

CA SUMMARY OF PROPOSED RULES FOR  
THE HEALTH INSURANCE PREMIUM TAX CREDIT

26 CFR PART 1  
REG-131491-10  
RIN 1545-BJ82

Reg Page	Proposed Regulatory Requirement	California Observations/Comments
50934	<p><b>Part 1: Health Insurance Premium Tax Credit</b></p>	
50934	<p><b>Premium Tax Credit Definitions (1.36B-1)</b></p> <p><b>(c) Qualified Health Plan.</b> Specifically excludes catastrophic plans from the definition.</p> <p><b>(d) Family &amp; Family size.</b> Taxpayer’s family means the individuals for whom a taxpayer properly claims a deduction for a personal exemption under Section 151 for the taxable year.</p> <p><b>(g) Lawfully Present</b></p> <p><b>(h) Federal Poverty Line</b></p>	<p>(d) California requests state flexibility to use Medi-Cal and Healthy Families rules regarding treatment of pregnancies in determining family size for tax credit purposes.</p> <p>(g) Consistent with California’s comments in the Exchange Eligibility NPRM:</p> <p>California should be able to identify in the exchange state plan a specific time period during which applicants agree that they will continue to be lawfully present for purposes of meeting this requirement.</p> <p>(h), Consistent with California’s comments in the Exchange Eligibility NPRM on the Federal Poverty Level: This proposed rule applies a different point in time definition of the Federal Poverty Level (FPL) to be used for exchange programs (premium tax credits and cost-sharing reductions) than what is used in Medicaid and CHIP, depending on the time period of</p>

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		application and program requirements. The FPL standard used by Medicaid and CHIP will be the same as those used by the exchange during open enrollment, but not during any special enrollment periods of the exchange. California recommends that the exchange programs, Medicaid, and CHIP use the same FPL standards at all times to facilitate enrollment simplification and coordination.
<b>50934</b>	<b>2. Eligibility for the Premium Tax Credit (1.36B-2)</b>	
<b>50934</b>	<b>(b) Applicable Taxpayer</b> Generally, an applicable taxpayer is a taxpayer whose household income is at least 100% but not more than 400% of the federal poverty level for the taxpayer’s family size for the taxable year. Also includes persons who are:	b. As noted in California’s comments in the Exchange eligibility NPRM on how best to streamline eligibility across health insurance affordability programs given differences in the income and other eligibility standards proposed:  California recommends that federal standards across programs be consistent unless precluded by the ACA. In addition, states should have the flexibility to propose in the program state plans strategies to align programs at the state level. For example, states should be able to propose how the exchange and other state agencies will treat income, whether current monthly or annualized incomes, across health insurance affordability programs, for specific applicants and beneficiaries. Consistent federal standards and state flexibility to align program standards and requirements, timelines and processes across all health insurance affordability programs are effective strategies to ensure that states can achieve streamlined and efficient eligibility and enrollment systems.

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	<p>i. Lawfully present aliens: if income is under 100% FPL, lawfully present aliens are treated as having income of 100% FPL. Lawful presence is defined with reference to the PCIP regulation. Premium assistance credit amounts are based on actual household income.</p> <p>ii. Taxpayers with household income under 100% FPL: an Exchange may approve a taxpayer for advance credit payments based on projecting a level of household income that makes the taxpayer ineligible for Medicaid. But monthly premium assistance credit amounts are based on actual household income.</p> <p>iii. Individuals who are incarcerated or not lawfully present: an individual who is not lawfully present or incarcerated is ineligible for enrollment in a QHP through an Exchange, but may be an applicable taxpayer if a family member is eligible and enrolls.</p>	<p><u>i. Expectation of lawful presence --</u></p> <p>As noted in California comments in the Exchange eligibility NPRM on language that a person be “reasonably expected” to remain lawfully present during the period of coverage:</p> <p>California should be able to identify in the exchange state plan a specific time period during which applicants agree that they will continue to be lawfully present for purposes of meeting this requirement.</p>

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<p><b>50934-50936</b></p>	<p><b>c. Minimum Essential Coverage</b></p> <p>Pg. 50940</p> <p>(1) In general Pgs 50940-41: Government-sponsored programs, employer-sponsored plans, grandfathered health plans, and certain other health benefits are minimum essential coverage.</p> <p>(2) Government-sponsored minimum essential coverage</p> <p>(i) An individual is treated as eligible for a government-sponsored program on the first day of the first full month in which the individual may receive benefits. Taxpayers would not lose eligibility for the credit for a month in which the taxpayer or a family member is technically eligible for a government program but cannot yet receive benefits. However, an individual who fails to complete the requirements to obtain coverage available under a government-sponsored program reasonably promptly is treated as eligible for the coverage on the first day of the second calendar month following the event that establishes eligibility. An individual who applies for a government-sponsored program that is effective retroactively upon approval may apply for the tax credit and is treated as eligible on the first day of the first calendar month after the approval.</p> <p>(iv) If the Exchange determines that an individual is not eligible for Medicaid or CHIP (or similar program) when he/she enrolls in a qualified health plan they are treated as ineligible for the taxable year</p> <p>Pgs 50941-42</p> <p>(3) Employer-sponsored minimum</p>	<p>(2) (i) As noted in California’s comments in the Exchange eligibility NPRM, California recommends that states be given maximum flexibility to align program processes, requirements and standards across all health insurance affordability programs to ensure effective coordination and simplicity at the state level. States should be able to propose in the exchange, Medicaid and CHIP state plans effective strategies to align program processes and standards.</p> <p>(iv). The federal government should ensure that employees considering enrollment in continuation coverage are aware of all coverage options available to them prior to making an enrollment choice.</p> <p>(v)(1) California notes the affordability problems for dependents inherent in</p>

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	<p>essential coverage</p> <p>(iv) Special rule for continuation coverage. An individual who may enroll in continuation coverage required under federal or a state law that provides comparable continuation coverage is eligible for minimum essential coverage only if the individual enrolls in the coverage.</p> <p>(v) Affordable Coverage.</p> <p>(1) Employer-sponsored plan is considered affordable for the employee (and dependents) if the employee's contribution for self-only coverage does not exceed 9.5% of household income-- even if the required contribution for the coverage of the family does exceed 9.5% of household income.</p>	<p>limiting affordability to self-only coverage. California also notes the inequity of 36B(c) (2)(C) (iii) that treats coverage that is unaffordable under the NPRM provisions and/or inconsistent with the definition of minimum coverage as satisfying both requirements if an individual enrolls in it. The state requests DHHS to use any regulatory authority it may have to mitigate or correct these problems.</p>

Premium Tax Credit NPRM: CA Comments

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	<p>50942: (vi) Minimum value. An employer-sponsored plan provides minimum value if the plan’s share of the total allowed costs of benefits provided under the plan is at least 60% of those costs.</p>	
<p><b>50936-50937</b></p>	<p><b>3. Computing the Premium Assistance Amount (1.36B-3)</b></p>	<p>As noted in California comments in the Exchange eligibility NPRM , California strongly recommends the development of federal materials, including an online calculator, and real-time resources (e.g., toll-free hotline) to assist application filers, navigators, brokers and program staff in answering tax-related questions.</p> <p>The calculator should help applicants to predict their credit at application and</p>

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		when annual income changes so that consumers are clearly aware of the tax consequences of income changes.  Exchanges should be required to educate filers about the availability of federal resources and assistance but should not have to assume primary responsibility for providing and tax-related information and advice. Given the potential liability of applicant taxpayers related to repayment of advanceable credits, it is critical that the appropriate federal agencies assume primary responsibility in this area.
<b>50937-50938</b>	<b>4. Reconciling the Premium Tax Credit With Advance Credit Payments (1.36B-4)</b>	
<b>50937</b>	<b>a. Reconciliation</b> Pg 50945-46: At the end of the tax year, the premium tax credits and advance credits are reconciled. If advance payments are less than allowable credits, the taxpayer gets a refund; if they are more, the taxpayer has additional liability. If a taxpayer is under 400% FPL, additional tax liability is limited	California’s comments above under (1.36B-33.) Computing Premium Assistance Credit Amount regarding the need for federal leadership in developing and providing consumers and other parties with information on tax-related issues is also relevant for reconciliation issues