Center on Budget and Policy Priorities

820 First Street NE, Suite 510
Washington, DC 20002

Tel: 202-408-1080
Fax: 202-408-1056

center@cbpp.org
www.cbpp.org

November 14, 2017

# Threat of Tax Credit Repayment Would Reduce Coverage, Put Many Families at Financial Risk

## Instead, Protections Should Be Extended to Middle-Income Families

By Tara Straw

Almost all of the House and Senate Republican plans to repeal the Affordable Care Act (ACA), including the most recent proposal from Senators Bill Cassidy and Lindsey Graham, include a little-discussed provision to increase the financial liability of people who accept advance payments of the ACA's premium tax credit to help pay health insurance premiums. The provision would eliminate the cap on the amount that families must repay if their income or circumstances change over the course of the year. Such changes can lead to families receiving a larger premium tax credit in advance than they turn out to qualify for — even if they correctly reported their income and circumstances each month. While families in these situations owe money back to the federal government, the current repayment caps protect low- and moderate-income enrollees against having to pay back a larger amount of the premium credit than they and their families can afford.

If the repayment caps were removed, as proposed in the Republican repeal bills:

- **It would punish people for unanticipated changes in their income and household size.** Many changes — such as fluctuating self-employment income, finding or losing a job, or receiving a lump-sum payment — are hard to predict. The impact of eliminating the repayment cap would be harshest for families with low or modest incomes and people nearing retirement, since they receive the largest subsidies.
- **It would deter 250,000 people from obtaining health coverage due to fear of excessive repayment, the Joint Committee on Taxation (JCT) estimates.**[1] This is because the low-income people who make up the majority of marketplace enrollees may not be able to bear the financial risk of possibly repaying thousands of dollars if some unexpected event occurs in their lives.
- **It could undermine efforts by policymakers of both parties to strengthen the individual market by broadening the risk pool.** Faced with the choice of risking full repayment or going uninsured, those who forgo coverage would likely be healthier than average, since sicker

[1] "Protecting Taxpayers by Recovering Improper Obamacare Subsidy Overpayments Act," House Ways and Means Committee Report 114-475, March 23, 2016, https://www.congress.gov/114/crpt/hrpt475/CRPT-114hrpt475.pdf.

people are less likely to risk going without insurance. As a result, the pool of people covered through the marketplaces would be sicker overall — the exact opposite of what bipartisan market stabilization efforts aim to achieve.

Rather than eliminating repayment protections for marketplace enrollees, policymakers should strengthen them by applying the repayment cap to households above 400 percent of the poverty line. President Trump and Republican Senators Ron Johnson and Susan Collins have each highlighted the hardships that families face when they must pay back large advance credits after exceeding the income ceiling for receiving subsidies, but the Republican proposal to eliminate the cap would do nothing to help these families. Instead, it would subject many more families to similar financial hardship.

## How the Repayment Cap Works

The ACA's tax credit offsets premiums for coverage purchased through the marketplace. It is available in advance to people with incomes between 100 and 400 percent of the poverty line ($16,020 to $64,080 for a family of two) who don't have access to public coverage (such as Medicaid) or affordable employer-sponsored coverage.[2] The amount of the credit is based on the taxpayer's projection of family income and household composition for the coming year — as verified by the marketplace — and is paid directly to the taxpayer's insurer.

The income that applicants report is matched with IRS information and data from a credit reporting agency. When electronic data on income aren't available or the applicant's attestation of income isn't "reasonably compatible" with electronic data, applicants can receive financial assistance (based on the income information they provided on the application) for 90 days, during which they must take further steps to verify their income. If they don't provide documentation to the marketplace's satisfaction within 90 days, their premium tax credit is adjusted or ended.

When people file their tax returns, the tax credit is reconciled (that is, recalculated based on *actual*, instead of projected, income and family size). If a family has earned *less* than it had estimated, it can claim a higher credit on its tax return; if it earned *more*, it must repay some or all the credit received. Reconciliation is based on the person's income for the year even if he received the correct subsidy based on his income in the months he received assistance. For example, a person who is unemployed at the start of the year may project his income based on the amount of unemployment compensation he expects to receive, since it may be hard to project when he'll get a new job or how much he'll earn. When he gets a job that includes health benefits, he discontinues the subsidy. At the end of the year, his credit will be reconciled based on his total income for the year, even if his subsidy was correct based on the income he received in the months he received the advanced credit.

This provision differs sharply from virtually all other means-tested programs, which base eligibility on current income; if a household's income rises during the year, it stops receiving assistance or receives less, but it doesn't have to pay back what it received during its period of need.

[2] Eligibility for a premium tax credit in 2017 is determined by the 2016 poverty line. Numbers reflect households in the 48 contiguous states plus the District of Columbia.

Bridging the gap between traditional means-tested programs and the ACA's unique advance tax credit structure, the ACA set a family's maximum repayment at $250 for single filers and $400 for everyone else to protect families against repayment amounts that could be financially devastating. Since the ACA's enactment, however, policymakers have twice raised — substantially — the amounts that households can be required to repay. The current caps range from $300 to $2,550, depending on the taxpayer's income and tax filing status (see Table 1), increasing the amounts that some families can be required to repay to more than six times over what the ACA initially required.

TABLE 1

### Premium Tax Credit Repayment Caps, 2017

| Income (as % of the poverty line) | Taxpayers Filing as Single Pay Back Up To: | Taxpayers Using Other Filing Statuses Pay Back Up To: |
|---|---|---|
| Under 200% | $300 | $600 |
| At least 200% but less than 300% | $750 | $1,500 |
| At least 300% but less than 400% | $1,275 | $2,550 |
| 400% and above | Full repayment | Full repayment |

The repayment caps protect a minority of marketplace enrollees from severe financial hardship, at a relatively modest cost to the federal government. In 2015, 62 percent of people who received advance payments had to repay excess premium tax credits.[3] This is expected, since the premium tax credit is very sensitive to changes in income. However, the repayment amounts for 72 percent of people who received an overpayment fell under the caps, meaning they had to pay back the full amount. Only 28 percent of marketplace enrollees who owed money back — or 17 percent of all taxpayers who claimed premium tax credits — had those repayments limited by the cap. In total, the IRS estimates that in 2015, the cap reduced repayments of premium tax credits by only $874 million, or 4.6 percent of the total premium tax credits claimed.

## Many Life Changes Affecting Credit Amounts Are Not Foreseeable

Many changes in income and household size that can alter a family's premium tax credit are hard to predict. That can be true, for example, for those who are self-employed, work overtime or have multiple part-time jobs, or receive lump-sum income. For instance, a low-income individual who receives a lump-sum taxable death benefit upon the death of a close family member will have income that is higher than originally projected and could face a large repayment obligation if the repayment caps are eliminated. The same is true for self-employed people who may have trouble projecting their income and expenses for the year and could face a large repayment obligation if they exceed their anticipated income.

A change in the taxpayer's household composition also can affect his premium tax credit. The credit is determined by household income as a percentage of the poverty line, which measures income in relation to family size. As with income, a taxpayer's family size (in this case, the number of personal and dependency exemptions claimed on the tax return) isn't determined until the end of

[3] Letter of IRS Commissioner Koskinen to Congress, January 9, 2017, https://www.irs.gov/pub/newsroom/commissionerletteracafilingseason.pdf.

the tax year. If a taxpayer expected to claim an individual as a dependent but in the end couldn't do so, the taxpayer's income will rise as a percentage of the poverty line — and his subsidy will fall, even though the family's income hasn't changed.

For example, consider a family consisting of a woman enrolled in marketplace coverage and her 18-year-old son enrolled in Medicaid. The woman's income of $23,000 is 143 percent of poverty for a household of two and her tax subsidy is $6,705. (As a dependent, her son's projected income isn't high enough to create a tax-filing requirement and so doesn't count toward household income.) But her son turns 19 by the end of the tax year and his income is a little higher than anticipated, so he must file his own tax return and cannot be claimed as his mother's dependent. When she reconciles her credit, her same $23,000 of income puts her at 194 percent of poverty for a household of one with credit eligibility of $6,134. Under current law, the repayment cap would limit her repayment to $300; without the cap, she would owe $571.[4]

People who receive advance premium tax credits must report changes in their income and household composition throughout the year. Yet prompt reporting often can't avoid an "overpayment." Consider a couple in their late 50s, with one spouse unable to work, who project earnings of $19,000 in 2017 (119 percent of the poverty line), making them eligible for a $16,500 advance premium tax credit.[5] In November, a disability claim for the non-working spouse is resolved retroactive to 2014 for a lump-sum payment of $37,000. Instead of $19,000, the couple's income for the year totals $56,000 (349 percent of the poverty line). The couple immediately reports the additional income to the marketplace, triggering a redetermination of their eligibility and a reduction in their credit, but it is too late in the month to cancel disbursement of December's credit. Under current law, the couple would face a $2,550 repayment at tax time. But under the Republican recapture proposal, they would owe more than $5,000, despite timely and accurate reporting at every stage.

In addition, some changes in tax filing status can make a person ineligible for the subsidy altogether, such as when a person separates from a spouse and chooses not to file a joint tax return. Couples who separate during the year and file their taxes separately must repay some or all of their premium subsidy, even if the subsidy was based on an accurate estimate of their income in the months before they separated. For instance, consider a married person who separates from her husband after the close of the tax year. At the start of the year, they had enrolled in marketplace coverage with an advance premium tax credit of $5,381, based on their household income of $40,000. At the end of the year, she files separately from her husband. With a tax status of Married Filing Separately, she is ineligible for the credit and must pay half of it back. At her income of $18,000 (152 percent of poverty), her repayment would be capped at $600 under current law, but under the GOP proposal, she would owe nearly $2,700.[6]

[4] Kaiser Family Foundation Health Insurance Marketplace Calculator using the national average figures for a 55-year-old adult, https://www.kff.org/interactive/subsidy-calculator-2017/.

[5] Kaiser Family Foundation Health Insurance Marketplace Calculator using the national average figures to determine the premium tax credit of a couple ages 57 and 58 in a state that hasn't expanded Medicaid, https://www.kff.org/interactive/subsidy-calculator-2017/.

[6] Kaiser Family Foundation Health Insurance Marketplace Calculator using the national average figures for two 40-year-old adults, https://www.kff.org/interactive/subsidy-calculator-2017/.

## Low-Income Families and Older People Most at Risk

Eliminating the repayment cap would hurt low-income and older people more than other enrollees because they receive the largest credits. A large share of marketplace enrollees is low income or older, and many could face very big repayments if the caps were eliminated. Data on 2017 enrollment show that 71 percent of enrollees in the marketplaces have incomes below 250 percent of the poverty line.[7] In addition, 27 percent of enrollees are between ages 55 and 64, and another 21 percent are between 45 and 54.

A premium tax credit is calculated based on the difference between the cost of a benchmark insurance plan (technically, the second-lowest-cost "silver plan" in the marketplace) and the household's expected contribution, which is based on its income (the contribution for 2017 ranges from 2.04 to 9.69 percent of household income). For low-income families, the credit is usually high because both their income and the percentage of income they must contribute are low; the credit thus covers more of the cost of a benchmark plan. Increases in income — for example, getting a better-paying full-time job or a second part-time or seasonal job — can significantly reduce the subsidy the family is eligible to receive, since both the family's income and the percentage of income they must contribute are higher.

Consider a married couple in their early 50s with one teenage child and $29,000 of income (144 percent of the poverty line) from one spouse's earnings. This family qualifies for a premium tax credit. In September, the working spouse gets a new job that offers health coverage, the family takes the coverage, and they terminate their premium tax credit, effective September 30. The family's income for the year totals $40,000 (198 percent of the poverty line). Under current law, the family must pay back $600 at tax filing — the ceiling on repayments for married filers with incomes below twice the poverty line. Under the Republican proposal, however, the family would have to pay back more than $1,100, even though they did nothing wrong, their income estimate was accurate before the job change, and they promptly notified the marketplace to end their premium subsidy and marketplace coverage.[8]

In general, lower-income families face more financial exposure under the GOP plan than higher-income families. For example, a family of three in Augusta, Maine, with income of $30,000 would receive a $9,300 tax credit for purchasing a benchmark plan in 2017, exposing the family to a potential repayment of 31 percent of their income if their income or household changes during the year. That same family at an income of $60,000 would receive $4,700 in subsidies (8 percent of income).[9] So, for a lower-income family, the risk of repayment is much more consequential because the credit is larger both in dollar terms and as a percentage of their income. This may cause many

---

[7] Marketplace Open Enrollment Period Public Use Files, Centers for Medicare & Medicaid Services, Department of Health and Human Services, May 11, 2017, https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/Plan_Selection_ZIP.html.

[8] Kaiser Family Foundation Health Insurance Marketplace Calculator using national average figures for a couple, ages 52 and 53, and their child for nine months of coverage. https://www.kff.org/interactive/subsidy-calculator-2017/.

[9] Kaiser Family Foundation Health Insurance Marketplace Calculator for Maine (zip code 04330) with two adults, both age 36, and one child, https://www.kff.org/interactive/subsidy-calculator-2017/.

low-income families — who make up the bulk of marketplace enrollment — to reconsider whether they can risk the financial exposure of accepting the credit.

Likewise, older enrollees face greater exposure to high repayment than younger enrollees because they have higher premiums and thus receive larger premium tax credits. For example, a 60-year-old with income of $30,000 will receive an average subsidy of $6,700, compared to $900 for a 25-year-old at the same income.[10] This suggests that older enrollees may rely more on the caps to limit their financial exposure, and therefore would be harmed more by the GOP plan to eliminate the caps.

In addition to their greater reliance on the caps, older enrollees face greater consequences when their income is greater than 400 percent of poverty — the point at which no cap applies under current law. People nearing retirement age receive larger premium tax credits at higher incomes than do younger people (since the cost of a younger person's insurance is lower, causing them to lose federal assistance at a lower income), putting them at greater risk if they surpass the 400 percent-of-poverty threshold. A 64-year-old with income of $47,500 (400 percent of the poverty line for a single person) will receive, on average, $5,600 in tax subsidies, but if his income differs from the projection by only $100 — a holiday bonus, extra shift of work, or better-than-expected investment returns — it reaches 401 percent of poverty, requiring full repayment of the $5,600.

The risk is even greater in certain higher-cost states. For example, in Alaska, a 64-year-old with income at 400 percent of poverty receives a credit of $20,205 and would be at risk of repaying that entire amount because of only a small change in income; in North Carolina, such a person would receive (and be at risk of repaying) $10,718. These figures illustrate both the financial risk someone may assume in accepting the credit and the cost of premiums and continued need for assistance, even among people at the upper end of the ACA's income eligibility scale. (See Appendix Table 1.)

## Proposal Could Cause People to Go Without Coverage or Care

Approximately 83 percent of marketplace enrollees get advance payments of the premium tax credit.[11] Fear of high and burdensome repayments could cause 250,000 people to go without coverage, according to JCT.[12]

The GOP proposal may also affect the type of coverage people purchase. Some 71 percent of enrollees in 2017 chose silver plans.[13] Without a repayment cap, many people might elect to minimize the risk of repayment by taking less assistance (that is, smaller premium tax credits) in advance and choosing a cheaper bronze plan instead. If they did, they'd face much higher deductibles, leaving some people at risk of going without care, seeking uncompensated care from

---

[10] Kaiser Family Foundation Health Insurance Marketplace Calculator using the national average, https://www.kff.org/interactive/subsidy-calculator-2017/.

[11] "Health Insurance Marketplaces 2017 Open Enrollment Period: Final Enrollment Report: November 1, 2016-January 31, 2017," Centers for Medicare & Medicaid Services, March 15, 2017, https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-03-15.html.

[12] "Protecting Taxpayers by Recovering Improper Obamacare Subsidy Overpayments Act."

[13] "Health Insurance Marketplaces 2017 Open Enrollment Period: Final Enrollment Report: November 1, 2016-January 31, 2017."

health providers, or accumulating medical debt if they got sick and could not afford their high deductible.

## Proposal Could Undermine Marketplace Risk Pool

Many Democrats and Republicans have stressed the importance of broadening the risk pool to promote market stability. For example, Governors John Kasich and John Hickenlooper have written about the importance of maximizing market participation "to improve the risk pool and set in place a virtuous cycle of lower premiums leading to higher enrollment."[14] However, the Republican proposal could work in the opposite direction. Faced with the tradeoff between risk of repayment and going without health insurance, healthier people would be more likely to choose the latter since they have a lower perceived need for insurance. As a result, the pool of people enrolled through the marketplaces would become sicker, on average, pushing up everyone's premiums.

## Policymakers Should Strengthen, Not Weaken, Financial Protections

The current repayment caps are designed to strike a balance between making coverage affordable based on people's current circumstances and providing them with a tax credit based on the income they report on their tax returns. Scrapping the caps — and potentially requiring very large repayments at tax time from people who accurately reported their circumstances but subsequently gained a job, had a child leave home, or experienced another such change — would not represent sound policy. It would force families to weigh the risk of being uninsured against serious illness or injury against the risk of owing the government thousands of dollars due to unavoidable or unforeseeable changes in circumstances.

Instead, policymakers should extend the caps to eliminate the cliff on repayment above 400 percent of poverty and avoid the hardship that many people — particularly older enrollees — now face. As Senator Susan Collins of Maine recently said, "working harder to get ahead can instead make some Americans fall further behind" because in some cases "if they earn one dollar more than 400 percent of the poverty rate, they lose their entire subsidy" and could owe thousands of dollars.[15] The people most likely to have difficulty estimating income are self-employed workers and low-income people working multiple jobs to support a family.

The problem of the repayment cliff has been widely noted. Senator Ron Johnson, for example, told the story of a couple who had to repay the IRS $15,000 in premium tax credits after their income unexpectedly went above 400 percent of the poverty line.[16] Similarly, President Trump told an anecdote of a couple whose financial hardships required them to find additional work, only to see their income climb above 400 percent of the poverty line and require repayment of "thousands and

---

[14] Letter from Governor John Kasich *et al.,* "Blueprint for Stronger Health Insurance Markets," August 30, 2017, http://governor.ohio.gov/Priorities-and-Initiatives/Blueprint-for-Stronger-Health-Insurance-Markets.

[15] Remarks by Senator Susan Collins, "The Path to Health Care Reform," October 13, 2017, https://www.collins.senate.gov/sites/default/files/10.13.17%20PenBay%20Speech.pdf.

[16] "Johnson on health care: 'The status quo is unacceptable,'" *Washington Post,* July 27, 2017, https://www.washingtonpost.com/video/politics/johnson-on-health-care-the-status-quo-is-unacceptable/2017/07/27/c24f3088-7315-11e7-8c17-533c52b2f014_video.html?utm_term=.6c145a271b19.

thousands of dollars" in advance credits.[17] Unfortunately, the GOP proposal to extend full repayment to everyone would do nothing for either family; instead, many people with much lower incomes would lose their protections against catastrophic repayments.

The repayment cliff may pose particular problems in the reconciliation of the *2018* premium tax credit. Many insurers built the loss of cost-sharing reduction payments into their silver plan rates, raising the benchmark plan costs and markedly raising the premium tax credit in some areas. That means that more people of any age at higher income levels will rely on the premium tax credit to afford insurance and therefore run the risk of a high repayment.

Extending repayment protections would provide peace of mind to people — notably older consumers — who have projected income near the upper eligibility limit but whose premiums are so high that they need the help of premium tax credits to afford to enroll. It would also benefit people who have lower expected income but receive large, unexpected lump-sum payments during the year, such as a taxable death benefit or a multi-year disability payment. Instead of increasing hardships for the lowest-income people, lawmakers should consider expanding protections for everyone.

[17] President Donald J. Trump, Weekly Address, June 23, 2017, https://www.whitehouse.gov/the-press-office/2017/06/23/president-donald-j-trumps-weekly-address.

APPENDIX TABLE 1

## Premium Tax Credit at Risk of Repayment for a 64-Year-Old Marketplace Consumer

Premium Tax Credit Received at 400% of Poverty Line That Would Need to Be Repaid in Full if Income Rises to 401% of the Poverty Line, 2017

| | Premium Tax Credit at Risk of Full Repayment |
|---|---|
| **Alabama** | $8,588 |
| **Alaska** | 20,205 |
| **Arizona** | 9,893 |
| **Arkansas** | 3,916 |
| **Delaware** | 7,317 |
| **Florida** | 4,672 |
| **Georgia** | 4,775 |
| **Hawaii** | 4,454 |
| **Illinois** | 5,634 |
| **Indiana** | 3,264 |
| **Iowa** | 5,977 |
| **Kansas** | 5,977 |
| **Kentucky** | 4,294 |
| **Louisiana** | 7,077 |
| **Maine** | 6,287 |
| **Michigan** | 3,229 |
| **Mississippi** | 4,775 |
| **Missouri** | 5,874 |
| **Montana** | 8,485 |
| **Nebraska** | 9,516 |
| **Nevada** | 3,951 |
| **New Hampshire** | 2,920 |
| **New Jersey** | 5,222 |
| **New Mexico** | 3,092 |
| **North Carolina** | 10,718 |
| **North Dakota** | 5,290 |
| **Ohio** | 3,161 |
| **Oklahoma** | 9,962 |
| **Oregon** | 5,256 |
| **Pennsylvania** | 6,630 |
| **South Carolina** | 6,355 |
| **South Dakota** | 8,245 |
| **Tennessee** | 8,622 |
| **Texas** | 4,363 |
| **Utah** | 5,496 |
| **Virginia** | 4,466 |
| **West Virginia** | 8,657 |

APPENDIX TABLE 1

## Premium Tax Credit at Risk of Repayment for a 64-Year-Old Marketplace Consumer

Premium Tax Credit Received at 400% of Poverty Line That Would Need to Be Repaid in Full if Income Rises to 401% of the Poverty Line, 2017

| | Premium Tax Credit at Risk of Full Repayment |
|---|---|
| **Wisconsin** | 5,840 |
| **Wyoming** | 9,584 |

Note: Based on the average benchmark premium across HealthCare.gov states. 400% of the poverty line for the 2017 plan year is about $47,500 for a single person; $59,350 in Alaska; and $54,700 in Hawaii.
Source: CBPP analysis using data on benchmark premiums from "Health Plan Choice and Premiums in the 2017 Health Insurance Marketplace," HHS Office of the Assistant Secretary for Planning and Evaluation, October 24, 2016, https://aspe.hhs.gov/system/files/pdf/212721/2017MarketplaceLandscapeBrief.pdf.