

Affordable Care Act Income Eligibility

Weak & Harmful to Taxpayers



*Senate Finance Committee & House Ways and
Means Committee Majority Staff White Paper*

Administration Continues to Relax Income Eligibility Verification for Advance Premium Tax Credits Despite Repeated Independent Watchdog Reports Highlighting Problems

The Affordable Care Act (ACA) created health care exchanges for individuals and families to facilitate the purchase of health insurance coverage. In 2014, 36 states participated in the Federally-facilitated Marketplace (FFM), which uses the Healthcare.gov platform developed and maintained by the Centers for Medicare & Medicaid Services (CMS), while 14 states and the District of Columbia opted to operate their own exchanges. Despite initial projections that more than 21 million people would be enrolled through the Obamacare exchanges by the end of 2016, actual enrollment has reached only half of those estimates.

In order to purchase health coverage on an exchange, an individual must be a U.S. citizen, national, or lawfully present; currently live in the United States; and not be incarcerated. The ACA also created new financial subsidies for individuals and families that meet certain eligibility requirements to purchase health insurance on the exchanges.¹ According to a Congressional Budget Office estimate, gross financial subsidies authorized in the ACA may cost taxpayers more than \$800 billion over the next ten years.²

The first type of subsidy is an advanceable, refundable tax credit, known as the advanced premium tax credit (APTC), and generally provides tax credits to individuals and families with income between 100 to 400 percent of the federal poverty level (FPL). Beginning in 2016, in order to continue to receive APTCs, individuals must file a federal income tax return for the 2014 coverage year and reconcile any APTCs received with the amount they are entitled. The second subsidy authorized under the law requires insurers to provide individuals with incomes of no more than 250 percent of the FPL with additional benefits known as cost-sharing reductions (CSRs) if they enroll in a specific type of health plan.

The administration has not put necessary safeguards in place to protect federal taxpayer dollars during ACA enrollment and income eligibility verification. In fact, independent federal watchdogs—the Department of Health and Human Services (HHS) Office of the Inspector General (OIG), the Government Accountability Office (GAO), and the Treasury Inspector General for Tax Administration (TIGTA)—have cumulatively released more than six dozen reports identifying various operational and implementation issues of the ACA since it was signed into law over six years ago. For instance, a recent GAO investigation — the results of which were described in *Patient Protection and Affordable Care Act: Results of Undercover Enrollment Testing for the Federal Marketplace and a Selected State Marketplace for the 2016 Coverage Year*³ — created fictitious exchange applicants and found that these identities continued to receive APTCs despite failing to file a 2014 tax return by August 2016. According to IRS data provided to GAO, as of December 2015, there were more than 1 million individuals

¹ The specific eligibility verification processes are described at the end of this document.

² CBO. *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2016 to 2026*." March 24, 2016. <https://www.cbo.gov/publication/51385>

³ GAO-16-784. *Patient Protection and Affordable Care Act: Results of Undercover Enrollment Testing for the Federal Marketplace and a Selected State Marketplace for the 2016 Coverage Year*. September 12, 2016. <http://www.gao.gov/products/GAO-16-784>

who received nearly \$4 billion in APTCs in 2014 that have not been reconciled. Without undergoing a reconciliation process, there is no way to know whether these individuals received the proper amount in subsidies, or whether they were eligible to receive subsidies at all.

Individuals that receive more in advanced credits than they are entitled to must repay the excess credits when they file their tax return. A TIGTA audit released in September 2016 revealed that nearly 1.6 million taxpayers received a total of approximately \$2 billion in excess APTCs on their tax returns in 2014. Due to repayment restrictions in the ACA⁴, TIGTA estimates that the IRS is prevented from collecting \$680 million of the excess APTCs received by a subset of those taxpayers.⁵ And, because the federal government is prevented from recovering a significant portion of APTC overpayments, it is critical that the initial eligibility determination is as accurate as possible.

Despite this imperative, the administration continues to relax standards for income-eligibility verification on the FFM, jeopardizing taxpayer dollars.⁶ For the 2017 plan year, CMS increased the data matching threshold that generates an inconsistency based on discrepancies between reported income and verifiable income available from federal, state, or commercial sources. This makes it more likely individuals could receive APTCs in greater amounts than for which they otherwise would be eligible. In previous years, CMS was supposed to request additional taxpayer documentation if there was greater than a 10 percent difference between the applicant's self-reported income and verifiable data. In 2017, that threshold will be increased to 25 percent or \$6,000, whichever is greater.⁷ This means it would be harder to detect a case in which an individual reports their expected annual income significantly lower than their actual income. As such, this individual would not have to provide additional documentation or proof of this income, and could continue to receive APTCs throughout the coverage year. And, in some cases, because of previously discussed subsidy repayment restrictions, taxpayers bear the majority of the cost of these improper overpayments. The HHS OIG warned CMS that "using a higher threshold to resolve inconsistencies related to annual household income increases the possibility that the marketplace will incorrectly determine an applicant's eligibility for insurance affordability programs and the amounts of the APTC and cost-sharing reductions."⁸

It appears that this administration— despite the warnings of several independent federal watchdogs— continues to place increasing exchange enrollment numbers above ensuring that APTCs are based on accurate information and only provided to individuals entitled to receive

⁴ Repayment limits vary depending on household income, and tax return filing status. The restrictions in repayments range from \$300 for an individual below 200 percent of the FPL filing single, up to \$2,500 for an individual with filing status other than single with income between 300 and 400 percent of the FPL. An individual at 400 percent of the FPL does not qualify for APTCs, and if one erroneously receives these credits, the amount must be repaid in full.

⁵ TIGTA. *Affordable Care Act: With Minor Exceptions, Controls and Procedures for Collection of the Shared Responsibility Payment and Excess Advance Premium Tax Credit Were Effectively Established*. September 19, 2016. <https://www.treasury.gov/tigta/auditreports/2016reports/201633071fr.pdf>

⁶ CMS permits states operating State-Based Exchanges to make similar adjustments to income-eligibility verification processes.

⁷ CMS. *Annual Income Threshold Adjustment FAQ*. July 21, 2016. <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FINAL-Income-Datamatching-FAQ-7-21-16.pdf>

⁸ HHS OIG. *Not All of the Federally Facilitated Marketplace's Internal Controls Were Effective in Ensuring that Individuals Were Properly Determined Eligible for Qualified Health Plans and Insurance Affordability Programs*. August 2015, <https://oig.hhs.gov/oas/reports/region9/91401011.pdf>.

them. In addition, the administration continues to ignore multiple recommendations made to improve the enrollment and eligibility verification process, costing taxpayers potentially billions of dollars.

Both Chairman Hatch and Chairman Brady have advanced ideas to simplify the delivery of financial assistance for the purchase of health insurance. For instance, they both support replacing the ACA's complex subsidy system with a simplified, portable tax credit for individuals that would be administered through a secure, responsible and safe verification method. This system would protect taxpayer dollars and quickly resolve any inconsistencies identified. Both Chairmen look forward to working with colleagues on both sides of the aisle to advance these proposals in the next Congress.

Background on Enrollment and Eligibility Requirements

To determine whether an individual or family meets enrollment and eligibility requirements for subsidized coverage, CMS established the Data Services Hub ("Data Hub") to serve as a portal between the exchanges and trusted data sources to verify the information supplied by applicants on the exchange. To determine the amount of APTC an individual participating in the FFM is allowed to receive, the individual must report their projected annual income and family size to the FFM for the year in which they are seeking coverage.⁹

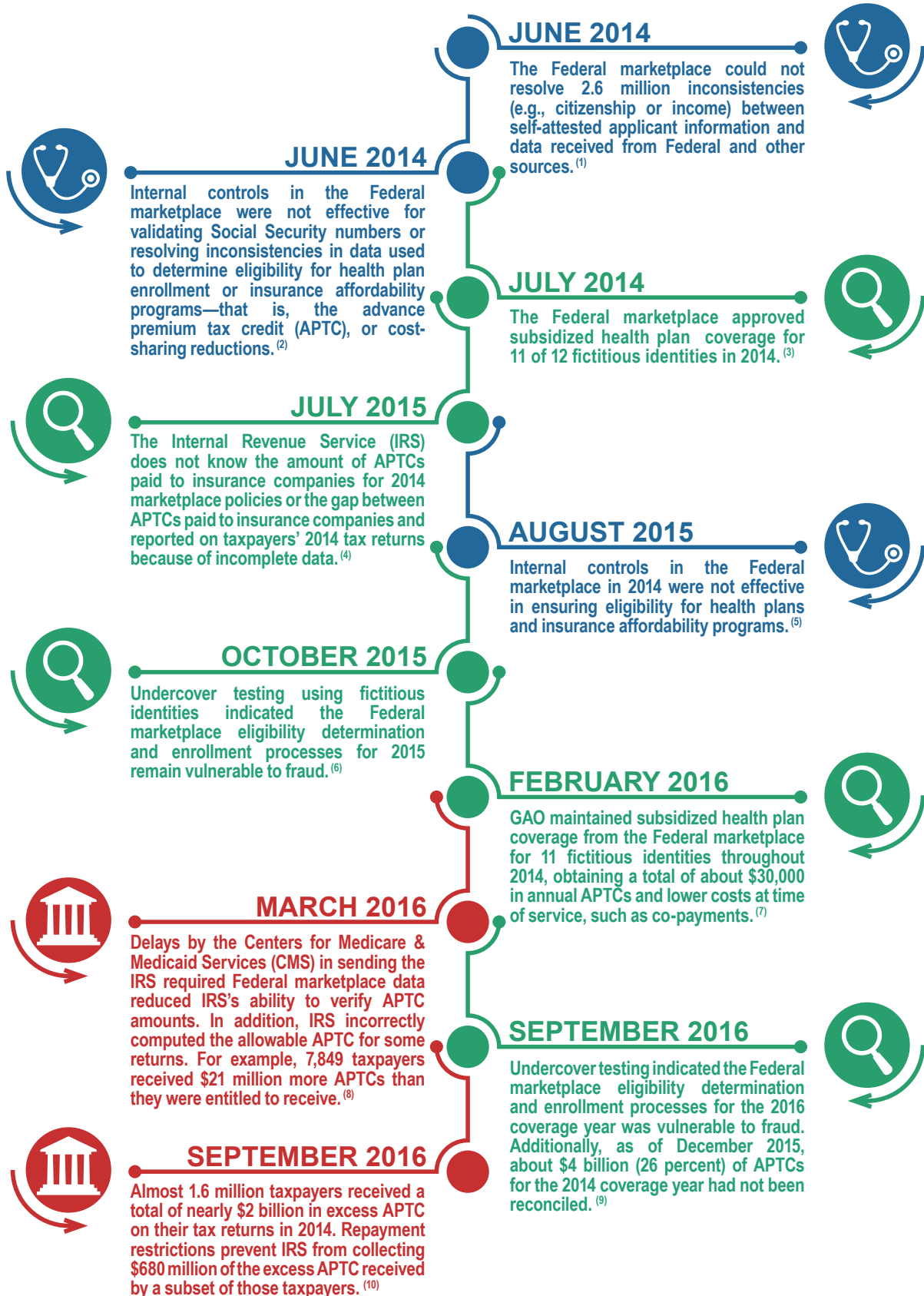
Current law requires this information be verified by comparing the estimated income with dated tax information from prior years through the "Data Hub." If the information provided by the applicant does not match federal sources within a certain threshold, an inconsistency is triggered.¹⁰

If a data-matching inconsistency occurs, an individual must provide additional documentation to the exchange to verify their annual income. CMS then adjusts the APTC accordingly. If no additional documentation is provided, the statute requires CMS to redetermine the applicant's eligibility based on data from federal sources. Since the APTC amount is based on the individual's estimate of their income, the individual must then reconcile the APTC received with the amount they are entitled to based on actual income and family size for the year. If actual income is higher than reported, then an individual may need to repay some or all of the APTC. If an individual's eligibility cannot be verified, or an individual seeking enrollment is found not to be eligible for enrollment, they must repay any APTC in its entirety.

⁹ The individual's monthly plan premium is then reduced by the amount of APTC, which is made directly to the insurer by CMS.

¹⁰ For example, for the 2014 coverage year, a data-matching inconsistency was triggered if an individual estimated their annual income for that year to be \$20,000 but their latest tax return for that individual showed an income of more than \$22,000—that is, a discrepancy of more than 10 percent.

WATCHDOGS IDENTIFY SHORTCOMINGS WITH THE FEDERAL MARKETPLACE



REPORT LINKS

1. HHS OIG. *Marketplaces Faced Early Challenges Resolving Inconsistencies With Applicant Data*. [OEI-01-14-00180](#). Washington D.C.: June, 2014.
2. HHS OIG. *Not all Internal Controls Implemented by the Federal California, and Connecticut Marketplaces Were Effective in Ensuring That Individuals Were Enrolled in Qualified Health Plans Accorded to Federal Requirements*. [A-09-14-01000](#). Washington D.C.: June, 2014.
3. GAO. *Patient Protection and Affordable Care Act: Preliminary Results of Undercover Testing of Enrollment Controls for Health Care Coverage and Consumer Subsidies Provided Under the Act*. [GAO-14-705T](#). Washington, D.C.: July 23, 2014.
4. GAO. *Patient Protection and Affordable Care Act: IRS Needs to Strengthen Oversight of Tax Provisions for Individuals*. [GAO-15-540](#). Washington, D.C.: July 29, 2015.
5. HHS OIG. *Not all of The Federally Facilitated Marketplace's Internal Controls Were Effective in Ensuring That Individuals Were Properly Determine Eligible for Qualified Health Plans and Insurance Affordability Programs*. [A-09-14-01011](#). Washington, D.C.: August, 2015.
6. GAO. *Patient Protection and Affordable Care Act: Preliminary Results of Undercover Testing of the Federal Marketplace and Selected State Marketplaces for Coverage Year 2015*. [GAO-16-159T](#). Washington, D.C.: October 23, 2015.
7. GAO. *Patient Protection and Affordable Care Act: CMS Should Act to Strengthen Enrollment Controls and Manged Fraud Risk*. [GAO-16-29](#). Washington, D.C.: February 23, 2016.
8. TIGTA. *Affordable Care Act: Internal Revenue Service Verification of Premium Tax Credit Claims During the 2015 Filing Season*. [2016-43-033](#). Washington, D.C.: March 31, 2016.
9. GAO. *Patient Protection and Affordable Care Act: Results of Undercover Enrollment Testing for the Federal Marketplace and a Selected State Marketplace for the 2016 Coverage Year*. [GAO-16-784](#). Washington, D.C.: September 12, 2016.
10. TIGTA. *Affordable Care Act: With Minor Exceptions, Controls and Procedures for Collection of the Shared Responsibility Payment and Excess Advance Premium Tax Credit Were Effectively Established*. [2016-33-071](#). Washington, D.C.: September 19, 2016.