

---

# **IRS Issues Final Regulations Fixing “Family Glitch” in ACA Subsidies, Adds New Cafeteria Plan Change in Status Rule for Exchange Eligibility**

*October 2022*

On October 11, 2022, the Internal Revenue Service (IRS) issued final regulations that expand the eligibility rules for family members to obtain subsidies on the public health insurance Exchange when they have not been offered affordable employer-sponsored health plan coverage. Separately, the IRS also expanded the cafeteria plan change-in-status rules to permit employees to change elections mid-year to allow family members to enroll in health care coverage on the public Exchange.

The final regulations fixing the “family glitch” and the guidance on the new change-in-status rules are effective starting after 2022.

This Aon bulletin addresses the following:

- Background on ACA Subsidies and “Family Glitch”
- Final Regulations Fix “Family Glitch”
- IRS Expands Cafeteria Plan Rules to Permit Enrollment in Public Exchange
- Employer Impact
- Next Steps

## **Background on ACA Subsidies and “Family Glitch”**

The Affordable Care Act (ACA) offers eligible individuals a premium tax credit (PTC) to purchase health care coverage on a public Exchange. PTCs are not available to individuals who have access to affordable coverage with minimum value that is offered through an employer plan.

The “family glitch” became apparent in 2013 when the Treasury issued regulations to determine whether employer-sponsored coverage was “affordable” for purposes of determining eligibility for a PTC for employees and related individuals. In the 2013 final regulations, the IRS stated that “affordable coverage” for related individuals was based on the cost of self-only coverage offered by an employer, and not the cost of coverage for any related individuals, such as family coverage. Under these 2013 rules, if an employer offered self-only coverage that met the definition of “affordable coverage” but offered family coverage that was not “affordable coverage,” neither the employee nor the family members were eligible for a PTC to purchase health care coverage on the public Exchange.

## **Final Regulations Fix “Family Glitch”**

These 2022 final regulations fix the “family glitch” by providing that the definition of “affordable coverage” includes the cost of family coverage offered by an employer with respect to family members. The final regulations also confirm that individuals with multiple offers of coverage have affordable coverage if at least one of the offers of coverage qualifies as affordable coverage. Finally, these final regulations clarify the ACA definition of minimum value (MV).

In fixing the “family glitch,” the final regulations provide that the affordability of coverage for a family member is based on the amount the employee must pay to cover the employee and related individuals included in the employee’s family. The final regulations:

- Allow family members of employees who are offered affordable self-only coverage but unaffordable family coverage to qualify for PTCs to purchase health care coverage on the public Exchange for these family members;
- Confirm that an individual with offers of coverage from multiple employers (e.g., an employee has an offer of coverage from his employer and his spouse has an offer of coverage from her employer) has been offered “affordable coverage” if at least one of the offers qualifies as “affordable coverage.”
- Provide that a plan satisfies the ACA’s MV requirement for family members only if the plan’s share of total allowed costs of the benefits provided to family members is at least 60 percent and includes substantial coverage of inpatient hospital services and physician services. Additionally, the final regulations provide that an employer plan that provides MV to an employee also provides MV to a related individual if the scope of benefits and cost-sharing under the plan are the same for employees and family members, with some additional guidance if the cost-sharing varies based on the tier of coverage for the employee and related individuals.
- Leave unchanged the rules for determining affordability under an individual coverage health reimbursement arrangement (HRA) and do not address qualified small employer HRAs.

## **IRS Expands Cafeteria Plan Rules to Permit Enrollment in Public Exchange**

In response to the final regulations fixing the “family glitch,” the IRS has expanded the cafeteria plan change-in-status rules to permit a cafeteria plan participant to revoke the employee’s health plan election under the cafeteria plan for other than self-only coverage (e.g., family coverage) to allow one or more family members to enroll in a public Exchange. Under this new rule announced in Notice 2022-41, the employee will also be able to prospectively elect out of family coverage and into self-only coverage under the health plan.

The IRS previously issued guidance in Notice 2014-55 enabling cafeteria plans to allow employees to revoke their elections for group health coverage if the employee is eligible to enroll in public Exchange coverage. However, employees were not able to revoke coverage for family members when they became eligible to enroll in public Exchange coverage, even if the family member became eligible to enroll in the public Exchange through special enrollment or the public Exchange’s annual open enrollment period. As a result, family members enrolled in non-calendar plan years were faced with a choice of a gap in coverage or overlapping coverage when enrolling in the public Exchange.

Under the guidance provided in Notice 2022-41, the IRS:

- Allows cafeteria plans to permit employees to revoke on a prospective basis an election of family coverage under a group health plan that is not a health flexible spending account and provides minimum essential coverage as long as:
  - One or more family members are eligible for special enrollment in a public Exchange or one or more family members seek to enroll in a public Exchange during the annual open enrollment period; and
  - The revocation of election of coverage under the group health plan corresponds to the intended enrollment of the family members in a public Exchange for new coverage that begins no later than immediately following the last day of the original coverage that is revoked.
- States that cafeteria plans may rely on the reasonable representation of an employee that the employee and/or family members have enrolled or intend to enroll in the public Exchange for new coverage that begins immediately after the old coverage is revoked.
- Cautions that cafeteria plans must adopt plan amendments to provide for the new election changes described above on or before the last day of the plan year in which elections are allowed and the amendment may be retroactive to the first day of that plan year.

Taxpayers may rely on the guidance issued in Notice 2022-41 for plan amendments allowing elections effective on or after January 1, 2023.

## Employer Impact

Employers that offer affordable self-only coverage options but unaffordable family coverage options could experience a shift in plan enrollment, as more individuals become eligible for PTCs to purchase coverage on the public Exchange. The Treasury and IRS noted in the preamble that the new affordability rule set forth in the final regulations is expected to increase affordability and accessibility of health insurance and should increase coverage and reduce costs for consumers.

The Treasury and IRS stated that they do not anticipate the new affordability rule to have a significant impact on average premiums for employer plans, and that employers will continue to have strong incentives (e.g., exclusion from taxation, pressure to offer generous family coverage to employees at low cost, recruiting/retention purposes) to offer family coverage.

The final regulations do not impact the affordability analysis for determining an employer's liability for penalties under the ACA employer shared responsibility provisions nor are there any changes to the information reporting requirements or forms under Sections 6055 and 6066 of the Internal Revenue Code (e.g., Forms 1095-B, 1095-C). The final regulations clarify that employers may continue to use the affordability safe harbors for purposes of complying with Section 4980H.

## Next Steps

The final regulations will go into effect for plans beginning on or after December 31, 2022.



---

Employers adopting the new cafeteria plan election change provision need to amend their cafeteria plans accordingly and communicate the change to their employees.

## Resources

The final regulations are available [here](#).

IRS Notice 2022-41 is available [here](#).



## About Aon:

[Aon plc](#) (NYSE: AON) exists to shape decisions for the better — to protect and enrich the lives of people around the world. Our colleagues provide our clients in over 120 countries with advice and solutions that give them the clarity and confidence to make better decisions to protect and grow their business.

Follow Aon on [Twitter](#) and [LinkedIn](#). Stay up-to-date by visiting the [Aon Newsroom](#) and sign up for News Alerts [here](#).