

Premium Tax Credit Regulations Amended

Cross References

- TD 9968, October 13, 2022

The IRS has issued final regulations under IRC section 36B that amend the regulations regarding eligibility for the Premium Tax Credit (PTC). The final regulations 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 final regulations also add a minimum value rule for family members of employees based on the benefits provided to the family members. The regulations affect taxpayers who enroll, or enroll a family member in individual health insurance coverage through a Health Insurance Exchange and who are allowed a PTC for the coverage.

In general, taxpayers are not allowed a PTC if they are eligible for employer health insurance coverage. An exception to this rule is if the employer coverage is unaffordable. Coverage is not affordable for an employee if the portion of the premiums required to be paid by the employee exceeds 9.5% of household income. The previous regulations under IRC 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.

On January 28, 2021, the President issued Executive Order (EO) 14009, Strengthening Medicaid and the Affordable Care Act (ACA). The EO directs the Secretary of the Treasury to review all existing regulations and other agency actions to determine whether the actions are inconsistent with the policy to protect and strengthen the ACA. The EO also directs the Secretary of the Treasury to examine policies or practices that may reduce the affordability of coverage or financial assistance for coverage, including for dependents.

As a result, the Treasury Department and the IRS reviewed the regulations under IRC section 36B 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 determined that IRC 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. The Treasury Department and the IRS view that the interpretation in the previous 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 those regulations is contrary to the policy of the ACA to expand access to affordable health care coverage.

As a result of this review, the Treasury Department and the IRS published proposed regulations on April 7, 2022 that reflect the view that that IRC 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.

The IRS received 3,888 comments on the proposed regulations, the overwhelming majority of which were in support of the rules in the proposed regulations. However, some commenters expressed the view that the affordability rule in the proposed regulations conflicts with the language in IRC section 36B, that the previous affordability rule is correct, and that the affordability rule for related individuals in the proposed regulations should be withdrawn. These commenters argued that IRC section 36B unambiguously establishes a single affordability test for both employees and related individuals that is based on the cost of self-only coverage to the employee.

The Treasury Department and the IRS disagree with these commenters. After careful consideration, the final regulations adopt the affordability test in the proposed regulations. The final regulations also adopt the minimum value rule in the proposed regulations.