EMPLOYEE BENEFITS

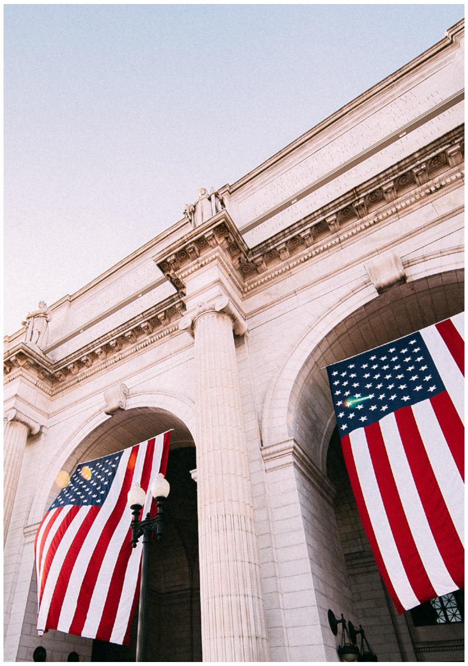
Fixing the Family Glitch: Proposed Change to Premium Tax Credits for Families and How It Impacts Employers

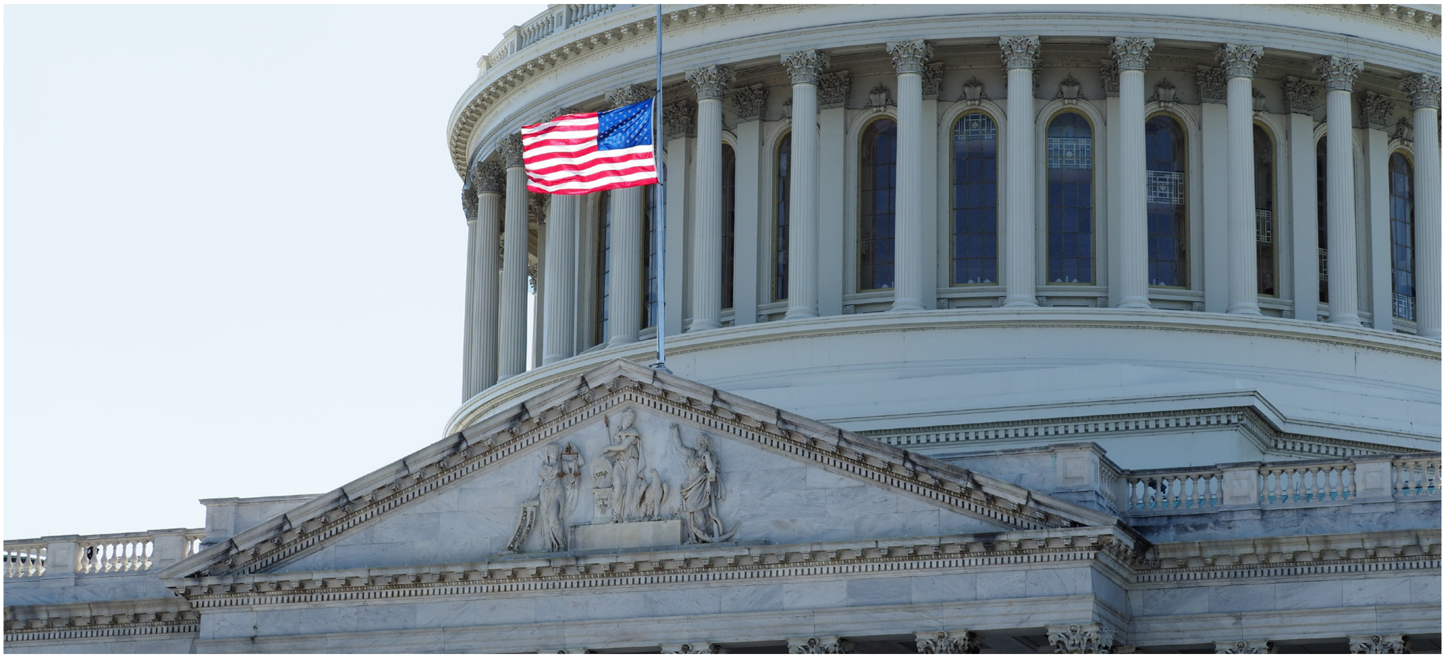
In April 2022, the IRS released proposed regulations aimed at fixing what has been referred to as the ACA's "Family Glitch." If finalized as currently written, the rules would expand the availability of marketplace premium tax credits for certain spouses and dependents of employees covered under, or eligible for, "affordable" employer-sponsored health coverage. As described below, this expansion will be achieved by changing the definition of "affordable" employer-sponsored coverage *for family members of employees*. In a White House fact sheet accompanying the announcement of the proposed regulations, the Biden Administration estimates that the proposed change would make marketplace tax credits newly available to approximately 5 million Americans. The final rule is "expected to be finalized no later than the end of [2022]," and the tax credits are expected to be available for the 2023 federal exchange open enrollment season.

The Family Glitch

The "Family Glitch" refers to the lack of premium tax credits for marketplace coverage available to spouses and dependents of employees. Under existing rules, the availability of tax credits for these individuals is tied to the affordability of employer-sponsored coverage *for the employee*. Under Internal Revenue Code Section 36B, individuals will not qualify for ACA marketplace premium tax credits if they have minimum essential coverage available to them through an employer unless that coverage is deemed not "affordable" or does not provide "minimum value."

Under the current regulations, whether employer-sponsored health coverage is "affordable" for purposes of the availability of a premium tax credit for individuals (including spouses and dependents of employees), is based on the cost of self-only coverage – i.e., the cost of family coverage is not considered. Accordingly, spouses and dependents of an employee will be ineligible for premium tax credits if an employer offers affordable self-only coverage even if family coverage is "unaffordable."





The Proposed Regulations

The proposed regulations, if adopted, would expand the tax credits by changing how affordability is determined for an employee's spouse and dependents. Specifically, the rules provide that an employer-sponsored plan will be considered "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 [as indexed]." Otherwise-eligible spouses and dependents that do not have access to affordable employer-sponsored coverage as determined under this new rule will be eligible for premium tax credits for coverage obtained through the marketplace.

The proposed regulations do not change the definition of "affordable" as it relates to employees. Thus, if an employee has access to self-only coverage that is affordable based on the previous definition (i.e., the cost of self-only coverage under the lowest cost option providing minimum value does not exceed 9.5%, as indexed, of household income), the employee would not be eligible for premium subsidies as they are deemed to have access to "affordable" coverage. This will mean that in cases where a given employer offers affordable self-only coverage but "unaffordable" family coverage, only the spouse and dependents of a given employee will be eligible for marketplace premium subsidies.

Will The Proposed Rules Affect Employers?

As described in the Federal Register, the proposed rules do not affect employer liability for shared responsibility penalties under the ACA's employer mandate. The definition of affordable employer-sponsored coverage for an employee (as opposed to non-employee family members) will not change and will continue to be based on the employee cost for self-only coverage. Because employer shared responsibility penalties are triggered only when a full-time employee who was not offered affordable coverage receives premium tax credits through the marketplace, the proposed rules would not change how employer shared responsibility penalties are determined. **In other words, the proposed rules *do not* require applicable large employers to offer affordable coverage to spouses and dependents.**

From a practical standpoint, employers who offer family coverage that is deemed unaffordable may see some spouses and dependents opt-out of coverage under the plan if the proposed rules are finalized. The new availability of the tax credits may cause some spouses and dependents to switch from higher-cost employer-sponsored family health plans to more affordable exchange coverage.

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