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Jack Lew
Secretary of the Treasury
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

John Koskinen
IRS Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Kathleen Sebelius
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Ave. SW
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Dear Secretary Lew, Commissioner Koskinen and Secretary Sebelius:

We are writing to urge the IRS and Treasury Department to issue regulations or guidance that lay out a process for married individuals to access affordable health insurance in circumstances that make it impossible or inadvisable for the individual to file a joint tax return.[1] In such cases, the IRS should permit an allowance so that such individuals may be eligible for both the Advance Premium Tax Credit (APTC) and the Premium Tax Credit (PTC).

The IRS and Treasury asked for comments on this issue in the final rules on the Premium Tax Credit issued in 2012.[2] With only weeks remaining in the open enrollment period, there are many individuals who are left without access to affordable health insurance because no regulations or guidance have been issued for such an allowance. We cannot know how much potential Marketplace enrollment has been reduced because individuals who know they will be unable to file joint returns are not eligible for affordable coverage. We also cannot know how many families have enrolled in coverage and are receiving the APTC unaware that they will experience a change in circumstance that results in an inability to file jointly and a requirement to repay thousands of dollars during reconciliation under Section 1.36B. Time is therefore of the essence.

[1] IRC Section 7703 provides a provision for certain married individuals living apart to not be considered married for tax purposes. We are primarily addressing individuals through this letter that do not meet the limited circumstances of Section 7703, such as individuals with no dependent children living in their home or situations in which a spouse is abandoned less than six months before the end of the tax year. However, we are also concerned that there may be individuals that are not considered married under Section 7703 but are not aware of this provision and report themselves as married to the health insurance marketplace.

[2] Health Insurance Premium Tax Credit, Final Rule, 77 Fed. Reg. 30,385 (Mary 23, 2010).

There are three important protections that must be included in regulations or guidance.

1. Allowances must be made for legally married individuals to be eligible for the APTC and PTC in specific circumstances in which an individual is unable to file a joint tax return with her or his spouse. Among the specific circumstances that should be included are: an individual who is a survivor of domestic violence; an abandoned spouse; an individual whose spouse is incarcerated; and an individual who reasonably expected a divorce or legal separation to be final by the end of the tax year.

2. There must be a transition period for married individuals who are informally separated but not legally separated or divorced. A one-year transition period would allow for individuals who have been separated for a long time to learn about the requirement to file jointly without being denied access to the APTC or PTC in 2014.

3. IRS and Treasury should work with the Department of Health and Human Services to ensure that the resulting eligibility for the APTC and cost sharing tax credits created by the issuance of guidance or regulations for individuals who fit into any of the specified categories and are otherwise eligible is defined as an exceptional circumstance allowing for a special enrollment period.

1. <u>Allowances must be made for legally married individuals to be eligible for the APTC and PTC in specific circumstances in which an individual is unable to file a joint tax return with her or his spouse.</u>

There are numerous situations in which it is legitimately inadvisable or impossible for a married tax filer to file a joint return. While there are numerous other tax credit rules that have similar requirements for married individuals to file jointly, the PTC is different because of the interaction with the APTC. Since the APTC is awarded throughout the year and effectively reduces the cost of health insurance, eligibility has a direct impact on an individual's ability to afford health insurance each month. In addition, because the APTC is awarded throughout the year, an individual who receives the APTC but is unable to file a joint tax return with her spouse could face thousands of dollars in repayment when she files taxes. This repayment could be required even if a situation outside of her control prevents her from filing a joint return or becoming legally separated or divorced before the end of the tax year. Any documentation related to the allowance should not be required to be dated within the tax year because there may be circumstances in which an individual is not aware of the interaction between filing jointly and the repayment of the APTC until she prepares her taxes.

a. Domestic Violence Survivors

It is particularly important that the eligibility rules for the APTC and PTC do not create barriers for survivors of domestic abuse to leave an abusive spouse. The value of the APTC and PTC could reach thousands of dollars per year, and a married taxpayer who files separately may be liable to repay far more than she can afford. (This is true even where the repayment limits in

Section 1.36B-4(a)(3) apply, especially since these limits are now substantially higher than they were when the ACA was passed.) Domestic violence survivors often already face economic barriers that make it difficult to flee an abusive situation, such as an inability to afford housing or a car. If a survivor preparing to leave an abusive spouse who has been receiving the APTC learns that she may also have to repay some or all of the advance payment unless she seeks a restraining order or similar documentation, it could discourage or prevent the survivor from leaving the abusive spouse.

We propose a process for survivors of domestic abuse to provide documentation in order to receive an allowance for the APTC or PTC when filing separately based on IRS Form 8857 (Request for Innocent Spouse Relief). IRS Form 8857 requires the tax filer to provide a written explanation of various circumstances relevant to the request for the allowance. Treasury could require the tax filer to briefly explain the circumstances supporting the request to file separately. The explanation could be written in a space provided following the checklist of permissible bases for the exception, or as a short attached statement if necessary (*see, e.g.,* Form 8857 questions 11, 14). Accompanying instructions should make clear that the explanatory statement does not need to provide extensive detail, so as to not discourage a tax filer because of privacy concerns. Like question 10 on Form 8857, which requests photocopies of documentation (such as a doctor's letter, police report, or notarized statement) *if available* in a case involving domestic abuse, the instructions for the allowance could provide examples of additional documents that may be submitted to support the tax filer's request, but must make clear that such documentation is not required.

We also recommend that any instructions related to receiving the APTC or PTC when married and filing separately note, like the recent proposed revenue procedure on innocent spouse relief,[i] that "abuse comes in many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate and intimidate the requesting spouse, or to undermine the requesting spouse's ability to reason independently and be able to do what is required under the tax laws."

b. Abandoned or Deserted Spouses

If one spouse abandons or deserts another and cuts off contact, then an abandoned spouse cannot file a joint tax return. As states generally have a time requirement to prove abandonment or desertion, it may not be possible for the abandoned spouse to receive a legal separation or divorce before the end of the tax year. Without a process to allow abandoned or deserted spouses to receive the PTC when filing separately, they will be left without access to affordable health insurance or with a requirement to repay thousands of dollars under Section 1.36B-4 when filing taxes.

We recommend a similar process that is used for the allowance for survivors of domestic abuse, based on IRS Form 8857. The documentation requirement for abandoned or deserted spouses could be met by any documents that show that the taxpayer was abandoned or deserted, cannot locate her spouse, and intends to terminate the marriage. Acceptable documentation should include, but not be limited to, a copy of a legal filing initiating divorce or separation, filing for child support, or a restraining order, a statement from the taxpayer, or a letter by an attorney or representative of the tax filer.

c. Incarcerated spouses.

There may be situations in which a spouse is unable to file a joint tax return with an incarcerated spouse. The administrative difficulties related to incarceration may make it impossible for the spouse to complete the tax returns and have the forms signed by the incarcerated spouse prior to the tax filing deadline. In these situations, a spouse should be able to receive an allowance to receive the APTC or PTC when filing separately.

We recommend a similar process that is used for the allowance for survivors of domestic abuse, based on IRS Form 8857. The documentation requirement for incarcerated spouses should show the tax filer's spouse is incarcerated and include a statement by the tax filer that the taxpayer is unable to have a joint tax return signed by the incarcerated spouse within the filing deadlines.

d. Individuals that reasonably expect a divorce or legal separation to be final by end of the tax year.

The process for a legal separation or divorce is uncertain and can take many months. There are multiple aspects of the process that are out of a spouse's control, including actions taken by the other spouse or scheduled dates for court proceedings. An allowance should be made for taxpayers that reasonably expect a divorce or legal separation to be final by the end of the tax year to receive the APTC or PTC and file separately. For example, a taxpayer may be moving forward with an agreeable divorce only to have the other spouse unexpectedly refuse to come to agreement on certain terms and refuse to communicate. The taxpayer may be left with an inability to receive cooperation from her spouse to file joint returns.

We recommend a similar process that is used for the allowance for survivors of domestic abuse, based on IRS Form 8857. The documentation requirement should show the taxpayer reasonably expected the marriage to be terminated through a legal separation or divorce by the end of the tax year. Acceptable documentation should include a copy of a legal filing initiating divorce or separation, filing for child support, or a restraining order, a statement from the taxpayer, or a letter from an attorney or other representative of the taxpayer.

2. <u>There must be a transition relief for individuals in long-term separation who have do not have a legal separation or divorce.</u>

Many low-income couples in long-term separations have never received a legal separation or divorce. These individuals live apart from their legal spouse, have separate finances and file taxes separately. Until these individuals try to enroll through the marketplace, they may be unaware that legally married couples can only receive the financial assistance to make coverage affordable if they file joint tax returns. As a result, these individuals are forgoing insurance coverage and remaining uninsured. We expect there are other individuals that may not be aware of the requirement to file jointly that are enrolling in coverage and receiving the APTC and who will have an unexpected financial burden when they file taxes and have to reconcile the APTC under Section 1.36B(4).

While marital separation is often a short period prior to reconciliation, legal separation or divorce, there are instances in which couples remain in long-term separations. If the informally separated spouse is not maintaining a household with a dependent child for at least half the year, she will not be able to file her taxes as unmarried under 26 U.S.C.A. §7703. If the informally separated spouse does not know where the other spouse is, or if there are domestic abuse issues which make the separated spouse unwilling to contact the other spouse, filing a joint return is impossible. Furthermore, the hardship that the married filing jointly requirement creates may fall on especially vulnerable women.

We recommend that IRS and Treasury provide a one year transition relief for taxpayers who are separated from their spouse and are either unable to locate them or are unwilling, for safety or other issues, to contact them, but are not legally separated or divorced. In the one year transition period, these taxpayers should receive an allowance to be eligible for the APTC or PTC when filing separate tax returns. The transition relief should be provided under similar authority to the Section 5000A Transition Relief for Individuals with Certain Government-Sponsored Limited-Benefit Health Coverage provided by the IRS in Notice 2014-10. In Notice 2014-10, the IRS notes that individuals enrolled in limited government sponsored health coverage "may not know when enrolling for the 2014 coverage year that such coverage is not minimum essential coverage."[3] Individuals also may not know as they enroll in marketplace coverage for the 2014 coverage year that they are not eligible for the APTC or PTC because they do not meet the requirements of 26 U.S.C.A. §7703. In the same spirit as the Transition Relief for Applicable Large Employers With Fewer Than 100 Full-Time Employees provided in the final Employer Share Responsibility Regulations, our recommended transition relief will assist these separated spouses in transitioning to the requirements of Section 1.36B.[4]

3. <u>Work with Department of Health and Human Services to Ensure a Special Enrollment Period After Issuance of Regulations or Guidance</u>

Under current regulations, couples in circumstances that result in them being unable to file joint tax returns are ineligible for the APTC. Once IRS and Treasury issues regulations or guidance creating an allowance and transition relief for taxpayers in these situations, these taxpayers will be newly eligible for the APTC. The 2014 open enrollment period ends March 31, so individuals will not be able to enroll unless they experience a special enrollment period under 45 CFR 155.420. The marketplaces must recognize that married individuals in circumstances that make it inadvisable for the individual to file a joint tax return and who have an allowance or transition relief under new regulations or guidance are considered to meet an exceptional circumstance under 45 CFR 155.420(d)(8) and therefore have a special enrollment period. We

[3] I.R.S. Notice 2014-10
[4] Shared Responsibility for Employers Regarding Health Coverage; Final Rule, 79 Fed. Reg. 8,574 (February 12, 2014).

are concerned that, without such clarity, some individuals will face difficulties accessing the APTC and enrolling in coverage.

It is crucial that IRS and Treasury issue regulations or guidance to help taxpayers in the situations discussed in this letter quickly. Individuals are currently forgoing health coverage because they are unable or unsure if they will be able to file a joint tax return. This must be corrected.

Sincerely,

AIDS Foundation of Chicago
AIDS Legal Council of Chicago
Alliance for a Just Society/Main Street Alliance
American Academy of Nursing
American Association of University Women
American College of Nurse-Midwives
American Congress of Obstetricians and Gynecologists
America Federation of State County and Municipal Employees
Asian Americans Advancing Justice - Los Angeles
Asian & Pacific Islander American Health Forum
California Partnership to End Domestic Violence
Colorado Consumer Health Initiative
Community Catalyst
Consumers for Affordable Health Care
Cuyahoga Health Access Partnership
Delaware Coalition Against Domestic Violence
End Domestic Abuse Wisconsin
EverThrive Illinois
Families USA
Georgetown University Center for Children and Families
Illinois Coalition for Immigrant & Refugee Rights
Immigrant Law Center of Minnesota
Kansas Coalition Against Sexual and Domestic Violence
Maine Coalition to End Domestic Violence
MD Women's Coalition for Health Care Reform
National Center of Lesbian Rights
National Domestic Violence Hotline
National Immigration Law Center
National Latina Health Network
National Latina Institute for Reproductive Health
National Network to End Domestic Violence
National Partnership for Women & Families
National Women’s Law Center
National Women's Health Network
New Jersey Coalition for Battered Women

Northwest Health Law Advocates
Ohio Domestic Violence Network
OutFront Minnesota
OWL
Pennsylvania Coalition Against Domestic Violence
Planned Parenthood Federation of America
Raising Women's Voices for the Health Care We Need
Sargent Shriver National Center on Poverty Law
SEIU Healthcare Minnesota
Service Employees International Union
TakeAction Minnesota
Virginia Organizing
Wisconsin Alliance for Women's Health
Women's Law Project

[i] I.R.S. Notice 2012-8, 2012-4 I.R.B. 309 (proposed Revenue Procedure updating Revenue Procedure 2003-61, 2003-2 C.B. 296, providing guidance regarding equitable relief from income tax liability under I.R.C. §§ 66(c), 6015(f)).