



July 2017

IMPROPER PAYMENTS

Improvements Needed in CMS and IRS Controls over Health Insurance Premium Tax Credit

Accessible Version

GAO Highlights

Highlights of [GAO-17-467](#), a report to congressional committees

Why GAO Did This Study

The Patient Protection and Affordable Care Act (PPACA) aims to expand health insurance coverage and affordability. PPACA provides eligible individuals with PTC to help cover the cost of premiums for health plans purchased through a marketplace. CMS maintains the federally facilitated marketplace known as HealthCare.gov. IRS is responsible for processing PTC-related amounts on tax returns. The estimated fiscal year 2016 net outlay for PTC that was refunded to taxpayers was about \$24 billion, while the estimated revenue effect from PTC that taxpayers used to reduce their tax liabilities was about \$2 billion.

GAO was asked to examine improper payments related to PTC. This report assesses the extent to which (1) CMS and IRS assessed the susceptibility of their PTC programs to significant improper payments; (2) CMS properly designed and implemented key control activities related to preventing and detecting improper payments of advance PTC; and (3) IRS properly designed and implemented key control activities related to preventing and detecting improper payments of PTC, including recovering overpayments and reimbursing underpayments of PTC.

GAO reviewed the improper payment susceptibility assessments completed by CMS and IRS; interviewed agency officials; reviewed policies and procedures; and tested statistical samples of (1) CMS applications with advance PTC transactions during the 2016 open enrollment period and (2) income tax returns with PTC transactions processed during the first 9 months of fiscal year 2016.

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What GAO Found

In fiscal year 2016, the Department of Health and Human Services' (HHS) Centers for Medicare & Medicaid Services (CMS) assessed its advance premium tax credit (PTC) program as susceptible to significant improper payments. CMS instituted a qualitative method for assessing the susceptibility of its program that was consistent with requirements, including assessing each of the nine required qualitative risk factors. However, CMS stated that it may not report improper payment estimates for the PTC program as required until at least fiscal year 2022 because of the complexity and timing of the process for developing such estimates. As a result, HHS's overall improper payments estimate will continue to be understated, and Congress and others will continue to lack key payment integrity information for monitoring HHS's improper payments. The fiscal year 2016 Internal Revenue Service (IRS) assessment for its PTC program was not consistent with requirements nor did it demonstrate whether the program met applicable thresholds for susceptibility to significant improper payments. Until IRS conducts an appropriate assessment, it will remain uncertain whether IRS should estimate the amount of improper payments for its PTC program.

Although CMS properly designed and implemented control activities related to the accuracy of advance PTC payments, it did not properly design control activities related to preventing and detecting improper payments of advance PTC, such as verifying individuals' eligibility. As a result, CMS is at increased risk of making improper payments of advance PTC to issuers on behalf of individuals.

CMS Key Control Activities Related to Preventing and Detecting Improper Payments of Advance PTC

| Centers for Medicare & Medicaid Services (CMS) control activity description | Design ^a | Implementation |
|---|---------------------|----------------|
| Key control activities related to eligibility requirements for advance premium tax credit (PTC) | | |
| Verifying citizenship and lawful presence with electronic data sources | ✓ | ✓ |
| Verifying the identities of individuals | X | X |
| Verifying residencies | X | X |
| Preventing duplicate coverage | X | X |
| Resolving inconsistencies | X | X |
| Monitoring continued eligibility | X | X |
| Verifying compliance with tax filing requirements | X | X |
| Verifying major life changes for enrollment outside of the open enrollment period | X | X |
| Key control activities related to the accuracy of advance PTC calculations based on incomes and family sizes | | |
| Verifying incomes and family sizes | X | X |
| Key control activities related to the accuracy of advance PTC payments to issuers | | |
| Accurately generating policy-based payments to issuers based on enrollment data | ✓ | ✓ |
| Properly reviewing and approving issuer payment calculations and reconciliations | ✓ | ✓ |
| Performing compliance reviews for issuers and qualified health plans | ✓ | ✓ |
| Notifying issuers of noncompliance and decertifying issuers | ✓ | ✓ |

- ✓ Control activities were properly designed to achieve the control objective
- X Control activities were not properly designed to achieve the control objective
- X Control activities that are not properly designed cannot be properly implemented

Source: GAO analysis of CMS control activities. | GAO-17-467

^aGAO did not evaluate whether control activities that were not properly designed were operating as designed.

What GAO Recommends

GAO is making 10 recommendations to HHS. Of these, 2 recommendations are related to complying with annual reporting of advance PTC improper payments estimates, including assuring that CMS expedites the process for reporting such estimates. The 8 remaining recommendations address improving control activities related to eligibility determinations and calculations of advance PTC based on incomes and family sizes. HHS concurred with 7 of the recommendations and neither agreed nor disagreed with the remaining 3 recommendations, which related to improving control activities for verifying identities of individuals, preventing duplicate coverage of individuals receiving minimum essential coverage through their employers, and verifying household incomes and family sizes. GAO continues to believe that actions to implement these 3 recommendations are needed as discussed in the report.

GAO is also making 5 recommendations to IRS. Of these, 1 recommendation focuses on properly assessing the susceptibility of the PTC program to significant improper payments. The remaining 4 recommendations address improving control activities related to processing PTC information on tax returns, such as recovering advance PTC made for individuals who do not meet the eligibility requirements for citizenship or lawful presence. IRS agreed with 2 recommendations, partially agreed with 2 other recommendations, and disagreed with the remaining recommendation. For the 2 partial concurrences, GAO continues to believe that actions to fully implement these recommendations are needed as discussed in the report. Although IRS disagreed with the 1 recommendation related to reviewing tax returns to those who are not reporting shared responsibility payments, the actions IRS described in its comments, if implemented effectively, would address the recommendation.

View [GAO-17-467](#). For more information, contact Beryl H. Davis at (202) 512-2623 or davisbh@gao.gov.

IRS did not design and implement certain key control activities related to preventing and detecting PTC improper payments, including recovering excess advance PTC overpayments. For example, IRS did not properly design procedures to routinely check for duplicate employer- or government-sponsored coverage. In addition, in 2015 and 2016, IRS used an ad hoc process for notifying nonfilers of the requirement to file tax returns; however, IRS did not establish procedures for sending these notices regularly during each filing season to facilitate compliance. Without properly designed control activities related to PTC, IRS is at increased risk of making improper payments to individuals.

IRS faces challenges that affect its ability to design and implement procedures related to preventing and detecting PTC improper payments, including recovering advance PTC overpayments and reimbursing advance PTC underpayments. For example, IRS maintains that reduced resources have impaired its ability to implement needed controls. Further, statutory limitations contributed to IRS's inability to fully collect excess advance PTC overpayments and reimburse PTC underpayments and to automatically correct errors in tax returns. GAO previously suggested that IRS seek legislative authority to correct tax returns at filing based on marketplace data. The Department of the Treasury, on behalf of IRS, has submitted proposals for congressional consideration to permit IRS to correct such errors where individuals' information on tax returns does not match corresponding information provided in government databases. Congress has not yet granted this broad authority.

IRS Key Control Activities for Preventing and Detecting Improper Payments of PTC

| | Design ^a | Implementation |
|---|---------------------|----------------|
| Key control activities related to the IRS's processing of the PTC | | |
| Verifying citizenship or lawful presence of individuals for PTC eligibility | X | X |
| Verifying health care coverage of individuals for PTC eligibility | X | X |
| Verifying individual shared responsibility payment compliance | X | X |
| Verifying individuals' incomes for calculating PTC-related amounts prior to issuing refunds | X | X |
| Reviewing tax returns that contain errors | X / ✓ | X / ✓ |
| Correcting PTC-related errors on tax returns prior to issuing refunds | X | X |
| Recovering excess advance PTC repayment amounts | X | X |
| Notifying nonfilers of the requirement to file tax returns | X | X |
| Preparing tax returns for nonfiling individuals through ASFR | X | X |

X Control activities were not designed to achieve the objective

X Control activities that are not properly designed cannot be properly implemented

✓ Because of resource limitations, IRS established dollar thresholds to limit the number of tax returns with PTC-related amounts for additional reviews by IRS examiners. Although the control activity was not properly designed because of resource limitations, we found that IRS's use of dollar thresholds was properly designed, implemented, and operating as designed

ASFR - Automated Substitute for Return

IRS - Internal Revenue Service

PTC - premium tax credit

Source: GAO analysis of IRS control activities. | GAO-17-467

^aExcept for control activities related to IRS's review of tax returns that contain errors, GAO did not evaluate whether other control activities that were not properly designed were operating as designed.

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Abbreviations

| | |
|----------|---|
| ASFR | Automated Substitute for Return |
| AVS | Affordable Care Act Verification Service |
| CHIP | Children’s Health Insurance Program |
| CMS | Centers for Medicare & Medicaid Services |
| DHS | Department of Homeland Security |
| EPD | Exchange Periodic Data |
| FFM | federally facilitated marketplace |
| HHS | Department of Health and Human Services |
| IPIA | Improper Payments Information Act of 2002, as amended |
| IRM | Internal Revenue Manual |
| IRS | Internal Revenue Service |
| OMB | Office of Management and Budget |
| PARIS | Public Assistance Reporting Information System |
| PPACA | Patient Protection and Affordable Care Act |
| PTC | premium tax credit |
| PUPS | Prisoner Update Processing System |
| SFR | substitute for return |
| SSA | Social Security Administration |
| SRP | shared responsibility payment |
| Treasury | Department of the Treasury |

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July 13, 2017

The Honorable Roy Blunt
Chairman
The Honorable Patty Murray
Ranking Member
Subcommittee on Labor, Health and Human Services,
Education, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Tom Cole
Chairman
The Honorable Rosa DeLauro
Ranking Member
Subcommittee on Labor, Health and Human Services,
Education, and Related Agencies
Committee on Appropriations
House of Representatives

The Patient Protection and Affordable Care Act (PPACA) aims to expand health insurance coverage and make it more affordable for low-income households.¹ PPACA required the establishment of health insurance exchanges, or marketplaces, in all states to assist individuals in comparing and selecting among insurance plans offered by participating private issuers of health care coverage,² such as health insurance companies. Under PPACA, states may elect to operate their own respective health insurance marketplaces, but a majority of states rely on the federally facilitated marketplace (FFM), known to the public as HealthCare.gov. The Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services (HHS) is responsible for overseeing the establishment of these state-based marketplaces and maintaining the FFM.

¹Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010). In this report, references to PPACA include any amendments made by the Health Care and Education Reconciliation Act.

²We use “issuer” when referring to an insurance entity licensed by a state to engage in the business of insurance in that specific state.

To help pay the cost of insurance premiums for taxpayers and their dependents, PPACA provides a premium tax credit (PTC) to individuals who meet certain income and other requirements. Individuals can have the federal government pay PTC to their issuers in advance on their behalf, known as advance PTC, which lowers their monthly premium payments. The advance PTC is based on estimates of household income. Taxpayers who choose to have advance PTC must reconcile the amount of advance PTC paid to issuers on their behalf with PTC they are eligible for on their income tax returns, which is computed based on the actual modified adjusted gross income calculated when filing their returns.³ PTC is a refundable tax credit in that in addition to offsetting tax liability, any credit amounts in excess of tax liability are refunded to taxpayers. The Internal Revenue Service (IRS) is responsible for ensuring individuals, employers, and issuers comply with certain PPACA health coverage and tax filing requirements.

PTC represents a significant fiscal commitment for the federal government. According to the Department of the Treasury (Treasury), the estimated fiscal year 2016 net outlay for the portion of PTC that was refunded to taxpayers was about \$24 billion; the estimated revenue effect from the portion that taxpayers used to reduce their tax liabilities was about \$2 billion.⁴ Enrollment control activities to reasonably assure that only qualified applicants receive PTC⁵—and any advance payments

³The amount of PTC also varies with changes in family size and the insurance premiums for the marketplace health plans offered in the area where a taxpayer resides.

⁴Department of the Treasury, Office of Tax Analysis, "Table 1. Estimates of Total Income Tax Expenditures for Fiscal Years 2016-2026," *Tax Expenditures* (Washington, D.C.: September 2016), accessed March 23, 2017, <https://www.treasury.gov/resource-center/tax-policy/Documents/Tax-Expenditures-FY2018.pdf>. The refundable portion of a tax credit is not reported as a revenue loss estimate but as an outlay. Tax expenditure estimates—for the nonrefundable portion of a tax credit—do not necessarily equal the increase in federal revenues (or the change in the budget balance) that would result from repealing the related tax provision because of potential incentive effects that may alter economic behaviors and interdependencies across tax provisions. For this reason, such estimates should be regarded as approximations.

⁵According to internal control standards, management designs control activities to achieve objectives and respond to risks. Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks. See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014). App. II provides additional details on components of internal control.

toward their insurance premiums—are a key factor in administering the credit effectively and efficiently.⁶

House Report No. 114-195, which accompanied H.R. 3020, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2016, included a provision for GAO to evaluate the process and coordination between HHS and Treasury to prevent improper payments of PTC.⁷ The objectives of this report are to determine the extent to which (1) CMS and IRS assessed the susceptibility of their PTC programs to significant improper payments and, if the programs were deemed susceptible, whether CMS and IRS took actions required by the Improper Payments Information Act of 2002, as amended (IPIA),⁸ and Office of Management and Budget (OMB) guidance;⁹ (2) CMS properly designed and implemented key control activities related to preventing and detecting improper payments of advance PTC; and (3) IRS properly designed and implemented key control activities related to preventing improper payments of PTC in processing federal income tax returns, detecting and recovering advance PTC overpayments made to issuers on behalf of policyholders, and reimbursing underpayments made to policyholders. Further, for those key control activities that we determined were properly designed and implemented, we evaluated the extent to which such control activities were operating as designed.

To address our first objective, we reviewed relevant laws, regulations, and guidance to identify the requirements that agencies must meet to

⁶According to CMS data, about 11 million people had enrolled into a 2016 health insurance plan under PPACA as of March 2016. About 85 percent of these enrollees qualified for the advanced PTC provided by PPACA.

⁷The explanatory statement accompanying the enacted Consolidated Appropriations Act, 2016, reiterated the provision for GAO to perform this audit. 161 Cong. Rec. H9693, H10290 (Dec. 17, 2015).

⁸IPIA, Pub. L. No. 107-300, 116 Stat. 2350 (Nov. 26, 2002), *as amended by* the Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204, 124 Stat. 2224 (July 22, 2010), and the Improper Payments Elimination and Recovery Improvement Act of 2012, Pub. L. No. 112-248, 126 Stat. 2390 (Jan. 10, 2013), *and codified as amended at* 31 U.S.C. § 3321 note. In this report, references to IPIA include any amendments made thereto.

⁹Office of Management and Budget, *Appendix C to Circular No. A-123, Requirements for Effective Estimation and Remediation of Improper Payments*, OMB Memorandum No. M-15-02 (Washington, D.C.: Oct. 20, 2014). In this report, references to OMB guidance refer to this OMB memorandum and the guidance contained therein.

identify programs that are susceptible to significant improper payments. We reviewed improper payment assessments that CMS and IRS conducted for fiscal year 2016 for their respective PTC program areas. We then analyzed those assessments against relevant IPIA requirements and OMB guidance to determine whether the agencies had evaluated the appropriate risk factors for improper payments and appropriately considered those factors in their susceptibility assessments. We also interviewed CMS and IRS officials on their plans to estimate and report improper payments for their PTC programs.

To address our second objective, we first reviewed PPACA and its implementing regulations, relevant internal control standards,¹⁰ and leading practices for managing fraud risks in federal programs (GAO's fraud risk framework),¹¹ and identified the relevant risks for which control activities are needed. To assess the design and implementation of key control activities related to PTC at CMS and to identify any deficiencies, we focused on key control activities at CMS related to the FFM for plan year 2016. We selected CMS's FFM because, at the time of our audit, it operated on behalf of about two-thirds of the states and about 75 percent of all enrollees receiving advance PTC. We evaluated the design and implementation of key control activities by reviewing CMS policies, procedures, and other relevant documents, such as interagency agreements and standard operating procedures for eligibility support workers. We compared the key risks we identified with the key control activities we identified to evaluate whether CMS's design of its control activities sufficiently addressed each key risk area.

For key control activities that we determined were properly designed and implemented, we evaluated whether they were operating as designed by testing a statistically random sample of applications for FFM policyholders with advance PTC transactions from CMS. The testing period covered applications received during the 2016 open enrollment period (November 1, 2015, through February 1, 2016). We did not evaluate control activities related to advance PTC payments to issuers on behalf of individuals because such payments included other aggregated costs and adjustments, such as cost-sharing reduction subsidies and user fees, which were beyond the scope of our audit. We also did not evaluate

¹⁰[GAO-14-704G](#).

¹¹GAO, *A Framework for Managing Fraud Risks in Federal Programs*, [GAO-15-593SP](#) (Washington, D.C.: July 2015).

whether key control activities that we determined were not properly designed and implemented were operating as designed because, without proper design and implementation, such control activities cannot achieve the control objective.

To address our third objective, we reviewed PPACA and its implementing regulations, relevant internal control standards,¹² and GAO's fraud risk framework,¹³ and identified the relevant risks areas for which control activities are needed. Consistent with our procedures for our second objective, we also reviewed IRS's processes to evaluate the design and implementation of its key control activities and identify any deficiencies. We evaluated the design and implementation of key control activities at IRS by reviewing IRS policies and procedures, such as the *Internal Revenue Manual* (IRM). We then compared the key risks we identified with key control activities to evaluate whether IRS's design of its control activities sufficiently addressed each key risk area. To assess whether IRS key control activities identified in our evaluation as properly designed and implemented were also operating as designed, we tested a statistical random sample of individual federal income tax returns with PTC transactions for the first 9 months of fiscal year 2016 (from October 1, 2015, to June 18, 2016).

To assess the reliability of the CMS application data and IRS PTC transaction data, we reviewed relevant documentation and interviewed officials responsible for these data. We also performed electronic testing to determine the validity of specific data elements we used to perform our work. For both sets of data, based on the reliability examination we undertook for each, we concluded that the data we used for this report were sufficiently reliable for our purposes. Appendix I provides additional details on our scope and methodology.

While our second and third audit objectives focused on certain significant control activities related to preventing and detecting improper payments in the PTC programs at CMS and IRS,¹⁴ we did not evaluate all control activities and other components of internal control. If we had done so, additional deficiencies may have been identified that could impair the

¹²[GAO-14-704G](#).

¹³[GAO-15-593SP](#).

¹⁴In addition, we also used the information and communication component of internal control and related principles as criteria for addressing all three of our audit objectives.

effectiveness of the control activities evaluated as part of this audit. Appendix II provides additional details on standards for internal control in the federal government.

We conducted this performance audit from January 2016 to July 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

CMS Marketplace Responsibilities for Advance PTC Payments

Under PPACA, health care marketplaces are the mechanisms through which applicants enroll in qualified health plans¹⁵ and apply for income-based advance PTC payments (paid directly to issuers) to offset the cost of these plans. As applicable, they also obtain eligibility determinations for other health coverage programs, such as Medicaid or the Children's Health Insurance Program (CHIP).¹⁶ CMS is responsible for overseeing the establishment of state-based marketplaces and operating the FFM for states that did not establish their own marketplaces. Applicants in these states enroll in qualified health plans through the FFM. CMS operates the FFM in about two-thirds of the states. Specifically, CMS oversees implementation of certain PPACA provisions related to the FFM, including ensuring that individuals are eligible to receive health insurance coverage through the FFM and determining the amount of any advance PTC they are eligible to receive.

¹⁵A qualified health plan is a health insurance plan that meets certain requirements and, on the basis of meeting those requirements, is certified to be sold through a marketplace. A qualified health plan must be certified by each marketplace through which it is sold.

¹⁶Medicaid is a joint federal-state program that finances health insurance coverage for certain categories of lower-income individuals, including children. CHIP provides insurance for some children whose household income is above the threshold for Medicaid eligibility.

To be eligible to enroll in a qualified health plan offered through a marketplace, applicants must be U.S. citizens or nationals, or otherwise lawfully present in the United States; reside in the marketplace service area; and not be incarcerated (unless incarcerated while awaiting disposition of charges). Marketplaces are required by law to verify certain application information to determine applicant eligibility for enrollment and, if applicable, advance PTC. The verification steps include validating applicant Social Security numbers, if provided; verifying citizenship or lawful presence status, and verifying household income.

PPACA requires that applicant-submitted information be verified and that determinations of eligibility be made through either an electronic verification system or another HHS-approved method. To implement this verification process, CMS developed its Data Services Hub, which acts as a conduit for exchanging information between (1) the FFM; state-based marketplaces; Medicaid agencies; and other federal, state, and commercial entities and (2) CMS's external partners, including IRS, the Social Security Administration (SSA), and other federal agencies. The FFM accesses this information through the Data Services Hub to verify that applicant information necessary to support an eligibility determination is consistent with external data sources.

CMS generates an "inconsistency" when applicant-submitted information does not match information from trusted data sources—either because information an applicant provided does not match information contained in the data sources or because such information is not available. Inconsistencies are also created whenever the FFM is unable to solicit information from trusted data sources due to data element requirements. As required by federal regulations,¹⁷ when there are inconsistencies, the marketplace grants temporary eligibility using applicant attestations and ensures that advance PTC is provided to issuers on behalf of the applicants qualified to receive them while such inconsistencies are being resolved. Also, under this marketplace process, applicants are asked to provide additional information or documentation for the marketplaces to review to resolve the inconsistencies. When applicants are unable to

¹⁷45 C.F.R. § 155.315(f)(4).

resolve the inconsistencies within the resolution period, the marketplace may terminate advance PTC and coverage in certain circumstances.¹⁸

Marketplaces are required to provide Form 1095-A, Health Insurance Marketplace Statement, to recipients enrolled in qualified health plans through the marketplace and to IRS. This form includes information on covered enrollees, coverage periods, monthly premiums, and amounts of advance PTC paid to issuers on behalf of the enrollees. Enrollees are instructed to use Form 1095-A information to prepare Form 8962, Premium Tax Credit, for their federal income tax returns.

Treasury regulations require marketplaces to report detailed information for each qualified health plan to IRS monthly, by the 15th day after each month of health insurance coverage. This monthly transmission—the Exchange Periodic Data (EPD) transmission—contains cumulative coverage information for the year, starting in January; thus, the EPD transmission due to IRS by January 15 should contain complete marketplace data for the entire previous coverage year. The EPD transmission is also required to include information on any exemptions from coverage requirements that are granted by the marketplace.

CMS is responsible for performing certain oversight functions intended to help ensure that the plans offered through the FFM meet certification standards. These oversight functions are intended to verify that enrollees receive appropriate health insurance coverage and that federal funds are not provided to health plans and issuers that do not meet the certification standards. When plans no longer meet certification standards, CMS may decertify them.

Each month, CMS is also responsible for calculating, processing, and authorizing aggregated advance PTC payments to issuers on behalf of eligible enrollees, along with cost-sharing reduction subsidies and collecting user fees from issuers in certain states. For enrollees determined eligible for advance PTC, the marketplace determines the

¹⁸For most types of inconsistencies, the standard resolution period is 90 days from the date the notices are sent to applicants. However, for inconsistencies related to citizenship, status as a U.S. national, or lawful presence, the inconsistency period is 90 days from the date the notices are received by applicants. To accommodate mail delivery time for these inconsistencies, CMS generally applies a standard resolution period of 95 days from the date that the notices are sent to applicants.

advance PTC amounts using, among other things, enrollee-reported incomes and family sizes.

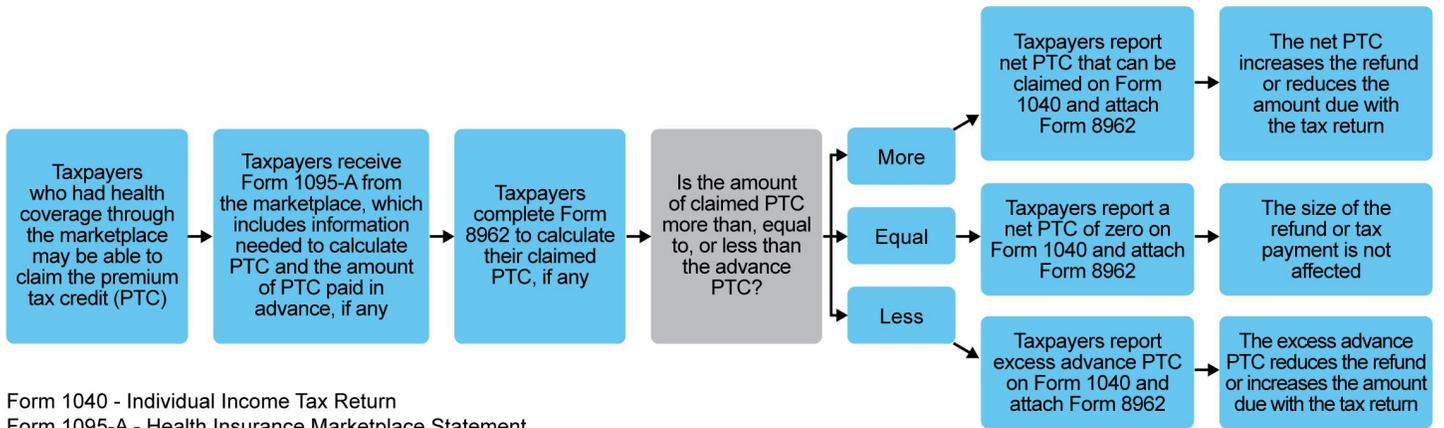
IRS Responsibilities Related to PTC

IRS is responsible for determining the final amounts of PTC that taxpayers are entitled to receive based on household incomes and family sizes reported on their tax returns. Taxpayers are eligible for PTC if they meet various criteria: (1) buy qualified health insurance through a marketplace; (2) are ineligible for affordable, minimum-value coverage through an employer or government plan; (3) are within certain income limits (household income from 100 percent to 400 percent of the federal poverty level);¹⁹ (4) do not file a tax return with the status of married filing separately; and (5) cannot be claimed as a dependent by another person.²⁰ While marketplaces determine the amounts of advance PTC for which individuals are eligible based on their anticipated family sizes and household incomes for the year reported to the marketplace, the final PTC amounts are based on actual incomes reported when those individuals file their federal income tax returns. As shown in figure 1, taxpayers use Form 1095-A, provided by marketplaces, and their actual modified adjusted gross incomes and family sizes to calculate their actual PTC amounts on Form 8962.

¹⁹For 2016, the federal poverty level in the 48 contiguous states and the District of Columbia was \$11,770 for an individual and \$24,250 for a family of four. Federal poverty level amounts are higher in Alaska and Hawaii.

²⁰Household income is the taxpayer's modified adjusted gross income, plus that of every other individual in a family for whom the taxpayer can properly claim a personal exemption and who is required to file a federal income tax return. Certain victims of domestic abuse and spousal abandonment may claim PTC using the married filing separately filing status. Also eligible for PTC are certain lawfully present immigrants who have household incomes less than 100 percent of the federal poverty level but are ineligible for Medicaid because of their immigration status.

Figure 1: Process for Taxpayers to Claim PTC



Form 1040 - Individual Income Tax Return
 Form 1095-A - Health Insurance Marketplace Statement
 Form 8962 - Premium Tax Credit

Source: GAO analysis of Internal Revenue Service information. | GAO-17-467

Form 8962 is the key form that IRS uses to determine and recover advance PTC overpayments and reimburse underpayments to individuals. When the claimed amounts are greater than the total advance PTC paid to issuers on behalf of individuals, those individuals report net PTC on their federal income tax returns (e.g., Form 1040, Individual Income Tax Return). The net PTC can increase refund amounts that taxpayers receive or reduce amounts due from taxpayers. When the claimed amounts are less than the total advance PTC paid to issuers on behalf of individuals, those individuals report the excess advance PTC on their federal income tax returns (e.g., Form 1040) as an increase in tax, subject to limitations on the increase. The excess advance PTC can reduce refund amounts that taxpayers receive or increase the amounts due from taxpayers.²¹ Taxpayers are responsible for submitting their federal income tax returns to IRS for processing with an attached Form 8962.

IRS is responsible for processing tax returns to determine the final amount of PTC to which taxpayers are entitled and recovering advance PTC overpayments. When IRS receives tax returns, IRS checks them for completeness and attempts to verify taxpayer identities and PTC eligibility. To verify PTC claims on federal income tax returns, IRS relies

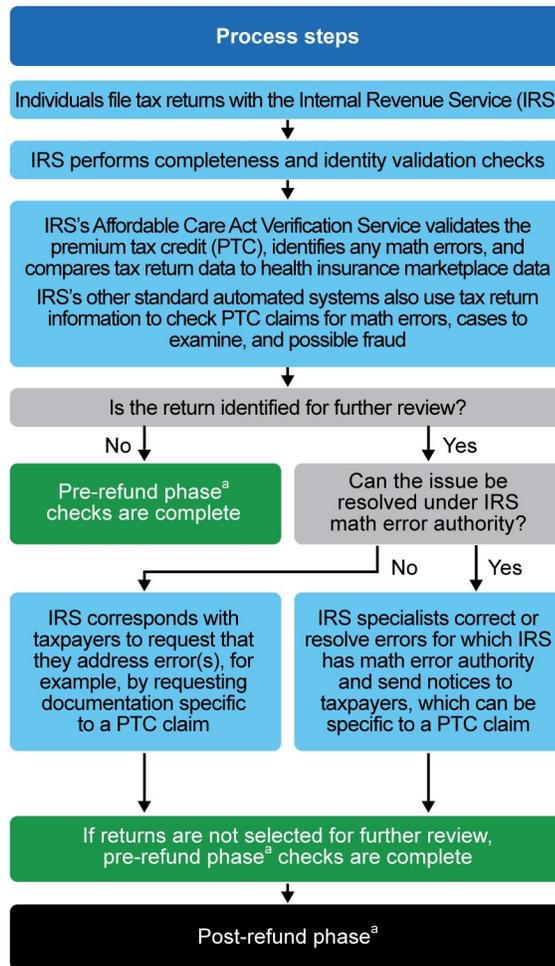
²¹As discussed later in this report, federal law limits the amount of excess advance PTC overpayments that individuals must repay, based on their household incomes as a percentage of the federal poverty level and filing status.

on marketplace data to confirm that taxpayers were enrolled in qualified health plans. As illustrated in figure 2, at the time of filing (i.e., before refunds are issued), IRS's Affordable Care Act Verification Service (AVS) system compares the information taxpayers reported on their tax returns to information furnished by the marketplaces, potentially identifying math errors or discrepancies with marketplace data. For example, AVS may identify taxpayers who received advance PTC according to the marketplaces, but did not report it on their tax returns through Form 8962. AVS may also detect cases when taxpayers claim the PTC on Form 8962 but are ineligible because they were not enrolled in a marketplace plan. When discrepancies are identified, IRS may correspond with taxpayers to address the related issues, or IRS may correct certain mathematical or clerical errors on tax returns and notify taxpayers of the proper tax liabilities based on those corrections.²² If IRS is unable to resolve such discrepancies through correspondence with taxpayers or through its math error authority, it may refer cases to examination for further review.²³

²²IRS can use math error authority for certain purposes specified in statute, including correcting calculation errors and checking for other obvious noncompliance, such as claims above income and credit limits. 26 U.S.C. § 6213(g)(2). For PTC, IRS can use math error authority to resolve issues such as a discrepancy between the family size reported on Form 8962 and the number of exemptions claimed on Form 1040. Compliance conditions that cannot be resolved with math error authority include mismatches with marketplace data, such as with PTC amounts paid in advance.

²³During return processing, IRS runs returns through additional systems to screen for fraud and errors. For example, one system—the Dependent Database—incorporates IRS and other government data, such as the National Prisoner File or child custody information from HHS, along with rules and scoring models to identify questionable tax returns and further detect identity theft. Once the suspicious tax returns are identified, the Dependent Database assigns a score to each tax return. Based in large part on these scores, as well as available resources, IRS selects a portion of suspicious returns for correspondence audits, which are audits conducted through the mail.

Figure 2: IRS’s Process for Verifying PTC Amounts on Tax Returns



Source: GAO analysis of IRS information. | GAO-17-467

^aThe pre-refund phase and post-refund phase steps apply to IRS processing of tax returns, regardless of whether a taxpayer actually receives a refund. These phases indicate whether such process steps are performed before or after refunds are sent to taxpayers.

Improper Payment Reporting Requirements

IPIA defines an improper payment as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. It includes duplicate payments; any payment made for an ineligible recipient, an ineligible good or service, or a good or service not received; or any

payment that does not account for credit for applicable discounts. OMB guidance also instructs agencies to treat any payments for which insufficient or no documentation is found as improper payments.

IPIA also defines the scope of payments subject to assessment, estimation, and reporting. Specifically, a payment is defined as any transfer or commitment for future transfer of federal funds—such as cash, securities, loans, loan guarantees, and insurance subsidies—to any nonfederal person or entity that is made by a federal agency, a federal contractor, a federal grantee, or a governmental or other organization administering a federal program or activity. IRS has historically estimated improper payments for the Earned Income Tax Credit but not for other refundable credits.

IPIA and OMB guidance together provide the specific requirements for assessing, estimating, and reporting on improper payments. Federal agencies are required to review all programs and activities that they administer and identify any program or activity that may be susceptible to significant improper payments.²⁴ IPIA defines “significant improper payments” as gross annual improper payments (i.e., the total amount of overpayments and underpayments) that may have exceeded (1) both 1.5 percent of program outlays and \$10 million of all program or activity payments made during the fiscal year reported or (2) \$100 million (regardless of the improper payment percentage of total program outlays). Agencies must institute a systematic method of reviewing and assessing their programs, which may take the form of either through a quantitative analysis based on a statistical sample or qualitative evaluation.

OMB guidance requires that agencies take into account the following nine risk factors that are likely to contribute to significant improper payments:

1. whether the program or activity reviewed is new to the agency;
2. the complexity of the program or activity reviewed, particularly with respect to determining correct payment amounts;
3. the volume of payments made annually;

²⁴The head of each executive agency is responsible for complying with IPIA requirements, and the required reporting is done in the executive agency’s agency financial reports.

4. whether payments or payment eligibility decisions are made outside of the agency, for example, by a state or local government or a regional federal office;
5. recent major changes in program funding, authorities, practices, or procedures;
6. the level, experience, and quality of training for personnel responsible for making program eligibility determinations or certifying that payments are accurate;
7. inherent risks of improper payments because of the nature of agency programs or operations;
8. significant deficiencies in the agency's audit reports, including but not limited to the agency inspector general or GAO audit findings or other relevant management findings that might hinder accurate payment certification; and
9. results from prior improper payment work.

OMB guidance describes these risk factors as the minimum that agencies should consider. An agency's assessment may include other risk factors, as appropriate, specific to the program or activity being assessed.

IPIA requires agencies to assess the risk of improper payments for each program and activity that they administer, at least once every 3 years for programs and activities deemed not susceptible to significant improper payments. If an agency finds that a program is susceptible to significant improper payments, the agency is required to estimate the annual amount of improper payments for the program, publish corrective action plans, set reduction targets, and annually report on the results of addressing these requirements for that program.

OMB established an interagency working group, which included officials from Treasury, IRS, HHS, and CMS, to help agencies navigate OMB improper payments guidance. The interagency working group concluded that CMS would be responsible for assessing risks and developing improper payment error rates for advance PTC payments and that IRS would be responsible for assessing risk and developing improper payment error rates for net PTC in tax return processing.

CMS and IRS Did Not Take All Required Actions to Assess, Estimate, and Report PTC-Related Improper Payments

In fiscal year 2016, neither CMS nor IRS took all required actions for assessing, estimating, and reporting improper payments related to PTC. CMS assessed its advance PTC program as susceptible to significant improper payments by appropriately considering each of OMB guidance's nine qualitative risk factors; however, it did not complete other key IPIA requirements for programs deemed susceptible to significant improper payments for its advance PTC program. IRS did not assess its PTC program's susceptibility to significant improper payments in a manner consistent with IPIA requirements.

CMS Assessed Its PTC Program as Susceptible to Significant Improper Payments but Has Not Estimated or Reported Amounts as Required

In fiscal year 2016, CMS concluded that its advance PTC program was susceptible to significant improper payments. We determined that CMS instituted a systematic, qualitative method for assessing risk that was consistent with IPIA requirements and OMB guidance. CMS appropriately assessed each of the nine risk factors required by OMB guidance. For example, CMS considered the risk factor regarding whether a program is new to the agency and rated the advance PTC program, which started in 2014, as high risk. CMS also appropriately tailored risk factors to its advance PTC program. For example, in considering the risk factor regarding recent changes in program operations and funding, CMS also considered projected future changes in program operations and funding that could affect improper payments for the program. The analysis that CMS performed on the risk factors supported its conclusion that the advance PTC program was susceptible to significant improper payments, as defined by IPIA and OMB guidance.

Although CMS reviewed its advance PTC program and concluded that it was susceptible to significant improper payments, it did not complete other key IPIA requirements for programs deemed susceptible to significant improper payments for its advance PTC program. Specifically, CMS did not estimate or report the annual amount of improper payments for the advance PTC program. According to the fiscal year 2016 HHS

agency financial report, CMS was unable to specify the year that the rate and the improper payment estimate amount will be reported. Further, CMS officials could not provide us with a specific date when they expected to be in compliance with these IPIA requirements. CMS officials told us that they will not report improper payment estimates in fiscal year 2017 and may not be able to report estimates until at least fiscal year 2022. According to the fiscal year 2016 HHS agency financial report, the agency is unable to specify the year that it will report the improper payment rate and amount because of the complexity of the improper payment error rate measurement methodology development process. This process involves conducting pilot testing, using those tests to refine the methodology, and then undergoing the rule-making process before implementing the methodology. However, the fiscal year 2016 HHS agency financial report did not disclose a timeline for completion of the key steps necessary for developing the improper payment methodology or why challenges will result in delays in meeting IPIA requirements for estimating and reporting improper payments.

According to internal control standards, management should externally communicate the necessary quality information to achieve the entity's objectives. This involves communicating with external parties—such as legislators, oversight bodies, and the general public—using established reporting lines. Information communicated to oversight bodies includes significant matters relating to risks, changes, or issues that affect the entity's internal controls for achieving compliance and reporting objectives. This communication is necessary for the effective oversight of internal control.

Because CMS does not plan to report improper payment estimates for this program for several years, HHS's overall improper payment estimate will continue to be understated, and CMS may be hindered in its efforts to reduce improper payments in this program. Additionally, Congress and other external stakeholders will continue to lack key payment integrity information for monitoring improper payments. Likewise, if CMS does not communicate significant matters relating to IPIA estimation, compliance, and reporting objectives for the advance PTC program; its progress and timeline for achieving those objectives; and the basis for its timeline for reporting improper payment estimates, legislators', oversight bodies', and the general public's expectations for CMS improper payments reporting may not align with those set by CMS management.

IRS Did Not Determine Whether Its PTC Program Is Susceptible to Significant Improper Payments

In its fiscal year 2016 improper payments susceptibility assessment, IRS did not assess the PTC program's susceptibility to significant improper payments in a manner consistent with IPIA requirements. IPIA and OMB guidance require agencies to identify all programs and activities that may be susceptible to significant improper payments. OMB guidance further instructs agencies not to put programs or activities into groupings that may mask significant improper payment rates by the scope of a grouping. However, IRS did not consider key types of PTC-related errors that may result in improper payments within the scope of its assessment. IRS focused its assessment on payment errors for taxpayers who reported a net PTC amount on their tax returns—that is, individuals who reported a final PTC amount that was greater than the advance PTC amounts they reported on their tax returns. IRS did not assess payment errors for taxpayers who (1) reported final PTC amounts equal to the advance PTC amounts they reported on their tax returns or (2) reported an excess advance PTC—that is, advance PTC amounts that exceeded the final PTC amounts they reported on their tax returns. Such errors fall under the purview of IRS controls and can affect the accuracy of net PTC payments and tax collections of excess advance PTC.

IRS officials told us that errors resulting in (1) final PTC claims equal to advance PTC and (2) excess advance PTC, which increase taxes owed, do not affect program outlays or improper payments. As a result, IRS maintains that these types of errors are not covered by IPIA. However, IPIA defines improper payments to include both overpayments and underpayments.

Although we agree that excess advance PTC increases taxes owed, taxpayers may inaccurately complete Form 8962 and erroneously report excess advance PTC on their returns instead of claiming net PTC, or they may simply fail to report net PTC on their tax returns altogether. Such errors would result in underpayments of net PTC and therefore affect program outlays and improper payments. These error types were not considered within the scope of the IRS susceptibility assessment for improper payments.

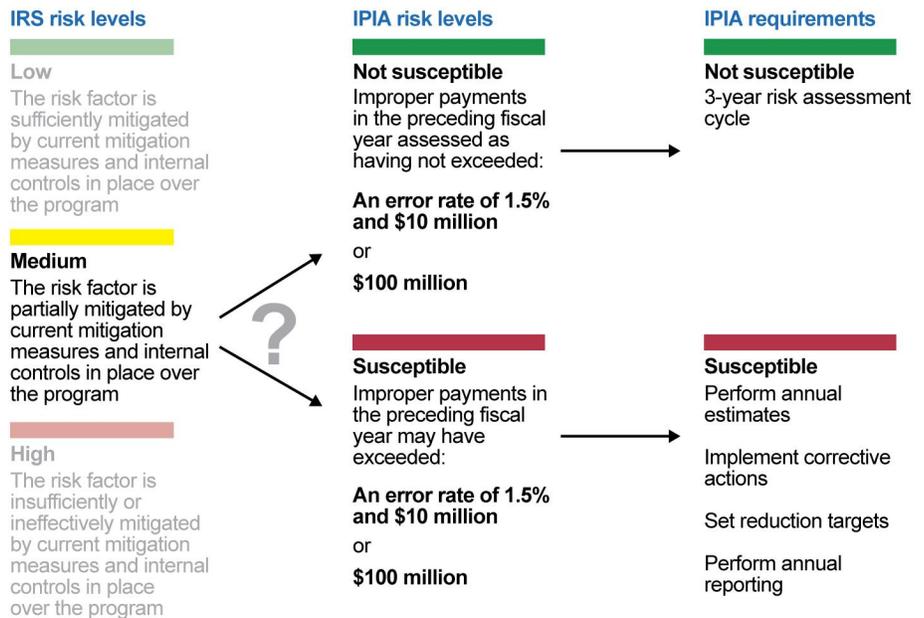
Likewise, IRS did not conclude on whether the PTC program is or is not susceptible to significant improper payments. Instead, IRS concluded that the risk of improper payments in the net PTC program was “medium.” The

assessment defined a “medium” risk level as one that is partially mitigated by current mitigation measures and internal controls (see fig. 3). IRS’s fiscal year 2016 IPIA susceptibility assessment for the net PTC was prepared by a contractor under the direction and oversight of IRS management. IRS management allowed the contractor to use a risk level definition that was inconclusive for purposes of assessing whether or not the program may be susceptible to significant improper payment thresholds, as defined by IPIA.

Figure 3: IRS Definitions of Risk Levels in Relation to IPIA Requirements

IRS did not conclude on whether the PTC program is susceptible to significant improper payments. Instead, IRS concluded that the risk of improper payments in the net PTC program was “medium.”

Because this medium assessment is not consistent with applicable IPIA estimation and reporting requirements, it is not evident whether IRS should address other potentially applicable IPIA estimation and reporting requirements for its PTC program.



IPIA - Improper Payments Information Act of 2002, as amended
 IRS - Internal Revenue Service
 OMB - Office of Management and Budget
 PTC - premium tax credit

Source: GAO analysis of 2016 IRS PTC risk assessment study, IPIA, and OMB guidance. | GAO-17-467

Although IRS used all of the required qualitative risk factors specified in IPIA and OMB guidance within its assessment, IRS did not analyze how each of the risk factors affected the susceptibility of the program to significant improper payments, as defined by IPIA. For example, rather

than analyzing whether the volume of PTC payments made was likely to cause the program to meet applicable IPIA thresholds for susceptibility to significant improper payments, IRS compared the projected total number of taxpayers who are able to claim net PTC on their federal income tax returns to the total number of taxpayers filing federal income tax returns as a whole during the 2015 filing season. Such a comparison is not relevant to assessing whether the program's error rates or improper payment amounts may have exceeded the applicable thresholds for susceptibility: either (1) 1.5 percent of program outlays and \$10 million or (2) \$100 million.

Internal control standards state that management should use quality information to achieve the entity's objectives.²⁵ Management obtains relevant data from reliable internal and external sources in a timely manner based on the identified information requirements. Relevant data have a logical connection with, or bearing upon, the identified information requirements. Reliable internal and external sources provide data that are reasonably free from error and bias and faithfully represent what they purport to represent.

By not considering certain types of underpayments or concluding whether its PTC program is susceptible to significant improper payments, IRS did not demonstrate whether the program met applicable thresholds for susceptibility to significant improper payments. Until IRS conducts an appropriate assessment, it will continue to be uncertain whether IRS should estimate the amount of improper PTC payments.

CMS Control Activities Related to Preventing and Detecting Improper Payments of Advance PTC Were Not Properly Designed

CMS control activities were not properly designed and implemented to help achieve management objectives related to preventing and detecting improper payments of advance PTC. Specifically, we identified deficiencies in the design of key CMS control activities related to

- eligibility requirements for advance PTC payments and

²⁵[GAO-14-704G](#).

- the accuracy of advance PTC calculations based on incomes and family sizes.

As shown in figure 4, we found that CMS control activities related to determining the accuracy of PTC payments to certified issuers of qualified health plans were properly designed and implemented. However, we did not evaluate whether all control activities related to preventing and detecting improper payments of advance PTC were operating as designed or evaluate other internal control components, such as the control environment. Deficiencies, if any, in the internal control components that were not evaluated could impair the overall effectiveness of CMS’s control activities related to preventing and detecting improper payments in the advance PTC program.

Figure 4: CMS Key Control Activities Related to Preventing and Detecting Improper Payments of Advance PTC

| Centers for Medicare & Medicaid Services (CMS) control activity description | Design | Implementation | Operating as designed |
|---|--------|----------------|-----------------------|
| Key control activities related to eligibility requirements for advance premium tax credit (PTC) | | | |
| Verifying citizenship and lawful presence with electronic data sources | ✓ | ✓ | ✓ |
| Verifying the identities of individuals | X | X | Not tested 1 |
| Verifying residencies | X | X | Not tested 1 |
| Preventing duplicate coverage | X | X | Not tested 1 |
| Resolving inconsistencies | X | X | Not tested 1 |
| Monitoring continued eligibility | X | X | Not tested 1 |
| Verifying compliance with tax filing requirements | X | X | Not tested 1 |
| Verifying major life changes for enrollment outside of the open enrollment period | X | X | Not tested 1 |
| Key control activities related to the accuracy of advance PTC calculations based on incomes and family sizes | | | |
| Verifying incomes and family sizes | X | X | Not tested 1 |
| Key control activities related to the accuracy of advance PTC payments to issuers | | | |
| Accurately generating policy-based payments to issuers based on enrollment data | ✓ | ✓ | Not tested 2 |
| Properly reviewing and approving issuer payment calculations and reconciliations | ✓ | ✓ | Not tested 2 |
| Performing compliance reviews for issuers and qualified health plans | ✓ | ✓ | Not tested 2 |
| Notifying issuers of noncompliance and decertifying issuers | ✓ | ✓ | Not tested 2 |

- ✓ Control activities were properly designed to achieve the control objective
- X Control activities were not properly designed to achieve the control objective
- X Control activities that are not properly designed cannot be properly implemented
- Not tested 1 We did not evaluate whether control activities that were not properly designed were operating as designed

Not tested 2 We did not evaluate CMS’s control activities related to making advance PTC payments to issuers within the scope of our testing because such payments include other aggregated costs and adjustments, such as cost-sharing reductions and user fees, which were beyond the scope of our audit

Source: GAO analysis of CMS control activities. | GAO-17-467

Most CMS Control Activities Related to Key Eligibility Requirements for Advance PTC Were Not Properly Designed

CMS did not properly design control activities related to individuals meeting key eligibility requirements for receiving advance PTC. While CMS's procedures related to verifying citizenship and lawful presence of individuals with Social Security Administration (SSA) and the Department of Homeland Security (DHS) were properly designed and implemented and were operating as designed, CMS procedures to verify other key eligibility requirements were not properly designed.

Verifying Citizenship and Lawful Presence

To be eligible to enroll in a qualified health plan offered through a marketplace, an individual must be a U.S. citizen or national, or otherwise lawfully present in the United States.²⁶ For verifying citizenship or lawful presence of individuals, CMS relies on data in SSA and DHS information systems. According to CMS's control activities for citizenship, CMS queries an SSA system to validate, among other things, whether an individual is a U.S. citizen. If the SSA system cannot verify citizenship, and the individual has provided an immigration document number that indicates possible citizenship or lawful presence, CMS queries a DHS system to verify the individual's citizenship or other immigration status.²⁷ We tested a statistical sample of 93 enrollment applications submitted during the 2016 open enrollment period and found that CMS verified citizenship and lawful presence with SSA or DHS for all applications.²⁸ Based on our audit work, CMS control activities for verifying citizenship and lawful presence of individuals with SSA or DHS were properly designed and implemented and were operating as designed.

Verifying the Identities of Individuals

An individual begins the marketplace enrollment process in a qualified health plan by providing basic personal information, such as name, birth date, and Social Security number. To prevent unauthorized individuals from creating marketplace accounts using the identities of others when applying for health coverage, CMS verifies some individual identities through an identity proofing process. According to CMS's internal control documentation, for individuals applying for marketplace coverage online

²⁶45 C.F.R. § 155.305(a)(1).

²⁷45 C.F.R. § 155.315(c).

²⁸We did not identify any cases during our testing where CMS did not verify citizenship and lawful presence with SSA, DHS, or both. For an observed number of zero cases in a sample size of 93, we can be 95 percent confident that the population deviation rate is not more than 3.17 percent. This is less than our tolerable deviation rate of 5 percent.

via HealthCare.gov, CMS validates their identities through an external source.²⁹

CMS does not perform identity proofing for individuals applying for health coverage through the mail or over the phone. For paper applications submitted by mail, the marketplace requires individual signatures before the marketplace processes those applications. For phone applications, CMS does not validate identities of individuals, instead relying solely on the basis of verbal attestations made by individuals. CMS allows individuals to complete the application process on the basis of these attestations, given under penalty of perjury.

According to CMS officials, PPACA does not require CMS to validate identities of individuals. However, internal control standards state that management should consider the potential for fraud when identifying, analyzing, and responding to risks and design and implement control activities to respond to risks.³⁰ Further, these standards also state that management should design control activities to achieve objectives and respond to risks.

Because CMS does not validate the identities of individuals who apply by phone or mail, CMS is vulnerable to enrolling ineligible individuals in qualified health plans with advance PTC. To illustrate, we previously reported on our undercover testing of CMS enrollment processes in 2014, in which we made six online applications using fictitious identities that failed to clear an identity validation step. We subsequently were able to obtain coverage for all six of these applications that we began online by completing them by phone. By following instructions to make telephone contact with the marketplace, we circumvented the initial identity-proofing control that had stopped our online applications.³¹

²⁹For online applications, the marketplace employs a process known as identity proofing to verify an individual's identity. It does so by using personal and financial history on file with a credit reporting agency contracted by the marketplace. The marketplace generates questions, based on information on file with the contractor, that only the individual is believed to be likely to know.

³⁰[GAO-14-704G](#).

³¹GAO, *Patient Protection and Affordable Care Act: Observations on 18 Undercover Tests of Enrollment Controls for Health-Care Coverage and Consumer Subsidies Provided under the Act*, [GAO-15-702T](#) (Washington, D.C.: July 16, 2015).

Verifying Residencies

CMS did not properly design procedures to verify the residencies of individuals. HHS regulations permit CMS to accept attestations of residency.³² In order to be eligible to enroll in a qualified health plan offered through a marketplace, individuals must reside in the marketplace service area.³³ CMS officials told us that they were unaware of a comprehensive, national electronic data source that could be used to verify residence. However, CMS did not document an evaluation of available external sources to determine the quality, relevance, and reliability of the data. Internal control standards state that management should use quality information to achieve the entity's objectives.³⁴ In addition, according to GAO's fraud risk framework, it is a leading practice to conduct data matching to verify key information, including self-reported data and information necessary to determine eligibility.³⁵ Without verifying the residencies of individuals, CMS is vulnerable to enrolling ineligible individuals in qualified health plans and improperly providing advance PTC to issuers on their behalf.

Preventing Duplicate Coverage

We found design deficiencies in CMS's procedures related to determining that advance PTC is not provided to issuers on behalf of individuals who are receiving or eligible for minimum essential coverage through their employers or government-sponsored programs.³⁶ Specifically, CMS does not (1) use data from nonfederal employers to check for duplicate minimum essential coverage; (2) have procedures for terminating coverage for individuals who have employer-sponsored minimum essential coverage; and (3) have procedures for sharing coverage information with, and obtaining coverage information from, such

³²45 C.F.R. § 155.315(d).

³³45 C.F.R. § 155.305(a)(3).

³⁴[GAO-14-704G](#).

³⁵[GAO-15-593SP](#).

³⁶Health insurance that meets the minimum essential coverage standards includes certain types of government-sponsored coverage (such as Medicare Part A or Medicaid) as well as most types of private insurance plans (such as employer-sponsored insurance). Health insurance that provides limited benefits, such as dental-only coverage, does not constitute minimum essential coverage.

employers. In addition, CMS checks for duplicate government-sponsored Medicaid and CHIP coverage only in the states where applicants attest to residing and thus would not detect whether applicants received such coverage in different FFM states.³⁷

Coverage from Nonfederal Employers

Although CMS has procedures to obtain data from the Office of Personnel Management for identifying individuals receiving health care coverage from federal employers, CMS does not have procedures that use data sources to identify individuals receiving minimum essential coverage through nonfederal employers.³⁸ CMS officials stated that PPACA does not require that employers report information on employer-sponsored coverage offers to HHS. CMS officials told us that they have explored other possible data sources, including Medicare Coordination of Benefits, the National Directory of New Hires, and Equifax data, but they have been unable to identify comprehensive electronic data sources that are sufficiently current and accurate for identifying these individuals. However, CMS did not document its evaluation of the availability and reliability of potential data sources. As a result, we were unable to evaluate CMS's review of these electronic data sources and assess whether CMS reviewed other potential data sources.

CMS relies on individuals to update their marketplace applications and has not established a process for terminating advance PTC for individuals who have not updated their applications. CMS has not designed procedures for the FFM to send notices to employees who have been identified as having access to minimum essential employer-sponsored coverage regularly during each enrollment season. CMS officials told us that in 2016 they began notifying certain employers of individuals enrolled

³⁷The Department of Health and Human Services Office of Inspector General also previously reported on how the federal marketplace resolved inconsistencies related to minimum essential coverage during the first open enrollment period (January 1, 2014 through April 19, 2014). For more information, see Department of Health and Human Services, Office of Inspector General, *Not All of the Federally Facilitated Marketplace's Internal Controls Were Effective in Ensuring That Individuals Were Properly Determined Eligible for Qualified Health Plans and Insurance Affordability Programs*, A-09-14-01011 (Washington, D.C.: August 6, 2015).

³⁸Individuals eligible to receive minimum essential coverage through employers are not eligible for PTC. See 26 U.S.C. § 36B(c)(2)(B), as added by PPACA § 1401(a).

in FFM coverage with advance PTC.³⁹ If employers responded and asserted that they provide individuals with access to affordable, minimum-value employer-sponsored coverage, the FFM would then send notices to those individuals notifying them to update their marketplace applications to reflect that they have access to or are enrolled in other coverage and warning them that failure to update their profiles accordingly may result in a tax liability. CMS officials told us that CMS has published information, for example, on a Frequently Asked Questions page, on the CMS website that describes the notices. However, these Frequently Asked Questions do not constitute procedures that provide guidance for sending out the notices regularly.

According to GAO's fraud risk framework, it is a leading practice to conduct data matching to verify key information, including self-reported data and information necessary to determine eligibility.⁴⁰ In addition, internal control standards state that management should use quality information to achieve the entity's objectives and should obtain relevant data from reliable internal and external sources based on the identified information requirements for achieving the entity's objectives and address risks.⁴¹ These standards also state that management should design control activities to achieve objectives and respond to risks.

Without policies and procedures for identifying individuals who have minimum essential coverage from nonfederal employers and for terminating advance PTC for those individuals, CMS is at greater risk of providing advance PTC to issuers on behalf of ineligible individuals.

Coverage from Government-Sponsored Programs

Individuals receiving coverage from government-sponsored programs, such as Medicare, Medicaid, and CHIP, are generally allowed PTC only for the months that one or more members of the individuals' families are not eligible for government-sponsored coverage.⁴² CMS has designed a process that identifies some but not all cases in which individuals who are

³⁹According to CMS officials, the FFM sent notices to employers if advance PTC was provided to issuers on behalf of their employees for at least 1 month and if CMS had addresses for the employers.

⁴⁰[GAO-15-593SP](#).

⁴¹[GAO-14-704G](#).

⁴²26 C.F.R. § 1.36B-2(a).

applying for the advance PTC may also have government-sponsored coverage. Specifically, CMS has procedures to identify individuals with duplicate government-sponsored coverage using data from Medicare, the Peace Corps, TRICARE,⁴³ and the Veterans Health Administration.

CMS did not establish a process to fully identify all individuals with duplicate government-sponsored coverage through Medicaid and CHIP. Specifically, CMS's procedures are designed to detect duplicate coverage with Medicaid and CHIP only in the states where individuals applied for coverage through the FFM and not in any other state where the FFM operates.⁴⁴ Consequently, its procedures do not detect when FFM applicants have duplicate coverage through Medicaid and CHIP from different FFM states than the states in which they applied and attested to residing.

According to CMS officials, FFM procedures are designed to check for Medicaid and CHIP only in the states where individuals have attested to residing during the application review process and not in other FFM states. Federal regulations require the FFM to verify whether individuals have been determined eligible for coverage through Medicaid and CHIP within the state or states in which the FFM operates by using information obtained from the agencies administering such programs.⁴⁵ Thus, the FFM is required to verify whether individuals also have Medicaid and CHIP coverage in all states covered by the FFM and not just in states where the individuals applied for coverage and attested to reside. According to CMS officials, it would be technically difficult and impracticable for all FFM states to provide information that would allow the FFM to check Medicaid and CHIP coverage for individuals in each of those states. However, CMS did not provide us with documented

⁴³TRICARE is a system of health care that the Department of Defense purchases from private insurers to supplement the health care that the department provides through its military treatment facilities and dental treatment facilities.

⁴⁴At the time of our audit, 12 states and the District of Columbia operated their own marketplaces. We found that CMS did not check household members listed on the FFM enrollment applications for Medicaid and CHIP coverage in New Jersey and Georgia, which use the FFM. CMS officials informed us that Georgia and New Jersey were having technical issues validating the response with CMS. CMS informed us that New Jersey accepted individual attestations until the issue was resolved in September 2016. CMS officials also informed us that they are working with Georgia to resolve the issue, but in the interim, CMS was accepting individual attestations.

⁴⁵45 C.F.R. § 155.320(b).

analyses to support this assessment. As a result, we were unable to evaluate CMS's assessment and determine whether CMS reviewed the feasibility of using other existing resources and tools for checking for Medicaid and CHIP coverage in all FFM states.

Internal control standards state that management should use quality information to achieve the entity's objectives.⁴⁶ In addition, these standards also state that management should design control activities to achieve objectives and respond to risks.

Without procedures in place to detect duplicate coverage by Medicaid and CHIP in states other than those in which individuals applied for coverage and attested to residing, CMS is at greater risk of providing advance PTC on behalf of individuals who receive Medicaid and CHIP coverage from other FFM states and are therefore ineligible for advance PTC.

Resolving Inconsistencies

Inconsistencies are generated when individual-attested information does not reasonably match information from the marketplace's trusted data sources, or because the needed information is not available from a federal data source. In such instances, the FFM sends eligibility letters to individuals requesting explanations or supporting documentation to resolve inconsistencies within a specific time frame, referred to as an inconsistency period. Individuals are generally given 95 days to provide the requested documentation to substantiate citizenship and lawful presence and 90 days for other types of inconsistencies.

During inconsistency periods, individuals may enroll in a qualified health plan and elect to receive advance PTC. Individuals can provide explanations and substantiating documents by mail or through the marketplace website. When individuals provide sufficient documentation to substantiate the attested information, the inconsistencies are resolved. When individuals do not provide sufficient documentation within the inconsistency period, the FFM "expires" those inconsistencies and determines the eligibility based on the existing information from electronic data sources. If data are not available, marketplace enrollments may be

⁴⁶[GAO-14-704G](#).

terminated or the individuals may be determined ineligible for advance PTC.

We identified deficiencies in CMS's design of key procedures related to resolving eligibility issues and terminating inconsistencies related to Social Security numbers and incarceration, as well as the timely termination of inconsistencies.

Social Security Number Inconsistencies

CMS did not properly design and implement procedures related to preventing advance PTC on behalf of individuals who submitted inaccurate or false Social Security numbers. Based on our analysis of the CMS inconsistency data for the 2016 open enrollment, we identified about 82,000 applications with unresolved Social Security number inconsistencies as of May 2016. CMS provided about \$42 million in advance PTC in May 2016 on behalf of these individuals. In February 2016, we reported that unresolved Social Security number inconsistencies are indicators of potentially fraudulent applications.⁴⁷ Unresolved Social Security number inconsistencies may also adversely affect IRS's ability to assess and fully recover advance PTC overpayments. In our February 2016 report, we recommended that the Secretary of Health and Human Services direct CMS to design and implement procedures to resolve Social Security number inconsistencies when the marketplace is unable to verify the numbers or individuals do not provide them. HHS concurred with our recommendation, and CMS officials told us that system functionality upgrades to address Social Security number inconsistencies were completed and deployed in March 2017. In May 2017, CMS established procedures for verifying Social Security numbers with documents submitted by the applicants but has not developed procedures to terminate advance PTC for applications with unresolved Social Security number inconsistencies. CMS officials did state that further refinements to the process are likely to occur.

Incarceration Status Inconsistencies

CMS did not properly design and implement procedures related to preventing advance PTC paid on behalf of incarcerated individuals or

⁴⁷GAO, *Patient Protection and Affordable Care Act: CMS Should Act to Strengthen Enrollment Controls and Manage Fraud Risk*, [GAO-16-29](#) (Washington, D.C.: Feb. 23, 2016).

individuals who may be using identities of incarcerated individuals, both of which would be ineligible for advance PTC. Based on our analysis of the CMS inconsistency data for the 2016 open enrollment, we identified about 30,000 applications with unresolved incarceration inconsistencies as of May 2016. CMS provided about \$10 million in advance PTC in May 2016 on behalf of these individuals. We had previously reported in February 2016 that CMS did not terminate individuals who had inconsistencies generated when verifying incarceration statuses with SSA's Prisoner Update Processing System (PUPS) database.⁴⁸ We reported that CMS officials told us that they did not terminate eligibility for incarceration inconsistencies because they determined that the PUPS data were unreliable for use by the marketplace. However, in the report, we stated that CMS did not provide us documentation on how it concluded that the PUPS data were unreliable for identifying incarcerated individuals or the potential cost associated with not verifying incarceration status. In the report, we recommended that the Secretary of Health and Human Services direct CMS to reevaluate the use of PUPS incarceration data in the inconsistency process. HHS concurred with our recommendation and noted in its comments to our report that PUPS data were not sufficiently current and accurate at that time. According to CMS officials, CMS continues to work with SSA to improve the quality of incarceration data used for verification. In March 2016, CMS officials stated that SSA completed developmental changes to improve the reliability of the match criteria for the incarceration database and limit the risk of receiving false positives. CMS officials stated that they are assessing whether these data improvements result in sufficiently reliable incarceration data but did not provide us a date on when the assessment will be completed.

Timely Termination or Adjustment of Advance PTC Because of Inconsistencies

CMS also did not properly design procedures related to terminating or adjusting advance PTC timely when inconsistency periods have expired. Specifically, CMS's procedures call for the processing of all expiration activities, including the notifications to issuers regarding the terminations or adjustments of advance PTC, at the beginning of the month following the month that the inconsistency periods expire. However, the effective dates of the terminations or adjustments are the last day of that month, which is also the month that notifications are provided to the issuers

⁴⁸[GAO-16-29](#).

regarding these terminations or adjustments. Thus, by not processing terminations or adjustments of advance PTC on a rolling basis based on the effective dates of the expirations of the inconsistency periods, CMS provides an extra month of advance PTC to issuers on behalf of ineligible individuals.⁴⁹

The aggregate dollar amounts for the extra month of advance PTC that CMS pays each month on behalf of ineligible individuals can be significant. For example, based on our analysis of CMS inconsistency data for the 2016 open enrollment, we identified about 45,000 applications that were terminated by CMS for lawful presence or citizenship inconsistencies. As a result of its practice of processing advance PTC terminations, as of May 2016, CMS had paid about \$19 million in extra advance PTC on behalf of these ineligible individuals during the 2016 open enrollment.⁵⁰

According to CMS officials, the current process for terminating enrollments based on expired inconsistencies gives individuals the full inconsistency period to mail in substantiating documents—and allows CMS to confirm whether sufficient documentation was provided—prior to initiating the termination process. CMS officials also stated that the processing of inconsistencies in batches also aligns with issuer operations (allowing time to adjust billing for the next month) and allows for a more efficient process. In addition, CMS officials told us that processing terminations outside of normal system and marketplace rules would require additional manual effort on the part of the marketplace and issuers. However, we could not determine the validity of the officials' statements because CMS did not provide us with documentation or analyses demonstrating that its current process for terminating policies and advance PTC is consistent with applicable statutory requirements, or that it is more efficient and cost-effective than processing terminations more frequently.

⁴⁹For example, if an inconsistency is set to expire in March, then CMS will process the expiration and send the notification of termination or adjustment of advance PTC to the issuer in early April. Because the effective date of the termination or adjustment is at the end of the month (April 30), CMS has provided an extra month of advance PTC to the issuer for the month of April.

⁵⁰Our analysis is based on data that we received from CMS for testing 2016 open enrollment period application transactions.

Internal control standards state that management should identify, analyze, and respond to risks related to achieving the defined objectives.⁵¹ These standards also state that management should design control activities to achieve objectives and respond to risks. Without evaluating its process for terminating inconsistencies, CMS is at risk of providing an extra month of benefits to individuals who are eventually terminated from coverage because of insufficient documentation to resolve the inconsistencies.

Monitoring Continued Eligibility

Federal regulations require marketplaces to periodically examine certain available data sources to determine, among other things, whether individuals with advance PTC remain eligible.⁵² However, CMS has not developed procedures to monitor and identify changes in circumstances, such as duplicate coverage or death, that may not be reported in a timely manner and would affect individuals' eligibility for advance PTC.

CMS checks for duplicate coverage from Medicaid in the states of individuals' residencies at the time of initial enrollment, but CMS does not have documented procedures to regularly monitor changes in health insurance coverage throughout the year. In October 2015, we reported that CMS did not have procedures to regularly monitor unreported duplicate coverage from Medicaid in FFM states.⁵³ Further, CMS had generally not provided FFM states with marketplace enrollment information that it would need to identify cases of duplicate coverage. In our report, we recommended that CMS establish a schedule for regular duplicate coverage checks and ensure that the checks are carried out according to schedule. In response to our recommendation, CMS officials told us that they completed checks for duplicate coverage. CMS officials also stated that the agency intended to perform this check at least twice per coverage year on an ongoing basis and will take steps to terminate advance PTC for any individuals identified. However, during the course of

⁵¹[GAO-14-704G](#).

⁵²45 C.F.R. § 155.330(d).

⁵³GAO, *Medicaid and Insurance Exchanges: Additional Federal Controls Needed to Minimize Potential for Gaps and Duplication in Coverage*, [GAO-16-73](#) (Washington, D.C.: Oct. 9, 2015).

our audit, we found that CMS does not have documented procedures instructing its personnel to continue running these checks regularly.⁵⁴

As mentioned earlier, CMS also did not provide us with documentation on the feasibility for using other existing resources and tools for checking for Medicaid and CHIP coverage in all FFM states. As such, we were unable to evaluate CMS's assessment to determine whether CMS reviewed the feasibility of all existing resources, such as the Public Assistance Reporting Information System (PARIS).⁵⁵ States can use PARIS to identify duplicate Medicaid coverage across other states. CMS officials told us that they have not studied the feasibility of using PARIS for the advance PTC program.

CMS also did not properly design procedures related to (1) periodically verifying that individuals with advance PTC provided to issuers on their behalf did not begin receiving other government-sponsored health care coverage after enrollment, such as Medicare or Department of Veterans Affairs health benefits, and (2) terminating advance PTC for individuals who have such coverage. CMS officials told us that they have established a process to check individuals enrolled in the FFM for Medicare coverage and to send notices to them if there is a match. However, CMS officials stated that they do not terminate advance PTC for such individuals. In addition, CMS officials stated that when individuals update their FFM applications, CMS checks those individuals' marketplace applications for duplicate government-sponsored health coverage. However, individuals may not update their applications if they elect to auto reenroll into plans. In such instances, CMS does not have mechanisms to terminate advance PTC for individuals who obtain or gain access to duplicative government-sponsored coverage.

⁵⁴As previously discussed, we also found deficiencies in the process that CMS uses to verify duplicate coverage with Medicaid and CHIP.

⁵⁵PARIS is a set of computer matches that enables state public assistance agencies and federal agencies to share information about applicants for and recipients of certain benefits. PARIS allows participating state public assistance agencies to exchange with other participants the previous quarter's eligibility files for the Temporary Assistance for Needy Families program, Supplemental Nutrition Assistance Program, and Medicaid program. Federal agencies such as the Department of Defense and the Department of Veterans Affairs have likewise signed agreements to participate in PARIS. States can use the PARIS data match to help assure that individuals enrolled in Medicaid or other public assistance benefits in one state do not receive duplicate benefits from that state's Medicaid program or from other public benefit programs in other states.

In addition, CMS does not conduct any periodic checks during the year to determine if any individuals have subsequently died. According to CMS officials, when individuals stop paying their premiums, such as in the case of death, there is a 90-day grace period, as required by PPACA, after which the individuals' policies would be canceled for failure to pay premiums. Thus, under the grace periods, CMS pays up to 3 months of additional advance PTC after individuals have died unless it is otherwise reported to their insurers. CMS officials told us that following the end of the grace periods and subsequent issuer terminations for failure to pay premiums, CMS retroactively recoups 2 of the 3 months of excess advance PTC by adjusting subsequent payments to issuers following the normal process that governs grace periods.

Internal control standards state that management should use quality information to achieve the entity's objectives.⁵⁶ In addition, these standards also state that management should design control activities to achieve objectives and respond to risks. Without establishing proper procedures to periodically check for changes in circumstances, such as individuals' eligibility for government-sponsored coverage or their deaths, CMS is at increased risk of providing advance PTC on behalf of individuals who are not eligible for it.

Verifying Compliance with Tax Filing Requirements

CMS did not properly design procedures related to timely terminating advance PTC for individuals who have not filed the required federal income tax returns. Under federal regulations, marketplaces must discontinue advance PTC for individuals who did not comply with the requirement to file a federal income tax return and reconcile the advance PTC.

CMS allowed 2014 advance PTC recipients to attest as to whether they had filed a 2014 tax return when making FFM eligibility determinations for 2016. CMS offered individuals the opportunity to attest they made the proper tax filing, followed by CMS post-approval checks of IRS data. CMS officials stated that they selected this approach in order to prevent erroneous advance PTC terminations because of delays in IRS processing and availability of filing data from IRS at the time of application review. However, CMS's process for verifying individual attestation and

⁵⁶[GAO-14-704G](#).

termination of individuals who did not file tax returns was not documented in its procedures. CMS officials told us that they had terminated advance PTC in November 2016 for individuals who IRS indicated had not filed 2014 tax returns. As a result, the marketplaces continued to pay advance PTC on behalf of those individuals for over three-quarters of plan year 2016 despite their not filing the required tax returns to reconcile their advance PTC.

In September 2016, IRS also began sending data to CMS on individuals or members of tax households on whose behalf CMS provided advance PTC but who did not file the required Form 8962, Premium Tax Credit, with their tax returns. The form is used to reconcile advance PTC amounts with the final PTC amounts. CMS did not terminate advance PTC for individuals who filed their tax returns but did not reconcile using Form 8962. However, CMS officials told us that they plan to terminate advance PTC for those who file but do not reconcile in the future.

Internal control standards state that management should use quality information to achieve the entity's objectives.⁵⁷ In addition, these standards also state that management should design control activities to achieve objectives and respond to risks.

Without designing and implementing policies and procedures related to preventing and detecting advance PTC to individuals who do not comply with tax filing requirements, including those who do not file Form 8962, CMS increases the risk that advance PTC will not be terminated on a timely basis. Further, the federal government is missing opportunities to recover overpayments of advance PTC as part of the IRS PTC reconciliation process. For example, as of October 2016, approximately 1 million households still had not filed the required Form 8962 with their 2014 tax returns. However, these households had approximately \$2.9 billion in advance PTC paid on their behalf in 2014. Furthermore, without the required Form 8962 from individuals who received advance PTC, IRS cannot identify potential underpayments or overpayments of advance PTC.

⁵⁷ [GAO-14-704G](#).

Verifying Major Life Changes That Qualify Individuals to Enroll Outside of the Open Enrollment Period

Individuals are generally only allowed to enroll in qualified health plans during the open enrollment period. However, special enrollment periods provide an opportunity for individuals who lose health insurance coverage during the year or experience certain major life changes to enroll in a qualified health plan through the marketplaces outside of the annual open enrollment period. Examples of major life changes include the loss of minimum essential coverage, permanent move of residence, birth of a child, and marriage.

Beginning in June 2016, individuals who qualified to enroll during special enrollment periods were asked to provide documentation to substantiate certain life changes. However, during the period of our audit, CMS procedures did not require the verification of major life changes using applicant-submitted documentation.

CMS officials told us that there is no specific legal provision that requires federal and state marketplaces to verify events that trigger special enrollment periods. However, in 2016, HHS conducted a study to confirm consumers' eligibility for special enrollment periods based on a review of documentation submitted for a sample of special enrollment periods granted during coverage year 2016. In April 2017, CMS issued a regulation to take effect on June 19, 2017, stating, among other things, that the federal marketplace will begin performing pre-enrollment verification of life changes for special enrollment periods. In the regulation, CMS stated that pre-enrollment verification of special enrollment periods will be phased in, focusing first on the categories with the highest volume and of most concern—such as loss of minimum essential coverage, permanent move, Medicaid or CHIP denial, marriage, and adoption.⁵⁸ However, CMS has not yet designed and implemented procedures for its contractor to implement this verification process.

Internal control standards state that management should use quality information to achieve the entity's objectives.⁵⁹ Accordingly, management should obtain relevant data from reliable internal and external sources in a timely manner based on the identified information requirements for

⁵⁸82 Fed. Reg. 18346 (Apr. 18, 2017).

⁵⁹[GAO-14-704G](#).

achieving the entity's objectives and address risks. Management evaluates these data for reliability, obtains them on a timely basis so that they can be used for effective monitoring, and processes the obtained data into quality information to support the internal control system. In addition, these standards state that management should design control activities to achieve objectives and respond to risks.

Without verifying and documenting events that trigger eligibility for enrollments during special enrollment periods, CMS may provide advance PTC and health care coverage to individuals who are not eligible to enroll outside of the annual open enrollment period. In addition, individuals may be able to receive health care coverage for sickness or injuries inappropriately because they received coverage outside of the open enrollment period by providing false information to the FFM related to a special enrollment period event. For example, in November 2016, we reported that the FFM and selected state-based marketplaces approved health insurance coverage and advance PTC for 9 of 12 of GAO's fictitious applications made during a 2016 special enrollment period. For 5 applicants, GAO provided no documents to support the special enrollment period triggering event, but CMS approved the coverage.⁶⁰

CMS's Key Control Activities Related to the Accuracy of Advance PTC Calculations Based on Income and Family Size Are Not Properly Designed

Individuals must meet income requirements in order to qualify for advance PTC. Specifically, individuals are expected to have household incomes equal to or between 100 and 400 percent of the federal poverty level for their given family size to be eligible for advance PTC.⁶¹

Although CMS designed procedures related to detecting potentially understated income amounts, its procedures do not include verifying income amounts that may be overstated. Specifically, CMS does not check for potentially overstated income amounts, despite the risk that individuals may do so in order to qualify for advance PTC. This risk is increased for states that did not expand Medicaid coverage to individuals

⁶⁰GAO, *Patient Protection and Affordable Care Act: Results of Enrollment Testing for the 2016 Special Enrollment Period*, [GAO-17-78](#) (Washington, D.C.: Nov. 17, 2016).

⁶¹26 U.S.C. § 36B(c)(1)(A), as added by PPACA § 1401(a).

who make less than 100 percent of the federal poverty level. To receive subsidized health care coverage in these states, individuals could overstate their income to at least 100 percent of the federal poverty level to ensure that they qualify for advance PTC. According to CMS officials, they did not check for potentially overstated income amounts because federal regulations allow CMS to accept individuals' attestations when attested income amounts are higher than those in IRS data. However, by not checking potentially overstated income amounts, CMS may be improperly providing advance PTC to issuers on behalf of individuals not eligible for the benefit.

Along with income, family size has a direct relationship to the amount of advance PTC for which enrollees are eligible. As family size increases, the percentage of the federal poverty level for that household to be eligible for the maximum amount of PTC decreases, thereby affecting the advance PTC amount. IRS provides CMS with household income and family size information for enrollees requesting eligibility determinations for advance PTC. However, when the family size provided by an enrollee does not match the family size shown in IRS records, CMS does not generate an inconsistency. CMS accepts applicant attestations without further verification. CMS officials also told us that it could be challenging to verify family size information with documentation from individuals. However, CMS could use federal income tax returns and other supporting documentation to substantiate family sizes.⁶²

Internal control standards state that management should use quality information to achieve the entity's objectives.⁶³ Management obtains relevant data from reliable sources. Relevant data have a logical connection with, or bearing upon, the identified information requirements. Reliable sources provide data that are reasonably free from error and bias and faithfully represent what they purport to represent. Internal control standards also state that management should design control activities to achieve objectives and respond to risks.

Without proper procedures for verifying incomes and family sizes, CMS's risk of providing advance PTC on behalf of individuals who do not meet

⁶²The Department Health and Human Services Office of Inspector General also previously reported findings on federal marketplace's internal controls related to family size during the first open enrollment period (January 1, 2014 through April 19, 2014). For more information, see A-09-14-01011.

⁶³[GAO-14-704G](#).

the minimum income eligibility requirements—including those who may purposefully misstate their incomes or family sizes in order to become eligible for advance PTC—is increased. For example, in our testing of 93 applications, we found 11 applications for individuals residing in states that did not expand Medicaid and for which the modified adjusted gross incomes for those households⁶⁴ were less than 100 percent of the federal poverty level, according to data that IRS provided to CMS during application review.⁶⁵ While some of these individuals may have earned additional income, they may have also overstated their incomes on their applications to become eligible for coverage and advance PTC. However, CMS did not check for potential overstatements of income amounts and generate inconsistencies to resolve such potential overstatements.

CMS Properly Designed and Implemented Control Activities Related to the Accuracy of Advance PTC Payments Made to Certified Issuers and Qualified Health Plans

Based on our audit work, CMS has properly designed and implemented procedures related to the accuracy of advance PTC to reasonably assure that payments made to issuers and qualified health plans comply with applicable requirements, including procedures to

- generate accurate policy-based payments to issuers based on enrollment data;
- properly review and approve of issuer payment calculations and reconciliations;
- perform compliance reviews to help ensure that issuers and qualified health plans meet applicable requirements of the marketplace; and

⁶⁴Household income is the taxpayer's modified adjusted gross income, plus that of every other individual in a family for whom the taxpayer can properly claim a personal exemption and who is required to file a federal income tax return.

⁶⁵We identified 11 cases where an applicant overstated their income and where the household income was less than 100 percent of the poverty level from CMS's population of approximately 5.0 million applications during the 2016 open enrollment period from November 15, 2015, through January 31, 2016. For an observed number of 11 cases in a sample size of 93, we can be 95 percent confident that the population deviation rate is not more than 18.82 percent. This is greater than our tolerable deviation rate of 5 percent.

- notify issuers of noncompliance and decertify those that do not meet key requirements.

As discussed earlier, we did not test whether the control activities for making payments to issuers were operating as designed because such payments include other aggregated costs and adjustments, such as cost-sharing reductions and user fees, which were outside the scope of this audit.

IRS's Control Activities Related to PTC Were Not Properly Designed and Implemented

IRS control activities were not properly designed and implemented to help achieve management objectives related to preventing and detecting improper payments of PTC. Specifically, we found deficiencies in the design of IRS control activities related to determining whether individuals

- met the citizenship or lawful presence requirement for PTC eligibility;
- had access to or enrollment in health care coverage that met minimum essential coverage, which would allow individuals to obtain PTC for the months that were not covered;
- properly assessed individual shared responsibility payments (SRP) on their tax returns; and
- were properly notified of the requirement to file if they did not file their tax returns.

IRS faces several challenges that affect its ability to design and implement control activities related to PTC. These challenges include the timeliness and availability of key income data to verify taxpayers' PTC claims, resource constraints in identifying tax returns for further review, and statutory limitations for automatically correcting tax returns and recovering excess advance PTC repayments.

We did not evaluate whether all control activities related to preventing and detecting improper payments of PTC were operating as designed or evaluate other internal control components, such as control environment. Deficiencies, if any, in the internal control components that were not evaluated could further impair the overall effectiveness of IRS's control activities related to preventing and detecting improper payments in the PTC program. (See fig. 5.)

Figure 5: IRS Key Control Activities Related to Preventing and Detecting Improper Payments of PTC

| | Design | Implementation | Operating as designed |
|---|---------|----------------|-----------------------|
| Key control activities related to the IRS's processing of the PTC | | | |
| Verifying citizenship or lawful presence of individuals for PTC eligibility | X 1,2 | X | Not tested |
| Verifying health care coverage of individuals for PTC eligibility | X 1,2 | X | Not tested |
| Verifying individual shared responsibility payment compliance | X 1,2 | X | Not tested |
| Verifying individuals' incomes for calculating PTC-related amounts prior to issuing refunds | X 2 | X | Not tested |
| Reviewing tax returns that contain errors | X 4 / ✓ | X / ✓ | ✓ |
| Correcting PTC related errors on tax returns prior to issuing refunds | X 3 | X | Not tested |
| Recovering excess advance PTC repayment amounts | X 3 | X | Not tested |
| Notifying nonfilers of the requirement to file tax returns | X 1 | X | Not tested |
| Preparing tax returns for nonfiling individuals through ASFR | X 4 | X | Not tested |

- X 1** IRS control activities were not properly designed to achieve the control objective
- X 2** Data challenges impede IRS's ability to design control activities to achieve the control objective
- X 3** Statutory limitations impede IRS's ability to design control activities to achieve the control objective
- X 4** Resource limitations impede IRS's ability to design control activities to achieve the control objective
- X** Control activities that are not properly designed cannot be properly implemented
- Not tested** We did not evaluate whether control activities that were not properly designed were operating as designed
- ✓** Because of resource limitations, IRS established dollar thresholds to limit the number of tax returns with PTC-related amounts for additional reviews by IRS examiners. Although the control activity was not properly designed because of resource limitations, we found that IRS's use of dollar thresholds was properly designed, implemented, and operating as designed

ASFR - Automated Substitute for Return

IRS - Internal Revenue Service

PTC - premium tax credit

Source: GAO analysis of IRS control activities. | GAO-17-467

IRS Is Unable to Design and Implement Control Activities to Verify Whether Individuals Meet the Citizenship or Lawful Presence Eligibility Requirement

To qualify for PTC, individuals must be U.S. citizens or nationals, or otherwise lawfully present in the United States.⁶⁶ All advance PTC for those not lawfully present must be reported on tax returns and repaid in full regardless of income level. As such, individuals are not entitled to PTC for any period during which they are not lawfully present in the United States.

IRS officials told us that IRS does not perform compliance checks to verify eligibility based on individuals' citizenship or lawful presence status. IRS officials stated that they rely on the state and federal marketplaces to determine whether the individuals met citizenship or lawful presence eligibility requirements. If IRS receives enrollment information from the state or federal marketplaces,⁶⁷ IRS presumes that individuals met citizenship or lawful presence requirements.

While information that IRS receives from state and federal marketplaces may be effective in determining whether individuals met citizenship and lawful presence requirements for PTC, it does not address situations when state or federal marketplaces conditionally provided advance PTC on behalf of individuals but subsequently terminated advance PTC payments because of failure to prove citizenship or lawful presence. Specifically, PPACA's implementing regulations allow individuals 95 days to provide supporting information to the marketplace when the marketplace is unable to verify that the individuals met enrollment or advance PTC requirements for citizenship or lawful presence.⁶⁸ Consequently such individuals' attested information qualifies them to be conditionally eligible for advance PTC during this inconsistency period. At the end of the inconsistency period, the marketplace is required to

⁶⁶45 C.F.R. §§ 155.305(a)(1) and 155.315(c).

⁶⁷As mentioned earlier, as required by Treasury regulations, CMS and the state marketplaces provide enrollment information to IRS each month and an annual summary of advance PTC paid on behalf of individuals during the year on Form 1095-A, Health Insurance Marketplace Statement.

⁶⁸45 C.F.R. §155.315(c).

terminate advance PTC for individuals who did not resolve their inconsistencies related to citizenship or lawful presence.

Treasury regulations do not require the marketplaces to provide IRS with the reasons for terminating health care coverage or advance PTC for individuals. Because of this, the marketplaces do not report advance PTC payment terminations to IRS for individuals who do not meet the citizenship or lawful presence eligibility requirements when the marketplaces make final determinations at the end of the inconsistency periods.

Internal control standards state that management should externally communicate the necessary quality information to achieve the entity's objectives.⁶⁹ As part of this standard, management should obtain quality information to reasonably assure that internal control objectives—such as necessary data to verify citizenship information or legal presence requirements for PTC—are achieved.

Because Treasury does not require the state or federal marketplaces to provide information on individuals who do not meet the citizenship or lawful presence requirements, IRS has not established a mechanism to identify that individuals claiming PTC meet this key PTC eligibility requirement. Further, according to IRS officials, they have not assessed the feasibility of obtaining such information from the marketplaces and incorporating such information into their processes. The volume and dollar amount of advance PTC paid on behalf of individuals whose coverage was terminated for citizenship or lawful presence requirements can be significant. In our February 2016 report,⁷⁰ we found that for the first enrollment period,⁷¹ CMS terminated about 65,000 policies from the marketplaces because individuals did not resolve their citizenship or lawful presence issues. Over \$130 million in advance PTC was paid on behalf of these individuals.⁷² Thus, without access to the data needed to verify citizenship or lawful presence eligibility requirements for individuals,

⁶⁹GAO-14-704G.

⁷⁰GAO-16-29.

⁷¹The first enrollment period was October 1, 2013, to March 31, 2014, and it also included a special enrollment extension into April 2014.

⁷²GAO-16-29.

IRS may be missing opportunities to prevent potentially significant improper payments of PTC.

IRS Control Activities Related to Checking for Health Care Coverage Were Not Properly Designed and Implemented

IRS has not properly designed and implemented key control activities to perform the necessary post-refund checks routinely to identify individuals who are not eligible for claimed PTC amounts because of either duplicate health care coverage or availability of coverage from employers or government-sponsored programs.⁷³ IRS officials stated that IRS examiners, using internal and external information systems, may check Forms 1095-B, Health Coverage, and 1095-C, Employer-Provided Health Insurance Offer and Coverage, filed for the individuals as part of their general examination procedures to verify all insurance coverage in and out of the marketplace. IRS officials stated that they rely on tax examiners' judgment to evaluate available data and determine whether the presence or absence of a particular item on a tax return represents a potential issue. IRS developed a checklist that examiners could use in reviewing tax returns for duplicate coverage and SRP and included this checklist in the program used by the postcompliance units. However, IRS did not incorporate the checklist or instructions to use the checklist in the IRM to require its use as part of the routine procedures that examiners in the postcompliance units perform regularly.

Internal control standards state that management should design control activities to achieve objectives and respond to risks.⁷⁴ Control activities are the policies, procedures, and other mechanisms that enforce management's directives to achieve the entity's objectives and address related risks.

⁷³IRS must rely on post-refund checks because IRS does not receive key health care data at the time of tax return processing to identify individuals who are not eligible for claimed PTC amounts. Unlike the marketplaces, which are required to report to IRS by the end of January, the employers and government-sponsored programs are not required to report health care coverage information to IRS until the end of March (if filed electronically), by which time IRS has already started processing federal income tax returns as individuals submit them in the filing season.

⁷⁴[GAO-14-704G](#).

IRS officials stated that they are reviewing the potential compliance issue related to duplicate health insurance coverage for post-refund compliance checks. IRS officials also stated that they have requested research data on the level of noncompliance for tax year 2015 and that these data will be evaluated to determine what, if any, post-refund actions are needed. Without routinely performing post-refund checks on individuals' health insurance coverage from employers or government-sponsored health care plans, IRS is vulnerable to improperly providing PTC to ineligible recipients. The effect of IRS's lack of routine post-refund checks on individuals' health insurance coverage from employers or government-sponsored health care plans was illustrated in our review of a statistical sample of 93 tax returns with PTC-related amounts during the first 9 months of fiscal year 2016. Based on our testing, the number of individuals who inappropriately received PTC because of their eligibility for or receipt of minimum essential coverage outside of the marketplace could be significant. In our statistical sample of 93 PTC-related transactions for the first 9 months of fiscal year 2016, we found 7 cases in which the individuals or members of their households received subsidized coverage from the marketplaces and at the same time also had coverage through employer- or government-sponsored health care plans for at least 1 month during the year.⁷⁵

IRS Control Activities Related to Verifying SRP Compliance Were Not Properly Designed and Implemented

IRS also does not have properly designed and implemented key control activities to perform the necessary post-refund checks to identify individuals who did not have health care coverage for the entire year and

⁷⁵We identified 7 cases in our statistical random sample of 93 transactions from IRS's population of approximately 6.1 million PTC-related transactions for the period from October 1, 2015, to June 18, 2016. For an observed number of 7 cases in a sample size of 93, we can be 95 percent confident that the population deviation rate is not more than 13.67 percent. This is greater than our tolerable deviation rate of 5 percent.

did not comply with SRP requirements.⁷⁶ In our statistical sample of 93 tax returns, we found that in 17 cases the individuals or all the members of their tax households did not have qualifying health care coverage for the entire year or an exemption from health care coverage for some of the months or for the entire year.⁷⁷ For those returns, the individuals did not pay the required SRP for the months without coverage and IRS did not assess SRPs for those individuals who did not have qualifying health care coverage or have coverage exemptions for the entire year. Without properly designed and implemented key control activities to perform the necessary post-refund checks of SRPs, IRS may not always consistently and equitably assess and collect the SRP.

IRS Is Unable to Design and Implement Control Activities to Verify Individuals' Income for Calculating PTC-Related Amounts Prior to Issuing Refunds

IRS's ability to verify taxpayer-reported income prior to issuing tax refunds is limited because some deadlines for third parties to report key aspects of taxpayer income fall late in the tax filing season.⁷⁸ As such, IRS does not timely receive complete income information, which impedes IRS's ability to design control activities for verifying PTC calculations prior to issuing tax refunds. IRS's challenge in verifying income before issuing refunds is not unique to PTC; it is an inherent risk with the tax

⁷⁶IRS must rely on post-refund checks to assess compliance for individual SRPs. Similar to duplicate coverage discussed earlier, the lack of availability of key data from issuers, federal and nonfederal employers, and government-sponsored programs also affected IRS's ability to verify, before issuing tax refunds, whether individuals were complying with SRP requirements. According to IRS officials, IRS was planning to implement a new process in 2017 to determine whether the individuals owed SRPs by identifying cases in which the individuals were silent with respect to health care coverage on their tax returns. Specifically, IRS officials stated that IRS intended to identify those individuals who did not (1) check the coverage box on the tax return, (2) claim an exemption from the coverage requirement, or (3) report an SRP. However, an executive order issued in January 2017 directs federal agencies to exercise all authority and discretion available to them to reduce the potential burden of PPACA. In response to this executive order, IRS stated that it did not implement this new process in 2017.

⁷⁷We identified 17 cases in our statistical random sample of 93 transactions from IRS's population of approximately 6.1 million PTC-related transactions for the period from October 1, 2015, to June 18, 2016. For an observed number of 17 cases in a sample size of 93, we can be 95 percent confident that the population deviation rate is not more than 26.15 percent. This is greater than our tolerable deviation rate of 5 percent.

⁷⁸As mentioned earlier, income is a key element used to calculate PTC on Form 8962.

administration processes in which refunds are issued before all compliance checks are completed. While IRS receives some income information from third parties—such as wage information from employers—by mid-February,⁷⁹ IRS may not receive other key income information returns necessary for verifying income until later in the tax filing season. For example, Form 1099-INT, Interest Income, can be filed electronically to IRS as late as March 31, which is well into the tax filing season and too late for IRS to use for checking income reporting compliance during pre-refund processing of tax returns. Because of the timing of third parties' submission of comprehensive information to IRS, IRS may not detect taxpayer misreporting of income before issuing refunds, which could result in improper PTC payments. As a result, IRS must rely on post-refund checks to identify any taxpayer misreporting of income after the filing season.⁸⁰

IRS Is Unable to Design and Implement Control Activities to Identify Tax Returns That Contain Errors for Further Review

IRS is unable to identify all tax returns that contain PTC-related errors for further review by its tax examiners. Since 2011, IRS has faced budget reductions.⁸¹ These budget reductions have heightened the importance of determining how best to allocate declining resources for IRS to reasonably assure that it can meet agency-wide strategic goals for increasing individual compliance, using resources more efficiently, and minimizing individual burden. As a result, IRS officials told us that IRS has prioritized its limited resources to design and implement cost-effective PTC-related key procedures to reasonably assure that it is focused on

⁷⁹Starting with the 2016 tax season, the filing deadlines for employers to furnish IRS with Forms W-2, Wage and Tax Statement, and certain Forms 1099-MISC, Miscellaneous Income, were moved up to January 31 from March 31.

⁸⁰For example, several months after returns have been filed, IRS electronically matches information reported by third parties, such as banks or employers, against the information that taxpayers report on their tax returns. This process, known as the Automated Underreporter program, helps IRS identify potentially underreported income or unwarranted deductions or tax credits.

⁸¹IRS's fiscal year 2016 annual appropriation provided \$11.24 billion, which was about \$900 million (7 percent) less than its fiscal year 2011 annual appropriation of \$12.12 billion. See GAO, *2016 Filing Season: IRS Improved Telephone Service but Needs to Better Assist Identity Theft Victims and Prevent Release of Fraudulent Refunds*, [GAO-17-186](#) (Washington, D.C.: Jan. 31, 2017).

issues that may represent the greatest financial exposure to the government. To do this, IRS established dollar thresholds to limit the number of tax returns with PTC-related amounts for additional reviews by IRS examiners, as it does in other types of tax administration. As a result, IRS does not review all tax returns that may contain errors but continues to process tax returns that have the PTC exposure amount below certain threshold amounts without any adjustments or further reviews by tax examiners.

We evaluated IRS's procedures related to the PTC processing dollar thresholds and found that IRS's use of dollar thresholds was operating as designed during the time period of testing.⁸² However, because IRS uses dollar thresholds to limit the number of individual federal income tax returns reviewed by examiners, it does not pursue errors in overstated or understated PTC amounts below the thresholds.

Although the focus was not on PTC, we reported in 2016 that IRS lacked a comprehensive strategy for its refundable tax credit compliance efforts.⁸³ In this report, we stated that IRS was working on a strategy to document current compliance efforts and identify and evaluate potential new solutions to address improper payments; however, its analysis focused on efforts to improve Earned Income Tax Credit compliance and did not include other refundable tax credits. As a result, we recommended that IRS develop a comprehensive operational strategy that includes all refundable tax credits. IRS agreed with the recommendation and stated that it is working on developing a comprehensive strategy to address compliance and improper payments related to its refundable tax credit programs, including PTC.

⁸²We evaluated IRS's procedures related to PTC processing dollar thresholds with a statistical random sample of 93 transactions from IRS's population of approximately 6.1 million PTC-related transactions on individual federal income tax returns based on the IRS-provided data for the period from October 1, 2015, to June 18, 2016, and identified 1 exception. For an observed number of 1 exception in a sample size of 93, we can be 95 percent confident that the population deviation rate is not more than 5 percent. This is equal to our tolerable deviation rate of 5 percent.

⁸³GAO, *Refundable Tax Credits: Comprehensive Compliance Strategy and Expanded Use of Data Could Strengthen IRS's Efforts to Address Noncompliance*, [GAO-16-475](#) (Washington, D.C.: May 27, 2016).

IRS Is Unable to Design and Implement Control Activities to Correct PTC-Related Errors on Tax Returns Prior to Issuing Refunds

A key control activity for IRS is correcting inaccuracies in individuals' PTC calculations. IRS does this by corresponding with individuals, suspending the tax returns, or using its statutory math error authority. Based on statistical sample of 93 individual federal income tax returns with PTC-related amounts from October 2015 to June 2016, we found that IRS (1) appropriately suspended the tax returns and corresponded with individuals to resolve PTC-related issues and errors on the tax returns and (2) accurately calculated and processed PTC-related amounts in cases within its statutory authority.

IRS cannot always correct individuals' inaccuracies that it identifies while processing tax returns. As we previously reported, in cases where individuals do not reconcile advance PTC, IRS does not have the authority to automatically correct the tax returns and notify the individuals of the changes.⁸⁴ In other circumstances, IRS has statutory math error authority to fix easily correctable calculation errors and check for other obvious noncompliance in limited circumstances.⁸⁵ However, in cases of a discrepancy with marketplace data, such as differences in amounts of advance PTC reported by individuals on their Forms 8962, IRS does not have the authority to automatically correct the tax returns and notify individuals of the changes. According to IRS officials, having the authority to correct PTC errors related to discrepancies with marketplace data would allow IRS to process returns more quickly without having to correspond with the individuals or expend further resources to audit their compliance.

In 2015, we suggested that IRS seek legislative authority to correct tax returns at filing based on the marketplace data.⁸⁶ Correctable-error authority could help IRS meet its goals: processing tax returns timely,

⁸⁴[GAO-17-186](#).

⁸⁵Under IRS's present math error authority, IRS may correct certain mathematical or clerical errors on a return and notify the taxpayer of the proper tax liability based on those corrections. 26 U.S.C. § 6213(b).

⁸⁶GAO, *Patient Protection and Affordable Care Act: IRS Needs to Strengthen Oversight of Tax Provisions for Individuals*, [GAO-15-540](#) (Washington, D.C.: July 29, 2015).

providing individuals with refunds more quickly, and reducing the burden on individuals of responding to IRS correspondence. It can also reduce the need for IRS to resolve discrepancies in post-filing compliance, which, as we previously concluded, is less effective and more costly than at filing compliance.⁸⁷ For each year beginning with fiscal year 2015, Treasury has submitted legislative proposals that among other things, would establish a category of correctable errors. Under the proposals, Treasury would be granted regulatory authority to permit IRS to correct errors in cases where information provided by individuals does not match corresponding information in government databases.⁸⁸ As of the completion of our audit, Congress has not yet granted this broad authority.

The effect of IRS's lack of authority to correct PTC-related errors on tax returns at filing was illustrated in our review of a statistical sample of 93 tax returns with PTC-related amounts during the first 9 months of fiscal year 2016. We found that for 6 of the 93 sample cases, the individuals did not submit the required Forms 8962 to reconcile PTC, when marketplace data indicated that these individuals had advance PTC paid on their behalf. In addition, for an additional 2 of the 93 cases, the individuals reported different amounts on their Forms 8962 than what the marketplace data indicated. For these 8 out of 93 cases, IRS issued refunds to the individuals without adjusting the refund amounts for the PTC-related differences.⁸⁹ Thus, without the ability to automatically correct the tax returns, IRS is not able to fully collect excess advance PTC overpayments and reimburse PTC underpayments.

⁸⁷GAO, *Identity Theft: Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud*, [GAO-14-633](#) (Washington, D.C.: Aug. 20, 2014).

⁸⁸Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals* (February 2016), 225-226; *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals* (February 2015), 245-246; and *General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals* (February 2014), 229-230.

⁸⁹We identified 8 cases in a statistical random sample of 93 PTC-related transactions from IRS's population of approximately 6.1 million PTC-related transactions from the period from October 1, 2015 to June 18, 2016, that occurred during the first 9 months of fiscal year 2016. For an observed number of 8 cases in a sample size of 93, we can be 95 percent confident that the population deviation rate is not more than 14.99 percent. This is greater than our tolerable deviation rate of 5 percent.

IRS Is Unable to Design and Implement Control Activities for Recovering Excess Advance PTC Repayment Amounts

IRS cannot design control activities to recover all excess advance PTC repayment amounts. Marketplaces determine the amounts of advance PTC for which individuals are eligible, in part, based on each applicant’s anticipated household income for the year. The PTC amount is based on actual income reported when individuals file income tax returns. If the amounts of advance PTC paid on behalf of individuals are greater than the amounts final PTC claimed on their tax returns, then the individuals must repay excess advance PTC. However, federal law limits the amount of excess advance PTC overpayments that individuals must repay, based on their household incomes as a percentage of the federal poverty level and filing status. As a result, IRS is prohibited from recovering the full amount of excess advance PTC payments that may otherwise be due from individuals. (See table 1.) According to IRS, for fiscal year 2016, individuals had over \$800 million in excess advance PTC that they were not required to repay because of repayment limitations. Under current federal law, IRS will continue to only recover the excess advance PTC repayment amounts up to the statutory repayment limitation.

Table 1: Repayment Limits for Excess Advance Premium Tax Credit for Tax Year 2016

| Household income as a percentage of the federal poverty level | Repayment limitation for single taxpayer filing status (dollars) | Repayment limitation for all other filing statuses (dollars) |
|---|--|--|
| Less than 200 percent | 300 | 600 |
| At least 200 but less than 300 percent | 750 | 1,500 |
| At least 300 but less than 400 percent | 1,275 | 2,550 |
| 400 or more percent | No limitation | No limitation |

Source: 26 U.S.C. § 36B(f). | GAO-17-467

Note: The repayment limits apply only to advance premium tax credit (PTC) for coverage of individuals who are lawfully present in the United States. All advance PTC to individuals who had marketplace coverage but were not lawfully present must be reported by individuals on their tax returns and repaid in full.

IRS Control Activities Related to Notifying Nonfilers of the Requirement to File Tax Returns Were Not Properly Designed and Implemented

IRS did not properly design control activities that notified nonfilers of the requirement to file tax returns.⁹⁰ We found that in 2015 and 2016, IRS used an ad hoc process to send notices to individuals who had advance PTC paid on their behalf during the previous calendar year and failed to file tax returns and to those who requested an extension to file. The notices alerted the individuals of the requirement to file a tax return and reconcile the advance PTC and warned that the failure to file could result in the loss of advance PTC for the following calendar year. However, IRS did not design policies and procedures for sending these notices regularly. According to IRS officials, IRS has not decided whether sending notices will be an ongoing process. IRS officials stated that if it becomes an ongoing process, then IRS will likely develop policies and procedures for sending these notices.

Internal control standards state that management should design control activities to achieve objectives and respond to risks.⁹¹ Control activities are the policies, procedures, and other mechanisms that enforce management's directives to achieve the entity's objectives and address related risks.

Without such policies and procedures in place, there is an increased risk that the ad hoc notification process will not be followed consistently in each filing season. As a result, individuals may be at risk for losing their subsidized health care coverage from the marketplaces in the future because they were not aware of the requirement to file their tax returns and reconcile the advance PTC since there is a year's interval between when individuals first apply for advance PTC and when they are supposed to reconcile it on their tax returns. In addition, without an

⁹⁰Filing a federal income tax return is a key requirement for the PTC program. It provides the information individuals use to reconcile the amounts of advance PTC paid on their behalf to the actual amounts of PTC to which they are entitled. IRS uses Form 8962, which individuals are to file with their tax returns, to identify and recover any advance PTC overpayments or reimburse any PTC underpayments. According to IRS reconciliations and analysis, about \$891 million in advance PTC was paid to issuers during tax year 2014 on behalf of individuals belonging to over 313,000 tax households that had not filed returns for the 2014 tax year as of July 2016.

⁹¹[GAO-14-704G](#).

assessment or claim being made by individuals through tax return filing, the federal government may not be fully collecting on excess advance PTC that may be owed or pay any additional PTC that is due to individuals. Individuals' claims are especially important because, as discussed later, IRS currently does not have the system capability to use marketplace data to calculate PTC through the Automated Substitute for Return (ASFR) program. Until IRS incorporates marketplace data into its automated process, this notification process will be key to identifying and collecting any overpayments of advance PTC made for individuals who did not file their tax returns.

IRS Is Unable to Design and Implement Control Activities for Preparing Tax Returns with PTC Information for Nonfilers

IRS was unable to incorporate PTC information in the ASFR program, a key process for preparing substitute tax returns for individuals who did not file. IRS has the authority to prepare a tax return for a nonfiling individual if the individual appears to be liable for the return and the individual required to file the return either does not file it or instead files a false, fraudulent, or frivolous return. IRS exercises this authority through its ASFR program. If IRS is unable to secure a valid income tax return from an individual, the ASFR program automatically estimates the tax liability by computing the individual's tax, penalties, and interest, based on third-party and other available information in its systems.

However, IRS officials stated that IRS faces challenges in incorporating the PTC program into the ASFR program. Specifically, the ASFR program does not have the PTC calculators necessary to calculate the PTC amounts. The program does consider PTC-related information in determining whether a substitute for return (SFR) should be created or in calculating taxes owed when an SFR is created for an individual for other reasons. Thus, IRS cannot automatically prepare the Form 8962 or calculate PTC for non-filing individuals who had advance PTC paid on their behalf.

IRS officials stated that they recognize the lack of PTC-related calculations in the ASFR program as a gap in the collection mechanism. However, IRS officials told us that they did not have the budgetary resources to incorporate the complex calculations into the agency-wide ASFR program in 2016. Without incorporating this important programming change, IRS may not be able to recover the full extent of excess advance

PTC amounts. IRS officials stated that they will consider incorporating this programming change in the ASFR program in the future subject to budgetary resource availability.

Conclusions

Preventing and detecting improper payments in the PTC programs is a complex undertaking. In fiscal year 2016, CMS assessed its PTC program as susceptible to significant improper payments, in accordance with IPIA and OMB requirements. However, CMS did not provide a specific, expeditious time frame for complying with statutory requirements to estimate and report on improper payments related to the program. As a result, HHS's overall improper payment estimate will continue to be understated. In addition, Congress and other stakeholders will continue to lack key payment integrity information for monitoring HHS's improper payments.

IRS did not assess the susceptibility of its PTC program in a manner consistent with IPIA requirements. Specifically, IRS did not include all types of errors that result in improper payments within the scope of its assessment and did not assess whether its PTC program met the applicable statutory thresholds for susceptibility to significant improper payments, as required by IPIA. Without estimating and reporting improper payments, IRS and external stakeholders, such as Congress, may not be able to fully assess the extent to which payment integrity objectives for the program are achieved.

Although CMS properly designed and implemented control activities related to the verification of citizenship and lawful presence and the accuracy of advance PTC payments, it did not properly design other control activities related to preventing and detecting improper payments of advance PTC. CMS often relies on insufficient, unreliable, and incomplete information for ensuring eligibility for advance PTC and accurately calculating the amounts of advance PTC. By not obtaining relevant data from reliable sources in a timely manner to meet the identified information requirements, and establishing procedures to verify eligibility of enrollees and the accuracy of advance PTC, CMS cannot reasonably assure that its payment integrity objectives are achieved.

IRS did not properly design and implement certain key control activities related to preventing and detecting PTC improper payments, including recovering excess advance PTC overpayments. While IRS may not

receive key information from marketplaces to identify individuals who did not demonstrate that they met citizenship or lawful presence requirements, IRS has not assessed the feasibility of requiring such information from the marketplaces and incorporating such information in its processes to recover advance PTC made for those individuals. In addition, IRS lacks certain key procedures to verify health care coverage on individuals routinely during its post-filing compliance checks. Without such checks, IRS may be missing opportunities to identify individuals who are not eligible for PTC because they can obtain health care coverage outside of the marketplaces or identify individuals who did not properly report their SRPs on their income tax returns. Finally, although IRS used an ad hoc process for notifying nonfilers of the requirement to file tax returns, IRS did not establish procedures for sending these notices regularly during each filing season to facilitate compliance. Without addressing these key deficiencies in control activities, IRS is at increased risk of making improper payments to individuals and may not be fully collecting excess advance PTC or reimbursing PTC underpayments.

IRS also faces data limitations, such as the availability of key income information from third parties, and statutory challenges that impede its ability to prevent improper payments, recover excess payments of advance PTC, and reimburse underpayments. For instance, in cases of discrepancies with marketplace data, IRS does not have the authority to automatically correct the tax returns and notify the taxpayers of the changes. In addition, there are statutory repayment limitations on the amount of excess advance PTC that taxpayers are required to return to the government. As a result, opportunities to recover PTC improper payments are limited in these areas unless statutory changes are made. In addition, resource constraints necessitate IRS making difficult decisions about how best to use its resources to identify taxpayer noncompliance and set objectives related to preventing and detecting improper payments for the PTC program. In 2016, we recommended that IRS develop a comprehensive operational strategy that includes all refundable tax credits for which IRS is responsible. Implementing our 2016 recommendation could help IRS determine whether its current allocation of resources for PTC is optimal and, if not, what adjustments may be needed.

Recommendations for Executive Action

To improve annual reporting on PTC improper payments, control activities related to eligibility determinations, and calculations of advance PTC, we

recommend that the Secretary of Health and Human Services direct the Administrator of CMS to take the following 10 actions:

1. Annually report improper payment estimates and error rates for the advance PTC program.
2. Until annual reporting of improper payment estimates and error rates for the advance PTC program is performed, disclose significant matters relating to IPIA estimation, compliance, and reporting objectives for the advance PTC program in the agency financial report, including CMS's progress and timeline for expediting the achievement of those objectives and the basis for any delays in meeting IPIA requirements.
3. Design and implement procedures for verifying the identities of phone and mail applicants to reasonably assure that ineligible individuals are not enrolled in qualified health plans in the marketplaces or provided advance PTC.
4. Assess and document the feasibility and availability of obtaining sufficiently reliable data to verify individuals' residencies and lack of minimum essential coverage from nonfederal employers and, if appropriate, design and implement procedures for using such data in its verification processes.
5. Design and implement procedures for sending notices to nonfederal employers routinely and terminating advance PTC for individuals who have access to minimum essential coverage from their employers.
6. Assess and document the feasibility of approaches for (1) identifying duplicate government-sponsored coverage for individuals receiving Medicaid and CHIP coverage in FFM states outside of the states where they attest to residing and (2) periodically verifying individuals' continued eligibility by working with other government agencies to identify changes in life circumstances that affect advance PTC eligibility—such as commencement of duplicate coverage or deaths—that may occur during the plan year and, if appropriate, design and implement these verification processes.
7. Assess and document the feasibility of approaches for terminating advance PTC on a timelier basis and, as appropriate, design and implement procedures for improving the timeliness of terminations.
8. Design and implement procedures for verifying compliance with applicable tax filing requirements—including the filing of the federal tax return and the Form 8962, Premium Tax Credit—necessary for individuals to continue to be eligible for advance PTC.

9. Design and implement procedures for verifying major life changes using documentation submitted by applicants enrolling during special enrollment periods.
10. Design and implement procedures for verifying with IRS (1) household incomes, when attested income amounts significantly exceed income amounts reported by IRS or other third-party sources, and (2) family sizes.

To comply with improper payments reporting requirements and improve procedures related to processing PTC information on tax returns, we recommend that the Commissioner of Internal Revenue direct the appropriate officials to take the following 5 actions:

1. Assess the program against applicable IPIA-defined thresholds and conclude on its susceptibility to significant improper payments, and revise the scope of its improper payments susceptibility assessment for the PTC program to include instances in which advance PTC is greater than or equal to the amount of PTC claimed on the tax return. If the program meets the IPIA definition for being susceptible to significant improper payments based on this assessment, estimate and report improper payments associated with the PTC program consistent with IPIA requirements.
2. Assess and document the feasibility of approaches for incorporating information from the marketplaces on individuals who did not demonstrate that they met the eligibility requirements for citizenship or lawful presence in the tax compliance process. If determined feasible, IRS should work with Treasury to require marketplaces to periodically provide such information on individuals and use such information to recover advance PTC made for those individuals.
3. Assess whether IRS should require its examiners to verify health care coverage of individuals to determine eligibility for PTC. To do this, IRS should complete its evaluation of the level of noncompliance related to duplicate health insurance coverage. Based on this evaluation and if cost effective, IRS should design and implement formal policies and procedures to routinely identify individuals inappropriately receiving PTC because of their eligibility for or enrollment in health care programs outside of the marketplaces and notify such individuals of their ineligibility for PTC.
4. Design and implement procedures in the IRM for examiners in the post-filing compliance units to review tax returns for health insurance coverage for the entire year, and to identify and assess individual

SRPs from those who are not appropriately reporting SRPs on their tax returns.

5. Design and implement procedures in the IRM to regularly notify nonfilers of the requirement to file tax returns in order to continue to receive advance PTC in the future.

Agency Comments and Our Evaluation

We provided a draft of this report to HHS, IRS, and OMB for comment. In its comments, reproduced in appendix III, HHS concurred with seven of our recommendations and neither agreed nor disagreed with the remaining three recommendations. In its comments, reproduced in appendix IV, IRS agreed with two recommendations, partially agreed with two other recommendations, and disagreed with the remaining recommendation. OMB's liaison to GAO stated in an e-mail that OMB had no comments on the report. HHS and IRS also provided technical comments, which we incorporated as appropriate.

Health and Human Services

In its comments, HHS stated that it is committed to ensuring access to high quality healthcare for all Americans by verifying the eligibility of consumers who apply for enrollment in qualified health plans through a marketplace and providing coverage to eligible individuals. HHS stated that it takes seriously its responsibilities to protect taxpayer funds while reducing the burden on consumers, employers, and other individuals and entities involved in the marketplace and other insurance affordability programs. In its response, HHS described its initiatives to enhance the integrity of its program, including conducting a fraud risk assessment for potential risk in the marketplace and working towards estimating and reporting improper payments for advance PTC. In addition, HHS described its process for verification of identity, determination of eligibility of enrollment through the marketplace, confirmation of individuals' compliance with tax filing requirements, and payments of advance PTC to certified issuers. HHS stated that it looked forward to continuing to benefit from suggestions from GAO and HHS's Office of Inspector General on ways to improve its operations so eligible individuals can gain coverage through the marketplaces and insurance affordability programs in a way that prevents consumer harm and protects taxpayer money.

HHS stated that it concurred with 7 of our 10 recommendations and described actions it has taken or plans to take to address these 7

recommendations. Such actions include (1) reporting on its progress in designing and implementing an improper payment estimate for the advance PTC program in future agency financial reports, (2) documenting the feasibility of modifying certain verification procedures, and (3) verifying key eligibility requirements, such as compliance with tax filing requirements and changes in life circumstances that qualified applicants for enrollment during special enrollment periods. The actions by HHS, if implemented effectively, would address our recommendations.

For the remaining three recommendations, HHS did not state whether or not they concurred with the recommendations.

In response to our third recommendation regarding verification of filer identity, HHS stated that for individuals starting a new application via phone, the call center representatives use verbal attestations for identity verifications from individuals. HHS stated that for paper applications, individuals must provide names and complete addresses as well as other information. In addition, HHS stated that individuals must attest that the information they provide on all applications is accurate by signing under penalty of perjury. However, we continue to believe that because CMS does not validate the identities of individuals who apply by phone or mail, CMS is vulnerable to enrolling ineligible individuals in qualified health plans with advance PTC.

For our fifth recommendation on sending notices to nonfederal employers, HHS stated that it is evaluating its 2016 employer notice program to determine the best approach for notifying employers in the future. Such an evaluation may provide useful information; however, we continue to believe that designing and implementing procedures for sending notices to nonfederal employers and terminating advance PTC to individuals with access to employer-sponsored coverage can reduce the risk of providing advance PTC to issuers on behalf of ineligible individuals.

In response to our tenth recommendation regarding verification of household income and family sizes, HHS stated that as part of its eligibility verification requirements, it verifies consumer-reported income with data from IRS. However, HHS stated that because household incomes may fluctuate year to year, it is difficult for consumers to project income for the year in advance. According to HHS, in instances where applicant-reported income is higher than the IRS data, HHS accepts the consumer attestation. However, HHS stated that it will assess the feasibility and burden on individuals of setting a reasonable threshold for the generation of annual household income inconsistencies that would require additional verification for consumer-attested income that

significantly exceeds income amounts reported by IRS or other third party sources. We believe that such an evaluation is a reasonable step to address our recommendation to enhance the effectiveness and efficiency of the program related to verification of household income. In addition, HHS stated that it currently accepts attestation when the family size provided by the individual does not match IRS's records. HHS stated that establishing a process to verify family size with IRS would require significant operational and privacy complexity. While we recognize that there may be certain complexities in the verification of family sizes, it is important that CMS develop policies and procedures to reasonably assure that such verifications are made on a regular basis.

Internal Revenue Service

In its comments, IRS stated that it faces significant challenges administering refundable tax credits given their complex structural design and the difficulty in validating eligibility criteria. IRS stated that it also faces significant challenges in the use of third party and other data to validate information provided by filers because many potential sources contain information that is incomplete, out-of-date, or otherwise unsuitable for use in tax administration. IRS also stated that the complexity of the law means that not every situation is a matter for simple adjudication. IRS added that it must take all these factors into account when designing and implementing pre-filing and post-filing approaches to tax compliance. IRS also stated that its refundable tax credits may have compliance-related risks that differ from those associated with other tax provisions and that administration of these provisions must address these unique risks. According to IRS, it has committed to OMB that it will conduct a quantitative analysis of PTC in fiscal year 2018, the first year that National Research Program data will be available to perform such analysis.

IRS stated that that it agreed with two of our recommendations, partially agreed with another two recommendations, and disagreed with the remaining recommendation.

IRS agreed with our second and third recommendations related to meeting eligibility requirements for citizenship and identifying individuals with duplicate health insurance coverage. IRS outlined several actions it plans to take to address those recommendations. These actions, if implemented effectively, would address our recommendations.

IRS partially agreed with our first recommendation related to an improper payment assessment for the PTC program. IRS stated that instances in

which the advance PTC is greater than or equal to the PTC amount claimed on the tax return do not result in the IRS increasing the outlay related to PTC and so these occurrences are not subject to IPIA. While we acknowledge that IRS's interpretation of the IPIA definition of "payments" excludes reductions in tax receipts, we nonetheless believe that these instances should be considered within the scope of the IRS susceptibility assessment for improper payments. Taxpayers may inaccurately complete Form 8962 and erroneously report excess advance PTC on their returns instead of claiming net PTC, or they may simply fail to report net PTC on their tax returns altogether. Such errors would result in underpayments of net PTC and therefore affect program outlays and improper payments. In addition, IPIA defines improper payments to include both overpayments and underpayments. IRS also stated that it conducted its fiscal year 2016 PTC improper payment risk assessment consistent with OMB guidance but will discuss with OMB a future change to the approach for assessing PTC improper payments as part of a larger discussion about the administration of refundable tax credits. However, IRS did not conclude whether or not the program may be susceptible to significant improper payments. Further, although we found that IRS used all of the required qualitative risk factors specified in IPIA and OMB guidance within its assessment, IRS did not analyze how each of the risk factors affected the susceptibility of the program to significant improper payments. Until IRS conducts an appropriate assessment consistent with IPIA and OMB guidance, it will continue to be uncertain about whether it should estimate the amount of improper PTC payments.

IRS also partially agreed with our fifth recommendation related to notifying non-filers of the need to file to continue receiving advance PTC. IRS stated that using a research-based approach to evaluate the 2015 tax filing season, it developed a post-compliance process for sending notices to individuals who received advance PTC paid on their behalf in the previous calendar year but failed to file a tax return and also to those who requested an extension to file. IRS stated that being flexible in its approach has allowed IRS to refine the process to improve efficiency and effectiveness. IRS further stated that based on the 2017 research analysis, IRS will determine whether the information should be included in an existing IRM. We agree that IRS should review its process to improve the efficiency and effectiveness of its operations. However, we continue to believe that designing and implementing procedures to regularly notify non-filers of the need to file to continue receiving advance PTC decreases the risk that the ad hoc notification process will not be followed consistently in each filing season.

IRS disagreed with our fourth recommendation related to reviewing tax returns to those who are not reporting SRP. However, IRS stated that, among other things, it has drafted a new IRM section for examiners who are responsible for reviewing tax returns to determine whether health insurance is reflected for the taxpayer for the entire year, and for identifying and assessing SRP on taxpayers who are not appropriately reporting SRP on their tax returns. IRS stated that the IRM section is pending approval by Exam Policy. Although IRS stated that it disagreed with our recommendation, we believe that the actions that IRS described in its response to our draft report would sufficiently address our recommendation if implemented effectively.

We are sending copies of this report to the appropriate congressional committees, the Director of the Office of Management and Budget, the Secretary of Health and Human Services, the Administrator of the Centers for Medicare & Medicaid Services, the Commissioner of Internal Revenue, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-2623 or davisbh@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



Beryl H. Davis
Director
Financial Management and Assurance

Appendix I: Objectives, Scope, and Methodology

The objectives of this report are to determine the extent to which (1) the Centers for Medicare & Medicaid Services (CMS) and the Internal Revenue Service (IRS) assessed the susceptibility of their premium tax credit (PTC) programs to significant improper payments and, if the programs were deemed susceptible, whether CMS and IRS took actions required by the Improper Payments Information Act, as amended (IPIA),¹ and Office of Management and Budget (OMB) guidance; (2) CMS properly designed and implemented key internal control activities related to preventing and detecting improper payments of advance PTC; and (3) IRS properly designed and implemented key control activities related to preventing improper payments of PTC in processing federal income tax returns, detecting and recovering advance PTC overpayments made to issuers on behalf of policyholders, and reimbursing underpayments made to policyholders. Further, for those key control activities assessed that we determined were properly designed and implemented, we evaluated the extent to which they were operating as designed.

To address our first objective, we reviewed improper payments reporting requirements and guidance, such as that in IPIA and the related guidance in Appendix C to OMB Circular No. A-123, *Requirements for Effective Estimation and Remediation of Improper Payments*,² to identify requirements that agencies must meet to ascertain whether their programs are susceptible to significant improper payments. We interviewed key officials from CMS and IRS to gain an understanding of their processes for implementing IPIA requirements, including how each of their risk assessments were performed and their plans, if any, to estimate and report on improper payments related to PTC. We also

¹IPIA, Pub. L. No. 107-300, 116 Stat. 2350 (Nov. 26, 2002), *as amended* by the Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204, 124 Stat. 2224 (July 22, 2010), and the Improper Payments Elimination and Recovery Improvement Act of 2012, Pub. L. No. 112-248, 126 Stat. 2390 (Jan. 10, 2013), *and codified as amended* at 31 U.S.C. § 3321 note. In this report, references to IPIA include any amendments made thereto.

²Office of Management and Budget, *Appendix C to Circular No. A-123, Requirements for Effective Estimation and Remediation of Improper Payments*, OMB Memorandum No. M-15-02 (Washington, D.C.: Oct. 20, 2014). In this report, references to OMB guidance refer to this OMB memorandum and the guidance contained therein.

analyzed CMS and IRS risk assessments for fiscal year 2016 to determine whether they were consistent with IPIA and OMB guidance. Specifically, we examined documentation to determine whether the CMS and IRS risk assessments (1) considered the qualitative risk factors specified by the improper payments requirements, (2) provided a basis for the risk determination, and (3) sufficiently concluded whether the programs met the criteria for susceptibility for significant improper payments. In addition, we considered relevant IPIA requirements, OMB guidance, and *Standards for Internal Control in the Federal Government* to assess whether the Departments of Health and Human Services and the Treasury externally communicated necessary quality information in their 2016 agency financial reports regarding improper payments for the PTC programs.³

To address our second objective, we first reviewed the Patient Protection and Affordable Care Act (PPACA),⁴ its implementing regulations, relevant internal control standards,⁵ and leading practices for measuring fraud risks in federal programs.⁶ Based on this review, we identified CMS's relevant risk areas and the key control activities needed to prevent and detect improper payments of advance PTC. These control activities included those related to verifying applicants' eligibility requirements to receive advance PTC, accurately determining advance PTC amounts based on expected household incomes and family sizes, and making accurate PTC payments to certified issuers for qualified health plans. The key control activities we selected are those that we viewed as critical for addressing the various types of key risks that CMS faces that are likely to result in improper payments of advance PTC.

For this objective, we evaluated CMS's key control activities related to CMS's federally facilitated marketplace (FFM) for plan year 2016. We selected the FFM because it represented about two-thirds of the states and about 75 percent of all enrollees receiving advance PTC at the time

³GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

⁴Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

⁵[GAO-14-704G](#).

⁶GAO, *A Framework for Managing Fraud Risks in Federal Programs*, [GAO-15-593SP](#) (Washington, D.C.: July 2015).

of our audit. For our audit, we assessed whether the key control activities at CMS, both individually and in combination with other control activities, were properly designed to prevent and detect improper payments of advance PTC.

We then evaluated the design of these key control activities at CMS by reviewing CMS policies, procedures, and other relevant documents, such as interagency agreements and standard operating procedures for eligibility support workers. We evaluated the key control activities to determine whether they sufficiently addressed the key risk areas that we identified by inspecting and analyzing relevant policies and procedures and directly testing the design of certain controls contained therein using the sample method described below. For key control activities that we determined were properly designed, we then performed walk-throughs and reviewed documents related to the control activities to determine whether CMS had properly implemented them.

For key control activities that we determined were properly designed and implemented, we evaluated whether they were operating as designed by testing a statistically random sample of FFM policyholders with advance PTC payment transactions from CMS. To evaluate whether such key control activities at CMS were operating as designed during the FFM's PPACA's 2016 open enrollment period, we obtained all 2016 open enrollment application transactions, including auto reenrollment application transactions that had effectuated medical policies from the FFM that were submitted from November 1, 2015, through February 1, 2016, and resulted in advance PTC. The total population of these transactions was approximately 5.0 million records. To assess the reliability of the application data, we (1) interviewed knowledgeable CMS officials about the quality control procedures the agency had in place when collecting and creating the data and (2) electronically tested the data. Based on the results of these procedures, we determined that the data were sufficiently reliable for our purposes.

From the population of approximately 5.0 million applications, we randomly selected 93 applications that had effectuated policies according to CMS records. For these 93 applications, we reviewed CMS records to determine whether the agency had performed the required internal control activities related to verifying key eligibility requirements and determining payments of advance PTC. We also used the random sample to provide evidence of the effect of providing advance PTC on behalf of individuals who did not meet the minimum income eligibility requirements. We did not evaluate whether the control activities related to the accuracy of advance

PTC payments to issuers were operating as designed because such payments included aggregated costs and adjustments, such as cost-sharing reduction subsidies and user fees, which were outside the scope of our audit. As a result, the focus of our work in this area was on the design and implementation of key control activities related to preventing and detecting improper payments of advance PTC made to issuers.

Similar to our procedures for our second objective, to address our third objective, we first reviewed PPACA, its implementing regulations, relevant internal control standards,⁷ and leading practices for managing fraud risks in federal programs.⁸ Based on this review, we identified IRS's relevant risk areas and the key control activities needed to prevent improper payments of PTC, including recovering overpayments and reimbursing underpayments. These key control activities were related to verifying individuals' eligibility for PTC, accurately calculating PTC claims, recovering overpayments (and reimbursing underpayments) related to advance PTC, and appropriately resolving PTC-related errors and discrepancies on federal income tax returns. The key control activities we selected are those that we viewed as critical for addressing the various types of key risks that IRS faces that are likely to result in improper payments of PTC, including the failure to recover overpayments (and reimburse underpayments). We evaluated IRS's key control activities from October 1, 2015, to June 18, 2016. We also did not evaluate whether key control activities that we determined were not properly designed and implemented were operating as designed because, without proper design and implementation, such control activities cannot achieve the control objectives.

We assessed whether the key control activities at IRS, both individually and in combination with other controls, were properly designed to achieve their objectives and address the related risks for preventing and detecting improper payments of PTC. Specifically, we reviewed IRS's processes and control activities, evaluated the design of key control activities, and identified any gaps and deficiencies. We evaluated the design of key control activities at IRS by inspecting and analyzing relevant policies and procedures contained in the *Internal Revenue Manual* and other relevant documents and directly testing the design of certain control activities contained therein using the sample methodology described below. For

⁷[GAO-14-704G](#).

⁸[GAO-15-593SP](#).

key control activities we found to be properly designed, we then assessed whether IRS properly implemented those key internal control activities. To do this, we performed walk-throughs and reviewed documentation of those key control activities.

We tested certain key control activities at IRS to determine whether they were operating as designed. To do this, we obtained a universe of PTC transaction data from federal income tax returns that had PTC-related transactions from October 1, 2015, to June 18, 2016, and then identified a relevant total population of approximately 6.1 million transactions. To assess the reliability of the PTC-related transaction data, we (1) reviewed IRS's Individual Income Tax Credits reports and supporting data extracts, (2) interviewed knowledgeable IRS officials about the quality control procedures IRS has in place for collecting and creating the data, and (3) electronically tested the data. Based on the results of these procedures, we determined that the data were sufficiently reliable for our purposes.

From the population of approximately 6.1 million transactions, we randomly selected 93 federal income tax returns with PTC transactions for our sample. For these 93 items, we reviewed the related federal income tax returns, including the Form 8962, Premium Tax Credit, and IRS processing reports and financial records on PTC-related transactions to determine whether IRS had performed the required internal control activities related to processing the credits. We also used this random sample to provide evidentiary support and illustrative examples of the effect of IRS's lack of statutory authority to correct PTC-related errors on tax returns and certain identified control deficiencies.

Because we followed a probability procedure based on random selections, each of our samples (for both CMS and IRS) is only one of a large number of samples that we might have drawn from the respective sampling populations. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval. This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. Confidence intervals are provided along with each sample estimate in this audit report. The results apply to the universes of (1) all FFM application transactions received from November

1, 2015, through February 1, 2016, with effectuated medical policies⁹ that resulted in payments of advance PTC and (2) PTC transaction data from federal income tax returns occurring from October 1, 2015, through June 18, 2016.

While our second and third audit objectives focused on certain significant control activities related to preventing and detecting the improper payments of PTC programs at CMS and IRS;¹⁰ we did not evaluate all control activities and other components of internal control. If we had done so, additional deficiencies may have been identified that could impair the effectiveness of the control activities evaluated as part of this audit. Appendix II provides additional details on standards for internal control in the federal government.

We conducted this performance audit from January 2016 to July 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁹Effectuated policies are when individuals effectuate their enrollments by paying their first month's premiums, meaning that they had active policies as of their policy effectuation dates.

¹⁰In addition, we also used the information and communication component of internal control and related principles as a criterion for addressing all three of our audit objectives.

Appendix II: Standards for Internal Control in the Federal Government

Standards for Internal Control in the Federal Government provides the overall framework for establishing and maintaining internal control.¹ Internal control should be designed, implemented, and operating effectively to provide reasonable assurance that the operations, reporting, and compliance objectives of an entity will be achieved. The five components of internal control are as follows:

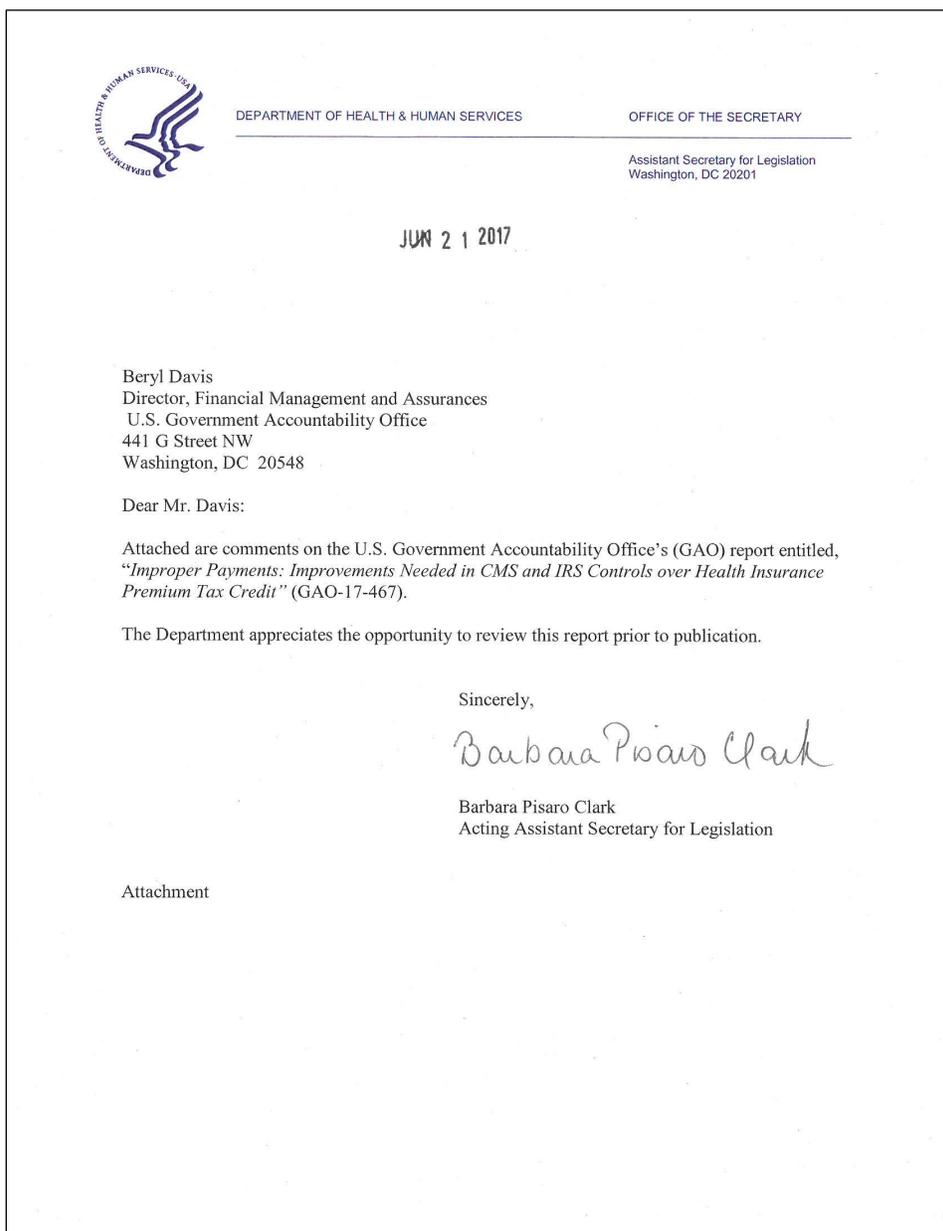
- Control environment: The foundation for an internal control system. It provides the discipline and structure to help an entity achieve its objectives.
- Risk assessment: Assesses the risks facing the entity as it seeks to achieve its objectives. This assessment provides the basis for developing appropriate risk responses.
- Control activities: The actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system.
- Information and communication: The quality information management and personnel communicate and use to support the internal control system.
- Monitoring: Activities management establishes and operates to assess the quality of performance over time and promptly resolve the findings of audits and other reviews.

An effective internal control system has each of the five components of internal control effectively designed, implemented, and operating and the five components operating together in an integrated manner. In this audit, we evaluated certain significant control activities at the Centers for Medicare & Medicaid Services and the Internal Revenue Service related to preventing and detecting improper payments in the premium tax credit programs. In addition, we also used the information and communication

¹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

component of internal control and related principles as a criterion for
addressing our audit objectives.

Appendix III: Comments from the Department of Health and Human Services



GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED: IMPROPER PAYMENTS: IMPROVEMENTS NEEDED IN CMS AND IRS CONTROLS OVER HEALTH INSURANCE PREMIUM TAX CREDIT (GAO-17-467)

The U.S. Department of Health and Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report. HHS is committed to ensuring access to high quality affordable healthcare for all Americans by verifying the eligibility of consumers who apply for enrollment in qualified health plans through a Federally-facilitated Exchange (Exchange), also referred to as a Marketplace, or for insurance affordability programs, including Medicaid and the Children's Health Insurance Program (CHIP), and providing coverage to eligible individuals. HHS takes seriously its responsibilities to protect taxpayer funds while reducing the burden on consumers, employers, and other individuals and entities involved in the Exchange and other insurance affordability programs.

Exchange Program Integrity

In order to better protect consumers and taxpayer dollars, HHS is implementing a number of initiatives to enhance operations with a focus on program integrity. HHS has expertise in preventing and detecting fraud, waste, and abuse from its other programs and is applying program integrity best practices to the Exchange. In addition, HHS has experienced program integrity staff that works to prevent and address instances of potential fraud. As recommended by the GAO,¹ HHS is conducting an Exchange Fraud Risk Assessment, leveraging the GAO's fraud risk framework.² The GAO's framework identifies leading practices for managing fraud risks and was developed to help managers combat fraud and preserve integrity in government agencies and programs. HHS is using this framework to identify and prioritize key areas for potential risk in the Exchange.

HHS has also begun work toward reporting advance payments of premium tax credit (APTC) improper payment estimates and as part of that process, conducted a risk assessment, as required by the Improper Payments Information Act of 2002 (IPIA), as amended, and Office of Management and Budget (OMB) guidance. As GAO reported, HHS appropriately assessed all risk factors required by IPIA and OMB, appropriately tailored the risk factors to the APTC program, and reached a conclusion supported by its analysis. Given the complexities of this program, HHS is piloting different measurement methodologies for estimating improper payments associated with APTC to ensure accuracy and efficiency in reporting an improper payment rate. In addition, as with other HHS programs, HHS has provided high-level information on the APTC risk assessment, such as the outcome of the risk assessment and next steps for determination of an improper payment rate, in the annual Agency Financial Reports.

Exchange Identity Verification Process

Before an individual can submit an application on HealthCare.gov, HHS verifies the adult application filer's identity to protect the privacy of personal information. To support exchanges in the verification of the identity of individuals submitting their applications online, HHS developed a remote identity proofing service. While not an eligibility requirement of the statute,

¹ "Patient Protection and Affordable Care Act: CMS Should Act to Strengthen Enrollment Controls and Manage Fraud Risk" (GAO-16-29, released February 2016)

² "A Framework for Managing Fraud Risks in Federal Programs" (GAO-15-593SP, released July 2015)

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this practice complies with National Institute of Standards and Technology (NIST) standards when consumers are accessing online federal systems. The remote identity proofing service is administered by a private third-party provider and uses leading identity-proofing capabilities available on today's market, including customized authentication services. For individuals starting a new application via the Exchange call center, the individual provides answers to questions about personally identifiable information (PII) and other information in the application and verbally attests under penalty of perjury that the information provided is correct. If the individual later decides to access the information through HealthCare.gov, the individual is required to go through the remote identity proofing process. For paper applications, individuals must provide a name and complete address, as well as other identifying information including date of birth. Regardless of the route of submission, individuals attest under penalty of perjury that the information provided is accurate.

As discussed below, application information, whether received via HealthCare.gov, the call center, or paper, will go through the same electronic eligibility verification process to determine whether an applicant is eligible for qualified health plan enrollment through the Exchange and/or insurance affordability programs.

The Exchange Eligibility Verification Process

In order to determine whether an applicant is eligible for qualified health plan enrollment through the Exchange and/or insurance affordability programs, HHS uses technology that allows the federal government to provide individuals with real-time, electronic eligibility verification via data sources available through the Federal Data Services Hub (Hub). The Hub provides a secure electronic connection between Exchanges and Medicaid/CHIP agencies with federal and private databases. These databases are used to verify eligibility and include records maintained by the Social Security Administration (SSA), the Internal Revenue Service (IRS), the Department of Homeland Security (DHS), Equifax, the Department of Veterans Affairs (VA), Medicare, Peace Corps, the Office of Personnel Management (OPM), TRICARE, and State Medicaid Agencies. The Hub supported tens of millions of data verifications during the first four open enrollment periods. For example, as the GAO reported, CMS' control activities for verifying citizenship and lawful presence with SSA or DHS were properly designed and implemented, and operating as designed.

Sometimes an applicant's eligibility information cannot be verified in real time by a trusted data source. These situations often involve people who have gained or lost a job, divorced, or changed their name. The verification process relies on the most recent data contained within the trusted data sources; however, the nature of the application information that is verified may change frequently, and the information contained in the trusted data sources may be out of date when a consumer submits an application. For example, IRS data is the primary source of income information as required by the Affordable Care Act (ACA), and it may be up to two years old depending on the most recent tax return filed by the applicant. When submitting the application information required by the ACA, individuals attest, under penalty of perjury, that the information they submit is accurate. Knowingly and willfully providing false or fraudulent information is a violation of federal law and subject to a fine of up to \$250,000.

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If an applicant provides information that cannot be verified by the trusted data sources, this does not necessarily mean the individual is ineligible for coverage and/or insurance affordability programs. In these cases, the statute requires the Exchanges make a reasonable effort to identify and address the cause of the inconsistency (otherwise known as a data matching issue) between the trusted data source and the information provided by the applicant. During this inconsistency resolution period, the ACA provides the applicant with eligibility for coverage through the Exchanges or for an insurance affordability program based on the information they attested to in their application.

Consistent with the law and regulations, to resolve such an inconsistency, the Exchange provides the applicant the opportunity to submit documentary evidence to prove eligibility within 90 or 95 days (as applicable, depending on the cause of the inconsistency). Contracted staff review the supporting documentation submitted by applicants to check that it is valid and sufficient to verify the application information before resolving the inconsistency issue. If an applicant does not provide satisfactory documentation within the required time to resolve their inconsistency, the Exchange will subsequently determine the applicant's eligibility based on the information contained within the trusted data sources, as required by the law. The Exchange continues to review documentation submitted by consumers and, if necessary, will end enrollment through the Exchange and/or adjust APTC as appropriate.

HHS has also recently taken steps to strengthen eligibility requirements and reduce fraud, waste, and abuse. In April 2017, HHS issued the final Market Stabilization rule, to help stabilize the individual and small group markets and increase choices for Americans. Consistent with this rule, individuals are required to submit supporting documentation when they apply for coverage through certain special enrollment periods, helping to ensure that only those who are eligible are able to enroll. The rule also encourages individuals to stay enrolled in coverage all year, and adds additional safeguards to ensure only those eligible to enroll through a special enrollment period are enrolled.

Tax Filing Requirement

To further protect the integrity of the Exchange and in accordance with the eligibility process created by the ACA, at the end of the tax year, every tax filer on whose behalf APTC were paid must file a federal income tax return to reconcile the APTC received based on the tax filer's final actual income for the year, since APTC provided to qualified health plan issuers is based on a consumer's estimated projected income for the coverage year. The IRS, through the tax filing process, reconciles the difference between the APTC paid to the qualified health plan issuer on the tax filer's behalf and the actual amount of the premium tax credit that the tax filer was entitled to claim. If Exchange consumers do not file their tax return and reconcile APTC previously paid on their behalf, they are not eligible to continue to receive APTC. The IRS provides information to Exchanges on consumers who received APTC in the prior coverage year but have not taken the necessary steps to file a tax return and reconcile APTC.

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Due to the normal time lag of data processing and updating in IRS systems and consumers' ability to receive tax filing extensions from the IRS, HHS accepted tax filers' attestations to having filed a tax return beginning with the 2016 open enrollment period. Consumers who were enrolled in Exchange coverage with APTC in 2015 who did not return to the Exchange to submit or update their application and select a plan during open enrollment for 2016 coverage, were auto re-enrolled without APTC if IRS data indicated to the Exchange that they had not filed a 2014 tax return and these consumers did not attest that the tax filer had met the requirement to file a tax return and reconcile APTC paid for 2014.

In May 2016, HHS conducted a check of IRS data to confirm whether consumers who were enrolled in Exchange coverage with APTC and had attested to filing a tax return for 2014 had, in fact, filed a tax return for 2014. These applications were rechecked against IRS data again in September 2016 following notification to applicable consumers that immediate action to file and reconcile was required, and those that still had not filed had their APTC ended as of November 1, 2016.

Making APTC Payments

HHS takes the stewardship of tax dollars seriously and has implemented a series of payment and system controls to assist in making accurate and timely financial assistance payments to issuers. HHS makes payments of APTC to health insurance issuers on behalf of consumers who are eligible for financial assistance. HHS fully transitioned qualified health plan issuers operating through the Exchange to an automated payment system in May 2016, allowing processing of payments on a policy-level basis. The automated system allows the exchanges, HHS, and issuers to share health insurance information, such as individuals included in a policy, the qualified health plan selected and the associated premium amount, and eligible financial assistance payment amount. As the GAO reported, HHS properly designed and implemented control activities related to the accuracy of APTC payments made to certified issuers. In addition, under HHS' Office of Management and Budget A-123 internal controls review over financial reporting, key controls surrounding the payment process were tested and determined to be operating effectively. Moreover, an independent certified public accounting firm conducted its review of the payment process and reported no significant issues. Lastly, HHS has undergone an Agreed upon Procedures (AUP) review to evaluate the payments and controls under the payment processes. These reports are shared with GAO and IRS annually. No major findings were noted during Fiscal years 2014, 2015, and 2016.

Improving our Programs

HHS looks forward to continuing to benefit from suggestions from our partners in the GAO and HHS OIG on ways to improve our operations so eligible consumers can gain coverage through the Exchanges and insurance affordability programs in a way that prevents consumer harm and protects taxpayer money. GAO's recommendations and HHS' responses are below.

Recommendation 1

Annually report improper payment estimates and error rates for the advance APTC program.

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HHS Response

HHS concurs with GAO's recommendation. In FY 2016, HHS completed a risk assessment of the APTC program and reported results in the FY 2016 Agency Financial Report. Currently, HHS is unable to specify the year the rate and amount will be reported due to the complexity and timing of the error rate measurement methodology development process, which involves conducting pilot testing, using those pilots to refine the methodology, and then undergoing the rulemaking process before implementing the methodology to ensure accurate and efficient reporting of an improper payment rate. HHS provided GAO some preliminary estimates of timing; however, this timing is currently under review and may undergo revisions.

Recommendation 2

Until annual reporting of improper payment estimates and error rates for the APTC program is performed, disclose significant matters relating to IPPIA estimation, compliance, and reporting objectives for the APTC program in the agency financial report, including CMS's progress and timeline for expediting the achievement of those objectives, and the basis for any delays in meeting IPPIA requirements.

HHS Response

HHS concurs with GAO's recommendation. HHS reported information on the status of the APTC risk assessment in the FY 2014 to FY 2016 Agency Financial Reports. Now that the program's improper payment risk assessment is completed, HHS will continue to report on its progress in designing and implementing an improper payment estimate for the APTC program in future Agency Financial Reports.

Recommendation 3

Design and implement procedures for verifying the identities of phone and mail applicants to reasonably assure that ineligible individuals are not enrolled in qualified health plans in the marketplace or provided APTC.

HHS Response

For applications submitted online, HHS verifies the adult application filer's identity through a RIDP service to protect the privacy of personal information. Verification with the RIDP service is not an eligibility requirement, but rather a NIST requirement when consumers are accessing online federal systems and a way of protecting PII stored online. For individuals starting a new application via the Exchange call center, the call center representative uses verbal attestation for identity verification from the consumer as the individual answers questions about PII and other information required in the application. For paper applications, individuals must provide a name and complete address, as well as other identifying information including date of birth. Individuals attest on all applications, including the paper application that the information provided is accurate by signing under penalty of perjury.

Recommendation 4

Assess and document the feasibility and availability of obtaining sufficiently reliable data to verify individuals' residencies and lack of minimum essential coverage from non-federal

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employers and, if appropriate, design and implement procedures for using such data in its verification processes.

HHS Response

HHS concurs with GAO's recommendation. HHS's previous assessment of available electronic data sources did not identify any comprehensive national data source for verifying residency. HHS recently conducted a study to assess the feasibility of developing an employer-sponsored coverage database and determined that development would be costly and highly burdensome given available resources. Additionally, it would impose extra burden on employers to collect the information needed to build a comprehensive employer-sponsored coverage database. HHS will continue to assess and document whether any sufficiently reliable data sources exist and examine the feasibility of implementation.

Recommendation 5

Design and implement procedures for sending notices to non-federal employers on a routine basis and terminating APTC of individuals that have access to minimum essential coverage from their employers.

HHS Response

In 2016, HHS sent notices to certain employers whose employees received APTC for at least one month in 2016 and if the Exchange had an address for the employer. HHS is evaluating the 2016 employer notice program to determine the best approach for addressing the ACA requirement for notifying employers in subsequent years.

Recommendation 6

Assess and document the feasibility of approaches for (1) identifying duplicate government-sponsored coverage for individuals receiving Medicaid and CHIP coverage in FFM states outside of the states where they attest to residing, and (2) periodically verifying individual's continued eligibility by working with other government agencies to identify changes in life circumstances that affect APTC eligibility—such as commencement of duplicate coverage or deaths—that may occur during the plan year and, if appropriate, design and implement these verification processes.

HHS Response

HHS concurs with GAO's recommendation. (1) HHS's preliminary analysis indicates that identifying government sponsored coverage for individuals receiving Medicaid and CHIP in Federally-facilitated Exchange states outside of the state where the applicant is enrolled in coverage would add several months to the time needed to execute the process of identifying duplicate enrollees and ending their APTC. Such additional time would significantly reduce the timeliness and effectiveness of the process and lead to an increase in burden on state Medicaid systems used to verify duplicate coverage. HHS will continue this analysis and document the feasibility of approaches for identifying duplicate government sponsored coverage for individuals receiving Medicaid and CHIP coverage in Federally-facilitated Exchange states outside of the application state of the consumer as well as periodically verifying individual's continued eligibility. (2) HHS has implemented a Periodic Data Matching process to proactively

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identify consumers who may be receiving Minimum Essential Coverage through Medicare, and thus are no longer eligible for financial assistance to help pay for Exchange coverage. HHS is also exploring approaches to identifying Exchange enrollees who may be deceased and should thus be disenrolled from coverage.

Recommendation 7

Assess and document the feasibility of approaches for terminating APTC on a more timely basis and, as appropriate, design and implement procedures for improving the timeliness of terminations.

HHS Response

HHS concurs with GAO's recommendation. HHS continues to assess the feasibility of terminating APTC at various times of the month as a result of consumers not resolving inconsistencies. HHS currently terminates APTC between the 1st and 15th of the month following the end of the inconsistency clock in order to accommodate issuer processes. Processing in these cohorts also allows for operational and quality efficiencies for HHS since processes can be completed in batches.

Recommendation 8

Design and implement procedures for verifying compliance with applicable tax filing requirements, including the filing of the federal tax return and the Form 8962, Premium Tax Credit, necessary for individuals to continue to be eligible for PTC.

HHS Response

HHS concurs with GAO's recommendation. The IRS provides information to Exchanges on consumers who received APTC in the prior coverage year but have not taken the necessary steps to file a tax return and reconcile APTC. Beginning in Open Enrollment for 2018, the Federally-facilitated Exchange will end APTC on behalf of tax filers who have not filed or have not reconciled APTC, when that information is reported to the Exchange by IRS.

Recommendation 9

Design and implement procedures for verifying major life changes using documentation submitted by applicants during special enrollment periods.

HHS Response

HHS concurs with GAO's recommendation. HHS is continually monitoring the operations of the Exchange and has taken several steps to analyze and strengthen current rules and procedures to ensure that only those who are eligible enroll through special enrollment periods. While special enrollment periods provide a critical pathway to coverage for qualified individuals who experience qualifying events, it's equally important that special enrollment periods are not misused or abused. In April 2017, HHS issued a final rule on Market Stabilization that promotes program integrity by requiring individuals to submit supporting documentation for special enrollment periods and ensures that only those who are eligible are able to enroll. It will encourage individuals to stay enrolled in coverage all year, reducing gaps in coverage and

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resulting in fewer individual mandate penalties, and help to lower premiums. This process begins in June 2017.

Recommendation 10

Design and implement procedures for verifying with IRS (1) household incomes when attested income amounts significantly exceed income amounts reported by IRS or other third party sources, and (2) family sizes.

HHS Response

(1) As part of our eligibility verification requirements, the Exchange verifies consumer reported income with trusted data from the IRS via the Federal Data Services Hub. The Exchange may set a reasonable threshold for acceptance in cases where the applicant's attestation of projected annual household income varies from income data received from trusted data sources. Annual household income may fluctuate year to year and throughout the year, making it difficult for consumers to project their income for the year ahead and in addition, income data from trusted data sources can be up to two years old. As such, in instances where applicant reported income is higher than information received from trusted data sources, HHS accepts consumer attestation, as allowed by regulation. HHS will assess the feasibility and burden on individuals of setting a reasonable threshold for the generation of annual household income inconsistencies that would require additional verification for consumer attested income that significantly exceeds income amounts reported by IRS or other third party sources. (2) HHS currently accepts attestation when a consumer provided family size does not match with IRS. Establishing a process to verify family size with IRS would require significant operational and privacy complexity in linking attested tax household size to the number of exemptions provided by IRS from the previous tax return on file.

Appendix IV: Comments from the Internal Revenue Service



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

June 22, 2017

Beryl Davis
Director, Financial Management and Assurance
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Davis:

Thank you for the opportunity to review the draft report, GAO-17-467, entitled *Improper Payments: Improvements Needed in CMS and IRS Controls over Health Insurance Premium Tax Credit*. We appreciate your acknowledgment of IRS efforts to administer the Premium Tax Credit (PTC) effectively and ensure that taxpayers claim and receive the correct amount of credit.

The IRS faces significant challenges administering refundable tax credits given their complex structural design and the difficulty in validating eligibility criteria. The volume of returns claiming the PTC and other refundable credits coupled with dwindling resources means that the IRS must make difficult decisions regarding the fairest and most equitable distribution of compliance resources. For example, where possible, we use Marketplace data during processing of tax returns claiming PTC in order to help reduce the need to resolve discrepancies through post-filing compliance activities. When that is not possible, we use risk-based selection criteria to develop an appropriate mix of audit work designed to fairly balance tax administration needs against the resources we have available.

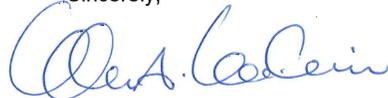
The IRS continues to use every tax administration tool and technique available to verify eligibility for the amount of the credit claimed. In your report, you make several recommendations concerning eligibility determinations, information sources, and tax compliance programs. We continually look for opportunities to improve tax administration, whether through the use of outreach and education activities or through the use of fraud, identity theft, and other filters intended to prevent improper reporting of PTC on tax returns to the extent possible. However, we continue to face significant challenges in the use of third party and other data to validate information provided by filers, because many potential sources contain information that is incomplete, out-of-date, or otherwise unsuitable for use in tax administration. Also, the complexity of the law means that not every situation is a matter for simple adjudication. The IRS must take all of these factors into account when designing and implementing pre-filing and post-filing approaches to tax compliance.

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The IRS recognizes that refundable tax credits may have compliance-related risks that differ from those associated with other tax provisions and that administration of these provisions must address these unique risks. In FY 2016, the IRS conducted a comprehensive PTC program risk assessment. In your report, you recognized that the IRS considered the nine risk factors delineated by the Office of Management and Budget (OMB) in its Circular A-123, Appendix C. Our risk assessment demonstrated that erroneous claims for Net PTC, as with other refundable credits, are not rooted in internal control weaknesses, financial management deficiencies, or financial reporting failures, but rather from eligibility criteria which cannot be verified independently except through an audit of the tax return. The IRS has committed to OMB that it will conduct a quantitative analysis of PTC in FY 2018, which is the first year that National Research Program (NRP) data will be available to perform such analysis. Our compliance estimates are based on NRP study data, and due to the timeframes involved in tax administration, NRP data lags behind the current year. The NRP expects to have sufficient data available this year for compliance analysis for tax year (TY) 2013 returns. Since TY 2014 was the first year for which PTC was available to taxpayers, this year's NRP data will be insufficient for analyzing PTC compliance.

Our comments to your recommendations are addressed in the attachment. If you have any questions, please contact me, or a member of your staff may contact John Pekarik, Associate Chief Financial Officer for Corporate Planning and Internal Control, at (202) 803-9151.

Sincerely,



John A. Koskinen

Enclosure

Enclosure

GAO Recommendations and IRS Comments
GAO-17-467
“Improper Payments: Improvements Needed in CMS and IRS Controls over Health Insurance Premium Tax Credit”

Recommendation 1: Assess the program against applicable IPIA-defined thresholds and conclude on its susceptibility to significant improper payments; and revise the scope of its improper payments susceptibility assessment for the PTC program to include instances in which the advance PTC is greater than or equal to the amount of PTC claimed on the tax return. If the program meets the IPIA definition for being susceptible to significant improper payments based on this assessment, estimate and report improper payments associated with the PTC program consistent with IPIA requirements.

Comment: The IRS partially agrees with this recommendation. Instances in which the Advance Payment of the Premium Tax Credit (APTC) is greater than or equal to the amount of PTC claimed on the tax return do not result in the IRS increasing the outlay related to PTC, and so by definition these occurrences are not subject to IPIA, as amended. The IRS understands and shares GAO’s concern about the misreporting of items on tax returns, including cases where the taxpayer misreports excess APTC, but the IRS has many compliance programs that operate outside the scope of IPIA and that address taxpayer error and noncompliance.

The IRS conducted its fiscal year 2016 PTC improper payment risk assessment consistent with guidance from the Office of Management and Budget (OMB), which concurred with our methodology. However, the IRS is committed to discussing with OMB a future change to the agreed-upon approach to assessing PTC improper payments as part of our larger and ongoing discussions with OMB about the administration of refundable tax credits and the challenges of reporting those credits through the framework of improper payments legislation and guidance.

Recommendation 2: Assess and document the feasibility of approaches for incorporating information from the marketplace on individuals who did not demonstrate that they met the eligibility requirements for citizenship or lawful presence in the tax compliance process. If determined feasible, IRS should work with Treasury to require marketplaces to periodically provide such information on individuals who did not demonstrate that they met the citizenship or lawful presence requirements and use such information to recover advance PTC made for those individuals.

Comment: The IRS agrees with this recommendation. We will evaluate the feasibility of receiving information from the marketplaces, and the value of using that information in our processes. If we determine that obtaining the data would be feasible and using it

would be cost-effective, we will consult with Treasury on regulations or other guidance needed to obtain the information.

Although eligibility determinations for the APTC are made outside the IRS's purview, the IRS has taken steps to ensure that the PTC is administered fairly and properly. For example, we have updated guidance in Publication 974, *Premium Tax Credit (PTC)*, to clarify that any advance payment of the PTC made on behalf of individuals who did not meet the citizenship or lawful presence requirements must be repaid in full. Taxpayers are required to report the excess APTC on their tax returns. If they do not, we address it through post-filing compliance.

Recommendation 3: Assess whether IRS should require its examiners to verify health care coverage of individuals to determine eligibility for PTC. To do this, IRS should complete its evaluation on the level of noncompliance related to duplicate health insurance coverage. Based on this evaluation and if cost effective, IRS should design and implement formal policies and procedures to routinely identify individuals inappropriately receiving PTC because of their eligibility for and/or enrollment in health care programs outside of the marketplace, and notify such individuals of their ineligibility for the PTC.

Comment: The IRS agrees with this recommendation. The IRS developed an ACA Compliance Strategy in October 2016, which included post-filing checks for the PTC. As you noted in your report, the IRS must rely upon post refund checks to verify if taxpayers had other healthcare coverage and therefore were not eligible to claim the PTC. For tax year 2017 the IRS plans to implement additional capabilities to evaluate the level of noncompliance related to duplicate health insurance coverage or offer of coverage. The IRS will continue to evaluate the results and design and implement cost effective policies and procedures that routinely identify individuals inappropriately receiving PTC, as warranted.

Recommendation 4: Design and implement procedures in the Internal Revenue Manual (IRM) for examiners in the post-filing compliance units to review tax returns for health insurance coverage for the entire year, and to identify and assess individual shared responsibility payments from those who are not appropriately reporting SRP on their tax returns.

Comment: The IRS disagrees with this recommendation. The IRS developed plans to evaluate and perform post-filing checks with individuals who do not comply with Shared Responsibility Payment (SRP) requirements. Procedures were previously designed and implemented for use by Field Examination to properly evaluate the SRP. Existing SRP compliance processes were documented in lead sheets for the 2014 through 2016 tax years and made available to tax examiners. A new IRM section was drafted for examiners in post-filing compliance units, who are responsible for reviewing tax returns to determine whether health insurance coverage is reflected for the taxpayer for the entire year, and for identifying and assessing SRP on taxpayers who are not appropriately reporting SRP on their tax returns. The IRM section is pending approval

by Exam Policy. Additionally, in 2016, SB/SE Field Exam provided SRP training sessions and instructions to all examiners. The IRS will continue to perform evaluations of our post-refund compliance strategies. As noted in your report, we must rely upon post-refund checks to assess compliance with the SRP. Starting in 2016, the IRS began receiving key data from issuers, federal and non-federal employers, and government-sponsored programs. We will continue to assess and evaluate the use of this data in our post-refund compliance plans.

Recommendation 5: Design and implement procedures in the IRM to regularly notify nonfilers of the requirement to file tax returns in order to continue to receive advance PTC in the future.

Comment: The IRS partially agrees with this recommendation. The IRS began processing tax year 2014 PTC-related tax returns during the 2015 filing season. During the processing of the return, the IRS corresponded with taxpayers who filed but did not reconcile the APTC received using Form 8962, *Premium Tax Credit*. If taxpayers did not respond to the IRS correspondence it could have resulted in an increase to the taxpayer's tax liability on their tax return.

In addition, using a research-based approach to evaluate the 2015 filing season results, the IRS also developed a post-compliance process to send notices to individuals who received APTC paid on their behalf in the previous calendar year but failed to file a tax return, and also to those who requested an extension to file.

The IRS is committed to informing taxpayers that they are required to reconcile the APTC paid on their behalf in order to continue to receive APTC in future years. Each year since the implementation of ACA, we have used this research-based approach to determine the appropriate post-compliance activities. Being flexible in our approach has allowed us to refine our processes to improve efficiency and effectiveness. Based on the 2017 research analysis, we will determine if the information should be included in an existing IRM.

Appendix V: GAO Contact and Staff Acknowledgements

GAO Contact

Beryl H. Davis, Director, (202) 512-2623 or DavisBH@gao.gov

Staff Acknowledgments

In addition to the contact named above, Matthew Valenta, Assistant Director; Maria Hasan, Auditor in Charge; Jeff Arkin; Laura Bednar; Marcia Carlsen; Nina Crocker; Francine DeVecchio; Maxine Hattery; Wilfred Holloway; Jason Kelly; Jason Kirwan; Heena Patel; Ricky A. Perry, Jr.; Kailey Seibert; Monasha Thompson; and Jingxiong Wu made key contributions to this report.

Appendix VI: Accessible Data

Agency Comment Letters

Text of Appendix III: Comments from the Department of Health and Human Services

Page 1

Beryl Davis

Director , Financial Management and Assurances

U.S. Government Accountability Office 441 G Street NW

Washington , DC 20548 Dear Mr. Davis:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "Improper Payments: Improvements Needed in CMS and IRS Controls over Health Insurance Premium Tax Credit" (GAO-17-467).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

Barbara Pisaro Clark

Acting Assistant Secretary for Legislation

Attachment

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GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED: IMPROPER PAYMENTS : IMPROVEMENTS NEEDED IN CMS AND

IRS CONTROLS OVER HEALTH INSURANCE PREMIUM TAX CREDIT (GAO- 17-467)

The U.S. Department of Health and Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report. HHS is committed to ensuring access to high quality affordable healthcare for all Americans by verifying the eligibility of consumers who apply for enrollment in qualified health plans through a Federally-facilitated Exchange (Exchange), also referred to as a Marketplace, or for insurance affordability programs, including Medicaid and the Children's Health Insurance Program

(CHIP), and providing coverage to eligible individuals. HHS takes seriously its responsibilities to protect taxpayer funds while reducing the burden on consumers, employers, and other individuals and entities involved in the Exchange and other insurance affordability programs.

Exchange Program Integrity

In order to better protect consumers and taxpayer dollars, HHS is implementing a number of initiatives to enhance operations with a focus on program integrity . HHS has expertise in preventing and detecting fraud, waste, and abuse from its other programs and is applying program integrity best practices to the Exchange. In addition, HHS has experienced program integrity staff that works to prevent and address instances of potential fraud. As recommended by the GAO¹, HHS is conducting an Exchange Fraud Risk Assessment, leveraging the GAO's

fraud risk framework.² The GAO's framework identifies leading practices for managing fraud risks and was developed to help managers combat fraud and preserve integrity in government agencies and programs. HHS is using this framework to identify and prioritize key areas for potential risk in the Exchange.

HHS has also begun work toward reporting advance payments of premium tax credit (APTC) improper payment estimates and as part of

¹ "Patient Protection and Affordable Care Act: CMS Should Act to Strengthen Enrollment Controls and Manage Fraud Risk"(GAO-16-29, released February 2016)

² "A Framework for Managing Fraud Risks in Federal Programs" (GAO-15-593SP, released July 20 15)

that process, conducted a risk assessment, as required by the Improper Payments Information Act of 2002 (IPIA), as amended, and Office of Management and Budget (OMB) guidance. As GAO reported, HHS appropriately assessed all risk factors required by IPIA and OMB, appropriately tailored the risk factors to the APTC program, and reached a conclusion supported by its analysis. Given the complexities of this program, HHS is piloting different measurement methodologies for estimating improper payments associated with APTC to ensure accuracy and efficiency in reporting an improper payment rate. In addition, as with other HHS programs, HHS has provided high-level information on the APTC risk assessment, such as the outcome of the risk assessment and next steps for determination of an improper payment rate, in the annual Agency Financial Reports.

Exchange Identity Verification Process

Before an individual can submit an application on HealthCare.gov, HHS verifies the adult application filer's identity to protect the privacy of personal information. To support exchanges in the verification of the identity of individuals submitting their applications online, HHS developed a remote identity proofing service. While not an eligibility requirement of the statute,

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this practice complies with National Institute of Standards and Technology (NIST) standards when consumers are accessing online federal systems. The remote identity proofing service is administered by a private third-party provider and uses leading identity-proofing capabilities available on today's market, including customized authentication services. For individuals starting a new application via the Exchange call center, the individual provides answers to questions about personally identifiable information (PII) and other information in the application and verbally attests under penalty of perjury that the information provided is correct. If the individual later decides to access the information through HealthCare.gov, the individual is required to go through the remote identity proofing process. For paper applications, individuals must provide a name and complete address, as well as other identifying information including date of birth. Regardless of the route of submission, individuals attest under penalty of perjury that the information provided is accurate.

As discussed below, application information, whether received via HealthCare.gov, the call center, or paper, will go through the same

electronic eligibility verification process to determine whether an applicant is eligible for qualified health plan enrollment through the Exchange and/or insurance affordability programs .

The Exchange Eligibility Verification Process

In order to determine whether an applicant is eligible for qualified health plan enrollment through the Exchange and/or insurance affordability programs, HHS uses technology that allows the federal government to provide individuals with real-time, electronic eligibility verification via data sources available through the Federal Data Services Hub (Hub). The Hub provides a secure electronic connection between Exchanges and Medicaid/CHIP agencies with federal and private databases. These databases are used to verify eligibility and include records maintained by the Social Security Administration (SSA), the Internal Revenue Service (IRS), the Department of Homeland Security (DHS), Equifax, the Department of Veterans Affairs (VA), Medicare, Peace Corps, the Office of Personnel Management (OPM), TRICARE, and State Medicaid Agencies. The Hub supported tens of millions of data verifications during the first four open enrollment periods . For example, as the GAO reported, CMS' control activities for verifying citizenship and lawful presence with SSA or DHS were properly designed and implemented, and operating as designed .

Sometimes an applicant 's eligibility information cannot be verified in real time by a trusted data source. These situations often involve people who have gained or lost a job, divorced , or changed their name. The verification process relies on the most recent data contained within the trusted data sources; however, the nature of the application information that is verified may change frequently, and the information contained in the trusted data sources may be out of date when a consumer submits an application. For example, IRS data is the primary source of income information as required by the Affordable Care Act (ACA), and it may be up to two years old depending on the most recent tax return filed by the applicant. When submitting the application information required by the ACA, individuals attest, under penalty of perjury, that the information they submit is accurate. Knowingly and willfully providing false or fraudulent information is a violation of federal law and subject to a fine of up to \$250,000.

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If an applicant provides information that cannot be verified by the trusted data sources, this does not necessarily mean the individual is ineligible for coverage and/or insurance affordability programs . In these cases, the statute requires the Exchanges make a reasonable effort to identify and address the cause of the inconsistency (otherwise known as a data matching issue) between the trusted data source and the information provided by the applicant. During this inconsistency resolution period, the ACA provides the applicant with eligibility for coverage through the Exchanges or for an insurance affordability program based on the information they attested to in their application .

Consistent with the law and regulations, to resolve such an inconsistency, the Exchange provides the applicant the opportunity to submit documentary evidence to prove eligibility within 90 or 95 days (as applicable, depending on the cause of the inconsistency). Contracted staff review the supporting documentation submitted by applicants to check that it is valid and sufficient to verify the application information before resolving the inconsistency issue. If an applicant does not provide satisfactory documentation within the required time to resolve their inconsistency, the Exchange will subsequently determine the applicant's eligibility based on the information contained within the trusted data sources, as required by the law. The Exchange continues to review documentation submitted by consumers and, if necessary, will end enrollment through the Exchange and/or adjust APTC as appropriate.

HHS has also recently taken steps to strengthen eligibility requirements and reduce fraud, waste, and abuse. In April 2017, HHS issued the final Market Stabilization rule, to help stabilize the individual and small group markets and increase choices for Americans . Consistent with this rule, individuals are required to submit supporting documentation when they apply for coverage through certain special enrollment periods, helping to ensure that only those who are eligible are able to enroll. The rule also encourages individuals to stay enrolled in coverage all year, and adds additional safeguards to ensure only those eligible to enroll through a special enrollment period are enrolled.

Tax Filing Requirement

To further protect the integrity of the Exchange and in accordance with the eligibility process created by the ACA, at the end of the tax year, every tax filer on whose behalf APTC were paid must file a federal

income tax return to reconcile the APTC received based on the tax filer's final actual income for the year, since APTC provided to qualified health plan issuers is based on a consumer's estimated projected income for the coverage year. The IRS, through the tax filing process, reconciles the difference between the APTC paid to the qualified health plan issuer on the tax filer's behalf and the actual amount of the premium tax credit that the tax filer was entitled to claim. If Exchange consumers do not file their tax return and reconcile APTC previously paid on their behalf, they are not eligible to continue to receive APTC. The IRS provides information to Exchanges on consumers who received APTC in the prior coverage year but have not taken the necessary steps to file a tax return and reconcile APTC

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Due to the normal time lag of data processing and updating in IRS systems and consumers' ability to receive tax filing extensions from the IRS, HHS accepted tax filers' attestations to having filed a tax return beginning with the 2016 open enrollment period. Consumers who were enrolled in Exchange coverage with APTC in 2015 who did not return to the Exchange to submit or update their application and select a plan during open enrollment for 2016 coverage, were auto re-enrolled without APTC if IRS data indicated to the Exchange that they had not filed a 2014 tax return and these consumers did not attest that the tax filer had met the requirement to file a tax return and reconcile APTC paid for 2014.

In May 2016, HHS conducted a check of IRS data to confirm whether consumers who were enrolled in Exchange coverage with APTC and had attested to filing a tax return for 2014 had, in fact, filed a tax return for 2014. These applications were rechecked against IRS data again in September 2016 following notification to applicable consumers that immediate action to file and reconcile was required, and those that still had not filed had their APTC ended as of November 1, 2016.

Making APTC Payments

HHS takes the stewardship of tax dollars seriously and has implemented a series of payment and system controls to assist in making accurate and timely financial assistance payments to issuers. HHS makes payments of APTC to health insurance issuers on behalf of consumers who are eligible for financial assistance. HHS fully transitioned qualified health plan issuers operating through the Exchange to an automated payment system in May 2016, allowing processing of payments on a policy-level

basis. The automated system allows the exchanges, HHS, and issuers to share health insurance information, such as individuals included in a policy, the qualified health plan selected and the associated premium amount, and eligible financial assistance payment amount. As the GAO reported, HHS properly designed and implemented control activities related to the accuracy of APTC payments made to certified issuers. In addition, under HHS' Office of Management and Budget A-123 internal controls review over financial reporting, key controls surrounding the payment process were tested and determined to be operating effectively. Moreover, an independent certified public accounting firm conducted its review of the payment process and reported no significant issues. Lastly, HHS has undergone an Agreed upon Procedures (AUP) review to evaluate the payments and controls under the payment processes. These reports are shared with GAO and IRS annually. No major findings were noted during Fiscal years 2014, 2015, and 2016.

Improving our Programs

HHS looks forward to continuing to benefit from suggestions from our partners in the GAO and HHS OIG on ways to improve our operations so eligible consumers can gain coverage through the Exchanges and insurance affordability programs in a way that prevents consumer harm and protects taxpayer money. GAO's recommendations and HHS' responses are below.

Recommendation 1

Annually report improper payment estimates and error rates for the advance APTC program.

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HHS Response

HHS concurs with GAO's recommendation. In FY 2016, HHS completed a risk assessment of the APTC program and reported results in the FY 2016 Agency Financial Report. Currently, HHS is unable to specify the year the rate and amount will be reported due to the complexity and timing of the error rate measurement methodology development process, which involves conducting pilot testing, using those pilots to refine the methodology, and then undergoing the rulemaking process before implementing the methodology to ensure accurate and efficient reporting of an improper payment rate. HHS provided GAO some preliminary

estimates of timing; however, this timing is currently under review and may undergo revisions.

Recommendation 2

Until annual reporting of improper payment estimates and error rates for the APTC program is performed, disclose significant matters relating to IPIA estimation, compliance, and reporting objectives for the APTC program in the agency financial report, including CMS's progress and timeline for expediting the achievement of those objectives, and the basis for any delays in meeting IPIA requirements.

HHS Response

HHS concurs with GAO's recommendation. HHS reported information on the status of the APTC risk assessment in the FY 2014 to FY 2016 Agency Financial Reports. Now that the program's improper payment risk assessment is completed, HHS will continue to report on its progress in designing and implementing an improper payment estimate for the APTC program in future Agency Financial Reports.

Recommendation 3

Design and implement procedures for verifying the identities of phone and mail applicants to reasonably assure that ineligible individuals are not enrolled in qualified health plans in the marketplace or provided APTC.

HHS Response

For applications submitted online, HHS verifies the adult application filer's identity through a RIDP service to protect the privacy of personal information. Verification with the RIDP service is not an eligibility requirement, but rather a NIST requirement when consumers are accessing online federal systems and a way of protecting PII stored online. For individuals starting a new application via the Exchange call center, the call center representative uses verbal attestation for identity verification from the consumer as the individual answers questions about PII and other information required in the application. For paper applications, individuals must provide a name and complete address, as well as other identifying information including date of birth. Individuals attest on all applications, including the paper application that the information provided is accurate by signing under penalty of perjury.

Recommendation 4

Assess and document the feasibility and availability of obtaining sufficiently reliable data to verify individuals' residencies and lack of minimum essential coverage from non-federal

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employers and, if appropriate, design and implement procedures for using such data in its verification processes .

HHS Response

HHS concurs with GAO's recommendation. HHS's previous assessment of available electronic data sources did not identify any comprehensive national data source for verifying residency. HHS recently conducted a study to assess the feasibility of developing an employer-sponsored coverage database and determined that development would be costly and highly burdensome given available resources. Additionally, it would impose extra burden on employers to collect the information needed to build a comprehensive employer-sponsored coverage database. HHS will continue to assess and document whether any sufficiently reliable data sources exist and examine the feasibility of implementation.

Recommendation 5

Design and implement procedures for sending notices to non-federal employers on a routine basis and terminating APTC of individuals that have access to minimum essential coverage from their employers.

HHS Response

In 2016, HHS sent notices to certain employers whose employees received APTC for at least one month in 2016 and if the Exchange had an address for the employer. HHS is evaluating the 2016 employer notice program to determine the best approach for addressing the ACA requirement for notifying employers in subsequent years.

Recommendation 6

Assess and document the feasibility of approaches for (1) identifying duplicate government- sponsored coverage for individuals receiving Medicaid and CHIP coverage in FFM states outside of the states where

they attest to residing, and (2) periodically verifying individual's continued eligibility by working with other government agencies to identify changes in life circumstances that affect APTC eligibility-such as commencement of duplicate coverage or deaths-that may occur during the plan year and, if appropriate, design and implement these verification processes.

HHS Response

HHS concurs with GAO's recommendation. (1) HHS's preliminary analysis indicates that identifying government sponsored coverage for individuals receiving Medicaid and CHIP in Federally-facilitated Exchange states outside of the state where the applicant is enrolled in coverage would add several months to the time needed to execute the process of identifying duplicate enrollees and ending their APTC. Such additional time would significantly reduce the timeliness and effectiveness of the process and lead to an increase in burden on state Medicaid systems used to verify duplicate coverage. HHS will continue this analysis and document the feasibility of approaches for identifying duplicate government sponsored coverage for individuals receiving Medicaid and CHIP coverage in Federally-facilitated Exchange states outside of the application state of the consumer as well as periodically verifying individual's continued eligibility. (2) HHS has implemented a Periodic Data Matching process to proactively

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identify consumers who may be receiving Minimum Essential Coverage through Medicare, and thus are no longer eligible for financial assistance to help pay for Exchange coverage. HHS is also exploring approaches to identifying Exchange enrollees who may be deceased and should thus be disenrolled from coverage.

Recommendation 7

Assess and document the feasibility of approaches for terminating APTC on a more timely basis and, as appropriate, design and implement procedures for improving the timeliness of terminations.

HHS Response

HHS concurs with GAO's recommendation. HHS continues to assess the feasibility of terminating APTC at various times of the month as a result of consumers not resolving inconsistencies. HHS currently terminates APTC

between the 1st and 15th of the month following the end of the inconsistency clock in order to accommodate issuer processes. Processing in these cohorts also allows for operational and quality efficiencies for HHS since processes can be completed in batches.

Recommendation 8

Design and implement procedures for verifying compliance with applicable tax filing requirements, including the filing of the federal tax return and the Form 8962, Premium Tax Credit, necessary for individuals to continue to be eligible for PTC.

HHS Response

HHS concurs with GAO's recommendation. The IRS provides information to Exchanges on consumers who received APTC in the prior coverage year but have not taken the necessary steps to file a tax return and reconcile APTC. Beginning in Open Enrollment for 2018, the Federally-facilitated Exchange will end APTC on behalf of tax filers who have not filed or have not reconciled APTC, when that information is reported to the Exchange by IRS.

Recommendation 9

Design and implement procedures for verifying major life changes using documentation submitted by applicants during special enrollment periods

HHS Response

HHS concurs with GAO's recommendation . HHS is continually monitoring the operations of the Exchange and has taken several steps to analyze and strengthen current rules and procedures to ensure that only those who are eligible enroll through special enrollment periods. While special enrollment periods provide a critical pathway to coverage for qualified individuals who experience qualifying events, it's equally important that special enrollment periods are not misused or abused. In April 2017, HHS issued a final rule on Market Stabilization that promotes program integrity by requiring individuals to submit supporting documentation for special enrollment periods and ensures that only those who are eligible are able to enroll. It will encourage individuals to stay enrolled in coverage all year, reducing gaps in coverage and

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resulting in fewer individual mandate penalties, and help to lower premiums . This process begins in June 2017.

Recommendation 10

Design and implement procedures for verifying with IRS (1) household incomes when attested income amounts significantly exceed income amounts reported by IRS or other third party sources, and (2) family sizes.

HHS Response

(1) As part of our eligibility verification requirements , the Exchange verifies consumer reported income with trusted data from the IRS via the Federal Data Services Hub. The Exchange may set a reasonable threshold for acceptance in cases where the applicant's attestation of projected annual household income varies from income data received from trusted data sources. Annual household income may fluctuate year to year and throughout the year, making it difficult for consumers to project their income for the year ahead and in addition, income data from trusted data sources can be up to two years old. As such, in instances where applicant reported income is higher than information received from trusted data sources, HHS accepts consumer attestation, as allowed by regulation . HHS will assess the feasibility and burden on individuals of setting a reasonable threshold for the generation of annual household income inconsistencies that would require additional verification for consumer attested income that significantly exceeds income amounts reported by IRS or other third party sources. (2) HHS currently accepts attestation when a consumer provided family size does not match with IRS. Establishing a process to verify family size with IRS would require significant operational and privacy complexity in linking attested tax household size to the number of exemptions provided by IRS from the previous tax return on file.

Text of Appendix IV: Comments from the Internal Revenue Service

Page 1

June 22, 2017

Beryl Davis

Director, Financial Management and Assurance

U.S. Government Accountability Office 441 G Street, N.W

Washington, DC 20548 Dear Ms. Davis:

Thank you for the opportunity to review the draft report, GA0-17-467, entitled Improper Payments: Improvements Needed in CMS and IRS Controls over Health Insurance Premium Tax Credit. We appreciate your acknowledgment of IRS efforts to administer the Premium Tax Credit (PTC) effectively and ensure that taxpayers claim and receive the correct amount of credit.

The IRS faces significant challenges administering refundable tax credits given their complex structural design and the difficulty in validating eligibility criteria. The volume of returns claiming the PTC and other refundable credits coupled with dwindling resources means that the IRS must make difficult decisions regarding the fairest and most equitable distribution of compliance resources. For example, where possible, we use Marketplace data during processing of tax returns claiming PTC in order to help reduce the need to resolve discrepancies through post-filing compliance activities. When that is not possible, we use risk-based selection criteria to develop an appropriate mix of audit work designed to fairly balance tax administration needs against the resources we have available.

The IRS continues to use every tax administration tool and technique available to verify eligibility for the amount of the credit claimed. In your report, you make several recommendations concerning eligibility determinations, information sources, and tax compliance programs. We continually look for opportunities to improve tax administration, whether through the use of outreach and education activities or through the use of fraud, identity theft, and other filters intended to prevent improper reporting of PTC on tax returns to the extent possible. However, we continue to face significant challenges in the use of third party and other data to validate information provided by filers, because many potential sources contain information that is incomplete, out-of-date, or otherwise unsuitable for use in tax administration. Also, the complexity of the law means that not every situation is a matter for simple adjudication. The IRS must take all of these factors into account when designing and implementing pre-filing and post-filing approaches to tax compliance.

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GAO Recommendations and IRS Comments GAO-17-467

"Improper Payments: Improvements Needed in CMS and IRS Controls over Health Insurance Premium Tax Credit"

Recommendation 1:

Assess the program against applicable IPIA-defined thresholds and conclude on its susceptibility to significant improper payments; and revise the scope of its improper payments susceptibility assessment for the PTC program to include instances in which the advance PTC is greater than or equal to the amount of PTC claimed on the tax return. If the program meets the IPIA definition for being susceptible to significant improper payments based on this assessment, estimate and report improper payments associated with the PTC program consistent with IPIA requirements.

Comment:

The IRS partially agrees with this recommendation. Instances in which the Advance Payment of the Premium Tax Credit (APTC) is greater than or equal to the amount of PTC claimed on the tax return do not result in the IRS increasing the outlay related to PTC, and so by definition these occurrences are not subject to IPIA, as amended. The IRS understands and shares GAO's concern about the misreporting of items on tax returns, including cases where the taxpayer misreports excess APTC, but the IRS has many compliance programs that operate outside the scope of IPIA and that address taxpayer error and noncompliance.

The IRS conducted its fiscal year 2016 PTC improper payment risk assessment consistent with guidance from the Office of Management and Budget (OMB), which concurred with our methodology. However, the IRS is committed to discussing with OMB a future change to the agreed-upon approach to assessing PTC improper payments as part of our larger and ongoing discussions with OMB about the administration of refundable tax credits and the challenges of reporting those credits through the framework of improper payments legislation and guidance.

Recommendation 2:

Assess and document the feasibility of approaches for incorporating information from the marketplace on individuals who did not demonstrate that they met the eligibility requirements for citizenship or lawful presence in the tax compliance process. If determined feasible, IRS should work with Treasury to require marketplaces to periodically provide such information on individuals who did not demonstrate that they met the citizenship or lawful presence requirements and use such information to recover advance PTC made for those individuals.

Comment:

The IRS agrees with this recommendation. We will evaluate the feasibility of receiving information from the marketplaces, and the value of using that information in our processes. If we determine that obtaining the data would be feasible and using it

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would be cost-effective, we will consult with Treasury on regulations or other guidance needed to obtain the information.

Although eligibility determinations for the APTC are made outside the IRS's purview, the IRS has taken steps to ensure that the PTC is administered fairly and properly. For example, we have updated guidance in Publication 974, Premium Tax Credit (PTC), to clarify that any advance payment of the PTC made on behalf of individuals who did not meet the citizenship or lawful presence requirements must be repaid in full. Taxpayers are required to report the excess APTC on their tax returns. If they do not, we address it through post-filing compliance.

Recommendation 3:

Assess whether IRS should require its examiners to verify health care coverage of individuals to determine eligibility for PTC. To do this, IRS should complete its evaluation on the level of noncompliance related to duplicate health insurance coverage. Based on this evaluation and if cost effective, IRS should design and implement formal policies and procedures to routinely identify individuals inappropriately receiving PTC because of their eligibility for and/or enrollment in health care programs outside of the marketplace, and notify such individuals of their ineligibility for the PTC.

Comment:

The IRS agrees with this recommendation. The IRS developed an ACA Compliance Strategy in October 2016, which included post-filing checks for the PTC. As you noted in your report, the IRS must rely upon post refund checks to verify if taxpayers had other healthcare coverage and therefore were not eligible to claim the PTC. For tax year 2017 the IRS plans to implement additional capabilities to evaluate the level of noncompliance related to duplicate health insurance coverage or offer of coverage. The IRS will continue to evaluate the results and design and implement cost effective policies and procedures that routinely identify individuals inappropriately receiving PTC, as warranted.

Recommendation 4:

Design and implement procedures in the Internal Revenue Manual (IRM) for examiners in the post-filing compliance units to review tax returns for health insurance coverage for the entire year, and to identify and assess individual shared responsibility payments from those who are not appropriately reporting SRP on their tax returns.

Comment:

The IRS disagrees with this recommendation. The IRS developed plans to evaluate and perform post-filing checks with individuals who do not comply with Shared Responsibility Payment (SRP) requirements. Procedures were previously designed and implemented for use by Field Examination to properly evaluate the SRP. Existing SRP compliance processes were documented in lead sheets for the 2014 through 2016 tax years and made available to tax examiners. A new IRM section was drafted for examiners in post-filing compliance units, who are responsible for reviewing tax returns to determine whether health insurance coverage is reflected for the taxpayer for the entire year, and for identifying and assessing SRP on taxpayers who are not appropriately reporting SRP on their tax returns. The IRM section is pending approval

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by Exam Policy. Additionally, in 2016, SB/SE Field Exam provided SRP training sessions and instructions to all examiners. The IRS will continue to perform evaluations of our post-refund compliance strategies. As noted in your report, we must rely upon post-refund checks to assess compliance with the SRP. Starting in 2016, the IRS began receiving key

data from issuers, federal and non-federal employers, and government-sponsored programs. We will continue to assess and evaluate the use of this data in our post-refund compliance plans.

Recommendation 5:

Design and implement procedures in the IRM to regularly notify nonfilers of the requirement to file tax returns in order to continue to receive advance PTC in the future. .

Comment:

The IRS partially agrees with this recommendation. The IRS began processing tax year 2014 PTC-related tax returns during the 2015 filing season. During the processing of the return, the IRS corresponded with taxpayers who filed but did not reconcile the APTC received using Form 8962, Premium Tax Credit. If taxpayers did not respond to the IRS correspondence it could have resulted in an increase to the taxpayer's tax liability on their tax return.

In addition, using a research-based approach to evaluate the 2015 filing season results, the IRS also developed a post-compliance process to send notices to individuals who received APTC paid on their behalf in the previous calendar year but failed to file a tax return, and also to those who requested an extension to file.

The IRS is committed to informing taxpayers that they are required to reconcile the APTC paid on their behalf in order to continue to receive APTC in future years. Each year since the implementation of ACA, we have used this research-based approach to determine the appropriate post-compliance activities. Being flexible in our approach has allowed us to refine our processes to improve efficiency and effectiveness. Based on the 2017 research analysis, we will determine if the information should be included in an existing IRM.

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