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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

REG-114339-21, page 1030.
These proposed regulations under section 36B of the Internal Revenue Code would amend the existing regulations regarding eligibility for the premium tax credit to provide that affordability of employer-sponsored minimum essential coverage for family members of an employee is determined based on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee. The proposed regulations also would add a minimum value rule for family members of employees based on the benefits provided to the family members.

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part IV

Notice of Proposed Rulemaking

Affordability of Employer Coverage for Family Members of Employees

REG-114339-21

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; withdrawal of a notice of proposed rulemaking; notification of hearing

SUMMARY: This document contains proposed regulations under section 36B of the Internal Revenue Code (the "Code") that would amend the existing regulations regarding eligibility for the premium tax credit ("PTC") to provide that affordability of employer-sponsored minimum essential coverage (employer coverage) for family members of an employee is determined based on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee. The proposed regulations also would add a minimum value rule for family members of employees based on the benefits provided to the family members. The proposed regulations would affect taxpayers who enroll, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange ("Exchange") and who may be allowed a PTC for the coverage. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 6, 2022. As of April 7, 2022, the notice of proposed rulemaking published in the **Federal Register** on September 1, 2015 (80 FR 52678), is withdrawn. A public hearing has been scheduled for Monday, June 27, 2022, at 10:00 a.m. EDT. The IRS must receive speakers' outlines of topics to be discussed at the public hearing by Monday, June 13, 2022. If no outlines are received by Monday, June 13, 2022, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-114339-21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury ("Treasury Department") and the IRS will publish for public availability any comment submitted electronically, and, to the extent practicable any paper comments submitted, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-114339-21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Clara Raymond at (202) 317-4718; concerning submission of comments or outlines, the hearing, or any questions to attend the hearing by teleconferencing, Regina Johnson at (202) 317-5177 (not toll-free numbers) or preferably by email to publichearings@irs.gov. If emailing, please include the following information in the subject line: Attend, Testify, or Question and REG-114339-21.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 36B of the Code.

Section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that a member of the taxpayer's family enrolls in a qualified health plan ("QHP") through an Exchange for one or more "coverage months." Under §1.36B-1(d) of the Income Tax Regulations, a taxpayer's family consists of the taxpayer, the taxpayer's spouse if filing jointly, and any dependents of the taxpayer.

Section 1.36B-3(d)(1) provides that the PTC for a coverage month is the lesser of: (i) the premiums for the month, reduced by any amounts that were refunded, for one or more QHPs in which a taxpayer or a member of the taxpayer's family enrolls ("enrollment premiums"); or (ii) the excess of the adjusted monthly premium for the applicable benchmark plan over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year ("taxpayer's contribution amount").

Under section 36B(c)(2)(B) and §1.36B-3(c), a month is a coverage month for an individual only if the individual is not eligible for minimum essential coverage ("MEC") for that month (other than coverage under a health care plan offered in the individual market within a state). Under section 5000A(f)(1)(B) of the Code, the term MEC includes employer coverage. If an individual is eligible for employer coverage for a given month, no PTC is allowed for the individual for that month.

Section 36B(c)(2)(C) generally provides that an individual is not eligible for employer coverage if the coverage offered is unaffordable or does not provide minimum value. However, if the individual enrolls in employer coverage, the individual is eligible for MEC, irrespective of whether the employer coverage is affordable or provides minimum value. *See* section 36B(c)(2)(C)(iii) and §1.36B-2(c)(3)(vii).

Section 36B(c)(2)(C)(i)(II) and §1.36B-2(c)(3)(v)(A)(*1*) generally provide that employer coverage is unaffordable for an employee if the share of the annual premium the employee must pay for self-only coverage is more than the required contribution percentage of household income. The required contribution percentage is 9.5 percent and is indexed

annually under section 36B(c)(2)(C)(iv).[1] Likewise, §1.36B-2(c)(3)(v)(A)(*2*) generally provides that employer coverage is unaffordable for individuals eligible to enroll in employer coverage because of their relationship to the employee (related individuals) if the share of the annual premium the employee must pay for self-only coverage is more than the required contribution percentage of household income. Thus, the employee's share of the premium for family coverage, as defined in §1.36B-1(m), is not considered in determining whether employer coverage is affordable for related individuals.

Under section 36B(c)(2)(C)(ii) and §1.36B-6(a)(1), an eligible employer-sponsored plan provides minimum value only if the plan's share of the total allowed costs of benefits provided to an employee is at least 60 percent. On November 4, 2014, the IRS released Notice 2014-69, 2014-48 I.R.B. 903, which advised taxpayers of the intent to propose regulations providing that plans that fail to provide substantial coverage for inpatient hospitalization or physician services also do not provide minimum value. Notice 2014-69 noted that the Department of Health and Human Services (HHS) was concurrently issuing parallel guidance and also provided that, pending issuance of final Treasury regulations, an employee will not be required to treat a non-hospital/non-physician services plan as providing minimum value for purposes of an employee's eligibility for a PTC.

On November 26, 2014, HHS issued proposed regulations providing that an eligible employer-sponsored plan provides minimum value only if, in addition to covering at least 60 percent of the total allowed costs of benefits provided under the plan, the plan benefits include substantial coverage of inpatient hospital services and physician services. *See* 79 FR 70674. On February 27, 2015, HHS finalized this minimum value rule at 45 CFR 156.145(a). *See* 80 FR 10750, 10872. On September 1, 2015, the Treasury Department and the IRS issued proposed regulations under section 36B (REG-143800-14, 80 FR 52678) (2015 proposed regulations) incorporating the substance of the minimum value rule in the HHS final regulations. The rule in the 2015 proposed regulations issued by the Treasury Department and the IRS relating to substantial coverage of inpatient hospital services and physician services has not been finalized.

On January 28, 2021, President Biden issued Executive Order (EO) 14009, Strengthening Medicaid and the Affordable Care Act (ACA). Section 3(a) of EO 14009 directs the Secretary of the Treasury to review, as soon as practicable, all existing regulations and other agency actions to determine whether the actions are inconsistent with the policy to protect and strengthen the ACA. Section 3(a)(v) of EO 14009 also directs the Secretary of the Treasury, as part of this review, to examine policies or practices that may reduce the affordability of coverage or financial assistance for coverage, including for dependents. Consequently, the Treasury Department and the IRS have reviewed the regulations under section 36B, including §1.36B-2(c)(3)(v)(A)(*2*), which provides that the affordability of employer coverage for related individuals is based on the employee's share of the annual premium for self-only coverage, not the cost of family coverage. The Treasury Department and the IRS have tentatively determined that the rule in §1.36B-2(c)(3)(v)(A)(*2*) is not required by the relevant statutes and is inconsistent with the overall purpose of the ACA to expand access to affordable health care coverage.

Explanation of Provisions

I. *Reasons for Regulatory Changes to Affordability Rule*

As explained in the Background section of this preamble, individuals generally are not allowed a PTC if they are eligible for non-individual market MEC, including employer coverage. However, individuals are not eligible for employer coverage if the coverage is unaffordable or does not provide minimum value, unless they enroll in the coverage. Coverage is not affordable for an employee if the portion of the premiums required to be paid by the employee for self-only coverage exceeds 9.5 percent of household income. The current regulations under section 36B provide that if self-only employer coverage is affordable for an employee, then the coverage is also affordable for a spouse with whom the employee is filing a joint return and any dependents of the employee who may be eligible to enroll in the employer coverage, regardless of the amount the employee must pay to cover the spouse and dependents. *See* §1.36B-2(c)(3)(v)(A)(*2*).

Section 1.36B-2(c)(3)(v)(A)(*2*) was promulgated as a final regulation in 2013. *See* TD 9611 (78 FR 7264). The Treasury Department and the IRS explained in the preamble to the 2013 final regulation that the language of section 36B, through the cross-reference to section 5000A(e)(1)(B),[2] specifies that the affordability test for related individuals is based on the cost of self-only coverage. However, the approach in the current regulations has potentially impacted millions of Americans. Among those impacted are families with children, some of whom have suffered economic hardship. In addition, the current approach has undermined access to more affordable health care coverage by preventing access to lower-premium subsidized Exchange plans. Under the current regulations, a PTC is not allowed for children and other family members who have been offered employer coverage if the cost of the employee's self-only coverage is affordable, regardless of the employee's cost to cover those family members. Many of these families purchase health insurance, either through a family member's job or an Exchange, but pay high portions of their income towards premiums. Other families forgo coverage altogether due to the high premium costs. Several studies have analyzed this problem.[3]

[1] As adjusted, the required contribution percentage is 9.61 percent for 2022. *See* Rev. Proc. 2021-36, 2021-35 I.R.B. 357. For simplicity, this preamble refers to 9.5 percent as the required contribution percentage.

[2] Section 5000A provides rules regarding the individual shared responsibility payment, including an exemption from the payment for individuals who have an offer of employer coverage that is unaffordable.

[3] For example, see https://www.healthaffairs.org/do/10.1377/hblog20210520.564880/full/.

Pursuant to EO 14009, the Treasury Department and the IRS have reexamined the current interpretation of section 36B(c)(2)(C)(i) in §1.36B-2(c)(3)(v)(A)(*2*). The Treasury Department and the IRS have preliminarily determined that section 36B(c)(2)(C)(i) does not compel the result that if self-only employer coverage is affordable for an employee, then the coverage also is affordable for a spouse and any dependents. To the contrary, the Treasury Department and the IRS believe that the statute is better read to require a separate affordability determination for employees and for family members. Further, the Treasury Department and the IRS are now of the view that the interpretation in the current regulations unduly weakens the ACA by basing affordability solely on the premium cost for the employee's self-only coverage and, therefore, the interpretation in the current regulations is contrary to the policy of the ACA to expand access to affordable health care coverage.

As discussed more fully in part II of this Explanation of Provisions, the Treasury Department and the IRS believe that section 36B(c)(2)(C)(i) is best interpreted in a manner that requires consideration of the premium cost to the employee to cover not just the employee, but also other members of the employee's family who may enroll in the employer coverage. This interpretation would create consistency across parallel provisions of the Code enacted by the ACA, specifically with regard to the affordability tests in sections 36B and 5000A. Consequently, the Treasury Department and the IRS propose to exercise the regulatory authority granted in section 36B(h) to adopt an alternative reading of section 36B(c)(2)(C)(i). Under this alternative reading, affordability of employer coverage for related individuals in the employee's family is determined based on the cost of covering the employee and those related individuals.

II. *Affordability Rule for Related Individuals*

A. *Approach in Current Regulations*

When the Treasury Department and the IRS promulgated §1.36B-2(c)(3)(v)(A)(*2*) as a final regulation in 2013, it was after considerable deliberation regarding the affordability rule for related individuals. The Treasury Department and the IRS first issued proposed regulations under section 36B in August 2011. *See* REG-131491-10 (76 FR 50931). In addition to proposing general rules on all aspects of the PTC, the 2011 proposed regulations provided that affordability for related individuals was based on the amount an employee must pay for self-only coverage. In response to the 2011 proposed regulations, the Treasury Department and the IRS received a significant number of comments on the proposed affordability rule for related individuals. To fully consider those comments and ensure a comprehensive analysis of the issue, the Treasury Department and the IRS promulgated final regulations in May 2012 that reserved with respect to the affordability rule for related individuals and stated that future regulations would address the issue. *See* TD 9590 (77 FR 30377). In February 2013, the Treasury Department and the IRS finalized the affordability rule for related individuals as initially proposed in 2011. *See* TD 9611 (78 FR 7264). In finalizing the rule as initially proposed in 2011 -- that is, providing that affordability for related individuals was based on the amount an employee must pay for self-only coverage -- the Treasury Department and the IRS focused on the relevant statutory provisions in sections 36B(c)(2)(C)(i)(II), 5000A(e)(1)(B), and 5000A(e)(1)(C).

Under section 36B(c)(2)(C)(i)(II), an employee who does not enroll in employer coverage is not considered eligible for the coverage if "the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income." The flush language following this provision provides that "[t]his clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee." This flush language does not specify how the language in section 36B(c)(2)(C)(i)(II) is intended to apply with respect to related individuals or how the cross-reference to section 5000A(e)(1)(B) is to be understood with regard to coverage of related individuals.

Section 5000A(e)(1)(B)(i)[4] provides that, for an employee eligible to purchase employer coverage, the term "required contribution" means "the portion of the annual premium which would be paid by the individual . . . for self-only coverage." For related individuals, the definition of "required contribution" in section 5000A(e)(1)(B)(i) is modified by a "special rule" in section 5000A(e)(1)(C). Section 5000A(e)(1)(C) provides that "[f]or purposes of [section 5000A(e)(1)](B)(i), if an . . . individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination under subparagraph (A) shall be made by reference to the required contribution of the employee." The regulations under section 5000A interpret section 5000A(e)(1)(C) as modifying the required contribution rule in section 5000A(e)(1)(B)(i) with regard to coverage for related individuals to take into account the cost of covering the employee and the related individuals, not just the employee. Specifically, with respect to related individuals, §1.5000A-3(e)(3)(ii)(B) provides that the required contribution for related individuals is the amount an employee must pay to cover the employee and the related individuals. The affordability rule for related individuals in §1.5000A-3(e)(3)(ii)(B) was proposed on the same day that the affordability rule for related individuals in §1.36B-2(c)(3)(v)(A)(*2*) was finalized in TD 9611.

When §1.36B-2(c)(3)(v)(A)(*2*) was promulgated as a final regulation in 2013, the Treasury Department and the IRS considered the statutory language of section 36B(c)(2)(C)(i)(II) and its cross-reference to section 5000A(e)(1)(B), as well as the statutory language of section 5000A(e)(1)(B) and the cross-reference in section 5000A(e)(1)(C) to section 5000A(e)(1)(B). Under one reading of section 36B(c)(2)(C)(i)(II), the affordability rule for related individuals is determined solely by reference to section 5000A(e)(1)(B), without the modification to that section for related individuals

[4] Section 5000A(e)(1) provides an exemption from the requirement to maintain MEC for individuals who are eligible only for coverage that is unaffordable. Under section 5000A(e)(1)(A), coverage is unaffordable for an individual if the individual's required contribution exceeds a certain percentage of the individual's household income for the taxable year.

provided by section 5000A(e)(1)(C). This reading results in affordability being determined based on the cost of self-only coverage to the employee. Under an alternative reading, the affordability rule for related individuals is determined by reference to section 5000A(e)(1)(B) taking into account the modification by section 5000A(e)(1)(C). With the issuance of current §1.36B-2(c)(3)(v)(A)(*2*), the Treasury Department and the IRS adopted the interpretation that affordability of employer coverage for related individuals is based on the cost of self-only coverage to the employee.

B. *Approach in Proposed Regulations*

The Treasury Department and the IRS recognize that the statutory language in section 36B(c)(2)(C)(i)(II) supports two different readings. Under one reading, reflected in current §1.36B-2(c)(3)(v)(A)(*2*), the affordability rule for related individuals is determined solely by reference to section 5000A(e)(1)(B), without the modification to that section for related individuals provided by section 5000A(e)(1)(C). This reading results in affordability being determined based on the cost of self-only coverage to the employee. Under an alternative reading, however, the affordability rule for related individuals is determined by reference to section 5000A(e)(1)(B), but also encompasses the modification of 5000A(e)(1)(B) by section 5000A(e)(1)(C), which provides a special rule for related individuals.

These proposed regulations would adopt the alternative reading, which the Treasury Department and the IRS have now preliminarily concluded is the better reading of these provisions. Under this interpretation, because section 5000A(e)(1)(C) begins with the language "[f]or purposes of [section 5000A(e)(1)](B)(i)," the parenthetical cross reference in section 36B(c)(2)(C)(i)(II) to section 5000A(e)(1)(B)(i) is understood to incorporate the special rule in section 5000A(e)(1)(C) that modifies the required contribution rule in section 5000A(e)(1)(B)(i) when the coverage in question is for related individuals. Under this interpretation, a specific reference in the flush language of section 36B(c)(2)(C)(i) to section 5000A(e)(1)(C) is not necessary to require the consideration of section 5000A(e)(1)(C) in determining affordability for related individuals for section 36B purposes.[5]

This proposed amendment to the affordability rule for related individuals would create greater consistency between the affordability rules in section 36B(c)(2)(C)(i) and the affordability rules in section 5000A(e)(1). The proposed amendment would also promote consistency between the affordability rules in these provisions and 42 U.S.C. 18081(b)(4)(C), which requires Exchange applicants to separately provide the required contributions of employees and of related individuals in order to determine PTC eligibility; in the Treasury Department's and the IRS's view, the requirement to provide this information would make little sense if PTC eligibility depended only on the cost to the employee for self-only coverage. In addition, the proposed amendment would also support efforts to achieve the goal of the ACA to provide affordable, quality health care for all Americans. *See* H.R. Rep. No. 111-243 (2009).

The proposed regulations would provide that an eligible employer-sponsored plan is affordable for related individuals if the portion of the annual premium the employee must pay for family coverage, that is, the employee's required contribution, does not exceed 9.5 percent of household income. For this purpose, family coverage means all employer plans that cover any related individual other than the employee, including a self plus-one plan for an employee enrolling one other family member in the coverage. An employee's required contribution for family coverage is the portion of the annual premium the employee must pay for coverage of the employee and all other individuals included in the employee's family who are offered the coverage.

Some individuals who are not part of the tax family might nonetheless be offered the employer coverage. For example, children up to age 26 might be offered coverage by the taxpayer's employer, but those adult children might not be reported on the employee's tax return because they do not qualify as dependents of the employee. The cost of covering individuals who are offered the coverage but are not in the employee's family is not considered in determining whether the employee's family members have an offer of affordable employer coverage, regardless of whether the non-family member enrolls in the coverage. That is because, under §1.36B-2(c)(4)(i), a related individual who is not a spouse filing jointly with the employee or a dependent of the employee, such as a child of the employee who is no longer the employee's dependent, is treated as eligible for the employer coverage only if he or she is enrolled in the coverage. Consequently, a related individual who is not a spouse filing jointly with the employee or a dependent of the employee does not need a determination of unaffordable coverage to be eligible for the PTC. As a result, the cost of covering that individual should not be considered in determining whether other related individuals have an offer of affordable employer coverage.

The proposed regulations would make changes only to the affordability rule for related individuals; they would make no changes to the affordability rule for employees. As required by statute, employees continue to have an offer of affordable employer coverage if the employee's required contribution for self-only coverage of the employee does not exceed the required contribution percentage of household income. Accordingly, under the proposed regulations, a spouse or dependent of an employee may have an offer of employer coverage that is unaffordable even though the employee has an affordable offer of self-only coverage.

The proposed regulations also address situations in which an individual has offers of coverage from multiple employers.

[5] In Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as amended, in combination with the "Patient Protection and Affordable Care Act*," (JCX-18-10), March 21, 2010 (the JCT report), the Joint Committee staff initially explained that "[u]naffordable is defined as coverage with a premium required to be paid by the employee that is 9.5 percent or more of the employee's household income, based on the type of coverage applicable (e.g., individual or family coverage)." The quoted language was later revised to state that "[u]naffordable is defined as coverage with a premium required to be paid by the employee that is 9.5 percent or more of the employee's household income, based on self-only coverage." *See ERRATA for JCX-18-10*, (JCX-27-10), May 4, 2010. Although the JCT report does not compel any particular reading of section 36B(c)(2)(C)(i)(II) as it relates to family coverage, these differing interpretations by the Joint Committee staff further demonstrate the statutory ambiguity that renders either interpretation available under the ACA.

Under the proposed regulations, an individual with offers of coverage from multiple employers, either as an employee or a related individual, has an offer of affordable coverage if at least one of the offers is affordable.[6] Thus, for example, assume X is married and files a joint return with X's spouse, Y. If X has offers of coverage from X's employer and Y's employer, X has an offer of affordable coverage if the self-only cost of X's employer coverage is affordable or if the family cost of Y's employer coverage is affordable. This rule regarding multiple offers of coverage is consistent with section 36B(c)(2)(B), under which a month is not a coverage month for an individual if the individual is eligible for MEC for the month, including employer coverage that is affordable and provides minimum value. In this example, X is eligible for affordable employer coverage if one or both of the offers of coverage to X is affordable.

The proposed change to the affordability rule for related individuals in §1.36B-2(c)(3)(v)(A)(*2*) requires a conforming change to §1.36B-2(c)(3)(v)(B), which provides that the affordability of employer coverage for an employment period that is less than a full calendar year is based on the employee's required contribution for self-only coverage ("part-year period rule"). The proposed regulations would amend §1.36B-2(c)(3)(v)(B) to provide a part-year period rule for employees that is based on the employee's required contribution for self-only coverage and a part-year period rule for related individuals that is based on the employee's required contribution for family coverage. Changes to other existing rules such as §1.36B-2(c)(3)(v)(A)(*4*) (wellness incentive programs) and (*5*) (employer contributions to health reimbursement arrangements integrated with eligible employer-sponsored plans) are not necessary because those paragraphs refer to an "employee's required contribution," which, under the proposed regulations, would cover both the required contribution for self-only coverage and the required contribution for family coverage.

III. *Minimum Value*

A. *Minimum Value Cost of Benefits Rule for Related Individuals*

Section 1.36B-6(a)(1) provides that an eligible employer-sponsored plan provides minimum value if the plan's share of the total allowed cost of benefits provided to an employee is at least 60 percent. The proposed regulations would expand §1.36B-6(a) to provide a similar minimum value rule for related individuals that is based on the level of coverage provided to related individuals under an employer-sponsored plan.

Section 36B(c)(2)(C)(ii) provides that an employee is not eligible for employer coverage when the employer-sponsored plan does not provide minimum value. Section 36B(c)(2)(C)(ii) does not specifically mention related individuals. Section 36B(c)(2)(C)(ii) could be interpreted to mean that there is no minimum value requirement for related individuals so that a related individual is eligible for employer coverage as long as the coverage is affordable, regardless of whether the employer coverage provides minimum value. Under such an interpretation, if an employer offers coverage to an employee and related individuals that is affordable, but does not provide minimum value for the employee, an employee who does not enroll in the coverage would not be eligible for the coverage, but related individuals offered the coverage would be eligible because section 36B does not have a minimum value requirement for related individuals.

That approach, however, was not adopted with the issuance of §1.36B-2(c)(3)(i)(A), which was promulgated in final regulations in 2012. *See* TD 9590 (77 FR 30377). Section 1.36B-2(c)(3)(i)(A) clarifies that there is a minimum value requirement for both employees and related individuals, stating that "an employee who may enroll in an eligible employer-sponsored plan . . . that is minimum essential coverage, and . . . a related individual, are eligible for minimum essential coverage under the plan for any month only if the plan is affordable and provides minimum value." Under this long-standing rule, a related individual who receives an offer of employer-sponsored coverage that does not provide minimum value is ineligible for the coverage, provided that the related individual does not enroll in the coverage.

Section 1.36B-2(c)(3)(i)(A) clarifies that there is a minimum value requirement for related individuals; however, §1.36B-6(a) provides the rule for determining whether an eligible employer-sponsored plan provides minimum value to related individuals. As explained in the Background section of this preamble, under §1.36B-6(a)(1), an eligible employer-sponsored plan provides minimum value if the plan's share of the total allowed cost of benefits provided to an employee is at least 60 percent, regardless of the total allowed costs of benefits provided to the related individual. Thus, under this rule, if the plan's share of the total allowed cost of benefits provided to an employee is below 60 percent, the plan does not provide minimum value to employees nor to any related individuals offered the coverage. Without a separate minimum value rule for related individuals based on the costs of benefits provided to related individuals, a PTC would not be allowed for a related individual offered coverage under a plan that was affordable but that provided minimum value to employees and not to related individuals. This outcome would undermine the benefit a related individual would derive from the proposed amendment of the affordability rule for related individuals. That is, the affordability of employer coverage for related individuals would be based on the employee's cost of covering the related individuals, but there would be no assurance that affordable coverage offered to the related individuals provided a minimum value of benefits to the related individuals.

The lack of a separate minimum value rule for related individuals also would be inconsistent with the overall goal of the ACA in providing comprehensive, affordable health coverage, as well as the goal of improving access to quality and affordable health care. Therefore, these proposed regulations provide in §1.36B-6(a)(2)(i)

[6] The proposed rule for offers from multiple employers is consistent with the treatment under §1.36B-2(c)(3)(i) for situations in which an employee or family member may choose from multiple plans offered by an employer. In those situations, an individual has an offer of affordable coverage if at least one of the plans offered by the employer is affordable.

that an eligible employer-sponsored plan satisfies the minimum value requirement only if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60 percent, similar to the existing rule in §1.36B-6(a)(1) for employees. Further, to be considered to provide minimum value under §1.36B-6(a)(2)(ii) of these proposed regulations, an eligible-employer sponsored plan would have to include substantial coverage of inpatient hospital services and physician services, as discussed in more detail in section III.B. of this preamble.

B. *Minimum Value Rule Regarding Inpatient Hospitalization and Physician Services*

As noted earlier in the Background section of this preamble, the Treasury Department and the IRS issued proposed regulations in September 2015 incorporating the substance of the minimum value rule that was finalized by HHS in February 2015. The HHS final regulations and §1.36B-6(a)(2) of the 2015 proposed regulations provide that an eligible employer-sponsored plan provides minimum value only if, in addition to covering at least 60 percent of the total allowed costs of benefits provided to an employee under the plan, the plan benefits include substantial coverage of inpatient hospital services and physician services. The Treasury Department and the IRS have not finalized these regulations. The Treasury Department and the IRS are withdrawing the 2015 proposed regulations and reproposing in §1.36B-6(a)(1)(ii) without substantive change the minimum value rule regarding inpatient hospital services and physician services for employees. Pending issuance of final Treasury regulations, an employee will not be required to treat a non-hospital/non-physician services plan as providing minimum value for purposes of an employee's eligibility for a PTC. *See* Notice 2014-69.

In addition, the Treasury Department and the IRS are proposing in this document to expand the minimum value rule in §1.36B-6(a)(2) of the 2015 proposed regulations to apply to related individuals. Thus, §1.36B-6(a)(2)(ii) of the proposed regulations would provide that an eligible employer-sponsored plan provides minimum value to a related individual only if, in addition to covering at least 60 percent of the total allowed costs of benefits provided to the related individual, the plan benefits include substantial coverage of inpatient hospital services and physician services.

IV. *Premium Refunds Affecting the PTC Computation*

Section 1.36B-3(d)(1)(i) provides that, in determining a taxpayer's premium assistance amount[7] for a coverage month, the taxpayer's enrollment premiums for the month are the premiums for the month, reduced by any amounts that were refunded, for one or more QHPs in which a taxpayer or a member of the taxpayer's family enrolls. Questions have arisen concerning refunds paid to a taxpayer in a taxable year that is after the taxable year the premium is paid and whether those refunds should be considered in determining the taxpayer's premium assistance amount for the month to which the refund relates. A medical loss ratio rebate under section 2718 of the Public Health Service Act is an example of a premium refund that may be paid to a taxpayer in a taxable year that is after the taxable year the taxpayer paid the premium.

Tax liability for a taxable year generally is determined based on events occurring in that taxable year (the current taxable year). Events occurring in a later taxable year, such as a refund of a deductible amount paid in the current taxable year, generally don't affect the tax liability of the current taxable year. Thus, a taxpayer's premium assistance amount for a month in the current taxable year should not be affected by a premium refund that was paid in a later taxable year.

Consequently, the proposed regulations would clarify that, in computing the premium assistance amount for a coverage month, a taxpayer's enrollment premiums for the month are the premiums for the month, reduced by any amounts that were refunded in the same taxable year the taxpayer incurred the premium liability.

V. *Severability*

If any provision in this rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at https://www.irs.gov.

Proposed Applicability Dates

The proposed regulations under §§1.36B-2, 1.36B-3, and 1.36B-6(a)(2) are proposed to apply for taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**. As of the publication date of these proposed regulations, the proposed regulations are expected to be finalized no later than the end of this year. The Treasury Department and the IRS have been working closely with HHS to ensure that the federally-facilitated Exchange would be ready to implement the proposed changes before the open enrollment for 2023 coverage. HHS, in coordination with the Treasury Department and the IRS, intends to take all necessary steps to support efforts by state-based Exchanges to implement any changes before the open enrollment for 2023 coverage.

The proposed regulations under §1.36B-6(a)(1)(i) are proposed to apply for taxable years ending after December 31, 2013.

The proposed regulations under §1.36B-6(a)(1)(ii) are proposed to apply

[7] The terms "premium assistance amount" and "premium tax credit" (or PTC) have the same meaning.

for plan years beginning after November 3, 2014.

Special Analyses

I. *Regulatory Planning and Review – Economic Analysis*

EOs 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). EO 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These proposed regulations have been designated as subject to review under EO 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations.

A. *Background*

1. *Affordability of Employer Coverage for Family Members of an Employee*

As noted earlier in this preamble, section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that the taxpayer or one or more family members is enrolled in a QHP through an Exchange (Exchange coverage) for one or more months in which they are not eligible for other MEC. However, an individual who is eligible to enroll in employer coverage, but chooses not to, is not considered eligible for the employer coverage if it is "unaffordable." Section 36B defines employer coverage as unaffordable for an employee if the employee's share of the self-only premium is more than 9.5 percent of the employee's household income.

Section 1.36B-2(c)(3)(v)(A)(*2*) provides that affordability of employer coverage for each related individual of the employee is determined by the cost of self-only coverage. Thus, the employee and any related individuals included in the employee's family, within the meaning of §1.36B-1(d), are eligible for MEC and are ineligible for the PTC if (1) the plan provides minimum value and (2) the employee's share of the self-only coverage is not more than 9.5 percent of household income (that is, the self-only coverage for the employee is "affordable").

2. *Description of the Proposed Regulations*

The proposed regulations would revise §1.36B-2(c)(3)(v)(A)(*2*) to provide a separate affordability test for related individuals based on the cost to the employee of family coverage. The proposed regulations do not change the affordability test for the employee. As a result, whenever a family applies for Exchange coverage and one or more family members has an offer of employer coverage, the Exchange will perform the following affordability determinations: one determination for the employee based on the cost of self-only coverage, one determination for the related individuals based on the cost of family coverage, and additional determinations for any related individuals who have an offer of coverage from another employer. It is therefore possible that family members would be eligible for PTC but the employee would not. In this case, if the entire family chooses to enroll in Exchange coverage with advance payments of the premium tax credit (APTC), the APTC would be paid only for coverage of the employee's family members but would not be paid for coverage of the employee.

B. *Baseline*

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

C. *Affected Entities*

Some families with an offer of employer coverage to the employee and at least one other family member would be newly eligible for a PTC for the Exchange coverage of the non-employee family members. The proposed regulations would have no effect on families for whom self-only employer coverage costs more than 9.5 percent of household income – given that family coverage is more expensive than self-only coverage – because the affordability status of their employer coverage is unchanged. Similarly, the proposed regulations would not affect families for whom the cost of family employer coverage does not exceed 9.5 percent of household income because their coverage is determined to be affordable either way. In contrast, the proposed regulations would affect only family members – other than the employee – for whom the employee's cost for the available employer coverage does not exceed 9.5 percent of household income for a self-only plan but exceeds 9.5 percent of household income for a family plan or for whom the offer of the family plan is affordable but doesn't provide minimum value. The Treasury Department and the IRS are unable to estimate the size of the population affected by the proposed regulations because contribution amounts for family coverage are not observed in the tax data.

Employers may see a shift for some of their employees from family coverage to self-only coverage when family members newly qualify for PTC. The cost per enrollee could increase or decrease depending on the characteristics of those that remain covered. However, this shift would likely lead to a decrease in the total amount employers are spending on health insurance as the Federal government increases spending on PTC for the non-employee family members.

D. *Economic Analysis of the Proposed Regulations*

1. *Overview*

For some families, the proposed regulations would lower the premium contributions required to purchase coverage for all family members by allowing family members other than the employee to qualify for a PTC. For some families with offers of employer coverage who will be newly eligible for the PTC, the combined cost of split coverage (self-only employer coverage for the employee plus PTC-subsidized Exchange coverage for related individuals) would be lower than what they pay for family coverage through the employer. Some low-income families with

uninsured individuals where the employee is offered low-cost, self-only employer coverage and relatively high-cost family employer coverage would gain access to a lower-cost option through eligibility for the PTC on behalf of one or more related individuals.

However, the cost for families to purchase Exchange coverage with APTC is determined in part by the applicable percentage and household income, which are the same regardless of the number of individuals actually covered. Therefore, if the number of individuals needing Exchange coverage is small – such as when some family members have access to other MEC – the cost of Exchange coverage per enrollee is relatively high when added to the cost of the employee share of self-only employer coverage. Furthermore, split coverage also means multiple deductibles and maximum out-of-pocket limits for the family, which potentially increases out-of-pocket costs for families. As a result of these features, many families with offers of employer coverage who would be newly eligible for the PTC under the proposed regulations – including families with some uninsured individuals – would not see any savings in the combined cost of out-of-pocket premiums and cost sharing. Lastly, many families may prefer the benefits and provider networks of employer coverage, compared to Exchange coverage. Taking all these factors into account, the Treasury Department and the IRS have determined that new take-up of Exchange coverage may be modest for eligible families because many would either still prefer employer coverage or prefer to purchase other goods and services, or save or invest, rather than insure all family members.

2. *Benefits*

Gain of health insurance coverage. For those individuals who are uninsured because the premiums for family coverage through a family member's employer are unaffordable, gaining access to PTC for the purchase of Exchange coverage may be more affordable and prompt some of them to take up coverage.

Additional health insurance option. For those individuals who are covered by family coverage through a family member's employer that costs more than 9.5 percent of their household income, the proposed regulations would, by providing access to a PTC, give them an additional option that could provide coverage at a lower cost or with more comprehensive benefits.

The Treasury Department and the IRS are unable to estimate the size of the benefits of the proposed regulations because contribution amounts for family coverage are not observed in the tax data. The Treasury Department and the IRS request comments that provide data, other evidence, or models that provide insight on this issue.

3. *Costs*

Administrative costs. Adding this new option for eligibility for PTC increases the cost to the IRS to evaluate PTC claims. The IRS's PTC infrastructure will require one-time changes to certain processes, forms, and instructions to be implemented in time for the 2023 tax year, and the cost of these changes is expected to be negligible. The Centers for Medicare & Medicaid Services ("CMS"), as the administrator of the Federally-facilitated Exchanges and the federal Exchange eligibility and enrollment platform, and the State-based Exchanges that operate their own Exchange eligibility and enrollment platforms will also incur administrative costs as the Exchanges will have primary responsibility for implementing the rule as part of the eligibility and enrollment process when families are applying for Exchange coverage with APTC. Exchanges will incur one-time costs to update Exchange eligibility systems to account for the new treatment of family contribution amounts for employer coverage for purposes of determining eligibility for APTC, and CMS, State-based Exchanges, State Medicaid Agencies, and CMS-approved Enhanced Direct Enrollment partners will incur administrative costs to make conforming updates to their respective consumer applications and consumer-facing affordability tools. The Treasury Department and the IRS anticipate total administrative costs to CMS, Exchanges, State Medicaid Agencies, and Enhanced Direct Enrollment partners associated with the proposed regulation to be modest, and request comments from impacted stakeholders to inform administrative cost estimates.

4. *Transfers*

Increased PTC costs for new Exchange enrollees. Because some individuals may be newly eligible for PTC, some individuals may move from employer coverage or uninsured status to Exchange coverage. Thus, the proposed regulations may increase the amount of PTC being paid by the government and reduce employer contributions.

Decreased employer exclusion for people who drop employer coverage. If individuals drop their employer coverage, or do not enroll when they otherwise would have, to take up Exchange coverage, the amount of money that was going toward their employer coverage, which provides tax-preferred health benefits, will go into the employee's wages, other employees' wages, and employer profits and will no longer be tax exempt. Thus, the proposed regulations may increase the amount of tax revenue received from income and payroll taxes.

The Treasury Department and the IRS are unable to estimate the size of the population affected by the proposed regulations because contribution amounts for family coverage are not observed in the tax data. The Treasury Department and the IRS request comments that provide data, other evidence, or models that provide insight on this issue.

5. *Impact on Small Entities*

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (the "Act") requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that "describe[s] the impact of the proposed rule on small entities." *See* 5 U.S.C. 603(a). The term "small entities" is defined in 5 U.S.C. 601 to mean "small business," "small organization," and "small governmental jurisdiction," which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is "small" and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). *See* title 13, part 121 of the Code of Federal Regulations (titled "Small Business Size

Regulations"). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. *See* title 13, § 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

Section 605 of the Act provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the proposed regulations falls on individual taxpayers, and entities will experience only small changes.

6. *Impact on Small Business*

Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

II. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA") requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

III. *Executive Order 13132: Federalism*

EO 13132 (titled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the EO. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the EO.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble in the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including the economic impact of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing has been scheduled for June 27, 2022, beginning at 10:00 a.m. EDT. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Individuals who wish to testify (by telephone) at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-114339-21) for the hearing and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG-114339-21. The email should also include a copy of the speaker's outline of topics. The email requesting to speak must be received by June 13, 2022. Speakers will have up to ten minutes to testify and may be asked questions by the panel.

Individuals who want to attend the public hearing by telephone must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-114339-21) and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG-114339-21. Email requests to attend the public hearing must be received by 5:00 p.m. EDT on June 23, 2022.

The telephonic hearing will be made accessible to people with disabilities. To request special assistance during the telephonic hearing, please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-5177 (not a toll-free number) by June 22, 2022. Any questions regarding speaking at or attending the public hearing may also be emailed to publichearings@irs.gov.

Drafting Information

The principal author of these proposed regulations is Suzanne R. Sinno of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-143800-14) that was published in the **Federal Register** on September 1, 2015 (80 FR 52678), is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.36B-2 is amended by:

1. Revising the first sentence and adding a sentence following the first sentence of paragraph (c)(3)(v)(A)(*2*).
2. Adding paragraph (c)(3)(v)(A)(*8*).

3. Revising the second sentence of paragraph (c)(3)(v)(B).
4. In paragraph (c)(3)(v)(D), Examples 1 through 9 are designated as paragraphs (c)(3)(v)(D)(*1*) through (*9*), respectively.
5. In newly designated paragraphs (c)(3)(v)(D)(*3*), (*5*), (*6*), (*7*), and (*9*), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(c)(3)(v)(D)(*3*)(i) through (ii)	(c)(3)(v)(D)(*3*)(*i*) through (*ii*)
(c)(3)(v)(D)(*5*)(i) through (ii)	(c)(3)(v)(D)(*5*)(*i*) through (*ii*)
(c)(3)(v)(D)(*6*)(i) through (ii)	(c)(3)(v)(D)(*6*)(*i*) through (*ii*)
(c)(3)(v)(D)(*7*)(i) through (iv)	(c)(3)(v)(D)(*7*)(*i*) through (*iv*)
(c)(3)(v)(D)(*9*)(i) through (ii)	(c)(3)(v)(D)(*9*)(*i*) through (*ii*)

6. Revising newly designated paragraphs (c)(3)(v)(D)(*1*) and (*2*).
7. Redesignating paragraphs (c)(3)(v)(D)(*3*) through (*9*) as paragraphs (c)(3)(v)(D)(*7*) through (*13*), respectively.
8. Adding new paragraphs (c)(3)(v)(D)(*3*) through (*6*);
9. Revising the heading for newly redesignated paragraph (c)(3)(v)(D)(*7*), the heading and first sentence of newly redesignated paragraph (c)(3)(v)(D)(*8*), the heading of newly redesignated paragraph (c)(3)(v)(D)(*9*), and the first sentence of newly redesignated paragraph (c)(3)(v)(D)(*9*)(*i*).
10. In the headings for newly redesignated paragraphs (c)(3)(v)(D)(*10*) through (*13*), removing the first period and adding a colon in its place.
11. Revising paragraph (e)(1).
12. Adding paragraph (e)(5).

The revisions and additions read as follows:

§1.36B-2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(3) * * *

(v) * * *

(A) * * *

(*2*) * * * Except as provided in paragraph (c)(3)(v)(A)(*3*) of this section, an eligible employer-sponsored plan is affordable for a related individual if the employee's required contribution for family coverage under the plan does not exceed the required contribution percentage, as defined in paragraph (c)(3)(v)(C) of this section, of the applicable taxpayer's household income for the taxable year. For purposes of this paragraph (c)(3)(v)(A)(*2*), an employee's required contribution for family coverage is the portion of the annual premium the employee must pay for coverage of the employee and all other individuals included in the employee's family, as defined in §1.36B-1(d), who are offered coverage under the eligible employer-sponsored plan. * * *

* * * * *

(*8*) *Multiple offers of coverage*. An individual who has offers of coverage under eligible employer-sponsored plans from multiple employers, either as an employee or a related individual, has an offer of affordable coverage if at least one of the offers of coverage is affordable under paragraph (c)(3)(v)(A)(*1*) or (*2*) of this section.

(B) * * * Coverage under an eligible employer-sponsored plan is affordable for a part-year period if the annualized required contribution for self-only coverage, in the case of an employee, or family coverage, in the case of a related individual, under the plan for the part-year period does not exceed the required contribution percentage of the applicable taxpayer's household income for the taxable year. * * *

* * * * *

(D) * * *

(*1*) *Example 1: Basic determination of affordability*. For all of 2023, taxpayer C works for an employer, X, that offers its employees and their spouses a health insurance plan under which, to enroll in self-only coverage, C must contribute an amount for 2023 that does not exceed the required contribution percentage of C's 2023 household income. Because C's required contribution for self-only coverage does not exceed the required contribution percentage of C's household income, under paragraph (c)(3)(v)(A)(*1*) of this section, X's plan is affordable for C, and C is eligible for minimum essential coverage for all months in 2023.

(*2*) *Example 2: Basic determination of affordability for a related individual*. (*i*) The facts are the same as in paragraph (c)(3)(v)(D)(*1*) of this section (Example 1), except that C is married to J, they file a joint return, and to enroll C and J, X's plan requires C to contribute an amount for coverage for C and J for 2023 that exceeds the required contribution percentage of C's and J's household income. J does not work for an employer that offers employer-sponsored coverage.

(*ii*) J is a member of C's family as defined in §1.36B-1(d). Because C's required contribution for coverage of C and J exceeds the required contribution percentage of C's and J's household income, under paragraph (c)(3)(v)(A)(*2*) of this section, X's plan is unaffordable for J. Accordingly, J is not eligible for minimum essential coverage for 2023. However, under paragraph (c)(3)(v)(A)(*1*) of this section, X's plan is affordable for C, and C is eligible for minimum essential coverage for all months in 2023.

(*3*) *Example 3: Multiple offers of coverage*. The facts are the same as in paragraph (c)(3)(v)(D)(*2*) of this section (Example 2), except that J works all year for an employer that offers employer-sponsored coverage to employees. J's required contribution for the cost of self-only coverage from J's employer does not exceed the required contribution percentage of C's and J's household income. Although the coverage offered by C's employer for C and J is unaffordable for J, the coverage offered by J's employer is affordable for J. Consequently, under paragraphs (c)(3)(v)(A)(*1*) and (*8*) of this section, J is eligible for minimum essential coverage for all months in 2023.

(*4*) *Example 4: Cost of covering individuals not part of taxpayer's family*. (*i*) D and E are married, file a joint return, and have two children, F and G, under age 26. F is a dependent of D and E, but G is not. D works all year for an employer that offers employer-sponsored coverage to employees, their spouses, and their children under age 26. E, F, and G do not work for employers offering coverage. D's required contribution for self-only coverage under D's employer's coverage does not exceed the required contribution percentage of D's and E's household income. D's required contribution for coverage of D, E, F, and G exceeds the required contribution percentage of D's and E's household income, but D's required contribution for coverage of D, E, and F does not exceed the required contribution percentage of the household income.

(*ii*) E and F are members of D's family as defined in §1.36B-1(d). G is not a member of D's family under §1.36B-1(d), because G is not D's dependent. Under paragraph (c)(3)(v)(A)(*1*) of this section, D's employer's coverage is affordable for D because D's required contribution for self-only coverage does not exceed the required contribution percentage of D's and E's household income. D's employer's coverage also is affordable for E and F, because, under paragraph (c)(3)(v)(A)(*2*) of this section, D's required contribution for coverage of D, E, and F does not exceed the required contribution percentage of D's and E's household income. Although D's cost to cover D, E, F, and G exceeds the required contribution percentage of D's and E's household income, under paragraph (c)(3)(v)(A)(*2*) of this section, the cost to cover G is not considered in determining whether D's employer's coverage is affordable for E and F, regardless of whether G actually enrolls in the plan, because G is not in D's family. D, E, and F are eligible

for minimum essential coverage for all months in 2023. Under paragraph (c)(4)(i) of this section, G is considered eligible for the coverage offered by D's employer only if G enrolls in the coverage.

(*5*) *Example 5: More than one family member with an employer offering coverage*. (*i*) K and L are married, file a joint return, and have one dependent child, M. K works all year for an employer that offers coverage to employees, spouses, and children under age 26. L works all year for an employer that offers coverage to employees only. K's required contribution for self-only coverage under K's employer's coverage does not exceed the required contribution percentage of K's and L's household income. Likewise, L's required contribution for self-only coverage under L's employer's coverage does not exceed the required contribution percentage of K's and L's household income. However, K's required contribution for coverage of K, L, and M exceeds the required contribution percentage of K's and L's household income.

(*ii*) L and M are members of K's family as defined in §1.36B-1(d). Under paragraph (c)(3)(v)(A)(*1*) of this section, K's employer's coverage is affordable for K because K's required contribution for self-only coverage does not exceed the required contribution percentage of K's and L's household income. Similarly, L's employer's coverage is affordable for L, because L's required contribution for self-only coverage does not exceed the required contribution percentage of K's and L's household income. Thus, K and L are eligible for minimum essential coverage for all months in 2023. However, under paragraph (c)(3)(v)(A)(*2*) of this section, K's employer's coverage is unaffordable for M, because K's required contribution for coverage of K, L, and M exceeds the required contribution percentage of K's and L's household income. Accordingly, M is not eligible for minimum essential coverage for 2023.

(*6*) *Example 6: Multiple offers of coverage for a related individual*. (*i*) The facts are the same as in paragraph (c)(3)(v)(D)(*5*) of this section (Example 5), except that L works all year for an employer that offers coverage to employees, spouses, and children under age 26. L's required contribution for coverage of K, L, and M does not exceed the required contribution percentage of K's and L's household income.

(*ii*) Although M is not eligible for affordable employer coverage under K's employer's coverage, paragraph (c)(3)(v)(A)(*8*) of this section dictates that L's employer coverage must be evaluated to determine whether L's employer coverage is affordable for M. Under paragraph (c)(3)(v)(A)(*2*) of this section, L's employer's coverage is affordable for M, because L's required contribution for K, L, and M does not exceed the required contribution percentage of K's and L's household income. Accordingly, M is eligible for minimum essential coverage for all months in 2023.

(*7*) *Example 7: Determination of unaffordability at enrollment*. * * *

(*8*) *Example 8: Determination of unaffordability for plan year*. The facts are the same as in paragraph (c)(3)(v)(D)(*7*) of this section (Example 7), except that X's employee health insurance plan year is September 1 to August 31. * * *

(*9*) *Example 9: No affordability information affirmatively provided for annual redetermination*. (i) The facts are the same as in paragraph (c)(3)(v)(D)(*7*) of this section (Example 7), except the Exchange redetermines D's eligibility for advance credit payments for 2015. * * *

* * * * *

(e) * * *

(1) Except as provided in paragraphs (e)(2) through (5) of this section, this section applies to taxable years ending after December 31, 2013.

* * * * *

(5) The first two sentences of paragraph (c)(3)(v)(A)(*2*), paragraph (c)(3)(v)(A)(*8*), the second sentence of paragraph (c)(3)(v)(B), paragraphs (c)(3)(v)(D)(*1*) through (*6*), and the first sentences of paragraphs (c)(3)(v)(D)(*8*) and (*9*) of this section apply to taxable years beginning after [date final regulations are published in the **Federal Register**].

Par. 3. Section 1.36B-3 is amended by revising paragraphs (d)(1)(i) and (n)(1) and adding paragraph (n)(3) to read as follows:

§1.36B-3 Computing the premium assistance credit amount.

* * * * *

(d) * * *

(1) * * *

(i) The premiums for the month, reduced by any amounts that were refunded in the same taxable year as the premium liability is incurred, for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or

* * * * *

(n) * * * (1) Except as provided in paragraphs (n)(2) and (3) of this section, this section applies to taxable years ending after December 31, 2013.

* * * * *

(3) Paragraph (d)(1)(i) of this section applies to taxable years beginning after [the date final regulations are published in the **Federal Register**].

Par. 4. Section 1.36B-6 is amended by revising paragraphs (a) and (g)(2) to read as follows:

§1.36B-6 Minimum value.

(a) *In general*--**(1)** *Employees***.** An eligible employer-sponsored plan provides minimum value (MV) for an employee of the employer offering the coverage only if--

(i) The plan's MV percentage, as defined in paragraph (c) of this section, is at least 60 percent based on the plan's share of the total allowed costs of benefits provided to the employee; and

(ii) The plan provides substantial coverage of inpatient hospital services and physician services.

(2) *Related individuals***.** An eligible employer-sponsored plan provides MV for an individual who may enroll in the plan because of a relationship to an employee of the employer offering the coverage (a related individual) only if--

(i) The plan's MV percentage, as defined in paragraph (c) of this section, is at least 60 percent based on the plan's share of the total allowed costs of benefits provided to the related individual; and

(ii) The plan provides substantial coverage of inpatient hospital services and physician services.

* * * * *

(g) * * *

(2) *Exceptions*. (i) Paragraph (a)(1)(ii) of this section applies for plan years beginning after November 3, 2014; and

(ii) Paragraph (a)(2) of this section applies to taxable years beginning after [date final regulations are published in the **Federal Register**].

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

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Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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We Welcome Comments About the Internal Revenue Bulletin

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