



**MEMORANDUM**

February 1, 2013

**To:** Hon. Orrin Hatch

**From:** Edward C. Liu, Legislative Attorney, x7-9166

**Subject:** **Eligibility of Enrollees in Employer-Sponsored Plans for Health Insurance Premium Tax Credits**

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This memorandum responds to your request for an analysis of whether employees would be eligible for the health insurance premium tax credits provided in § 36B of the Internal Revenue Code (IRC) if they were enrolled in a health insurance plan that was offered by their employer.<sup>1</sup> Because employer plans can be structured in a variety of ways, this memorandum does not focus on employees' eligibility under a specific plan structure. Instead, it discusses the consequences that an employee's eligibility or enrollment in an employer-sponsored plan will have with respect to that employee's eligibility for health insurance premium tax credits provided under IRC § 36B. The analysis below is generally applicable to health plans offered by a variety of employers, including state or local governments, fully insured or self-insured plans, and multi-employer plans.

## Background

Beginning in 2014, § 36B of the IRC, added by the Patient Protection and Affordable Care Act (ACA) provides a refundable tax credit to certain individuals whose household income is between 100-400% of the federal poverty level.<sup>2</sup> The individual must also be enrolled in a health insurance plan through a health insurance exchange established in the individual's state,<sup>3</sup> and cannot be eligible for minimum essential coverage, other than health insurance offered in the individual market.<sup>4</sup> The enrollment and minimum essential coverage requirements are the eligibility criteria most likely implicated when asking whether an employee who participates in an employer-sponsored plan would be eligible for a credit under § 36B, and are discussed in more detail below. For a broader discussion of all the eligibility criteria, *see* CRS Report

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<sup>1</sup> If an employer with at least 50 full-time employees (on average), has any employees who receive a premium subsidy under § 36B, that employer may be subject to an excise tax imposed under I.R.C. § 4980H. The potential effects of the "employer penalty" is beyond the scope of this memorandum, which is focused solely on the employees' eligibility for credits under § 36B. For more information on I.R.C. § 4980H, *see* CRS Report R41159, *Summary of Potential Employer Penalties Under the Patient Protection and Affordable Care Act (PPACA)*, by Janemarie Mulvey.

<sup>2</sup> I.R.C. § 36B.

<sup>3</sup> I.R.C. § 36B(c)(2)(A)(i).

<sup>4</sup> I.R.C. § 36B(c)(2)(C).

R41137, *Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (ACA)*, by Bernadette Fernandez and Thomas Gabe.

## “Enrolled in through an Exchange”

In order to be eligible for an exchange premium credit, an individual must have enrolled in coverage through an exchange.<sup>5</sup> Therefore, if an employee has enrolled in a plan without going through the exchange, no credit may be allowed for that employee’s coverage under § 36B. Small employers, and potentially large employers beginning in 2017, may purchase a plan for their employees through an exchange.<sup>6</sup> However, if the employer contributes toward the premiums for that plan, the employees covered under that plan will not be eligible for credits under § 36B, with respect to that coverage.<sup>7</sup>

## Minimum Essential Coverage

Individuals who seek to receive a health insurance premium credit under § 36B, cannot be eligible for minimum essential coverage from a source other than the individual health insurance market.<sup>8</sup> The definition of minimum essential coverage includes employer-sponsored coverage that is affordable and provides minimum value.<sup>9</sup> Employer-sponsored coverage is defined as a governmental plan or any other plan or coverage offered in the small or large group market.<sup>10</sup> The offer of employer-sponsored coverage to an employee will generally make that employee ineligible to receive a premium subsidy under § 36B, unless the plan is unaffordable or does not provide minimum value.

Affordability is determined by comparing the employee’s required contribution for self-only coverage under the employer-sponsored plan with the employee’s total household income. If the required contribution exceeds 9.5% of the employee’s household income, the employer-sponsored plan is considered unaffordable.<sup>11</sup> A plan provides minimum value if the plan’s payments cover at least 60% of total allowed costs on average.<sup>12</sup> If the plan is either unaffordable or does not provide minimum value, the fact that it is offered to an employee will not disqualify that employee from receiving a premium subsidy under § 36B with respect to coverage obtained through an exchange.

However, in the event that an individual accepts and is actually covered under an employer-sponsored plan, the affordability and minimum value tests will not apply, and the individual may be denied a premium subsidy under § 36B because he or she will be considered eligible for other minimum essential coverage.<sup>13</sup> For example, if an employee has actually enrolled in employer-sponsored coverage, no credit

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<sup>5</sup> I.R.C. § 36B(c)(2)(B).

<sup>6</sup> 42 U.S.C. § 18032(f)(2).

<sup>7</sup> I.R.C. § 36B(c)(2)(A)(ii) (requiring premiums for health insurance coverage to be paid by either employee or advanced premium tax credit in order for coverage to be eligible for subsidy).

<sup>8</sup> I.R.C. § 36B(c)(2)(B).

<sup>9</sup> I.R.C. § 36B(c)(2)(C).

<sup>10</sup> I.R.C. § 5000A(f)(2)(A). The term “employer-sponsored plan” also includes grandfathered health plans as defined under the ACA.

<sup>11</sup> I.R.C. § 36B(c)(2)(C)(i). The allowed percentage of household income is indexed to inflation for years after 2014.

<sup>12</sup> I.R.C. § 36B(c)(2)(C)(ii).

<sup>13</sup> I.R.C. § 36B(c)(2)(C)(iii).

can be allowed under § 36B with respect to that coverage, even if the employee's required contribution exceeds 9.5% of the employee's household income.