UNITED STATES DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

TELECONFERENCE PUBLIC HEARING ON PROPOSED REGULATIONS

"AFFORDABILITY OF EMPLOYER COVERAGE FOR FAMILY MEMBERS OF EMPLOYEES"
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PROCEEDINGS

(10: 01 a.m.)

OPERATOR: Carol Weiser, please go ahead.

MS. WEISER: Thank you. Good morning everyone. We'll take just a brief moment here to introduce each of the panelists. As each speaker should know, you have 10 minutes for your remarks. We will be conducting this as we would a live in-person hearing. In other words, if any of the panelists have a question, the panelists will interrupt the speaker, and the speaker's time

will be paused as the question is asked and answered. And then the clock will resume so that the speaker will have the remainder of their 10-minute time.

Assuming that we have time at the end, we will also open up to see that whether anyone else who had not signed up has some remarks that they wish to make. And they will have approximately five minutes each to do so. Again time allowing.

So, let me start actually with introducing myself. I am Carol Weiser, the benefits tax counsel in the Office of Tax Policy Treasury Department. And let me turn it over to my colleague in Treasury, Kim Koch.

MS. KOCH: Thanks, Carol. And good morning everyone. I'm an attorney in the Office of Tax Policy at Treasury, in the office of the Tax Legislative Counsel. And now, I'll turn it over to my IRS colleagues to introduce themselves.

MS. RAYMOND: Good morning. My name is Clara Raymond. I am an attorney at IRS Office of Chief Counsel Income Tax and Accounting. I will turn it over to my colleagues for the same.

MS. PFLANZ: Thank you, Clara. Jessica. Good morning. My name is Shareen Pflanz and I'm a Special Counsel in the Office of Chief Council at Income Tax and Accounting. And I'm turning it over to Steve.

MR. TOOMEY: Hi, good morning. Steve Toomey is my name and I am a Senior Counsel in Income Tax and Accounting. And we'll be working on the final regulations. Thanks for joining us and back to you, Carol.

MS. WEISER: Thank you. I'll turn it over to the moderator to introduce our first speaker, to call on our first speaker.

OPERATOR: I do not see Emily Stewart dialed in at this time. Did you want to move to the next one?

MS. WEISER: Yes. If it — shall we see whether she is dialed in and you don't recognize her, or I leave it to you, the moderator.

OPERATOR: Emily Stewart, if you are on the line, please press one, then zero. I can open your line. One moment here. Emily, your line is open.

MS. STEWART: Hi, can you hear me?

OPERATOR: Yes, please go ahead.

MS. STEWART: Okay, great. Thank you so much. And thank you for the opportunity to speak about the proposed rule. As noted, my name is Emily Stewart. And I'm the Executive Director of Community Catalyst, which is a national nonprofit organization with a mission to build the power of more than 30 state and national organizations, including many who are also weighing

in today that people to create a health system rooted in race equity and health justice in a society where health is a right for all. We are just one of are urging the IRS to move expeditiously, to adopt a proposed rule, which would finally correct the family glitch created in 2013 by what we believe is a misreading of the Affordable Care Act.

That misreading erected a barrier to affordable coverage for more than five million people by borrowing them from eligibility for premium tax credits despite having an offer of employer coverage that is simply unaffordable for their family. Community Catalyst and our coalition partners have long supported the interpretation applied in its proposed rule as the best reading of the statute and consistent with the goals of the ACA to expand access to affordable coverage. And we're not alone. Over 3,800 people submitted comments in support of the Administration's proposed fix that will help low-wage workers and their families save up to $400 a month on health insurance.

So, the family glitches unfortunately, are more than a mere of glitch. It puts affordable coverage out of reach for families with employer sponsored insurance that is deemed affordable for an individual employee, but not for the employee's family. Many of these families are forced to make the impossible choice of leaving some of their loved ones, uninsured or struggling to pay for high premiums and out-of-pocket costs sometimes leading to medical debt. These families often end up foregoing preventive care, prenatal care, mental health treatment, cancer care, and other necessary medical services because they simply can't afford it.

The people most impacted by the family glitch are working families many at the lower end of the income spectrum, who despite full-time employment are struggling to meet their essential healthcare needs. About half of the estimated five million people affects our children and half our families earning less than 250 percent of the federal poverty level, which for a family of four is an income below $70,000 per year. We all know health insurance is expensive and 2021 went out of every eight families was enrolled in a family coverage plan where the family's contribution to the premium was at least $10,000. It's about 14 percent of the typical family of four's income far exceeding the ACA's affordability standard. And this figure does not include deductibles, co-payments and other out-of-pocket costs. The family glitch has a bigger impact on low wage workers. Indeed employees of companies with higher percentages of low-wage workers contribute in average of 35 percent of the premium for family coverage as compared to the 27 percent of employees who contribute in companies with fewer low-wage workers.

And it isn't just about employees in the private sector. So, for example, Felicia is an educator in Tennessee. She has insurance through the State for her family of four, which includes herself, her husband, and their two young daughters. She pays almost 1,200 per month to cover the employer-sponsored plan's premiums for her family, which is almost 25 percent of her gross income.

Felicia's husband and children don't qualify for tax credits through the marketplace because of the family glitch. Those rules have designated her employer coverage affordable, despite the fact that it's 25 percent of her gross income and that's just for premium. Despite paying nearly a quarter of her income for health insurance coverage, she has also found that her plan doesn't cover the cost of her family's prescribed medications. And she ends up paying hundreds of

dollars a month in additional out-of-pocket costs. She told us at Community Catalyst, something needs to be done. So, in providing an improved reading of the statute, one that is more closely aligned with the intent of the ACA, the new proposed rule is a critical step towards helping families like Felicia's stay healthy and make ends meet. By providing an affordability test that takes the cost of family coverage into account, millions of families will no longer be forced to choose between unaffordable employer coverage and going without coverage for their dependents at all. Families will be able to choose the coverage option that works best for them, whether that be to remain as a family in the employer plan or to obtain marketplace coverage with financial assistance for the dependent family members.

The impact of the proposed rule aren't limited to healthcare alone. For example, Sarah, is a married mother of one son living in a small city in Ohio. Her husband works full-time and is a primary earner in their household while she works very limited part-time hours outside the home and provides full-time care for their son. Their annual household income is below the median for their area. But the cost to ensure Sarah and her son through her husband's employer is prohibitively expensive. And she has been forced to pay the exorbitant cost of a private individual plan with a dependent bringing the family's gross earnings down significantly. She can only afford the monthly premiums for high deductible plans, which means that she is also paying out-of-pocket for a large percentage of her medical care because of these costs she's foregoing medical treatment for her conditions at this time.

Sarah said to us, it breaks my heart that I have to choose between my family and my finances. I left a well paying full-time job so that I would be able to raise our children myself, instead of using daycare. I was worried about losing my health coverage to my employer. However, I knew a number of single young professionals, all with higher salaries than my current combined household income, who qualified for tax credits on their health insurance. So, I thought I would be able to find more affordable coverage for myself when I left my job. When I found out I wasn't eligible, it felt like I was being punished for choosing to have a family. The cost of health insurance shouldn't prevent people from accessing care. And it certainly shouldn't prevent them from having a family. Allowing families like Sarah's to access premium support would go a long way to improving not just their health, but their overall quality of life.

That's why it's so important that this proposed rule be approved and implemented before the next open enrollment period in November. Swift action would then allow families newly eligible for tax credits to enter ACA marketplaces beginning in 2023, we need to give people the best shot at bringing down costs and helping families plan for their future. Additionally, this new proposed rule makes an important clarification that employer sponsored family coverage is itself subject to the minimum value standard, and must be independently assessed for compliance. But this approach is wholly consistent with the ACA's tax and purpose, ensuring that a family offered low or below min minimum value coverage is not prevented from accessing premium tax credits simply because this low value coverage is also cheap.

Families need affordable coverage, of course, but they also need quality coverage that will meet their needs. No one likes paying for nothing and no one should have to pay large percentages of their income for health insurance that simply doesn't cut it when a family needs care. Quick and decisive final adoption of this proposed rule will give over five million people an opportunity

their families have likely never had, a chance to enroll in affordable subsidized marketplace health coverage that meets the needs of their families.

For that reason, Community Catalyst strongly supports this proposed rule and its goal of reducing the cost of care that families in every community face and look forward to its swift adoption into continuing our shared work to help all families access the resources and support they need to thrive. Thank you.

MS. WEISER: Thank you. I do not believe that we have any questions at this time so we can proceed to the next speaker.

OPERATOR: Thank you. Next, we have Doug Badger, please go ahead.

MR. BADGER: Thank you. My name is Doug Badger. I'm a Senior Fellow in the Center for Health and Welfare Policy at the Heritage Foundation, and a Senior Fellow at the Galen Institute. The previous speaker made some very strong arguments in favor of Congress amending the statute to create an affordability test for family coverage under ESI. The current regulation finalized in 2013, however, adopts the only permissible reading of that statute. Section 36(b) of the Internal Revenue Code contains one and only one affordability test and it applies to workers and their dependents alike. If a worker must pay more than 9.5 percent annually adjusted of household income for self only coverage, then the worker and his or her dependents are eligible for PTCs assuming they meet other legal qualifications.

The NPRM proposes to create an affordability test for family coverage, which is found nowhere in statute. The agency improperly, albeit, tentatively asserts the subparagraph 5000A(e)(1)(c), which determines whether uninsured dependence of workers with an offer of ESI are exempt from tax penalty into an amendment to §36(b) turning it into an entitlement to tax credit. That impermissible reading reflects a fundamental misunderstanding of the statute structure, purpose, and provisions. §36(b) creates an entitlement to PTCs.

Importantly, it renders hundreds of millions of citizens and legal residents, including those with an offer of ESI ineligible for PTCs. The purpose of the credits was to supplement not to supplant existing coverage. It carves out a narrow exception for workers and their dependence if ESI is unaffordable and it explicitly bases that on the cost of self only coverage. §36(b) establishes no such exception based on the cost of family coverage. Some of the confusion comes in when we begin to look at §5000A, in which the NPRM attempts to transform an exemption from tax penalties into an entitlement to tax credits.

Sections A through C of 5000A established a tax penalty, since reduced to zero on applicable individuals who do not maintain minimum essential coverage. Sections D and E then carve out exceptions to those tax penalties. Basically, exempts various categories of people. At 5000A(e)(1) sets an overall test of affordability, which is based on individual coverage, but for workers in subparagraph (b) and for dependents on subparagraph (c), there is a special rule which deals with the affordability of ESI. 5000A(e)(1)(c), therefore, exempts uninsured dependence from tax penalties. In that sense, they are no different from numerous other categories of individuals exempted under subsections D and E. These include exemptions for

members of certain religious sects, individuals enrolled in health sharing industries, individuals not lawfully present in the United States, incarcerated individuals, taxpayers with incomes below the filing threshold, members of Indian tribes and any individual determined by the HHS Secretary, "to have suffered hardship with respect to the capability to obtain coverage under a qualified health plan." All these individuals are exempt from the tax penalty established in §5000A, and none of them by virtue of that exemption are eligible for PTCs. The same holds for workers with an offer of ESI.

Now, the preamble looks for ways to say that there is some ambiguity in the statute, which is actually quite clear. One of the things it cites in a footnote is the Joint Committee on Taxation's March, 2010 technical explanation of the ACA's tax provisions, which erroneously described the affordability test as applicable to the cost of family coverage. The JCT corrected that error six weeks later. It noted that the determination of affordability is based only on the cost of self only coverage.The JCT staff thus made an error and later corrected it as they did in that very same document with 10 other errors, which included erroneous descriptions of the tax penalty on the uninsured and the so-called Cadillac Tax on certain employer-sponsored plans.

The preamble, I believe, mischaracterizes this error as differing interpretations betraying a statutory ambiguity, but that's not how the Joint Committee staff characterized the document. They entitled their May 2010 publication Errata, Latin for mistakes, not differing interpretations or ambiguities. By their own administration staff got it wrong on this and 10 other matters in their March 2010 description of ACA tax provisions. They corrected their mistakes six weeks later.

While it's efficient to say that the statute does not permit this interpretation. It's also worth noting that in the more than 12 years, Congress has never amended the statute to create an affordability test for family coverage. Most recently, President Biden signed the American Rescue Plan Act (ARPA) into law in March of 2021 and the House passed the Build Back Better Act in November of 2021. Both pieces of legislation made major expansions of premium tax credits under 36(b). Neither bill proposed to fix the so-called family glitch.

There are many reasons why Congress may not have done this. While the NPRM, as we've already heard, undoubtedly would help some families, it would as the pre to the NPRM acknowledges result in employers decreasing contributions to health coverage of family members, potentially forcing them to pay more to retain their ESI. It would as the preamble to the NPRM acknowledges result in split coverage with workers and their dependents covered by different insurance policies, with different deductibles provider networks, drug formularies, and cost sharing requirements, potentially leading to higher out-of-pocket medical costs.

Finally, this is a very inefficient way to expand coverage. A Congressional Budget Office scored one recent legislative proposal to fix the glitch at $45 billion over 10 years. The White House fact sheet estimates that 200,000 uninsured people would gain coverage under the fix. That's a cost of $22,500 per year, per newly insured individuals. The NPRM would also potentially harm states by shifting some people from ESI to Medicaid and ship programs that represent the largest uncontrollable items on their budgets.

The Congress can take all of these matters into consideration and amend the statute to fix the family glitch. The agencies can only administer the law. They cannot rewrite it, which is what this NPRM proposes to do. Thank you.

MS. WEISER: Thank you. I am not hearing that any of the panelists have any questions. So, we can proceed to the next speaker. Thank you.

OPERATOR: Thank you. Our next speaker is Brian Blase. Please go ahead.

MR. BLASE: Yes, thank you for the opportunity to testify. My name is Brian Blase. I am the President of Paragon Health Institute. From 2017 to 2019, I was a special assistant to the president for Economic Policy at the National Economic Council.

At the outset, I associate myself 100 percent with the Doug Badger's analysis and comments. And I'll start with my recommendation that IRS should withdraw the proposed rule because it's an impermissible reading of the statute, as well as being bad policy. Doug just laid out the case why the proposed rule is unlawful and harmful. I cosigned a letter with Doug and three dozen other legal and policy experts in strong opposition to the proposed rule. These signees included former HHS general counsel, as well as a former director of the National Economic Council.

Now, I'm going to make five broad points this morning in my testimony. The first is that the law is clear and unambiguous. And the IRS was right last decade in its 2013 rule. The Affordable Care Act is clear and unambiguous. Affordability of employer coverage is based on the cost of self-only plans. The IRS' 2013 rule was not an agency policy position, nor the result of a insufficiently thorough or creative legal review.

To the contrary, the IRS' response was a crystal-clear conclusion about the limited authority available to the Agency that reflected clear statutory text, even after IRS and Treasury engaged in an exhaustive legal analysis to find even a sliver of ambiguity. While there is sometimes a gray area between creative legal interpretation and the rule of law, this proposed rule does not straddle or approach this area.

Second, the IRS must enforce the law. Any new administration seeks to carry out its executive authorities to move policy in its preferred direction. But when a president takes office, the new administration is constitutionally bound to enforce the law and ensure the executive branch agencies do too. No amount of political pressure can ever be justification for agencies to ignore clear statutory language and issue regulations inconsistent with the law.

For the IRS, one of the reasons the IRS Commissioner has a five-year term is to better ensure such adherence to law and insulate it from the political influence of the White House to violate the law. Taxpayers must be able to rely upon an unbiased IRS.

Third, and as Doug mentioned, the proposed rule would harm many people and entities. The rule correctly discusses two groups who this proposal would harm. First, some families would bear higher total costs and lose access to employer plans. Second, other families would be forced to navigate multiple plans with different benefits, cost sharing, and provider networks.

If this rule is finalized, there would be three other losers not listed in the proposed rule. The first are taxpayers. CBO estimates the new spending to be $45 billion over the next decade. Second, would be states who would face higher costs from public programs. And third, the IRS would suffer because it would prove that it could be pressured to White House wishes willing to violate laws enacted by Congress, resulting in increased public distrust and necessary congressional oversight to prevent the Agency from further politicizing its enforcement powers.

Fourth, I'll expand on the damage to the IRS. I worked with IRS and Treasury career officials on a host of issues during my time as a special assistant to the president at the National Economic Council. Those officials exercise due diligence and professionalism in their work. Several times, political appointees in the White House, including me, expressed desire for the IRS to take administrative actions to expand consumer choice and control over individuals' healthcare finances.

Despite the administration's and the public's strong interest in such actions, IRS officials routinely pushed back with their interpretation that the law and precedent prevented such actions. On these questions, the legal issues were much less clear than the ACA language at issue now that plainly lists affordability to self-only coverage, though we respected the IRS' historic and consistent approach to these issues and we were left to push legislative reforms, rather than administrative ones.

Because of my experience at NEC, I did not expect the IRS to propose this rule, despite President Biden's executive order. I was extremely surprised that despite the political pressure, the IRS put forward this proposed rule and that the IRS would reopen long-settled tax law and its enforcement of the Internal Revenue Code with no change in the underlying law.

If the IRS were to finalize this proposed rule, it would lack credibility to object to changes desired by future administrations. By finalizing an illegal change in the definition of affordability of coverage, the IRS would not be able to credibly oppose efforts by this and future administrations to change tax policy in direct contravention of the Internal Revenue Code. Based on the precedent set in this situation, future enforcement of the tax code would gyrate back and forth based on the administration in power without regard to enacted law. The only way for IRS to avoid this dangerous outcome is by withdrawing this rule.

My fifth and final point is about the lack of a real, credible cost benefit analysis in the rule. The lack of a quantitative cost benefit analysis does not withstand scrutiny. This failure permitted the Agency to inappropriately classify the rule as not significant. The IRS' rationale for the lack of a cost benefit analysis does not withstand scrutiny and is inconsistent with past precedent.

For example, the Treasury led the drafting of a 2019 rule to expand health reimbursement arrangements. Treasury used its health insurance model to provide detailed estimates of that rule. And the HRA rule is more complicated to model in this proposed rule.

There are two possible explanations for the failure of a cost benefit analysis in this case. One, a rushed process to meet a political timeline. Two, such analysis would be harmful to the rule

demonstrating the magnitude of spending needed only to slightly reduce the number of uninsured.

According to CBO, the 10-year cost of this action would be $45 billion. The White House press release for the rule stated that about 200,000 additional people would gain coverage.

These two estimates together showed that it would cost a staggering $225,000 over 10 years to cover just one additional person. This huge cost results from the rule's primary economic effect, replacing employer financed coverage with public subsidies. Plus, the economic burden from taxation would be billions of dollars each year.

The lack of a cost benefit analysis likely also violates the Administrative Procedure Act. This failure to apprise the public of an opportunity for meaningful notice and comment demonstrates the lack of a reasoned explanation for the IRS' about-face and underscores the arbitrariness and capriciousness of this rule. Yet another reason why the IRS should not finalize it.

If the Agency does not withdraw the rule because it concludes after additional review that it lacks legal authority, it should at a minimum, open the rule back up for public comment after completing and publishing a real regulatory impact analysis. Thank you for your time this morning.

MS. WEISER: Thank you. I am not hearing any questions from the panel. We can proceed to our next speaker. Thank you.

OPERATOR: Thank you. Elaine Dalpiaz, if you are on the line, please press 1 then 0 and I can open your line.

MS. DALPIAZ: — Strategic Partnerships at First Focus on Children. First Focus on Children is a national bipartisan child advocacy organization dedicated to ensuring that children are a priority in federal policy and budget discussions. Our organization is committed to ensuring that all children have access to high quality, affordable healthcare. So, thank you for the opportunity to share comments at this public hearing on the Treasury Department's proposed regulations under Section 36(b) of the Internal Revenue Code.

First Focus on Children is pleased that the Treasury Department has issued these proposed regulations regarding the affordability of employer coverage for family members of employees, or as we refer to it in the children's health community, fixing the family glitch.

We believe that the intent of the Affordable Care Act was to expand access to healthcare coverage and make it affordable to individuals and working families. Unfortunately, for nearly five million people who fall into the family glitch, access to affordable healthcare coverage is elusive and more of a dream, not a viable option. Approximately 2.8 million children fall into the family glitch each year and most of these children are from low-income families. So, what does this mean for these 2.8 million children?

When children do not have access to affordable healthcare, they miss out on important well-child visits, vaccinations, and specialty care for chronic conditions. Serious chronic and acute medical conditions may go untreated. As a result, children can suffer unintended health consequences with long-term implications. When children miss well-child visits, other things like social, emotional, and developmental delays may go undetected, and children may suffer unnecessary and long-term harm.

Not a day goes by when you don't hear about the exploding mental health crisis in our country for children and teens. It was brewing before the pandemic, but now it is a serious epidemic. The family glitch impacts the mental health of our children. When children and teens do not have affordable healthcare coverage, they have little or no access to mental health services. That is why I am here today to show support for the administration's proposal to finally, once and for all, fix the family glitch.

First Focus on Children has been on record since 2012 as an advocate for fixing the family glitch. Bruce Lesley, President of First Focus, testified on Capitol Hill in 2014, urging Congress to fix this flaw which prevents about 2.8 million low-income children a year from receiving affordable healthcare coverage. For those low-income children caught in the glitch, some will simply go without coverage. Others will get some coverage through their parents' or guardians, but at great financial hardship to the family.

As you know, the problem is that the affordability threshold of the ACA is determined using the cost of the employee's self-only coverage, not for the true cost of family coverage. The working families who fall into the glitch do not qualify for ACA tax credits, which would make family health coverage more affordable. The working families that fall into the glitch do so through no fault of their own. They did not do anything wrong.

While premiums for self-only health insurance coverage average $7,739 a year, premiums for family coverage average $22,221 a year, nearly triple the cost. It's not that we are asking these families to pay a little more, we are asking these low-income families to pay a lot more. Not one, not two, but three times the cost. And during these challenging economic times, for the millions of families who are above the Medicaid eligibility line, paying nearly triple the cost of a single person's annual premium with no access to premium tax credits because they are caught in the family glitch, it gives them basically two choices.

One, don't buy health insurance for their spouse and children and play Russian roulette with their family's healthcare. Or, two, buy healthcare on the open market and forego tax credits that the ACA designed for low-income working families like theirs. Pay top dollar for health insurance for their family, and use their limited disposable income for healthcare premiums, and decide which essential family items they will forego, such as food, rent, transportation, clothing, and school-related expenses. Expenses which are rising and straining low-income and middle-income family budgets.

Parents want health insurance for their spouses and children. No parent wants to face the scenario that they can't afford to take their child to the doctor when he or she is sick or when they suffer from chronic illnesses like asthma or diabetes. Or they can't afford a visit to the emergency

room if their child has an accident. Or they can't afford to see that their child receives regular well-child visits from a pediatrician so they can grow up healthy.

First Focus on Children and the other organizations that support healthcare coverage for all children thank the Treasury Department and the IRS for proposing regulations to fix the unintended glitch in our healthcare system. First Focus believes that affordability for related individuals should be based on the true cost of family coverage, not on affordability for a single employee.

In closing, First Focus supports proposed regulations and we urge the Treasury and the IRS to finalize the rule. Thank you.

MS. WEISER: Thank you very much. I'm not hearing that any of the panelists have questions for the speaker. So, we will proceed to the next speaker. Thank you.

OPERATOR: Thank you. Our next speaker is Cheryl Fish-Parcham. Please go ahead.

MS. FISH-PARCHAM: Can you hear me?

OPERATOR: Yes, please go ahead.

MS. FISH-PARCHAM: Thank you. Families USA is a leading national nonpartisan voice for healthcare consumers. For more than 40 years, Families USA has been dedicated to achieving high-quality affordable healthcare and improved health for all. We strongly support the IRS' proposed rule, Affordability of Employer Coverage for Family Members of Employees.

We commented in 2011, 2012, and again this month that the current rule, which does not consider family members' costs for employer-based coverage, is contrary to the policy of the Affordable Care Act to ensure that low- and middle-income Americans have access to affordable health coverage. It is not plausible that Congress would have considered the cost of dependent coverage in determining whether a family was subject to penalties for going without coverage yet ignore the costs of dependent coverage in determining whether family members were eligible for premium tax credits.

As an organization that closely followed the legislative process when the Affordable Care Act was being enacted, we did not imagine a reading of the law that would prevent families from obtaining premium tax credits without an offer of affordable coverage for each family member. And we've worked ever since then to try to fix the rule.

Research in individual experiences document the problem that this rule addresses. As early as 2012, GAO recommended that IRS and Treasury consider an alternative approach for determining family eligibility for premium tax credits, noting that nearly half a million children would remain uninsured if the test was not altered. Last year, the Kaiser Family Foundation noted that over five million people continue to be affected by the family glitch, including about half a million who remain uninsured, and many others who pay extremely high costs for their health insurance.

Especially affected are families with the lowest wages such as workers in service occupations. The Bureau of Labor Statistics shows that employers charge those workers on average 40 percent of the cost of family premiums. A navigator with the Virginia Poverty Law Center tells of one such person. Mary Stregel (phonetic) is similar to thousands of Virginia spouses. She is fighting cancer and is uninsured because although her husband's employer offers an affordable and comprehensive plan to the employee, the spousal coverage under that plan costs $1,200 a month with a high deductible. Mary and her husband cannot afford this and Mary does not qualify currently for Medicaid or Medicare. And she cannot purchase a life saving marketplace plan that would cost others not in the family glitch around $300 a month.

Mary goes without insurance, applies for charity care, does not keep up with her cancer treatment, and is more likely to die than those with health coverage. This policy must change to allow spouses and children the opportunity to be insured through the marketplace. It is a matter of life and death.

Many workers with very modest incomes such as some working for childcare programs and fast-food restaurants are already paying high premiums to cover themselves in high deductible employee plans. Adding a spouse or child to such a plan is way out of reach. In about 1/3 of states, children's eligibility for public coverage through Medicaid and Chip ends at about 215 percent of the federal poverty guidelines and parents' income eligibility for Medicaid is lower than that. Each of these family members deserves affordable access to coverage.

Changing the test of affordability as proposed could help more than 700,000 people purchase health insurance through the marketplace with premium tax credits and result in additional children obtaining coverage through Medicaid and Chip. Third Way estimates that if the American Rescue Plan subsidies continue, capping family premiums as proposed in this rule would save a family of four with income at twice the poverty line over 4,100 a year. Even absent continuation of the enhanced subsidies, savings under this proposed rule would be substantial. The Urban Institute estimates that it would help about 710,000 people afford private coverage on the marketplace and save them an average of $400 per person in premiums, which adds up to a significant amount for a family.

We also support the two other changes that the proposed rules would make clarifying that if employer-sponsored plans don't provide a minimum value of coverage to family members, the members may participate in the marketplace, and clarifying that premium rebates received as a result of a plan not meeting required medical loss ratios don't count as income. We support these reasonable and family-friendly clarifications. Thank you.

OPERATOR: Thank you very much. I'm not hearing that there are any questions for the speaker so we will continue moving through the speakers list. Thank you.

MS. WEISER: Thank you Brian Connell. If you are on the line please press one then zero so I can open your line.

MS. BERGE: Hi, this is Katie Berge. I'm attending on behalf of Brian Connell this afternoon, or this morning rather. Can you hear me?

MS. WEISER: Yes, please go ahead.

MS. BERGE: Great. Thank you. As I mentioned I'm attending on behalf of Brian Connell representing the Leukemia & Lymphoma Society. My name is Katie Berge and I work here at our — on or Federal Government Affairs Team. The Leukemia & Lymphoma Society's mission is to cure leukemia, lymphoma, Hodgkin's Disease and myeloma and to improve he quality of life for patients and their family. We've advanced this mission by advocating that blood cancer patients have sustainable access to quality, affordable, coordinated health care regardless of their source of coverage. LLS is pleased to strongly support the agency's proposed rule and interpretation of affordability to suggest the Family Glitch. Over the years the Family Glitch has caused millions of families that cannot afford job-based coverage to be kept out of affordable care. There's particularly importance to the Leukemia and Lymphoma Society recognizing that a not insignificant amount of patients come to us from the pediatrics cancer community, as leukemia and particularly common when diagnosed in those populations. As my — as several others have explained on the call today already and I'm happy to kind of keep my comments brief as a result employer sponsored coverage is often very expensive particularly for those who have low to middle income. These costs burdens for employer sponsored family coverage but particularly pronounced for small businesses and cover relatively large share of low wage workers. The ACA sought to bridge the gap between employer sponsored coverage by providing those with unaffordable offers of employer sponsored coverage with subsidies to purchase health insurance through the marketplaces. In 2013 interpretation under the 2013 interpretation children and other family members were offered unaffordable employer sponsored coverage for bargain containing subsidies to the ACA marketplaces. Again, going to the point that several others have made today that there's physical decisions resulting from that including deferred or even declined offers of coverage and delayed treatments including first screenings and pediatric care. LLS is very grateful that the IRS has reassessed this interpretation and strongly agree with the determinations that it laid out in proposed rule. In our view the ACA did not require nor support the 2013 interpretation and we respectfully suggest that the corrected interpretated error is necessary in order to give full effect to the statute. This interpretation also supports the goal of being CH provide affordable, high-quality healthcare for all Americans, something that is particularly important for patients with chronic and serious health conditions. The Department's proposed interpretation would align the definition of affordability with respect to both individuals and premium tax credits for family members. An analysis provided by the FightTiger Family Foundation estimated that the Family Glitch prevents more than 5.1 million people from obtaining some type of coverage to which they are entitled under the law. More than half of those harmed are children and nearly half a million individuals are estimated to be uninsured because of this flawed regulation. The IRS has proposed to fix so the Family Glitch would give renewed hope to millions of Americans affected by this error and give them the opportunity to enroll in high-quality coverage to be subsidized in ACA marketplace. And resulting substantial savings for particularly those with lower incomes. For these and many other reasons the Leukemia & Lymphoma Society is very pleased to support the IRS' new interpretation of this regulations and its statute and strongly support what it means for patients and consumers across the country who will then be able to access care like they have not been before. I'm happy to leave my comments there but also happy to answer questions. Thank you for your time.

MS. WEISER: Thank you very much. Not hearing that we have any questions from the panel so we will proceed to the next speaker. Thank you. Jacqueline Link if you are on the line please press one then zero so I can open your line.

MS. LINK: Hi, is everyone able to hear me?

MS. WEISER: Yes, we can hear you.

MS. LINK: Hi. My name is Jacqueline Link and I'm a health policy specialist with the American Lung Association. Thank you for the opportunity to comment on the proposed rule regarding affordability of employer coverage for family members of employees. The American Lung Association is the oldest voluntary public health association in the United States currently representing more than 36 million Americans living with lung diseases. The Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease through research, education and advocacy. Our organization is committed to ensuring that everyone has access to quality, affordable health care coverage. I'm here today to express support for the affordability of employer coverage for family member of employees proposed rule. The proposal seeks to remedy what is known as the Family Glitch which prevents millions of individuals from qualifying for subsidized health plans through the affordable cash marketplaces. The existing policies are harmful to low-and-middle-income families who are forced to take employer coverage that is not affordable to them or go without coverage. The IRS's proposal to fix the Family Glitch is an important step in ensuring that health care is affordable, accessible, adequate and the Lung Association urges the IRS to finalize this rule. It is estimated that 5.1 million people fall into the Family Glitch, 85 percent of whom are paying for the employer coverage plan and half of whom are children. A study found that those families were spending about 15.8 percent of their income on employer insurance plans, whereas families with similar income levels are eligible for subsidized coverage through the marketplace. About a half million of those who fall into the Family Glitch remain uninsured. This rule places an undue financial burden on families and in some cases discourages them from enrolling in coverage of any kind. So patients with lung diseases such as asthma or COPD, health insurance is essential to managing their health conditions and many of these patients are forced to pay high premiums for employer insurance plans for families. Employer sponsored coverage can be very expensive, however the proposed rule will eliminate the Family Glitch and allow low-and-middle-income families access to more affordable coverage. For example, a recent study estimated that a family of four with an income of $53,000 which is 200 percent of the federal poverty level would save more than $4,100 in premiums annually. Families with incomes at or below 250 percent of the federal poverty level will experience additional savings because they'll be able to enroll in a marketplace plan with reduced cost sharing. This proposal is also in keeping with the purpose of the Affordable Care Act to expand access to affordable health coverage. As IRS recognizes the current regulation has undermined the law by preventing children and other family members who lack access to affordable coverage and obtaining financial assistance to purchase a family marketplace plan. If finalized, this rule will expand the availability of affordable health care to millions of individuals, in turn reducing income disparities in health coverage. I appreciate the opportunity to provide testimony in support of this proposal, and the Lung Association encourages the IRS to finalize the proposed rule. Thank you.

MS. WEISER: Thank you. I'm not hearing that any of the panelists have a question, so we will proceed to the next speaker. Thank you. Sarah Lueck your line is open.

MS. LUECK: Yeah, hi. Thank you. Hi everybody. My name is Sarah Lueck. I'm the Vice President of Health Policy at the Center on Budget and Policy Priorities. Thanks for the opportunity to speak at the hearing today. CBPP is a non-partisan research and policy organization based in Washington, D.C., founded in 1981, CBPP conducts research and analyses to inform public debates and policymakers about a range of budgets, hacks and problematic issues affecting individuals in families with low or moderate income. Thank you again for the opportunity to testify today in support of the proposed regulation regarding affordability and employer coverage for family members of employees. Under current regulations family members are barred from premium tax credit eligibility when the employee's coverage offer is deemed affordable under standards set in the Affordable Care Act, or ACA, even if premiums for family coverage are prohibitively high. This undermines the coverage goals of the ACA and runs counter to the entire law. Affordability for dependents should be based on the cost of family coverage not the cost of self only coverage that is used for determining affordability for the employee. The IRS's proposed rule seeks to remedy this by adopting a proper interpretation as a ACA provision on affordability of employer coverage. Others have spoken eloquently about the importance of finalizing this rule to ensure that coverage is affordable for families caught in the Family Glitch. I will focus my testimony on explaining why the Center on Budget and Policy Priorities has long argued in support of the interpretation adopted in the IRS proposed rule. Under the ACA individuals eligible for minimum essential coverage are ineligible for premium assistance and cost sharing reduction in the health insurance marketplaces. A provision often referred to as a firewall. Minimum essential coverage includes eligible employers sponsored plan. However, employees will not be considered eligible for minimum essential coverage if the employee contributions, the cost of the premium exceeds a specified percent of household income. There are three relevant provisions of the ACA that must be read together as a proposed rule does to properly determine affordability when determining whether family members other than employee are eligible for premium tax credit. Under Section 36(b) of the Internal Revenue Code, the employee's required contribution is determined, "within the meaning of section 5000Ae1b" and the firewall applies "to an individual who is eligible to enroll in the plan by reason of a relationship to the individual bearer the employee" such as a spouse or a child. Section 5000A subsection e1, subparagraph b is part of the ACA provision on individual responsibility. It allows individuals who cannot afford coverage an exemption from the penalty for not having health coverage. The provision states that in calculating whether coverage is affordable the required contributions to those eligible for an employer plan which is then compared to a household's income is based on the employee's contribution for self only coverage. Importantly, this provision is qualified by following subparagraph in Section 5000Ae1c which states that, "for purposes of subparagraph e1 if an applicable individual is eligible for minimum essential coverage through an employer by reasonable relationship to an employee, the determination under subparagraph A shall be made by reference to the required contribution of the employee." I will refer to Section 5000 Ae1c as the special rule. Subparagraph A in Section 5000Ae1 refers to the test for determining whether coverage is unaffordable for the exception from the penalty. Putting all of this together, when a family has an offer of employer coverage the test of whether it is affordable depends on the employee's required contribution of the percentage of household income. The employee's required

contribution is defined in ACA provision on individual responsibility. For an employee with an offer of employee coverage the required contribution is defined as the amount the employee must pay for self only coverage. For dependents of the employee the statute includes the special rule stating that the determination shall "be made by reference to the required contribution of the employee." Treasury's longstanding failure to take this special rule into account in determining affordability for purposes of premium tax credit eligibility which it would correct in the proposed rule led to affordability for family members being determined one way for the individual mandate and another way for premium tax credit eligibility. In its current regulations Treasury reads the special rule in 5000A as using the cost of family coverage should determine affordability of coverage for the employee and dependents for purposes of the individual mandate. However, in determining affordability for provisions of firewall Treasury applies only 5000Ae1B and ignores the special rule that qualifies the application of the affordability test the dependent in 5000Ae1c. The better reading is that in requiring the use of the same test for the firewall as for the individual responsibility requirement. Congress intended that the entire rule be applied including the special rule that qualifies the application of the affordability test for employee. It is unlikely that Congress intended affordability be determined one way in determining whether a family is exempt from the application of the individual mandate and another way for the firewall. It's far more likely as the proposed rule now concludes that in directing Treasury to use the test in 5000Ae1b, Congress intended that the special rule qualifying the treatment of dependent should also apply. The proposed rule adopts this analysis affirming that the special rule applies. This means that the affordability of coverage for family members of employees would be based on what it would cost to cover them in the employer plan. If the cost is above the affordability threshold the plan would be unaffordable and they would be eligible for premium tax credit in the exchange. This is the correct reading of the statute and it is the proper result on policy ground. In conclusion the proposed rule would provide critical access to affordable coverage for many families. Some uninsured people would be able to newly enroll in coverage. Other families would see reduced costs because they would be able to access financial assistance through the marketplaces. We urge Treasury and IRS to finalize the rule. Thank you.

MS. WEISER: Thank you. Next speaker please. Thank you Tyler Hoblitzell, please go ahead.

MR. HOBLITZELL: Yes. Thank you and good morning. My name is Tyler Hoblitzell and I am the Regulatory Cares Manager for the American Heart Association. The American Heart Association is a national non-profit, voluntary health organization dedicated to the reduction of death, disability and cardiovascular diseases including heart disease and stroke. On behalf of the American Heart Association including the American Stroke Association and millions of volunteers and supporters, I appreciate the opportunity to testify today in support of this proposed rule. In 2013 the IRS promulgated a regulation that prohibits children and other family members from obtaining subsidized family coverage through ACA marketplaces, cost of employee only coverage that's been deemed affordable. Even if the cost of the family policy would not have met that same standard. This 2013 interpretation is long been at odds with the purpose of the ACA to expand access to affordable health coverage. The IRS recognizes in its proposal current regulation has undermined the ACA by preventing children and other family members to block access to affordable coverage from obtaining financial assistance, to purchase marketplace plan. In fact, an analysis by the Kaiser Family Foundation estimated the Family Glitch prevents more than 5.1 million people from obtaining subsidized coverage to which they

otherwise would be entitled under the law. With a half of those children and nearly half million individuals are estimated to be uninsured because of this flawed regulation. In our patient community lack of adequate insurance coverage poses a huge risk. One in three American adults suffer from cardiovascular disease or CVD for short and access to health insurance particularly important for people with CVD. A connection between having health insurance and health outcomes from the CVD population is clear and well documented. Americans with CVD risk factors who are under insured but do not have access to health insurance have a higher mortality rate and poor blood pressure control than their insured counterparts. Also, uninsured stroke patients suffer from greater neurological impairments, longer hospital stays, and a higher risk of death than similar patients with adequate health insurance coverage. The American Heart Association, our core non-partisan principle regarding health reform efforts is getting access to affordable, quality health insurance coverage for all Americans. If finalized this proposed rule will resolve more American getting coverage to quality affordable health insurance. One study estimates that under the proposed rule about 710,000 more people would enroll in marketplace coverage with premium tax credits, 90,000 more children would be enrolled in Medicaid and the Children's Health Insurance Program. Additionally, the administration estimates that the number of uninsured would be reduced by about 200,000. The AHA is pleased to see that IRS has reassessed the 2013 regulation statute and strongly agree with its determinations in the proposed rule. In our view the ACA does not require and does not support the 2013 interpretation. We agree that correcting this interpretive error is necessary to giving full effect to this statute. IRS's proposed fix for Family Glitch would give millions of people affected by this error the option to enroll in subsidized marketplace coverage and result in substantive savings for many particularly, those at lower incomes. If finalized the proposed rule would expand coverage to even more uninsured and open the door for many others to access more affordable coverage. We greatly appreciate and strongly support the proposal to make these benefits reality for our patients' community. Thank you again for the opportunity to provide comments in support of this fix for the Family Glitch. I'd be happy to take any questions at this time.

MS. WEISER: Thank you very much. Not hearing that we have questions from the panel, so we will continue.

MS. DEXTER: My apologies, I had to get it unmuted. Can you hear me now?

MS. WEISER: Yep, we can hear you.

MS. DEXTER: Wonderful; thank you. I'm very happy to be here today. I'm Jennifer Dexter. I'm the Assistant Vice President for our policy at the National Health Council. We appreciate the opportunity to be here today to provide input into the proposed regulation to adjust the affordability of employer coverage for family members of employees. The National Health Council (NHC) was created by and for patient organizations more than 100 years ago. The NHC brings diverse organizations together to forge consensus to drive patient-centered health policy. We provide increased access to affordable high value sustainable healthcare. We're made up of more than 145 national health-related organizations and businesses. The NHC's core membership include the nation's leading patient organizations, many of whom are represented here today. Other members include health-related associations and nonprofit organizations, including the

provider, research and family caregiver communities, and businesses representing biopharmaceutical, device diagnostic, generic drug, and payor organizations.

The proposal we are discussing today would remedy a flawed policy that has prevented millions of Americans who cannot afford job-based coverage from qualifying for a subsided health plan through the Affordable Care Act marketplaces. The proposed fixed to the "family glitch" will provide people with chronic diseases and disabilities who would now have the opportunity to purchase affordable health assistance and receive assistance in affording it. This is especially important for those people with chronic conditions who without access to the ACA subsidies would not be able to afford coverage and thus not be able to access the products and service they need to manage that condition.

The policy change is consistent with the intent of the ACA and the purposes for which it was enacted. We applaud the IRS for re-examining this problem and strongly support its proposal to fix it. Enabling consumers to obtain the financial assistance, to which they are entitled under federal law, the proposed rule will improve access to affordable quality care. Employer-sponsored coverage can be very expensive. As you've heard repeatedly today, the rates for family coverage can be astronomical. People with chronic conditions and disabilities often don't have the option to forego coverage and take the risk, so they are forced into terrible financial decisions.

The other aspect of this proposal that is so important is the advances it will lead in health equity. According to the Kaiser Family Foundation, a report you've heard quoted many times today, among firms with relatively large share of lower wage workers, employers had to pay a higher percentage of the premium than those companies with a smaller share of lower wage workers, an average of 35 percent of the premium for a family plan.

In addition, the Kaiser Family Foundation research says that a majority of those that would benefit from the rule change and the broadened subsidies in coverage are children and, among adults, women are much more likely to fall into the glitch than men. In addition, people with chronic diseases and disabilities are likely to fall into the glitch and not have their own employer-sponsored coverage.

The National Health Council strongly supports finalizing this proposal and helping more people access the care and services they need.

Thank you for the opportunity to speak today.

MS. WEISER: Thank you very much. Let's proceed to the next speaker.

MS. KRENRICH: Okay, great; can you hear me?

MS. WEISER: Yes; please go ahead.

MS. KENRICH: Okay. Good morning. My name is Stephanie Krenrich, Senior Director of Federal Advocacies for the American Cancer Society, Cancer Action Network (ACS CAN).

ACS CAN is making cancer a top priority for public officials and candidates at the federal, state, and local levels. ACS CAN impowers advocates across the country to make their voices heard and influence evidence-based public policy change, as well as legislative and regulatory solutions that will reduce the cancer burden. As the American Cancer Society's nonprofit, nonpartisan, advocacy affiliate, ACS CAN is critical to the fight for a world without cancer.

I appreciate the opportunity to testify today on behalf of cancer patients, survivors, and their families. Cancer is unpredictable and can strike at any time. Being enrolled in comprehensive and affordable health insurance coverage is a key determinant in surviving cancer. Research from the American Cancer Society shows that uninsured individuals are less likely to get screened for cancer and, thus, are more likely to have their cancer diagnosed at an advanced stage when survival is less likely and the cost of care more expensive.

This does not only impact the 1.9 million Americans who will be diagnosed with cancer this year, but also the 16.9 million Americans living today who have a history of cancer. That is why having access to affordable health insurance is critical in the fight against cancer. Millions of Americans have access to health care coverage through their employers. Under the Affordable Care Act, and its implementing rules, employer-sponsored coverage must meet both a minimum value test and an affordability test. If a coverage fails one or both of those tests, the employee may be eligible for subsidies on the marketplace if they meet the income flesh hold. While these policies provide great protection to employees, they do not apply to individuals who are eligible for employer-sponsored coverage as a dependent of an employee.

In 2013 implementing regulations determined that the affordability test would be based solely on the employee's coverage and would not consider the cost of family coverage, which can be far more expensive than employee-only coverage. Unfortunately, individuals who are offered employer-sponsored coverage as a dependent of an employee, even if that coverage does not meet the affordability test, do not qualify for subsidies on the marketplace and, as a result, are often left without coverage. Addressing this so-called family glitch will help many families who currently struggle to access affordable health insurance.

The American Cancer Society operates a specialized health insurance assistance service which provides cancer patients information about health insurance options that may be available to them in their area. We call it HIETH (phonetic). So HIETH representatives hear from individuals who have been affected by the family glitch. For example, they heard from a woman in Florida who's husband's employer-sponsored coverage is unaffordable. This woman called HIETH because she has a history of cancer, and believes she is experiencing some cancer symptoms. Unfortunately, because of the family glitch, she lacks health insurance coverage and cannot afford to go see a health care provider to determine whether or not she has cancer, and if she is diagnosed with cancer, to obtain coverage for her treatment. If she does have cancer, that cancer will spread if left untreated.

Earlier this year, in April 2022, the IRS issued a proposed rule that would amend the affordability test to clarify that the amount of the premium the individual pays for family coverage does not exceed 9.5 percent of the household income. The proposed rule would only make this change for individuals who are either a spouse, filing jointly, or a dependent of the

employee. The proposed rule addresses instances where an individual with offers of coverage from multiple sources, for example, when both spouses are offered employer-sponsored coverage, in such cases, the affordability test is met if one of the other offers is affordable.

ACS CAN applauds the Administration's proposed rule, which seeks to address the family glitch. We agree with the Administration that this revised interpretation is more in line with the intent of the Affordable Car Act, which is to provide individuals access to comprehensible and affordable heath insurance coverage. The proposed rule also sought to address two other technical but important issues. First, the proposed rule seeks to expand the minimum value test to also include family members. A plan would provide minimum value for family members if the actuarial value of the plan is at least 60 percent and the plan benefits include substantial coverage of in-patient hospitalization services, and physician services.

ACS CAN appreciates this clarification. As noted in the proposed rule, without a separate minimum value test for related individuals, it could be possible for an individual to be offered coverage that meets the affordability rule for related individuals but does not meet the minimum value requirement for related individuals. Second, the proposed rule clarifies that a taxpayers premium assistance amount for a month in the current taxable year should not be affected by a premium refund that was paid in a later taxable year based on payments made in the prior taxable year. In other words, if an individual were to receive a premium refund, like a medical-loss ratio rebate, that refund amount would not count for purposes of determining the individual's eligibility for subsidies. Again, ACS CAN supports this interpretation.

For individuals who receive a premium refund should not have to include that income for purposes of their subsidy calculation. Not all enrollees will receive a premium refund. Requiring those who do have to account for the amount of the refund would create an unnecessary administrative burden on individuals.

Thank you for this opportunity to share our thoughts regarding the proposal. We urge the Department to finalize the rule. I will be happy to answer any questions.

MS. WEISER: Thank you very much. Let's proceed to the next speaker.

MR. NELSON: Hi. My name is Peter Nelson. I'm a Senior Policy Fellow with Center of the American Experiment, a public policy organization based in Minnesota. And from December 20, '17 to January 20, '21, I was a Senior Advisor to the Administrator at CMS where I led efforts to create a more stable affordable health insurance market; and in my current role as Senior Policy Fellow, I continue to work on policies and advancing policies that do lead to that better insurance market space. And I'm here today to urge you to withdraw the proposed rule because it does not offer a permissible interpretation of the statute.

So, in 2013 Treasury finalized a rule with the current interpretation of the statute where it found that Section 46.B says that affordability is based on the cost of self-only coverage for both the employee and their dependents. Treasury, today, this year, needs to introduce some sort of ambiguities to this statute to go back and change this rule; and you've identified ambiguity but, I believe, that ambiguity just doesn't exist.

The ambiguity you identified is in the flush language in section 36(b) where the flush language basically says that that direct a reference to the self-only coverage applies also to related individuals; and it doesn't really say how that direct reference is supposed to apply, but it is the direct reference. The direct reference is very clear, and the direct reference cites self-only coverage and not family coverage. And so, there really is a lot of clarity there because that flush language says you just apply the same rule as to employees as to related individuals.

Going on, your argument seems to hinge on using the special rule in Section 5000.A to apply, basic to change the interpretation so that family coverage becomes the basis for affordability; and, yet, the fact is, when you look at Section 5000.AE1.C, it's clearly limited to the purposes of determining exemptions from the individual mandate, and because there's a direct reference in that section to Section 5000.AE1.A, and it says that for purpose of the special rule; and, therefore, by identifying one purpose, the purpose for determining eligibility for the individual mandate exemption, you can't then use that section to determine, for the purposes of section 36(b), for determining premium subsidy eligibility.

And the current interpretation is not inconsistent with any other statutory provisions. The proposed rule suggests that the proposed interpretation of federal reading because it, basically, would mirror the interpretations across the affordability test for the premium subsidy eligibility and individual mandate exemptions; but consistency itself is not a virtue. In this case, it's easy to see why Congress would have applied different standards. One standard applies to a financial penalty, and one applies to a financial benefit. So, it's easy to see why a penalty and a benefit would have its different interpretation.

The proposed rule also reads 42 U.S.C. 1808(1) as inconsistent and the provision that requires a reporting regarding the required contribution for employees and related individuals. However, the statute uses the word "or" in this context and it doesn't use "and" as the Treasury suggests; and because it uses the word "or," it's not requiring reporting of employees and related individual's cost information. It's just requiring the reporting of one or the other because it just depends on who is the actual employee, because the employee could be the employee himself, or the employee could the related individual. So, that is not at all inconsistent. There's consistency across 1808(1) and the current interpretation.

And moving on. When you look at the history of the statute. The history of the legislative amendment clearly shows the family glitch was added by design. The proposed rule cites a report from the Joint Committee on Taxation, issued when the ACA passed in the House, which originally stated statute based affordability on the cost of family coverage. The JCT quickly corrected this error. You've argued the error reflects the ambiguity of the statute; however, the most likely source of error actually reveals how congressional amendments introduced the family glitch by design, not by accident.

The erroneous text is nearly identical to text found in a Senate Finance Committee report describing the provisions of the America's Healthy Future Act of 2009. This Act was amended and consolidated with another bill to become the ACA. However, before being amended, this act did not include the family glitch. The fact that the JCT error mirrors a description of this earlier bill shows the JCT error was a simple cut-and-paste error, not due to any ambiguity. In fact, the

proposed rule failed to note that the JCT correctly described the position elsewhere in their report. This further support said the mistake was a simple cut-and-paste error. It's hard to believe that JCT held conflicting positions at the same time they published the report. Now, looking back at the text of the America's Healthy Future Act, as introduced in October 2009, and how Congress amended it to become the ACA, shows how Congress clearly enacted the family glitch by design. There were three key changes to the text that happened at that time.

First, the Senate amended the definition of required contribution to mean the portion of premium paid for self-only coverage. Second is that the Senate amended the cross-reference in section 36(b) to specifically target the newly-amended definition of required contribution. Originally, the cross reference pointed the entire individual mandate exemption section, including the special rule. These two changes alone introduce the family glitch. They added self-only coverage and removed the special rule from the cross reference. However, to remove any ambiguity, the manager's amendment, added right before final passage in the Senate, then specified the special rule applies only to the individual mandate exemption. The way the proposed rule now reads, the statute is exactly how the statute read, as introduced in October 2009.

In light of this legislative history, to adopt the proposed interpretation, you must also adopt the position that these amendments changed nothing; and that is an untenable position.

I also want to note that adding the family glitch supported several Congressional purposes. Now, we've heard that fixing the family glitch serves the purpose of the ACA to provide more affordable coverage; but there are a number of competing priorities at the time the Congress had to address in order to pass the ACA; and there's three that are important here.

The first is that the ACA was enacted to reduce the federal deficit. In his health care speech to the Joint Session of Congress in September of 2009, President Obama asserted "our health care problem is our deficit problem," and promised he would not sign a plan that adds one dime to our debt. The family glitch cut billions from the cost of exchange subsidies. The ACA also aimed, in the words of Obama, "to provide more secure instability to those who have health insurance." To that end, the law tried to avoid displacing people from the coverage they already had. The firewall between employer coverage and subsidized coverage helped keep people in employer coverage. The family glitch holstered that firewall.

Congress also knew the ACA needed to include provisions for protected individual health insurance market rich pool. Alone, the law's coverage guarantees couldn't allow people to wait until they were sick before getting coverage. The ACA entitlements expected people who moved through employer coverage to the individual market would be sicker on average. The family glitch reduced this movement.

So, based on all of those arguments related to the statutory text, the history of legislative amendment, and the purposes the family glitch serves, it's very clear that the family glitch was added by Congress by design; and there is no ambiguity in the statute. Trying to introduce ambiguity is simply not permissible because the statute is clear; and if you do this, there will be some unintended consequences. We've heard before this that there is (inaudible) in employer coverage. We've heard that there's going to be family members that will be subject to different

plan networks and cost-sharing. And I'll just note that in many states, in at least five states that are offered on the exchange, the minimum moot (phonetic) is $6,000 — that's the minimum; and so that is the minimum moot that is available to people. They're going to have to couple that moot, the minimum out-of-pocket exposure — they'll have to match that with an employer-sponsored plan too; and all of those unintended consequences, all those harmful impacts are things that Congress would need to address; and, I think, they would address it. I think we should be leaving this issue to Congress to solve; and with that, I thank you for your time, and I'm open to any questions.

MR. TOOMEY: This is Steve Toomey. You said $6,000 is the minimum. Were you using an acronym there? I'm sorry I didn't get that.

MR. NELSON: The max out-of-pocket exposure.

MR. TOOMEY: Okay.

MR. NELSON: On healthcare.gov, in five states the very lowest max on out-of-pocket exposure is $6,000.

MR. TOOMEY: Okay, got it. Thank you.

MS. WEISER: Thank you. Let's go to our next and final listed speaker.

OPERATOR: Thank you. Robin Paoli, your line is open.

MS. PAOLI: Hello. This is Robin Paoli, Executive Director of the HRA Council. I think you for this opportunity to provide our testimony today. I want to share my time with one of our board members, Mark Mixer, who is dialed in. Can you confirm two quick things for me: One that it is okay for me to share my time with him; and secondly, that his line is open as well. Mark Mixer.

MR. MIXER: I have dialed in if you can hear me.

MS. PAOLI: Mark, hello. Mark is one of our board members. He also is a member of the HRA Council and also leads a health insurance plan that is in the marketplace, so he is an ACA Plan CEO, and he has implemented health reimbursement arrangements in his company.

So the HRA Council stands for "Health Reimbursement Arrangement", which is a wonderful form of employer-sponsored insurance where the employer sets aside a designated amount each month for employees — and in some cases their dependents — to use to purchase their own health insurance on the marketplace, so they get as much choice as they can get in terms of deciding their plan, their network, their doctors, their prescriptions — all of that. And in our comment letter, we indicated our support for fixing the family glitch and a very specific request for qualification that — in otherwise eligible families who would receive their PTC and no longer be in the family glitch — that these families can combine the HRA amount from the employer to the employee, and then the family can take that and combine it with the PTC to purchase one shared plan for the family, which in part is the solution to one of the issues raised

earlier about families having to juggle multiple plans and multiple out-of-pocket expenses or multiple deductibles. In this case they would be able to have one plan for the family, reducing their administrative burden and their cost structure. And so we support fixing the family glitch. We ask for this clarification and now Mark, let me turn it over to you.

MR. MIXER: Thank you, Robin, and thank you, Carol, for hosting this.

I guess I am going to come at this a little bit differently. I certainly want to transcend the legal and the tax regulation issues I guess both Mr. Badger, Mr. Nelson and Dr. Blase brought up, but assuming that this moves forward, the proposed rule I think almost certainly has to include reference to health reimbursement arrangements which have been around for decades and decades, well-established, but now provide an employer an additional opportunity to move out of the benefit-defined world and move into a contribution-defined product, so that the traditional coverage is no longer the employer trying to select what benefit is best available to his employees and, instead, providing funds or dollars that the employee can then go out and purchase. So to that end, the Council very much would love to see it identified specifically that should a premium tax credit be available, should the glitch be fixed, that that employee's family are able to combine the amounts the employer's providing along with the premium tax credit, so you eliminate what is being proposed as a problem — and that is multiple plans, multiple networks, multiple out-of-pockets, multiple deductibles, and they are able to purchase a single plan, a single network, a single deductible, a single maximum out-of-pocket, with the funds being combined. So with that, I do bring a different perspective to the table in that I took my — I have several hundred employees in which we put into the individual market using an HRA, it's still an employer-sponsored plan, there's nothing different in that regard, we simply provided them funds — high success, high satisfaction rate out of that. And then we are an ACA plan in the Georgia market. We represent about 1 out of every 11 individuals insured in the Georgia market. And I will end with this, I think there is a misapplication of the traditional group model thinking. Two things — one, that everybody has access in a group model to a national network — nothing can be further from the trust. Smaller employers particularly are impacted dramatically by this as they abandon the fully insured or the group-insured market because costs are simply too high. And one way to mitigate cost year over year is to begin to reduce the network access and to increase deductibles and maximum out-of-pockets. I think the other concern is that we continue to mirror the individual market plan designs against group plan designs, and we assume group plans are significantly richer than individual plans. Mr. Nelson in his testimony referenced that as well. And while you may be able to prove an anecdotal component of that, I think overall you're finding individual plans can mirror group plans in many markets — maybe not all, but certainly in many. In the Georgia market, we have plans that have zero deductibles. You don't find that in the group market.

So I'll end with this. The HRA Council certainly applauds the efforts to fix the family glitch. I would echo though Mr. Nelson's comments where regardless of the desire to obtain a fix, we more strongly as a council desire that the cure doesn't become an unattended curse. With that, we believe that combining the employer funding with the premium tax credits when you get down to the ground boot level of implementing this fix, helps to avoid such an unintended consequence.

Thank you for your time.

MS. PAOLI: Thank you, Mr. Mixer. And we are happy to take any questions or to conclude our testimony by thanking you for this time today and asking you to clarify that families will be able to combine the HRA contribution with the PTCs to purchase one shared group plan. Thank you so much.

MR. TOOMEY: Yes, this is Steve again. Can I ask a question about that? Currently under the 36(b) regulations, a family has to opt out of the HRA in order to get a premium tax credit — the employee has to opt out of the HRA. But if the employee does that and the HRA is unaffordable under the rules and the regulations then the employee and the family are potentially able to claim a premium tax credit. Are you suggesting that that rule change, that the employee and the family should both be able to get the HRA and get a premium tax credit? I am a bit confused as to what you are requesting.

MR. MIXER: I think you've got to bifurcate the market. In the smaller market — those defined as small employers, which in Georgia is 50 and fewer — affordability really doesn't come into play because there is no affordability test. So it is only applied to applicable large employers. Where an applicable large employer subject to the affordability test, once it is deemed affordable, even if the employee waives off coverage, they still are not eligible for the premium tax credit. We think the fix ultimately provides kind of a best of both worlds' environment, where the employee can obtain the funding, particularly in an HRA environment from the employer, and also garner premium tax credit from the federal government to assist in the premium payments that the family would be subject to. I think if you left this under the affordability of employer coverage for family members of employees heading — as this testimony is — we are simply saying if you fix the family glitch, we recommend that you specify that an employee can obtain both employer and premium tax credits as a family and apply them to a single policy.

MR. TOOMEY: Okay, that helps. Thank you.

MS. PAOLI: Thank you, sir. Are there any other questions?

Thank you for this opportunity to answer your question and to testify today.

MS. WEISER: Thank you to all of the speakers. We certainly appreciate your time as we said at the outset, if there is anyone else who has dialed in that would like to take the opportunity to provide a few short remarks, I'll turn this back over to the moderator to see whether anyone else has something that they would like to add.

OPERATOR: Thank you. If you wish to make a public comment, you may press 1, then 0 on your telephone keypad. Once again, if you would like to make a public comment, please press 1 and then 0 at this time.

I do have one comment in cue, it will just be one moment here. Debbie Hebb, please go ahead.

MS. HEBB: Thank you. This is my first time ever on one of your calls, and I do appreciate it. I am actually an employee benefits broker, and I deal with this issue on a constant basis. I would like to —

MS. WEISER: Could you give us your name again, please, we didn't get that, sorry.

MS. HEBB: It's Debbie Hebb, H-E-B-B.

MS. WEISER: Thank you.

MS. HEBB: You're welcome. As an employee benefits broker, I see on a daily basis what is the cost of the insurance, and also what income individuals are making. I am in a more rural area, so again, we don't have high incomes. The issue with this, I think it is twofold: Number one, I think there was some intentions as far as making it for employers when they would be penalized if they didn't offer affordable care for the employee. There is also the mention, of course, that the family, being the 9.61 percent for the test on the individual market. And I think we have blurred them together.

Employers in small groups cannot afford to cover spouses and children. The most that we generally have for most of our companies would be a 50 percent coverage for the family, but most often, the majority of my employers cannot afford it, so the employees must pay 100 percent of their dependent costs and that includes the spouse. We are causing more harm by not allowing the spouse and the children to be able to go through the individual market and get coverage than what I believe is the rulings or the interpretations of these rulings are thinking about. I don't believe that Congress at any time had the intention that 9.61 percent of an employee's income would be sufficient to cover a family cost.

And so I thank you. Again, I'm in this world every single day, and I think a lot of people just do not understand the realities of what these families are going through.

Thank you.

OPERATOR: Thank you. I have no further comments, thank you.

MS. WEISER: All right. Well, thank you once again to all of the speakers. We appreciate your time. And with that, we will conclude the hearing.

OPERATOR: And ladies and gentlemen, that does conclude your conference for today. Thank you for your participation and for using AT&T's Event Conferencing Service. You may now disconnect.

(Whereupon, at 11: 38 a.m., the PROCEEDINGS were adjourned.)

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