

**DESCRIPTION OF H.R. 2581,
THE “VERIFY FIRST ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
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Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 2581, the “Verify First Act” on May 24, 2017. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 2581, the “Verify First Act”* (JCX-25-17), May 23, 2017. This document can be found also on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

A. Verification of Status in United States as Condition of Receiving Advance Payment of Health Insurance Premium Tax Credit

Present Law

Premium assistance credit

A refundable tax credit (“premium assistance credit”) is provided for eligible individuals and families to subsidize the purchase of health insurance plans through an American Health Benefit Exchange (“Exchange”), referred to as “qualified health plans.”² In general, as discussed below, advance payments with respect to the premium assistance credit are made during the year directly to the insurer. However, eligible individuals may choose to pay their total health insurance premiums without advance payments and claim the credit at the end of the taxable year.

The premium assistance credit is generally available for individuals (single or joint filers) with household incomes between 100 and 400 percent of the Federal poverty level (“FPL”) for the family size involved.³ Household income is defined as the sum of: (1) the individual’s modified adjusted gross income, plus (2) the aggregate modified adjusted gross incomes of all other individuals taken into account in determining the individual’s family size (but only if the other individuals are required to file a tax return for the taxable year). Modified adjusted gross income is defined as adjusted gross income increased by: (1) any amount excluded from gross income for citizens or residents living abroad,⁴ (2) any tax-exempt interest received or accrued during the tax year, and (3) the portion of the individual’s social security benefits not included in gross income.⁵ To be eligible for the premium assistance credit, individuals who are married must file a joint return. Individuals who are listed as dependents on a return are not eligible for the premium assistance credit.

In order to enroll in a qualified health plan through an Exchange and receive the premium assistance credit, an individual must be a citizen or national of the United States (“U.S.”) or an alien lawfully present in the U.S.⁶

² Sec. 36B, effective for taxable years ending after December 31, 2013. Under the Affordable Care Act, an American Health Benefit Exchange is a source through which individuals can purchase health insurance coverage. As used herein, the Affordable Care Act (or “ACA”) refers to the combination of the Patient Protection and Affordable Care Act (“PPACA”), Pub. L. No. 111-148, and the Healthcare and Education Reconciliation Act of 2010 (“HCERA”), Pub. L. No. 111-152. Qualified health plan is defined in PPACA section 1301.

³ Federal poverty level refers to the most recently published poverty guidelines determined by the Secretary of Health and Human Services. Levels for 2017 and previous years are available at <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references>.

⁴ Sec. 911.

⁵ Under section 86, only a portion of an individual’s social security benefits are included in gross income.

⁶ PPACA sec. 1312(f)(3) and sec. 36B(e)(2).

As part of the process of enrollment in a qualified health plan through an Exchange, an individual may apply and be approved for advance payments with respect to a premium assistance credit (“advance payments”).⁷ The individual must provide information on income, family size, changes in marital or family status or income, and U.S. citizen, national or lawfully present status. The Exchange process includes a system through which the Secretary of Health and Human Services (“HHS”) verifies information provided by the individual using information from certain Federal agencies and other sources. U.S. citizen, national or lawfully present status is verified by obtaining information from the Commissioner of Social Security and the Secretary of Homeland Security.⁸ If an individual is approved for advance payments, the Department of the Treasury pays the advance amount directly to the issuer of the health plan in which the individual is enrolled. The individual then pays to the issuer of the plan the difference, if any, between the advance payment amount and the total premium charged for the plan.

SSNs and ITINs

An individual filing a U.S. tax return is required to state his or her taxpayer identification number on the return. Generally, a taxpayer identification number is the individual’s Social Security number (“SSN”).⁹ However, in the case of an individual who is not eligible to be issued an SSN, but who has a tax filing obligation, the Internal Revenue Service issues an individual taxpayer identification number (“ITIN”) for use in connection with the individual’s tax filing requirements.¹⁰ An individual who is eligible to receive an SSN may not obtain an ITIN for purposes of his or her tax filing obligations.¹¹ An ITIN does not provide eligibility to work in the U.S. or to claim Social Security benefits.

The American Health Care Act of 2017

The American Health Care Act of 2017, as passed by the House of Representatives on May 4, 2017 (the “AHCA”), amends various health-related provisions of the Code.¹² Effective

⁷ PPACA secs. 1411-1412. The Department of Health and Human Services is responsible for rules relating to Exchanges and the eligibility determination process.

⁸ PPACA sec. 1411(c)(2).

⁹ Sec. 6109(a).

¹⁰ Treas. Reg. Sec. 301.6109-1(d)(3)(i).

¹¹ Treas. Reg. Sec. 301.6109-1(d)(3)(ii).

¹² H.R. 1628, as passed by the House of Representatives on May 4, 2017. The AHCA also amends certain provisions of the Public Health Service Act (the “PHSA”). Under present-law PHSA section 2701, premiums charged for health insurance purchased in the individual market are permitted to vary only by certain factors, such as the number of individuals covered by the insurance and, within limits, the age of the insured. This limit on premium variation is referred to as community rating. AHCA section 133 amends the PHSA to require an increase of 30 percent in the otherwise applicable premium in certain cases where an individual enrolling in health insurance coverage did not have health insurance for 63 or more consecutive days during the preceding 12-month period (sometimes referred to as the “continuous coverage” requirement). Under AHCA section 136, in certain cases

for months beginning after December 31, 2019, in taxable years ending after that date, the AHCA replaces the present-law premium assistance credit with a new credit.¹³ Under the AHCA, an individual is eligible for the new premium assistance credit only if the individual is a citizen or national of the U.S. or a qualified alien.¹⁴ In connection with the new premium assistance credit, the AHCA amends the provisions relating to advance payment of the credit to direct the Secretary of the Treasury and the Secretary of HHS to prescribe such regulations as each Secretary may deem necessary to establish and operate the advance payment program in a manner that protects taxpayer information, provides robust verification of all information necessary to establish eligibility for advance payments, ensures proper and timely payments to appropriate health providers, and protects program integrity to the maximum extent feasible.¹⁵

Description of Proposal

The proposal amends the present-law premium assistance credit to specify that no advance payments are to be made with respect to an individual unless the Secretary of the Treasury has received confirmation from the Secretary of HHS that the Commissioner of Social Security or the Secretary of Homeland Security has verified the individual's status as a citizen or national of the U.S. or an alien lawfully present in the U.S. using a process that includes the appropriate use of information related to citizenship or immigration status, such as SSNs.¹⁶ The proposal also amends the provision of the AHCA relating to the new premium assistance credit to add a similar requirement of confirmation that an individual's status as a citizen or national of the U.S. or a qualified alien has been verified.¹⁷

where the continuous coverage requirement is not met, premiums may be based on the health status of the individual in lieu of the 30 percent premium increase.

¹³ AHCA section 214. AHCA sections 201 and 202 amend the present-law premium assistance credit for periods before the new credit becomes effective.

¹⁴ Qualified alien is defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. sec. 1641).

¹⁵ AHCA section 214(b), adding a new PPACA section 1412(f).

¹⁶ An SSN is not the sole means by which citizenship or immigration status can be verified. However, under the proposal, an ITIN cannot be used to verify citizenship or immigration status.

¹⁷ The bill also contains a proposal to amend the continuous coverage requirement under AHCA section 133 so that, in the case of an individual for whom a determination of eligibility for advance payments is delayed by reason of the requirement to verify the individual's status under PPACA section 1411(c)(2), the period from the date of application for advance payments to the date of verification is disregarded in determining whether the individual meets the continuous coverage requirement (including for purposes of whether, under AHCA section 136, premiums can be based on the individual's health status). The bill further contains a proposal to amend PPACA section 1411 to require with respect to such an individual that, if, in order for the individual's health coverage to be effective as of the date requested in the individual's application for enrollment, the individual would be required to pay retroactive premiums for two or more months, the individual must be provided the option of postponing the effective date of coverage for up to one month.

Effective Date

The proposal relating to the present-law premium assistance credit is contingent on the enactment of the AHCA and will apply (if at all) to months beginning after December 31, 2017. The proposal relating to the new premium assistance credit under the AHCA is contingent on the enactment of the AHCA and will apply (if at all) to months beginning after December 31, 2019, in taxable years ending after that date.¹⁸

¹⁸ The proposal to amend the continuous coverage requirement under AHCA section 133 is contingent on enactment of the AHCA and will take effect (if at all) as if included in the AHCA. The proposal relating to the postponement of health coverage by an individual, for whom a determination of eligibility for advance payments is delayed by reason of the requirement to verify the individual's status under PPACA section 1411(c)(2), is contingent on enactment of the AHCA and will apply (if at all) to applications for advance payments for months beginning after December 31, 2017.

B. Estimated Revenue Effect

The bill is estimated to have no effect on Federal revenues.