they are an alien lawfully present, and not eligible for Medicaid (due to the five-year waiting period), they can be treated as an “applicable taxpayer” if they would otherwise qualify.
- If the Exchange estimated at the time of enrollment that the taxpayer’s household income would be above 100 percent of the FPL, and high enough that the taxpayer is not eligible for Medicaid, and authorized payment of advance credits to a QHP in which the taxpayer enrolled, that taxpayer would be considered an applicable taxpayer even if the actual household income for the taxable year was less than 100 percent of the FPL, so long as they would otherwise qualify.

If an individual is not lawfully present in the U.S., or is incarcerated, then that individual is not eligible to be covered by a QHP through an Exchange. However, such individuals may be considered “applicable taxpayers” if eligible family members enroll in a QHP.

Minimum essential coverage

A taxpayer is not eligible for the premium tax credit or enrollment in a QHP, in a month if otherwise eligible for minimal essential coverage during that month through certain government- or employer-sponsored plans or grandfathered plans.

Government-sponsored minimum essential coverage: is defined to include programs such as Medicare, Medicaid, CHIP, TRICARE, and veterans’ health care. As specified in the ACA, an individual is defined as eligible for minimum essential coverage under a veterans’ health care program only if the individual is actually enrolled in the program. The IRS Commissioner will further define eligibility for specific governmental programs in future guidance.

Timing: an individual is generally treated as eligible for a government-sponsored program (other than a veteran’s health care program, which requires enrollment) on the first day of the first full month in which the individual may receive benefits. An individual does not lose eligibility for a tax credit if technically eligible for the government program for a month but not yet enrolled due to administrative processing. However, if an individual fails to complete the necessary requirements reasonably promptly, the individual is treated as eligible as of the first day of the second calendar month following the event that establishes eligibility.

In the case of an eligibility determination in a program such as Medicaid, where eligibility may be granted retroactively, and could overlap a period of receipt of advance payment premium tax credits, the individual is treated as eligible for minimum essential coverage no sooner than the first day of the first calendar month after the approval. That means that the individual does not retroactively lose eligibility for the premium tax credit for the period of overlap when computing their end of year tax reconciliation. An individual is treated as not eligible for Medicaid, CHIP or a similar program if an Exchange determines that the individual is not eligible at the time that the individual enrolls in a QHP.

Examples: the text of the proposed rule provides several examples to clarify the policy.

The IRS requests comments on whether rules should provide additional flexibility in the case of transitions of coverage under a QHP to coverage under a government-sponsored program.

Employer-sponsored minimum essential coverage: minimum essential coverage includes an eligible employer-sponsored plan, including a grandfathered plan. An employee (and related individuals) who may enroll in the employer-sponsored plan is considered eligible for minimal essential coverage in a month if eligible to enroll in such a plan, even if the employee opts not to enroll.

To qualify as “minimum essential coverage” the plan must provide minimum value and be affordable.

Minimum value: defined to mean that the plan’s share of total allowed costs of benefits is at least 60 percent, under regulations that will be published by the Secretary of HHS.

Affordability: the IRS provides a more extensive review of affordability. Affordability for both employees and related individuals is defined to mean that the annual premium for the employee for self-only coverage does not exceed a required contribution percentage, which is 9.5 percent of household income for the employee in 2014, and indexed for subsequent years. The IRS notes that this means that the plan is considered affordable (for the employee and related dependents) even if the employee’s required contribution for family coverage exceeds 9.5 percent of income. The IRS notes, however, that future regulations related to the affordability test for the individual mandate requirement for family members are expected to be based on the employee’s required contribution for family coverage.

Finally, the NPRM provides that if an individual enrolls in an employer plan despite the fact that it would have been considered unaffordable, then the individual is considered to have minimum essential coverage (and thus ineligible to qualify for a tax credit in the Exchange).

The IRS proposes an affordability safe harbor for employees. If an Exchange determines that an employer plan is unaffordable upon enrollment of the employee or related individual in a QHP in the Exchange, then that employer plan is considered to be unaffordable for the plan year, even if the taxpayer’s final household income for the year would have made the plan affordable. Thus, the individual would not lose eligibility for any premium tax credit during that period.

The IRS also reviews a potential safe harbor for employers that will be considered under future regulations. Under the ACA, a large employer that offers coverage to full-time employees and dependents is subject to an assessment if at least one full-time employee is certified to receive a premium tax credit or cost sharing reduction in the Exchange, because the employer coverage is unaffordable for that employee or does not provide minimum value. The IRS notes that employers have commented that they know the employee’s wages, but do not know the household income. Taxable household income can differ from wages, and in some cases be lower than the wages because expenses such as moving expenses, IRA contributions and other items are deducted from wage income to determine household income. As a result, in some cases, an employer may view the employee contribution as below 9.5 percent of wages, but it would be over 9.5 percent of the (lower) computed household income.

The IRS notes that future regulations are expected to propose a safe harbor for employers. Under that safe harbor, the employer would not be exposed to the penalty even if the employee qualifies for a premium tax credit or affordability credit in the exchange based on their household income if the employee portion of the self-only premium for the employer’s lowest cost plan does not exceed 9.5 percent of the W-2 wages for the employee. In that case, the individual would receive a premium tax credit based on the family income affordability standard, but the employer would not be assessed a penalty. **The IRS will be issuing a request for comment on this issue.**

Failure to enroll in employer plan: If an individual is eligible for coverage through an eligible employer-sponsored plan, and fails to enroll during a prescribed enrollment period, the individual is considered eligible for the minimal essential coverage under that plan throughout the plan year (and thus not eligible for a tax credit), even during the months when enrollment is no longer open. The proposed rule provides an example of this situation.

Continuation coverage: The NPRM provides a special rule for continuation coverage under federal or state law: an individual is considered eligible for minimum essential coverage only if the individual actually enrolls in such a plan.

Examples: the text of the proposed rule provides several examples to clarify the policy.

Computing the premium assistance credit amount (§1.36B-3)

General

The tax credit is an income-based credit designed to help make premiums more affordable.

- In general, for those with income between 100 percent and 400 percent of the FPL, it limits the taxpayer's share of premium to an amount no greater than an applicable percentage of income. That percentage starts at two percent of income and increases to 9.5 percent of income for those between 300 percent and 400 percent of the FPL.
- That tax credit is calculated based on the premium for a benchmark plan, which is the second lowest priced "silver" plan for that taxpayer's family enrollment category in the Exchange. If the taxpayer chooses a more expensive plan, the tax credit does not increase; it is a fixed amount and the taxpayer would then have to pay more out of pocket for the higher priced plan. If they choose the lowest price plan, they pay less.
- The credit is paid by the government to insurers on a monthly basis for all "coverage months" for the taxpayer and family members, and reconciled, with limits, at the time the taxpayer files a tax return for the year.

The NPRM sets out several general definitions and policies. In general, the taxpayer's premium assistance tax credit for a taxable year is the sum of the amounts of the credit for all coverage months for individuals in the taxpayer's family.

"Coverage family" means the members of the taxpayer's family who are not eligible for minimum essential coverage, are lawfully present in the U.S and are not incarcerated.

A "coverage month" for an individual is a month in which the individual is covered by a QHP in the Exchange on the first day of the month, the individual is not eligible for minimum essential coverage, and the premium is paid by the taxpayer or an advance credit payment.

If another person pays for coverage for the taxpayer (such as a divorced parent paying for coverage for a child who is claimed as dependent by the other parent, the taxpayer), that is considered a part of the premium paid by the taxpayer.

Examples: the text of the proposed rule provides several examples to clarify the policy.

Premium assistance amount

The amount of the premium assistance is the lesser of:

- The premium for the month for the QHP(s) in which the taxpayer and members of the taxpayer's family enroll; or
- The excess of: the adjusted monthly premium of the applicable benchmark plan over 1/12 of the taxpayer's household income times the applicable percentage for that income level for the tax year.

The adjusted monthly premium is the premium for the taxpayer's coverage family adjusted only for the age of each member as allowed under the ACA.

Applicable benchmark plan:

The benchmark plan for a coverage month is the second lowest cost "silver" plan (70 percent actuarial value) for the applicable family size category. (The Department of Health and Human Services has proposed, and sought comments on, four categories: self-only, two adult families, one adult with a child or children; and all other families.) That means that there would be a different benchmark plan for purposes of computing the tax credit for each of the designated family categories.

In the case of families with tax dependents who would not be covered under the family insurance plan (such as a dependent niece), but instead enroll in a separate QHP, the IRS proposes that the applicable benchmark plan and premium be the combination of the premiums for the multiple benchmark plans in which the taxpayer's family is enrolled, **but the agency seeks comments on this approach.**

Examples: the text of the proposed rule provides several examples to clarify the policy.

Applicable percentage: the applicable percentage defines the taxpayer's share of premiums for the benchmark plan. It determines, for each income level as a percentage of the federal poverty level (FPL), the share of income that must be spent on the premium, which is used to compute the tax credit amount based on the price of the benchmark plan. The applicable percentages are noted in the following table:

Applicable percentage table, 2014*		
Household income as percent of federal poverty line	Initial percentage**	Final percentage**
Less than 133%	2.0%	2.0%
At least 133% but less than 150%	3.0%	4.0%
At least 150% but less than 200%	4.0%	6.3%
At least 200% but less than 250%	6.3%	8.05%
At least 250% but less than 300%	8.05%	9.5%
At least 300% but less than 400%	9.5%	9.5%
*The applicable percentages may be increased in the future by statutory formula to reflect rates of premium growth compared with income (through 2018) and compared with the Consumer Price Index (CPI) (after 2018)		
**The percentage increases on a sliding scale between the initial and final percentage within each income category		

By way of example, HPA prepared the following calculation for the simplest of situations, using the 2011 federal poverty level (FPL):

- Taxpayer is a family of four, with income of \$33,525, which is exactly 150 percent of the FPL. The taxpayer’s applicable limit for purposes of computing the tax credit is 4.0% of income (see table), or \$1,341 per year/\$112 per month (rounded).
- Taxpayer enrolls in the applicable benchmark plan for that family category, with a premium for that benchmark plan of \$12,000 per year, or \$1,000 per month.
- The tax credit is set to pay the difference between the \$1,000 monthly premium and the taxpayer’s obligation of \$112, or \$888 per month.
- If the taxpayer chooses a higher priced plan (for example, a plan costing \$1,100 per month), the credit remains at \$888 per month, and the taxpayer is responsible for the remaining premium of \$212.
- If the taxpayer chooses the lowest priced plan (for example, a plan costing \$900 per month), the credit remains at \$888 per month, and the taxpayer is responsible for the remaining \$12. However, even if the lower priced plan is less than the \$888 tax credit, the taxpayer share of premium can drop to zero, but never results in a rebate.

Examples: the text of the proposed rule provides several more detailed examples to clarify the policy.

Additional benefits: if the QHP offers benefits beyond the essential benefits, or a State requires such additional benefits, the portion of the premium attributable to those benefits is not included in the calculation of the premium for purposes of computing the tax credit.

Pediatric dental coverage: in the case of an individual enrolled in a QHP and in the separate pediatric dental coverage allowed under the ACA, the portion of the premium for the separate dental coverage is added to the premium for the benchmark plan in computing the amount of the

tax credit for that taxpayer. **The IRS requests comments on methods for determining the amount of premium properly allocable to pediatric dental benefits.**

Families including individuals not lawfully present: For purposes of computing the taxpayer’s family size in determining family income as a percentage of the FPL, individuals in the family who are not lawfully present are not counted. The computation of household income in that case is:

$$\text{Household income} \times \frac{\text{FPL for family size excluding individuals not lawfully present}}{\text{FPL for family size including individuals not lawfully present}}$$

Reconciling the premium tax credit with advance credit payments (§1.36B-4)

In general, the amount of advance credit payments allowed over the course of a year based on the determinations of the Exchange is reconciled with the credit allowed based on the taxpayer’s final income tax return for a taxable year. The contribution amount (household income times the applicable percentage) is based on the household income and family size at the end of the taxable year.

If the premium tax credit due for the taxable year exceeds the advance credit payments, then the taxpayer may receive the excess as an income tax refund. If the advance credit payments exceed the premium tax credit due for the year, the taxpayer owes the excess as a tax liability, subject to certain limits for those with income less than 400 percent of the FPL. For 2014, the limits are as follows (they may be adjusted in future years to reflect changes in the CPI):

Additional tax limitation table, 2014		
Household income as percent of federal poverty line	Limitation if filing as individual	Limitation for all other taxpayers
Less than 200%	\$300	\$600
At least 200% but less than 300%	\$750	\$1,500
At least 300% but less than 400%	\$1,250	\$2,500
400% or greater	No limit	

In cases where the family QHP coverage enrollment category changes over the course of a year (such as switching from coverage in a policy for two adults to coverage for two adults plus a child), which yields a change in the premium, benchmark and tax credit calculation, the rules generally determine the premium credit calculation based on the number of coverage months in each category.

Examples: the text of the proposed rule provides several more detailed examples to clarify the policy.

Changes in filing status: in cases where marital status changes, the taxpayer:

- Computes the applicable benchmark plan for the taxpayer's marital status as of the first day in each coverage month;
- The taxpayer's contribution amount is determined using the taxpayer's household income and family size at the end of the taxable year.

Taxpayers who are married at some time during a year but are no longer married at the end of a taxable year must allocate the respective premiums for any coverage months in which they were enrolled in the same QHP for the applicable benchmark plan, the plan in which they were jointly enrolled, and the advance credit payments in any portion they choose so long as the allocation for all items is the same. If the taxpayers cannot agree, 50 percent is allocated to each of the taxpayers.

Married taxpayers must file joint returns in order to qualify for the premium tax credits. If a couple did receive advance credit payments but still file separately, they must allocate the advance credit payments equally to each spouse in determining the excess advance credit payments for purposes of reconciliation.

Examples: the text of the proposed rule provides several more detailed examples to clarify the policy.

Information reporting by Exchanges (§1.36B-5)

An Exchange must report to the IRS and a taxpayer the following information for a QHP the taxpayer enrolls in:

- The premium and category of coverage for the applicable benchmark plan(s) used to compute advance credit payments, and the period coverage was in effect;
- The total premium for coverage
- The aggregate amounts of advance credit payments or cost sharing reductions
- The name, address and taxpayer identification number (TIN) of the individuals covered under the policy
- All information provided to the Exchange at the time of enrollment or during the taxable year necessary to determine eligibility for and the amount of the premium tax credit
- All information necessary to determine if a taxpayer has received excess advance payments
- Any other information required in published guidance

Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B (§1.6011-8)

Taxpayers who receive advance payments of premium tax credits must file an income tax return for that taxable year.