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Health Insurance Premium Tax Credit and Cost-Sharing Reductions

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Summary

Certain individuals without access to subsidized health insurance coverage may be eligible for the premium tax credit (PTC) established under the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) and amended under the American Rescue Plan Act of 2021 (ARPA, P.L. 117-2) to include several temporary provisions. The dollar amount of the PTC varies from individual to individual, based on a formula specified in statute. Individuals who are eligible for the PTC may be required to contribute some amount toward the purchase of health insurance.

To be eligible to receive the premium tax credit in 2022, individuals must have annual household income at or above 100% of the federal poverty level; not be eligible for certain types of health insurance coverage, with exceptions; file federal income tax returns; and enroll in a plan through an individual exchange. Exchanges (or marketplaces) are not insurance companies; rather, exchanges serve as marketplaces for the purchase of health insurance. They operate in every state and the District of Columbia.

The PTC is refundable, so individuals may claim the full credit amount when filing their taxes, even if they have little or no federal income tax liability. The credit also is advanceable, so individuals may choose to receive advanced payments of the credit (or APTC). APTCs are provided on a monthly basis to coincide with the payment of insurance premiums, automatically reducing consumer costs associated with purchasing insurance. The credit is financed through permanent appropriations authorized under the federal tax code.

Individuals who receive premium credit payments also may be eligible for subsidies that reduce cost-sharing expenses. The ACA established two types of cost-sharing reductions (CSRs). One type of subsidy reduces annual cost-sharing limits; the other directly reduces cost-sharing requirements (e.g., lowers a deductible). Individuals who are eligible for CSRs may receive both types. Plans with CSRs were initially provided payments to reimburse them for the cost of providing the subsidies to eligible consumers. Although applicable health plans must continue to provide these CSRs, such plans no longer receive direct payments.

The ARPA makes temporary changes to the PTC and to CSRs. Its provisions amend statute to

- expand eligibility for and the amount of the PTC applicable to certain exchange plans for tax years 2021 and 2022;
- suspend the requirement, for tax year 2020, that individuals pay back PTC amounts that were provided in excess; and
- expand eligibility for and the calculation of both the PTC and CSRs for individuals who receive unemployment compensation during calendar year 2021.

This report describes current law (including ARPA provisions that are in effect as of the publication date of this report) and applicable regulations and guidance, specifically with regard to how the PTC and CSR requirements apply in 2022.

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American Rescue Plan Act of 2021

The American Rescue Plan Act of 2021 (ARPA; P.L. 117-2) makes temporary changes to the premium tax credit (PTC) and cost-sharing reductions (CSRs). Of those temporary changes, one pertains to tax year 2022: expand eligibility for and the amount of the PTC applicable to certain exchange plans.

The ARPA temporary changes to the PTC and CSRs that have expired include the provisions that

- suspended the requirement, for tax year 2020, that individuals pay back PTC amounts that were provided in excess and
- expanded eligibility for and the calculation of both the PTC and CSRs for individuals who receive unemployment compensation during calendar year 2021.

This report describes current law and applicable regulations and guidance, specifically how the PTC and CSR requirements apply in 2022, and includes historical enrollment and spending data.

Sources: 26 U.S.C. 36B(b)(3)(A)(iii) and (c)(1)(E); and CRS Report R46777, *American Rescue Plan Act of 2021 (P.L. 117-2): Private Health Insurance, Medicaid, CHIP, and Medicare Provisions*.

Background

Certain individuals and families without access to subsidized health insurance coverage may be eligible for a premium tax credit (PTC). This credit, authorized under the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) and amended under the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2), applies toward the cost of purchasing specific types of health plans offered by private health insurance companies.[1] Individuals who receive PTC payments also may be eligible for subsidies that reduce cost-sharing expenses.[2]

To be eligible for the PTC and cost-sharing reductions (CSRs), individuals and families must enroll in health plans offered through health insurance exchanges and meet other criteria. Exchanges operate in every state and the District of Columbia (DC).[3] Exchanges are not insurance companies; rather, they are marketplaces that offer private health plans to qualified individuals and small businesses. The ACA specifically requires exchanges to offer insurance options to individuals and to small businesses, so exchanges are structured to assist these two different types of customers. Consequently, each state has one exchange to serve individuals and families (an *individual exchange*) and another to serve small businesses (a *Small Business Health Options Program*, or *SHOP, exchange*).

Health insurance companies that participate in the individual and SHOP exchanges must comply with numerous federal and state requirements. Among such requirements are restrictions related to the determination of premiums for exchange plans (*rating restrictions*). Insurance companies are prohibited from using health factors in determining premiums. However, they are allowed to vary premiums by age (within specified limits), geography, number of individuals enrolling in a plan, and smoking status (within specified limits).[4]

[1] §1401 of the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended); new §36B of the Internal Revenue Code of 1986 (IRC); and §§9661-9663 of the American Rescue Plan Act of 2021 (ARPA, P.L. 117-2).

[2] ACA §1402; and new §18071 of the Public Health Service Act (PHSA).

[3] For additional background about the exchanges, see CRS Report R44065, *Overview of Health Insurance Exchanges*.

[4] For additional discussion regarding these rating restrictions, see CRS Report R45146, *Federal Requirements on Private Health Insurance Plans*.

Premium Tax Credit

The dollar amount of the PTC is based on a statutory formula and varies from individual to individual. Individuals who are eligible for the premium credit generally are required to contribute some amount toward the purchase of their health insurance.

The PTC is refundable, so individuals may claim the full credit amount when filing their taxes even if they have little or no federal income tax liability. The credit also is advanceable, so individuals may choose to receive the credit in advance of filing taxes on a monthly basis to coincide with the payment of insurance premiums (technically, advance payments go directly to insurers). Advance payments (or APTC) automatically reduce monthly premiums by the credit amount. Therefore, the direct cost of insurance to an individual or family that is receiving APTC payments generally will be lower than the advertised cost for a given exchange plan.

Eligibility

To be eligible to receive the PTC, individuals must meet the following criteria:

- file federal income tax returns;
- enroll in a plan through an individual exchange;
- have annual household income at or above 100% of the federal poverty level (FPL)[5] for tax year 2022;[6] and
- *not* be eligible for minimum essential coverage (see the "Not Eligible for Minimum Essential Coverage" section in this report), with exceptions.

These eligibility criteria are discussed in greater detail below.

File Federal Income Tax Returns

Because premium assistance is provided in the form of a tax credit, such assistance is administered by the Internal Revenue Service (IRS) through the federal tax system. The premium credit process requires qualifying individuals to file federal income tax returns, even if their incomes are at levels that normally do not necessitate the filing of such returns.

Married couples are required to file joint tax returns to claim the premium credit, with some exceptions. The calculation and allocation of credit amounts may differ in the event of a change in tax-filing status during a given year (e.g., individuals who marry or divorce).[7]

[5] Household income is measured according to the definition for modified adjusted gross income (MAGI); see the "Have Annual Household Income at or Above 100% of the Federal Poverty Level" section of this report. The guidelines that designate the federal poverty level (FPL) are used in various federal programs for eligibility purposes. The poverty guidelines vary by family size and by whether the individual resides in the 48 contiguous states and the District of Columbia, Alaska, or Hawaii. See Office of the Assistant Secretary for Planning and Evaluation, "Frequently Asked Questions Related to the Poverty Guidelines and Poverty," at https://aspe.hhs.gov/frequently-asked-questions-related-poverty-guidelines-and-poverty#programs.

[6] ARPA §9661 expands eligibility for the premium tax credit (PTC) by temporarily eliminating the phaseout for households with annual incomes above 400% of FPL. Elimination of the phaseout applies to tax years 2021 and 2022. The phaseout would resume beginning in 2023.

[7] See IRS, "Health Insurance Premium Tax Credit: Final Regulations," 77 *Federal Register* 30377, May 23, 2012.

Enroll in a Plan Through an Individual Exchange

Premium credits are available only to individuals and families enrolled in plans offered through individual exchanges; premium credits are not available through SHOP exchanges. Individuals may enroll in exchange plans if they (1) reside in a state in which an exchange was established; (2) are not incarcerated, except individuals in custody pending the disposition of charges; and (3) are citizens or have other lawful status.[8]

Actuarial Value and Metal Plans

Most health plans sold through exchanges established under the ACA are required to meet actuarial value (AV) standards, among other requirements. AV is a summary measure of a plan's generosity, expressed as the percentage of medical expenses estimated to be paid by the insurer for a standard population and set of allowed charges. In other words, the higher the percentage, the lower the cost sharing, on average, for the population. AV is not a measure of plan generosity for an enrolled individual or family, nor is it a measure of premiums or benefits packages.

An exchange plan that is subject to the AV standards is given a precious metal designation: platinum (AV of 90%), gold (80%), silver (70%), or bronze (60%).

Undocumented individuals (individuals without proper documentation for legal residence) are prohibited from purchasing coverage through an exchange, even if they could pay the entire premium. Because the ACA prohibits undocumented individuals from obtaining exchange coverage, these individuals are not eligible for the PTC. Although certain individuals are not eligible to enroll in exchanges due to incarceration or legal status, their family members may still receive the PTC as long as those family members meet all eligibility criteria.

Have Annual Household Income at or Above 100% of the Federal Poverty Level

Individuals generally must have household income (based on FPL) that meets a minimum level to be eligible for the PTC in 2022, as specified under the ARPA.[9] Household income is measured according to the definition for modified adjusted gross income (MAGI).[10] An individual whose MAGI is at or above 100% of FPL may be eligible to receive the PTC for tax year 2022.[11]

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[8] Generally, enrollment through individual exchanges is restricted to a certain time period: an open enrollment period (OEP). The OEP for exchanges occurs near the end of a given calendar year for enrollment into health plans that begin the following year. Under certain circumstances, individuals may enroll in exchange plans outside of the OEP. For individuals who experience a "triggering event" during the plan year, exchanges are required to provide a "special enrollment period" (SEP) to allow such individuals the option of enrolling into an exchange for that plan year. SEP rules are specified at 45 C.F.R. 155.40, at https://www.govinfo.gov/content/pkg/CFR-2013-title45-vol1/xml/CFR-2013-title45-vol1-sec155-420.xml.

[9] There are exceptions to the lower bound income threshold at 100% of FPL. One exception relates to the state option under the ACA to expand Medicaid for individuals with income up to 138% of FPL. If a state chooses to undertake the ACA Medicaid expansion (or has already expanded Medicaid above 100% of FPL), eligibility for premium credits would begin above the income level at which Medicaid eligibility ends in such a state. (Note that in states that do not expand Medicaid to at least 100% of FPL, some low-income residents in those states are *ineligible* for both premium credits and Medicaid.) Another exception is for lawfully present aliens with incomes below 100% of FPL, who are *not* eligible for Medicaid for the first five years that they are lawfully present. The ACA established §36B(c)(1)(B) of the IRC to allow such lawfully present aliens to be eligible for premium credits. Lastly, the final regulation on premium credits provided a special rule for credit recipients whose incomes at the end of a given tax year end up being less than 100% of FPL. Such individuals will continue to be considered eligible for the PTC for that tax year.

[10] See CRS Report R43861, *The Use of Modified Adjusted Gross Income (MAGI) in Federal Health Programs*, for background information about the use of MAGI in determining eligibility for premium tax credits.

[11] ARPA §9661 expands eligibility for the PTC by temporarily eliminating the phaseout for households with annual incomes above 400% of FPL. Elimination of the phaseout applies to tax years 2021 and 2022. The phaseout would

Table 1 displays the income levels equivalent to 100% of FPL, for the location and size of family, that correspond to the eligibility criteria for the PTC in 2022 (using poverty guidelines updated by the Department of Health and Human Services [HHS] for 2021).[12]

Table 1. Income Levels Applicable to Eligibility for the Premium Tax Credit for 2022, by Selected Family Sizes

(based on 2021 HHS poverty guidelines)

Number of Persons in Family	Income Levels Equivalent to 100% of FPL		
	48 Contiguous States and DC	Alaska	Hawaii
1	$12,880	$16,090	$14,820
2	$17,420	$21,770	$20,040
3	$21,960	$27,450	$25,260
4	$26,500	$33,130	$30,480

Source: Congressional Research Service (CRS) computations based on Department of Health and Human Services (HHS), "Annual Update of the HHS Poverty Guidelines," 86 *Federal Register* 7732, February 1, 2021, at https://www.govinfo.gov/content/pkg/FR-2021-02-01/pdf/2021-01969.pdf.

Notes: For 2022, the income levels used to calculate premium credit eligibility and amounts are based on 2021 HHS poverty guidelines. The poverty guidelines are updated annually for inflation. FPL = Federal Poverty Level. DC = District of Columbia.

Not Eligible for Minimum Essential Coverage

To be eligible for a premium credit, an individual may *not* be eligible for *minimum essential coverage* (MEC), with exceptions (described below). The ACA broadly defines MEC to include Medicare Part A; Medicare Advantage; Medicaid (with exceptions); the State Children's Health Insurance Program (CHIP); Tricare; Tricare for Life, a health care program administered by the Department of Veterans Affairs; the Peace Corps program; any government plan (local, state, federal), including the Federal Employees Health Benefits Program (FEHBP); any plan offered in the individual health insurance market; any employer-sponsored plan (including group plans regulated by a foreign government); any grandfathered health plan; any qualified health plan offered inside or outside of exchanges; and any other coverage (such as a state high-risk pool) recognized by the HHS Secretary.[13]

resume beginning in 2023.

[12] The poverty guidelines are updated annually, at the beginning of the year. However, premium credit calculations are based on the prior year's guidelines to provide individuals with timely information as they compare and enroll in exchange plans during the OEP (which occurs prior to the beginning of the plan year).

[13] See CRS Report R44438, *The Individual Mandate for Health Insurance Coverage: In Brief*.

However, the ACA provides certain exceptions regarding eligibility for MEC and PTC. An individual may be eligible for premium credits even if he or she is eligible for any of the following sources of MEC:

- the individual (nongroup) health insurance market;[14]
- an employer-sponsored health plan that is either unaffordable[15] or inadequate;[16] or
- limited benefits under the Medicaid program.[17]

Medicaid Expansion

Under the ACA, states have the option to expand Medicaid eligibility to include all nonelderly, nonpregnant individuals with incomes up to 138% of FPL.[18] If an individual who applied for premium credits through an exchange is determined to be eligible for Medicaid, the exchange must have that individual enrolled in Medicaid instead of an exchange plan. Therefore, in states that implemented the optional Medicaid expansion to include individuals with incomes at or above 100% of FPL (or any state that decided to expand eligibility to individuals irrespective of the ACA's Medicaid expansion provisions), premium credit eligibility begins at the income level at which Medicaid eligibility ends.

Determination of Required Premium Contributions and Premium Tax Credit Amounts

Required Premium Contribution Examples

The amount of the PTC varies from individual to individual. Calculation of the credit is based on the annual household income (i.e., MAGI) of the individual (and tax dependents), the premium for the exchange plan in which the individual (and any dependents) is enrolled, and other factors. For simplicity's sake, the following formula illustrates the calculation of the credit:

Standard Plan Premium – Required Premium Contribution = Premium Tax Credit Amount

Premiums are allowed to vary based on a few characteristics of the person (or family) seeking health insurance. *Standard Plan Premium* refers to the premium for the second-lowest-cost silver plan (see text box in the "Eligibility" section of this report) in the person's (or family's) local area. *Required Premium Contribution* refers to the amount that a premium credit-eligible individual (or family) may pay toward the exchange premium. The required premium contribution is capped according to household income, with such income measured relative to FPL (see **Table 1**). The cap requires lower-income individuals to contribute a smaller share of income toward the monthly premium for the standard plan, compared with the requirement for

[14] The private health insurance market continues to exist outside of the ACA exchanges. Moreover, almost all exchange plans may be offered in the market outside of exchanges.

[15] For 2022, if the employee's premium contribution toward the employer's self-only plan exceeds 9.61% of household income, such a plan is considered unaffordable for premium credit eligibility purposes. For additional information, see IRS, Revenue Procedure 2021-36, at https://www.irs.gov/irb/2021-35_IRB#REV-PROC-2021-36.

[16] If a plan's actuarial value is less than 60%, the plan is considered inadequate for premium credit eligibility purposes.

[17] Limited benefits under Medicaid include the pregnancy-related benefits package, treatment of emergency medical conditions only, and other limited benefits.

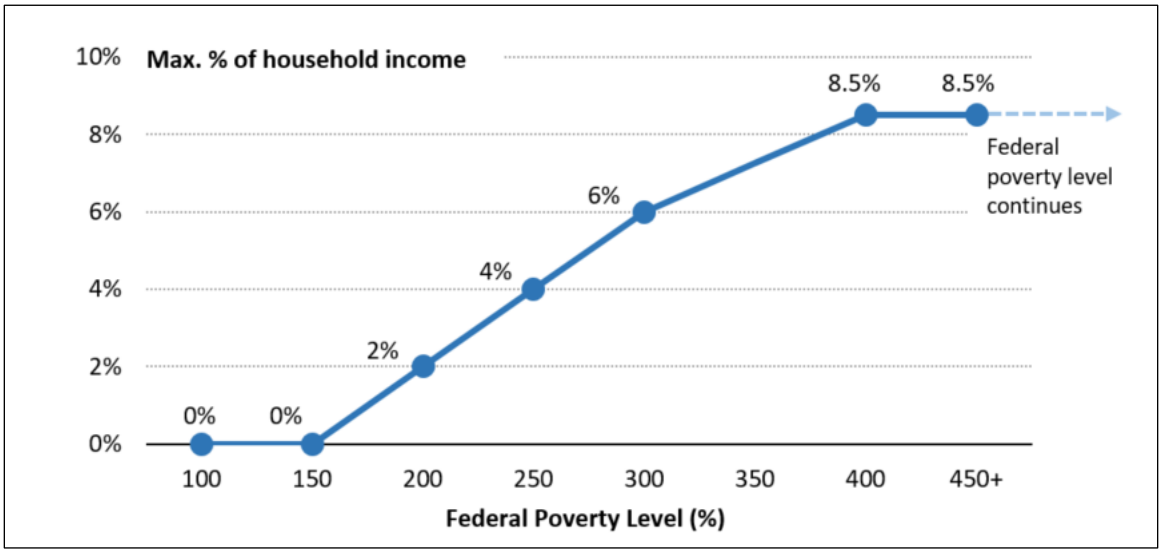
[18] See CRS In Focus IF10399, *Overview of the ACA Medicaid Expansion*.

higher-income individuals. The required premium contribution caps typically are updated through IRS guidance on an annual basis. However, the ARPA temporarily replaces those caps (see **Figure 1**).[19]

The amount of the credit for a given individual is calculated as the difference between the premium of the plan in which the individual enrolls and his or her required contribution. Given that the premium and required contribution vary from person to person, the premium credit amount likewise varies. An extreme example is when the premium for the standard plan is very low, the tax credit may cover the entire premium and the individual may pay nothing toward the premium. The opposite extreme scenario, for some higher-income individuals, is when the required contribution exceeds the premium amount, leading to a credit of zero dollars, meaning the PTC-eligible individual (or family) would pay the entire premium amount.

Figure 1. Cap on Required Premium Contributions for Individuals Who Are Eligible for the Premium Tax Credit in 2022

(cap varies by income, as measured relative to the federal poverty level)



Source: Internal Revenue Service (IRS), Revenue Procedure 2021-36, at https://www.irs.gov/irb/2021-35_IRB#REV-PROC-2021-36.

Notes: The cap assumes that the individual enrolls in the standard plan (second-lowest-cost silver plan) used to calculate premium credit amounts. If the individual enrolls in an exchange plan that is more expensive than the standard plan, the individual would be responsible for paying any premium amount that exceeds the calculated credit amount. Section 9661 of the American Rescue Plan Act of 2021 (ARPA, P.L. 117-2) applies these percentages to tax years 2021 and 2022.

To illustrate the premium credit calculation for 2022, consider a premium credit eligible individual living in Lebanon, KS—the geographic center of the continental United States—with household income of $19,320 (150% of FPL, according to applicable regulations). For 2022, such an individual would be required to contribute 0.0% of that income toward the premium for the standard plan in his or her local area (see **Figure 1**). In other words, the individual would have a zero dollar premium if he or she enrolled in the standard plan. In contrast, an individual residing in the same area with income of $32,200 (250% of FPL) would be required to contribute 4.0% of

[19] See ARPA §9661. The new percentages apply to the PTC for tax years 2021 and 2022. Beginning in 2023, the annual update to these percentages would revert to pre-ARPA statute and applicable IRS guidance.

his or her income toward the premium for the same plan. The maximum amount this individual would pay for the standard plan would be $1,288 (that is, $32,200 x 4.0%) for the year or approximately $107 per month.[20]

A similar calculation is used to determine the required premium contribution for a family. For instance, consider a couple and one child residing in Lebanon, KS, who are eligible for the PTC with household income of $32,940 in 2022. For a family of this size, this income is equivalent to 150% of FPL for premium credit purposes. Just as in the example above of the individual with income at 150% of FPL, this family would be required to contribute 0.0% of its annual income toward the premium for the standard plan in its local area. In contrast, a family residing in the same area with income of $54,900 (250% of FPL) would be required to contribute 4.0% of its income toward the premium for the same plan. The maximum amount this family would pay for the standard plan would be $2,196 ($54,900 x 4.0%) for the year (approximately $183 per month).

Generally, the arithmetic difference between the premium and the individual's (or family's) required contribution is the tax credit amount provided to the individual (or family). Therefore, factors that affect either the premium or the required contribution (or both) will change the premium credit amount; such factors include age, family size, and choice of metal plan.

Reconciliation of Advance Premium Tax Credit Payments

As mentioned previously, an eligible individual (or family) may receive advance payments of the premium credit to coincide with when insurance premiums are due. For such an individual, the advance premium tax credit (APTC) is provided on a monthly basis and the amount is calculated using an *estimate* of income. When an individual files his or her tax return for a given year, the total amount of APTC he or she received in that tax year is reconciled with the amount he or she should have received, based on *actual* income, as determined on the tax return.

If an individual's income *decreased* during the year and he or she should have received a larger tax credit, the additional credit amount will be included in the individual's tax refund for the year or used to reduce the amount of taxes owed. If an individual's income *increased* during the year and he or she received too much in APTC payments, the excess amount generally will be repaid in the form of a tax payment.

For individuals with incomes below 400% of FPL, any repayment amount is capped with greater tax relief provided to individuals with lower incomes (see **Table 2**).

Table 2. Annual Limits on Repayment of Excess Premium Tax Credits, 2022

Household Income (Expressed as a Percentage of the Federal Poverty Level)	Applicable Dollar Limit for Unmarried Individuals[a]
<200%	$325
200% to <300%	$825
300% to <400%	$1,400

Source: IRS, Internal Revenue Bulletin 2021-48, at https://www.irs.gov/irb/2021-48_IRB.
Notes: The applicable dollar limit for all other tax filers is twice the limit for unmarried individuals.
a. Does not include surviving spouses or heads of households.

[20] For estimates of premium credit amounts based on factors for which insurance companies are allowed to vary premiums (as described in the "Background" section of this report), see Kaiser Family Foundation, "Health Insurance Marketplace Calculator," at http://kff.org/interactive/subsidy-calculator/.

Preliminary Tax Credit Data

The IRS has published preliminary data about the PTC in its annual "Statistics of Income" (SOI) reports. The most recently published SOI report is for tax year 2019.[21] The following data provide summary statistics about two overlapping populations: tax households that received APTC, and households that claimed the credit on their individual income tax returns.[22]

Tax Year 2019

For tax year 2019, around 5.8 million tax returns indicated receipt of advance payments of the tax credit, totaling to more than $44.4 billion. Of those 5.8 million returns, nearly 2.2 million tax households received advance payments that were less than what they were eligible for, and approximately 3 million tax households received advance payments that were more than what they were eligible for.[23] The remaining difference represents households that received the correct amount in APTC.

The SOI data indicate that approximately 5.2 million tax returns for the 2019 tax year claimed a total of more than $40.5 billion of tax credit. The 5.2 million returns represent the number of tax households that were actually eligible for the credit, based on the information provided in the 2019 tax returns.[24] These eligible households represent those who received advance payments of the credit and those who claimed the credit after the end of the tax year.[25] The IRS also has published limited tax credit data by state, county, and zip code.[26]

Enrollment Data

HHS regularly publishes data on persons selecting and enrolling in exchange plans, including individuals who were determined eligible for the PTC. For plan year 2021, HHS posted reports and public-use files available with national enrollment data, as well as limited data by state, county, and zip code.[27] During the 2021 open enrollment period (OEP), approximately 88% of all exchange enrollees were eligible for the tax credit.[28] In addition to the annual OEP, the Administration provided a special enrollment period (SEP) in response to the ongoing public health emergency caused by the Coronavirus Disease 2019 (COVID-19) pandemic.[29] During the

[21] The data represent tax return information at the time of filing; therefore, the data do not incorporate corrections or amendments made to the tax returns at a later time. IRS, "Affordable Care Act Items," Table 2.7, at https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304.

[22] The SOI report does not include all estimates of tax credit recipients and claimants necessary to fully describe the overlap of these two taxpayer populations.

[23] The 3 million taxpayers who received excess advanced payments paid back a total of approximately $4.2 billion.

[24] The number of taxpayers who received advance payments exceeded the number who were eligible for the credits, indicating that some taxpayers received unauthorized credits. The IRS did not include, in the SOI report, an estimate of the number of taxpayers who received unauthorized credits.

[25] The IRS did not include, in the SOI report, separate estimates of the number of eligible taxpayers who received advance payments and the number who did not.

[26] See IRS, "ACA Data from Individuals," at https://www.irs.gov/statistics/soi-tax-stats-affordable-care-act-aca-statistics-individual-income-tax-items.

[27] CMS, "2021 Marketplace Open Enrollment Period Public Use Files," at https://www.cms.gov/research-statistics-data-systems/marketplace-products/2021-marketplace-open-enrollment-period-public-use-files.

[28] See CMS, "Health Insurance Marketplaces 2021 Open Enrollment Report," at https://www.cms.gov/files/document/health-insurance-exchanges-2021-open-enrollment-report-final.pdf.

[29] This SEP was available in all states using the HealthCare.gov enrollment platform from February 15 – August 15,

2021 SEP, approximately 91% of "consumers with New SEP Plan Selections" were eligible for the PTC.[30]

Cost-Sharing Reductions

An individual who qualifies for the PTC, is enrolled in a silver plan (see text box above, "Actuarial Value and Metal Plans"), *and* has annual household income no greater than 250% of FPL is eligible for cost-sharing reductions (CSRs).[31] The purpose of CSRs is to reduce an individual's (or family's) expenses related to cost-sharing requirements under the silver plan; such requirements may include deductibles, co-payments, coinsurance, and annual cost-sharing limits.[32] There are two types of CSRs, and the level of assistance for each varies by income band (see descriptions below). Individuals who are eligible for cost-sharing assistance may receive both types of subsidies, as long as they meet the applicable eligibility requirements.

The ACA requires the HHS Secretary to provide full reimbursements to insurers that provide CSRs. Federal outlays for such reimbursements totaled the following amounts:[33]

- FY2014: $2.111 billion,
- FY2015: $5.382 billion,
- FY2016: $5.652 billion, and
- FY2017: $7.317 billion.

Although the ACA authorized the cost-sharing subsidies and payments to reimburse insurers, it did not address the financing for such payments. The Obama Administration provided CSR payments to insurers using an existing appropriation that finances the PTC (among other tax benefits). The House of Representatives filed suit in 2014, claiming the payments violated the appropriations clause of the U.S. Constitution. After holding that the House has standing to sue the Obama Administration, the U.S. District Court for the District of Columbia concluded that payments for CSRs were unconstitutional for lack of a valid appropriation enacted by Congress. The court barred the Obama Administration from making the payments but stayed its decision pending appeal of the case. Following the November 2016 election, the court delayed the case to allow for nonjudicial resolution, including possible legislative action. Congress did not provide appropriations, and on October 13, 2017, the Trump Administration filed a notice announcing it would terminate payments for these subsidies beginning with the payment that was scheduled for

2021; states with state-based exchanges (SBEs) were "strongly encouraged" to take similar action. All SBEs did so, although the dates of their SEPs varied. CMS, "2021 Special Enrollment Period in Response to the COVID-19 Emergency," at https://www.cms.gov/newsroom/fact-sheets/2021-special-enrollment-period-response-covid-19-emergency.

[30] This is the share of "unique consumers who didn't have an active enrollment" at the time the SEP began in their respective states, and "made a plan selection" during the SEP, which became "active" (i.e., was not cancelled), as specified. CMS, *2021 Final Marketplace Special Enrollment Period Report*, at https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf. Also see this report for more information about SBEs' SEPs.

[31] ACA §1402.

[32] A *deductible* is the amount an insured consumer pays for covered health care services before the applicable insurer begins to pay for such services (with exceptions). *Coinsurance* is a share of costs, expressed as a percentage, an insured consumer pays for a covered health service. A *co-payment* is a fixed dollar amount an insured consumer pays for a covered health service. An *annual cost-sharing limit* is the total dollar amount an insured consumer would be required to pay out of pocket for use of covered services in a plan year. Once an insured consumer's out-of-pocket spending meets this limit, the insurer generally will pay 100% of covered costs for the remainder of the plan year.

[33] Data provided to CRS by the IRS Budget Office.

October 18, 2017. In response, attorneys general of 18 states and the District of Columbia filed suit in the U.S. District Court for the Northern District of California challenging HHS's decision to terminate CSR payments.[34]

Despite the administrative decision to terminate CSR payments, such decision provides no relief to insurers that continue to be required under federal law to provide CSRs to eligible individuals. In response, health insurers increased premiums to offset this loss in reimbursements (if permitted by state insurance regulators); this practice is referred colloquially as *silver loading*.[35]

As part of the legal challenges related to CSR payments, the Federal Circuit Court of Appeals concluded that insurers were "entitled to recover unpaid cost-sharing reduction (CSR) payments that the Trump Administration withheld, but only to the extent insurers had not recouped their losses through higher premiums."[36]

Reduction in Annual Cost-Sharing Limits

Each metal plan limits the total dollar amount an insured consumer will be required to pay out of pocket for use of covered services in a plan year (referred to as an *annual cost-sharing limit* in this report). In other words, the amount an individual spends in a given year on health care services covered under his or her plan is capped.[37] For 2022, the annual cost-sharing limit for self-only coverage is $8,700; the corresponding limit for family coverage is $17,400.[38] One type of cost-sharing assistance reduces such limits (see **Table 3**). This CSR reduces the annual limit faced by premium credit recipients with incomes up to and including 250% of FPL; greater subsidy amounts are provided to those with lower incomes. In general, this cost-sharing assistance targets individuals and families that use a great deal of health care in a year and, therefore, have high cost-sharing expenses. Enrollees who use little health care may not generate enough cost-sharing expenses to reach the annual limit.

[34] For a discussion of legal considerations related to the termination of CSR payments, see CRS Legal Sidebar LSB10018, *Department of Health and Human Services Halts Cost-Sharing Reduction (CSR) Payments*.

[35] For background on silver loading, see Bipartisan Policy Center, "Stabilizing the Individual Insurance Market: What Happened and What Next?," March 2018, at https://bipartisanpolicy.org/wp-content/uploads/2019/03/BPC-Health-Stabilizing-The-Individual-Health-Insurance-Market.pdf. The practice of silver loading was protected under federal law during plan year 2021; see §609 of the Further Consolidated Appropriations Act, 2020, P.L. 116-94.

[36] Aviva Aron-Dine and Christen Linke Young, "Silver-Loading Likely to Continue Following Federal Circuit Decision on CSRs," *Health Affairs*, October 13, 2020, at https://www.healthaffairs.org/do/10.1377/hblog20201009.845192/full/.

[37] The annual cost-sharing limit applies only to health services that are covered under the health plan and are received within the provider network, if applicable.

[38] See "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards," 86 *Federal Register* 24140, May 5, 2021, at https://www.federalregister.gov/documents/2021/05/05/2021-09102/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2022-and.

Table 3. ACA Cost-Sharing Reductions: Reduced Annual Cost-Sharing Limits, 2022

Household Income Tier, by Federal Poverty Level	Annual Cost-Sharing Limits	
	Self-Only Coverage	*Family Coverage*
100% to 150%	$2,900	$5,800
>150% to 200%	$2,900	$5,800
>200% to 250%	$6,950	$13,900

Source: Department of Health and Human Services (HHS), Table 10, "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards," 86 *Federal Register* 24140, May 5, 2021, at https://www.federalregister.gov/documents/2021/05/05/2021-09102/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2022-and.

Note: ACA = Patient Protection and Affordable Care Act (P.L. 111-148, as amended).

For example, consider the hypothetical individual who resides in Lebanon, KS, and has household income at 150% of FPL (as discussed in the "Required Premium Contribution Examples" section of this report). A person eligible to receive CSRs at that income level would face an annual cost-sharing limit of $2,900, compared to an annual limit of $8,700 for someone also enrolled in a silver plan but does not receive this subsidy. The practical effect of this reduction would occur when this individual spent up to the reduced amount. For additional covered services received by the individual, the insurance company would pay the entire cost. Therefore, by reducing the annual cost-sharing limit, eligible individuals are required to spend less before benefitting from this financial assistance.

Reduction in Cost-Sharing Requirements

The second type of CSR also applies to premium credit recipients with incomes up to and including 250% of FPL. For eligible individuals, the cost-sharing requirements (for the plans in which they have enrolled) are reduced to ensure that the plans cover a certain percentage of allowed health care expenses, on average. The practical effect of this CSR is to increase the actuarial value (AV) of the exchange plan in which the person is enrolled (**Table 4**). In other words, enrollees face lower cost-sharing requirements than they would have without this assistance. Given that this type of CSR directly affects cost-sharing requirements (e.g., lowers a co-payment), both enrollees who use minimal health care and those who use a great deal of services may benefit from this assistance.

Table 4. ACA Cost-Sharing Reductions: Increased Actuarial Values

Household Income Tier, by Federal Poverty Level	New Actuarial Values for Cost-Sharing Subsidy Recipients
100% to150%	94%
>150% to 200%	87%
>200% to 250%	73%

Source: 45 C.F.R. §156.420.

Note: ACA = Patient Protection and Affordable Care Act (P.L. 111-148, as amended).

To be eligible for cost-sharing subsidies, an individual must be enrolled in a silver plan, which already has an AV of 70% (see text box above, "Actuarial Value and Metal Plans"). For an individual who receives the CSR referred to in **Table 4**, the health plan will impose different cost-sharing requirements so that the silver plan will meet the applicable increased AV. The ACA does

not specify how a plan should reduce cost-sharing requirements to increase the AV from 70% to one of the higher AVs. Through regulations, HHS requires each insurance company that offers a plan subject to this CSR to develop variations of its silver plan; these silver plan variations must comply with the higher levels of actuarial value (73%, 87%, and 94%).[39] When an individual is determined by an exchange to be eligible for CSRs, the person is enrolled in the silver plan variation that corresponds with his or her income.

Consider the same hypothetical individual discussed in the previous section. Since this person's income is at 150% of FPL, if he or she receives this type of subsidy, the silver plan in which he or she is enrolled will have an AV of 94% (as indicated in **Table 4**), instead of the usual 70% AV for silver plans.

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[39] See 45 C.F.R. §156.420.