



441 G St. N.W.
Washington, DC 20548

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October 27, 2022

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Republican Leader
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Affordability of Employer Coverage for Family Members of Employees*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled "Affordability of Employer Coverage for Family Members of Employees" (RIN: 1545-BQ16). We received the rule on October 11, 2022. It was published in the *Federal Register* as final regulations on October 13, 2022. 87 Fed. Reg. 61979. The effective date is December 12, 2022.

According to IRS, this final rule provides guidance on the affordability of employer-sponsored minimum essential coverage (employer coverage) for family members of employees. IRS stated that the rule amends the section 36B regulations of the Internal Revenue Code (26 U.S.C. § 36B) regarding eligibility for the premium tax credit to provide that affordability of employer coverage for family members of an employee is based on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee. IRS also indicated that the rule adds a minimum value rule for family members of employees based on the benefits provided to the family members.

Enclosed is our assessment of IRS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Oluwafunmilayo A. Taylor
Chief, Publications and Regulations Branch, Legal Processing Division
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE
ENTITLED
“AFFORDABILITY OF EMPLOYER COVERAGE
FOR FAMILY MEMBERS OF EMPLOYEES”
(RIN: 1545-BQ16)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) conducted an economic analysis of this final rule. According to IRS, the benefits of the rule include making health insurance coverage more affordable for presently uninsured individuals as well as providing currently insured individuals an additional health insurance option that could provide coverage at a lower cost or with more comprehensive benefits. In regard to the costs of the rule, IRS indicated that adding the new option for eligibility for the Premium Tax Credit (PTC) increases the cost to IRS to evaluate PTC claims. According to IRS, the agency’s PTC infrastructure will require one-time changes to certain processes, forms, and instructions to be implemented in time for the 2023 taxable year, and IRS expects that the cost of these changes will be negligible. Additionally, IRS stated that it anticipates that the rule’s total administrative costs to the Centers for Medicare & Medicaid Services, State and Federal Exchanges, state Medicaid Agencies, and Enhanced Direct Enrollment partners will be modest. IRS also noted that in regard to transfer payments, the rule may increase the amount of PTC being paid by the government and reduce employer contributions as well as possibly increase the amount of tax revenue received from income and payroll taxes.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

IRS certified that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

IRS determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million (updated annually for inflation) or more.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 7, 2022, IRS published a proposed rule. 87 Fed. Reg. 20354. IRS received 3,888 comments on the proposed rule and responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

IRS determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

IRS promulgated this final rule pursuant to section 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS determined that this final rule is subject to review under the Order.

Executive Order No. 13132 (Federalism)

IRS determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.