

**DESCRIPTION OF BUDGET RECONCILIATION  
LEGISLATIVE RECOMMENDATIONS RELATING  
TO FEDERALLY-SUBSIDIZED HEALTH  
INSURANCE OVERPAYMENTS**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on April 18, 2012

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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**CONTENTS**

	<u>Page</u>
INTRODUCTION .....	1
A. Recapture of Overpayments Resulting From Certain Federally-Subsidized Health Insurance .....	2
B. Revenue Effect of the Proposal.....	6

## INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of Budget Reconciliation Legislative Recommendations Relating to Federally-Subsidized Health Insurance Overpayments on April 18, 2012. This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of Budget Reconciliation Legislative Recommendations Relating to Federally-Subsidized Health Insurance Overpayments* (JCX-34-12), April 17, 2012. This document can also be found on our website at [www.jct.gov](http://www.jct.gov).

## **A. Recapture of Overpayments Resulting From Certain Federally-Subsidized Health Insurance**

### **Present Law**

#### **Premium assistance credit**

For taxable years ending after December 31, 2013, section 36B provides a refundable tax credit (the “premium assistance credit”) for eligible individuals and families who purchase health insurance through an American Health Benefit Exchange. The premium assistance credit, which is refundable and payable in advance directly to the insurer, subsidizes the purchase of certain health insurance plans through an American Health Benefit Exchange.

The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100 and 400 percent of the Federal poverty level (“FPL”) for the family size involved who do not receive health insurance through an employer or a spouse’s employer.<sup>2</sup> Household income is defined as the sum of: (1) the taxpayer’s modified adjusted gross income, plus (2) the aggregate modified adjusted gross incomes of all other individuals taken into account in determining that taxpayer’s family size (but only if such individuals are required to file a tax return for the taxable year). Modified adjusted gross income is defined as adjusted gross income increased by: (1) any amount excluded by section 911 (the exclusion from gross income for citizens or residents living abroad), (2) any tax-exempt interest received or accrued during the tax year, and (3) an amount equal to the portion of the taxpayer’s social security benefits (as defined in section 86(d)) that is excluded from income under section 86 (that is, the amount of the taxpayer’s Social Security benefits that are excluded from gross income).<sup>3</sup> To be eligible for the premium assistance credit, taxpayers who are married (within the meaning of section 7703) must file a joint return. Individuals who are listed as dependents on a return are ineligible for the premium assistance credit.

As described in Table 1 below, premium assistance credits are available on a sliding scale basis for individuals and families with household incomes between 100 and 400 percent of FPL to help offset the cost of private health insurance premiums. The premium assistance credit amount is determined based on the percentage of income the cost of premiums represents, rising from two percent of income for those at 100 percent of FPL for the family size involved to 9.5 percent of income for those at 400 percent of FPL for the family size involved. After 2014, the percentages of income are indexed to the excess of premium growth over income growth for the

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<sup>2</sup> Individuals who are lawfully present in the United States but are not eligible for Medicaid because of their immigration status are treated as having a household income equal to 100 percent of FPL (and thus eligible for the premium assistance credit) as long as their household income does not actually exceed 100 percent of FPL.

<sup>3</sup> The definition of modified adjusted gross income used in section 36B is incorporated by reference for purposes of determining eligibility to participate in certain other healthcare-related programs, such as reduced cost-sharing (section 1402 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (“PPACA”)), Medicaid for the nonelderly (section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) as modified by section 2002(a) of PPACA) and the Children’s Health Insurance Program (section 2102(b)(1)(B) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)) as modified by section 2101(d) of PPACA).

preceding calendar year. After 2018, if the aggregate amount of premium assistance credits and cost-sharing reductions<sup>4</sup> exceeds 0.504 percent of the gross domestic product for that year, the percentage of income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the consumer price index for the preceding calendar year. For purposes of calculating family size, individuals who are in the country illegally are not included.

**Table 1.—The Premium Assistance Credit Phase-Out**

<i>Household income (expressed as a percent of FPL)</i>	<i>Initial premium (percentage)</i>	<i>Final premium (percentage)</i>
100% up to 133%	2.0	2.0
133% up to 150%	3.0	4.0
150% up to 200%	4.0	6.3
200% up to 250%	6.3	8.05
250% up to 300%	8.05	9.5
300% up to 400%	9.5	9.5

**Minimum essential coverage and employer offer of health insurance coverage**

Generally, if an employee is offered minimum essential coverage<sup>5</sup> in the group market, including employer-provided health insurance coverage, the individual is ineligible for the premium assistance credit for health insurance purchased through an exchange.

If an employee is offered unaffordable coverage by his or her employer or the plan’s share of total allowed cost of provided benefits is less than 60 percent of such costs, the employee can be eligible for the premium assistance credit, but only if the employee declines to enroll in the coverage and satisfies the conditions for receiving a premium assistance credit through an American Health Benefit Exchange. Unaffordable coverage, as defined by Federal

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<sup>4</sup> As described in section 1402 of PPACA.

<sup>5</sup> As defined in section 5000A(f).

law, is coverage with a premium required to be paid by the employee that is more than 9.5 percent of the employee’s household income, based on self-only coverage.<sup>6</sup>

**Reconciliation**

If the premium assistance credit received through advance payment exceeds the amount of premium assistance credit to which the taxpayer is entitled for the taxable year, the liability for the overpayment must be reflected on the taxpayer’s income tax return for the taxable year subject to a limitation on the amount of such liability. For persons with household income below 400 percent of FPL, the liability for the overpayment for a taxable year is limited to a specific dollar amount (the “applicable dollar amount”) as shown in Table 2 below (one-half of the applicable dollar amount shown in Table 2 for unmarried individuals who are not surviving spouses or filing as heads of households).<sup>7</sup>

**Table 2.—Reconciliation**

<i>Household income (expressed as a percent of FPL)</i>	<i>Applicable dollar amount</i>
Less than 200%	\$600
At least 200% but less than 300%	\$1,500
At least 300% but less than 400%	\$2,500

If the premium assistance credit for a taxable year received through advance payment is less than the amount of the credit to which the taxpayer is entitled for the year, the shortfall in the credit is also reflected on the taxpayer’s tax return for the year.

**Description of Proposal**

The proposal repeals the present-law provision under which, in the case of an individual with household income below 400 percent of FPL, liability for an overpayment resulting from excess advance payments is limited to the applicable dollar amount. Thus, under the proposal, an individual would be liable for the full amount of the overpayment.

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<sup>6</sup> The 9.5 percent amount is indexed for calendar years beginning after 2014 to reflect the excess of premium growth over income growth.

<sup>7</sup> Section 36B(f)(2), as amended by section 208 of the Medicare and Medicaid Extenders Act of 2010, Pub. L. No. 111-309, and section 4 of the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Pub. L. No. 112-9.

**Effective Date**

The proposal is effective for taxable years ending after December 31, 2013.

## B. Revenue Effect of the Proposal

The following presents the estimated Federal fiscal year budget effects of the proposal.

	<b>Fiscal Years</b> <b>[Billions of Dollars]</b>											
<b><u>Item</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>	<b><u>2021</u></b>	<b><u>2022</u></b>	<b><u>2013-17</u></b>	<b><u>2013-22</u></b>
Recapture of Overpayments Resulting from Certain Federally- Subsidized Health Insurance [1].....	---	1.1	2.6	4.1	5.0	5.5	5.9	6.1	6.6	6.9	12.9	43.9

**NOTE:** Details do not add to totals due to rounding.

[1] Estimate includes the following effects:

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2013-17</u>	<u>2013-22</u>
Off-budget effects.....	[2]	[2]	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.2	-0.6
Outlay effects.....	---	-0.9	-1.9	-3.0	-3.6	-4.0	-4.2	-4.4	-4.8	-5.1	-9.3	-31.9

[2] Loss of less than \$50 million.