

IRS Notice of Proposed Rule Making (26 CFR Part 1)

This NPRM contains proposed regulations relating to requirements for Exchanges to report information relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. These proposed regulations affect Exchanges that make qualified health plans available to individuals and employers (these proposed regulations amend §1.36B-5).

Advance Premium Tax Credit Reconciliation

Under section 36B(f)(1), taxpayers who receive advance credit payments must reconcile the amount of the advance payment with the amount of the premium tax credit computed on the taxpayer's income tax return. A taxpayer who receives excess advance payments must treat the excess amount as additional tax under section 36B(f)(2). Taxpayers whose credit amount exceeds the amount of advance payments for the taxable year may receive the excess as additional credit. Taxpayers who do not seek advance credit payments also may claim the premium tax credit on the income tax return.

Exchange Reporting

Section 36B(f)(3) directs Exchanges to report to **the IRS and to taxpayers** certain information required to reconcile the premium tax credit with advance credit payments and to administer the premium tax credit generally. The required information relates to the enrollment of a taxpayer and taxpayer's family in a qualified health plan through the Exchange and includes

- the level of coverage,
- identifying information for the primary insured and each enrollee,
- the amount of premiums and advance credit payments for the coverage,
- information (concerning, for example, a change in circumstances) provided to the Exchange necessary to determine eligibility for and the amount of the credit, and
- other information necessary to determine if a taxpayer has received the appropriate advance credit payments.

Time and manner of reporting

The proposed regulations require Exchanges to report the specified information for each qualified health plan *electronically* to the IRS on an **annual** and, to facilitate efficient tax administration, a **monthly** basis, and specify the information that must be reported in each category. Under the proposed regulations, Exchanges must make a monthly report to the IRS on or before the fifteenth day of the month following the month of coverage. The information reported monthly will be **cumulative**,

containing monthly data for each month beginning with January through the most recent completed month.

For example, information reported in September will contain information for each month from January through August. The annual report for the calendar year must be made on or before January 31 of the year following the year of coverage. Information for more than one tax household will be on the same annual report if the individuals enroll in one qualified health plan.

Information required to be reported annually (by January 31)

1. The name, address, and taxpayer identification number (TIN), or date of birth if a TIN is not available, of an individual enrolling, or enrolling a family member, in coverage and **approved for APTC** (taxpayer), and the name and TIN of the individual's spouse (if applicable)
2. The name, address, and TIN, or date of birth if a TIN is not available, of an adult enrolling in coverage or enrolling one or more members of a family in coverage and **either not requesting or not approved for APTC** (*responsible adult*)
3. The name and TIN, or date of birth if a TIN is not available, and dates of coverage for each individual covered under the plan;
4. The monthly premium for the applicable benchmark plan used to compute APTC;
5. For a responsible adult, the premium for the applicable benchmark plan that would apply to the individuals enrolled in a QHP;
 - o *Alternative approach:* Alternative to reporting applicable benchmark plan, an Exchange can satisfy this requirement if, on or before January 1 of each year after 2014, the Exchange provides a reasonable method that any individual may use to determine the premium for the applicable benchmark plan that applies to the individual's coverage family for the prior calendar year for purposes of determining the individual's premium tax credit.
6. The monthly premium for the plan or plans in which a taxpayer, responsible adult, or family member enrolls, without reduction for APTC, including the amount of premiums for a stand-alone dental plan allocated to pediatric dental benefits;
7. The amount of the APTC made on a taxpayer's behalf each month;
8. The name of the QHP issuer and the issuer's employer identification number (EIN);
9. The QHP policy number;
10. The Exchange's unique identifier

Information required to be reported monthly (by the 15th of the month)

1. Whether the individuals enrolled in the QHP are the taxpayer's dependents;
2. Information on employment (to the extent this information is provided to the Exchange) consisting of—
 - a. The name, address, and EIN of each employer of the taxpayer, taxpayer's spouse, and each individual covered by the qualified health plan or plans; and

- b. An indication of whether an employer offered minimum essential coverage, and, if so, the amount of the employee's required contribution for self-only coverage and the Exchange's determination of whether the employer coverage was affordable and provided minimum value
3. The unique number that identifies the specific account of the taxpayer or responsible individual to enable data association from month to month;
4. The name and TIN, or date of birth if a TIN is not available, of each individual for whom the Exchange has granted an exemption from coverage, the months for which the exemption is in effect, and the exemption certificate number; and

The information reported monthly will be submitted to the IRS through the Department of Health and Human Services.

Statements to Taxpayers or Responsible Adults

The proposed regulations direct Exchanges to furnish to each taxpayer or responsible adult who enrolled, or whose family member enrolled, in a QHP a written statement that includes the information the Exchange must report to the IRS *annually*. Exchanges may use Form 1095-A for this statement and must furnish the statement on or before January 31 of the year following the calendar year of coverage.

The proposed regulations permit electronic delivery of statements to the taxpayer or responsible adult if the taxpayer or responsible adult *consents*. A recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished. Alternatively, the consent may be made in a paper document that is confirmed electronically.

If mailed, the statement must be sent to the taxpayer's or responsible person's last known permanent address or, if no permanent address is known, to the taxpayer's or responsible person's temporary address.

An Exchange may provide that the withdrawal of consent takes effect either on the date the Exchange receives it or on another date no more than 60 days later. The Exchange may provide that a request by the recipient for a paper statement will be treated as a withdrawal of consent to receive the statement in an electronic format. If the Exchange furnishes a statement after the withdrawal of consent takes effect, the recipient has not consented to receive the statement in electronic format.

Required disclosures

Prior to, or at the time of, an individual's consent, an Exchange must provide to the individual a clear disclosure statement that contains:

- An Exchange must inform the recipient that the statement will be furnished on paper if the recipient does not consent to receive it electronically.
- An Exchange must inform the recipient of the scope and duration of the consent. For example, the Exchange must inform the recipient whether the consent applies to each statement required to be furnished after the consent is given until it is withdrawn or only to the first statement required to be furnished following the consent.
- An Exchange must inform the recipient of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph
- An Exchange must inform the recipient of how to withdrawal the consent
- An Exchange must inform the recipient of notice of termination of electronic statements

Statements

If a statement is furnished on a web site, the Exchange must notify the recipient. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement and include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, this statement must be on the subject line of the electronic mail.

If the electronic statement is undeliverable the Exchange must mail or hand-deliver the statement within 30 days.

Record Retention

Statements furnished on a web site must be retained on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The Exchange must maintain access to corrected statements that are posted on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.