



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

July 6, 2016

TO: Members, Subcommittee on Oversight and Investigations

FROM: Committee Majority Staff

RE: Hearing entitled “The ACA’s Cost Sharing Reduction Program: Ramifications of the Administration’s Decision on the Source of Funding for the CSR Program.”

On July 8, 2016, at 9:15 a.m. 2322 Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled “The ACA’s Cost Sharing Reduction Program: Ramifications of the Administration’s Decision on the Source of Funding for the CSR Program.” The Subcommittee will hear testimony about the ramifications of the Administration’s decision to fund the cost sharing reduction (CSR) program of the Patient Protection and Affordable Care Act (PPACA) through the permanent appropriation for tax refunds and credits.

I. WITNESSES

Panel One (invited)

- The Honorable Sylvia Burwell, Secretary, U.S. Department of Health and Human Services.

The Department has declined to provide a witness for this hearing

Panel Two

- Doug Badger, Senior Fellow, Galen Institute;
- Tom Miller, Resident Fellow, American Enterprise Institute;
- Morton Rosenberg, Legislative Consultant; and,
- Simon Lazarus, Senior Counsel, The Constitutional Accountability Center

II. BACKGROUND

A. The Cost Sharing Reduction Program

The Patient Protection and Affordable Care Act provides two subsidies to individuals who purchase coverage through health insurance exchanges:

1. Premium Tax Credits (PTC): A refundable tax credit available for eligible taxpayers who purchase a qualified health plan (QHP) on the health insurance exchanges created by the PPACA.¹ The government can pay this credit to insurance companies in advance to offset an individual's monthly premium (in which case it is known as an Advanced Premium Tax Credit (APTC)), or a taxpayer may claim it as a credit on a tax return.
2. Cost Sharing Reductions (CSR): The law requires insurance companies to reduce copayments, deductibles, and other expenses paid by eligible beneficiaries. The law authorizes the federal government to offset the cost of these reductions by making payments to the insurance companies.²

The PPACA also established a process to determine an applicant's eligibility for PTCs and CSRs in advance, which allows individuals to have PTCs applied to their monthly premiums and qualify for cost sharing reductions.³

Section 1401 of the PPACA added Section 36B to the Internal Revenue Code, establishing the PTC. This credit is available to taxpayers with incomes between 100 and 400 percent of the federal poverty level (FPL). The PTC amount is based on the taxpayer's income, family size, and the price of a benchmark health plan.⁴ For eligible individuals, the government can pay the credit in advance to the insurance companies so that the insurance companies reduce those individuals' premiums--these payments are the APTCs.⁵

Section 1402 of the PPACA created the CSR program. The statute requires insurers to reduce co-payments, deductibles, and other out-of-pocket costs for eligible insured individuals. These individuals must have an income between 100 and 250 percent of the FPL, must be eligible for PTCs, and must have purchased a specific type of QHP on the exchange.⁶

Congress both authorized and funded the PTC program in the PPACA. Section 1401 of the PPACA added Section 36B to the Internal Revenue Code, which authorizes the PTC program,⁷ amended an existing permanent appropriation—31 U.S.C. § 1324—and designated the permanent appropriation as the source of funding for the PTC program.⁸ The appropriation's

¹ 26 U.S.C. § 36B.

² 42 U.S.C. § 18071.

³ 42 U.S.C. § 18081 and 18082.

⁴ 26 U.S.C. § 36B(b)(2)(B)(i).

⁵ 42 U.S.C. § 18082(c)(2).

⁶ 42 U.S.C. § 18071(b)(1).

⁷ Patient Protection and Affordable Care Act, Pub. L. No 111-148, 124 Stat. 119 (2010).

⁸ *Id.* (amending 31 U.S.C. § 1324 by adding "36B" to the list of tax credits available to be paid from the permanent appropriation).

statutory language also limits payments from the appropriation to only tax refunds and specific credit provisions within Internal Revenue Code, including the PTC provision, Section 36B.⁹

With respect to the CSR program, however, Congress provided only an authorization, and not an appropriation, in the ACA. The CSR program is not a tax provision and not codified within the Internal Revenue Code. Further, there is no language in the ACA or anywhere else tying the CSR program to the 31 U.S.C. § 1324 appropriation.¹⁰

Indicating that the CSR program requires an annual appropriation, on April 10, 2013, the Administration requested an annual appropriation for the program in the President's FY 2014 budget request.¹¹ On July 11, 2013, the Senate Committee on Appropriations expressly denied the request in its committee report.¹² In January 2014, despite this denial and without an annual appropriation, the Administration began making CSR payments through the permanent appropriation for tax refunds and credits, codified at 31 U.S.C. § 1324—the same source of funding as the premium tax credit program.

B. The Committees' Investigation

For more than a year, the Committee on Energy and Commerce, along with the Committee on Ways and Means, have been investigating the facts surrounding the Administration's decision to fund the Cost Sharing Reduction program through the permanent appropriation for tax refunds and credits. From the outset, the committees have clearly stated the purpose of their investigation: to fully understand the facts surrounding the Administration's decisions to fund the cost sharing reduction program from the permanent appropriation for tax refunds and credits. In the course of this investigation, the committees have sent fifteen letters, issued six subpoenas for documents, and conducted twelve transcribed interviews of current and former Administration officials involved in decisions regarding the source of funding for the CSR program. The Administration, however, has not cooperated with the committees' requests.

III. ISSUES

The following issues are expected to be examined at the hearing:

- The ramifications of the Administration's decision to fund the CSR program through the permanent appropriation for tax refunds and credits;
- The importance of the appropriations power to the Congress; and
- The need for robust congressional oversight of the Executive Branch.

⁹ 31 U.S.C. § 1324.

¹⁰ Patient Protection and Affordable Care Act, Pub. L. No 111-148, 124 Stat. 119 (2010).

¹¹ Office of Mgmt. and Budget, *The Budget for the U.S. Government Fiscal Year 2014*, Appendix at 448 (Apr. 10, 2013).

¹² S. Comm. on Appropriations, *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2014*, 113th Cong. (S. Rept. 113-71).

IV. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Jessica Donlon or Jen Barblan of the Committee staff at (202) 225-2927.