

[COMMITTEE PRINT]

[Budget Reconciliation Legislative Recommendations Relating to Recapture of Federally-Subsidized Health Insurance Overpayment]

1 Subtitle A—Recapture of Overpay-
2 ments Resulting From Certain
3 Federally-subsidized Health In-
4 surance

5 SEC. 601. RECAPTURE OF OVERPAYMENTS RESULTING
6 FROM CERTAIN FEDERALLY-SUBSIDIZED
7 HEALTH INSURANCE.

8 (a) IN GENERAL.—Paragraph (2) of section 36B(f)
9 of the Internal Revenue Code of 1986 is amended by strik-
10 ing subparagraph (B).

11 (b) CONFORMING AMENDMENT.—So much of para-
12 graph (2) of section 36B(f) of such Code, as amended by
13 subsection (a), as precedes “advance payments” is amend-
14 ed to read as follows:

15 “(2) EXCESS ADVANCE PAYMENTS.—If the”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years ending after De-
18 cember 31, 2013.



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I. SUMMARY AND BACKGROUND

A. Purpose and Summary

In partial fulfillment of the reconciliation instructions included in section 201(b)(6) of the Concurrent Resolution on the Budget for Fiscal Year 2013 (H. Con. Res. 112), the Committee on Ways and Means, by voice vote and without amendment (with a quorum being present), favorably transmitted the Budget Reconciliation Legislative Recommendations Relating to Recapture of Federally-Subsidized Health Insurance Overpayments. The Committee recommends a full repeal of the repayment limits on certain federally-subsidized insurance premium tax credit overpayments. The Patient Protection and Affordable Care Act of 2010 (“PPACA”), Pub. L. No. 111-148 (March 23, 2010), provided for refundable tax credits for certain federally-subsidized health insurance policies and capped the amount of credit overpayments that can be recouped. The Committee’s recommendation repeals section 36B(f)(2)(B) of the Internal Revenue Code of 1986, as added by PPACA and subsequently amended by Pub. L. No. 111-309 and Pub. L. No. 112-9.

B. Background and Need for Legislation

Given the Federal government's current fiscal situation and growing financial commitment to health care services, it is imperative that Congress scrutinize the Federal budget to identify potential improper payments resulting from waste, fraud, and abuse. Once identified, it is incumbent on Congress to amend statutes and address programs that fail to fully protect taxpayer dollars. PPACA’s design of advanceable and refundable tax credits for the purchase of certain government-approved health insurance creates the potential for such waste, fraud, and abuse. The combination of income determination rules, limits on the amount of subsidy overpayments that can be recouped, and the large amount of federal funds (over \$800 billion between 2014 and 2022) being expended make the program particularly susceptible to overpayments. Accordingly, the bill seeks to reduce waste, fraud, and abuse by repealing the limit on the amount of overpayments the government can recoup.

C. Legislative History

Budget resolution

On March 29, 2012, the House of Representatives approved H. Con. Res. 112, the budget resolution for fiscal year 2013. Pursuant to section 201(b)(6) of H. Con. Res. 112, the Committee on Ways and Means was directed to submit to the Committee on the Budget recommendations for changes in law within the jurisdiction of the Committee on Ways and Means sufficient to reduce the deficit by \$1,200,000,000 for the period of fiscal years 2012 and 2013; by \$23,000,000,000 for the period of fiscal years 2012 through 2017; and by \$53,000,000,000 for the period of fiscal years 2012 through 2022.

Committee action

On April 18, 2012, in partial fulfillment of its instructions under the budget resolution, the Committee on Ways and Means marked up the budget reconciliation legislative

recommendation relating to recapture of overpayments resulting from certain Federally-subsidized health insurance and ordered the legislative recommendation favorably transmitted.

Committee hearings

The Committee on Ways and Means held hearings regarding the President's Fiscal Year 2012 budget submission on February 15, 2011, and February 16, 2011, with Secretary of the Treasury Timothy F. Geithner and Secretary of Health and Human Services Kathleen Sebelius, respectively, in which implementation of PPACA and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (March 30, 2010), was a focal point. The Committee on Ways and Means held hearings regarding the President's Fiscal Year 2013 budget submission on February 15, 2012, and February 28, 2012, with Secretary of the Treasury Timothy F. Geithner and Secretary of Health and Human Services Kathleen Sebelius, respectively, in which projected increases in PPACA's subsidy expenditures and management of the law's implementation, particularly at the Internal Revenue Service, were discussed.

II. EXPLANATION OF PROVISION

A. Recapture of Overpayments Resulting From Certain Federally-Subsidized Health Insurance

Present Law

Premium assistance credit

For taxable years ending after December 31, 2013, section 36B provides a refundable tax credit (the “premium assistance credit”) for eligible individuals and families who purchase health insurance through an American Health Benefit Exchange. The premium assistance credit, which is refundable and payable in advance directly to the insurer, subsidizes the purchase of certain health insurance plans through an American Health Benefit Exchange.

The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100 and 400 percent of the Federal poverty level (“FPL”) for the family size involved who do not receive health insurance through an employer or a spouse’s employer.¹ Household income is defined as the sum of: (1) the taxpayer’s modified adjusted gross income, plus (2) the aggregate modified adjusted gross incomes of all other individuals taken into account in determining that taxpayer’s family size (but only if such individuals are required to file a tax return for the taxable year). Modified adjusted gross income is defined as adjusted gross income increased by: (1) any amount excluded by section 911 (the exclusion from gross income for citizens or residents living abroad), (2) any tax-exempt interest received or accrued during the tax year, and (3) an amount equal to the portion of the taxpayer’s social security benefits (as defined in section 86(d)) that is excluded from income under section 86 (that is, the amount of the taxpayer’s Social Security benefits that are excluded from gross income).² To be eligible for the premium assistance credit, taxpayers who are married (within the meaning of section 7703) must file a joint return. Individuals who are listed as dependents on a return are ineligible for the premium assistance credit.

As described in Table 1 below, premium assistance credits are available on a sliding scale basis for individuals and families with household incomes between 100 and 400 percent of FPL to help subsidize the cost of private health insurance premiums. The premium assistance credit amount is determined based on the percentage of income the cost of premiums represents, rising from two percent of income for those at 100 percent of FPL for the family size involved to 9.5

¹ Individuals who are lawfully present in the United States but are not eligible for Medicaid because of their immigration status are treated as having a household income equal to 100 percent of FPL (and thus eligible for the premium assistance credit) as long as their household income does not actually exceed 100 percent of FPL.

² The definition of modified adjusted gross income used in section 36B is incorporated by reference for purposes of determining eligibility to participate in certain other healthcare-related programs, such as reduced cost-sharing (section 1402 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (“PPACA”)), Medicaid for the nonelderly (section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) as modified by section 2002(a) of PPACA) and the Children’s Health Insurance Program (section 2102(b)(1)(B) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)) as modified by section 2101(d) of PPACA).

percent of income for those at 400 percent of FPL for the family size involved. After 2014, the percentages of income are indexed to the excess of premium growth over income growth for the preceding calendar year. After 2018, if the aggregate amount of premium assistance credits and cost-sharing reductions³ exceeds 0.504 percent of the gross domestic product for that year, the percentage of income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the consumer price index for the preceding calendar year. For purposes of calculating family size, individuals who are in the country illegally are not included.

Table 1.—The Premium Assistance Credit Phase-Out

<i>Household income (expressed as a percent of FPL)</i>	<i>Initial premium (percentage)</i>	<i>Final premium (percentage)</i>
100% up to 133%	2.0	2.0
133% up to 150%	3.0	4.0
150% up to 200%	4.0	6.3
200% up to 250%	6.3	8.05
250% up to 300%	8.05	9.5
300% up to 400%	9.5	9.5

Minimum essential coverage and employer offer of health insurance coverage

Generally, if an employee is offered minimum essential coverage⁴ in the group market, including employer-provided health insurance coverage, the individual is ineligible for the premium assistance credit for health insurance purchased through an American Health Benefit Exchange.

If an employee's share of the premium for self-only coverage exceeds 9.5 percent of an employee's household income or the plan's share of total allowed cost of provided benefits is less

³ As described in section 1402 of PPACA.

⁴ As defined in section 5000A(f).

than 60 percent of such costs, the employee can be eligible for the premium assistance credit. Premium assistance tax credit eligibility requires that an employee decline enrollment in employer-offered coverage and satisfy the conditions for receiving a premium assistance tax credit through an American Health Benefit Exchange.

Reconciliation

If the premium assistance credit received through advance payment exceeds the amount of premium assistance credit to which the taxpayer is entitled for the taxable year, the liability for the overpayment must be reflected on the taxpayer’s income tax return for the taxable year subject to a limitation on the amount of such liability. For persons with household income below 400 percent of FPL, the liability for the overpayment for a taxable year is limited to a specific dollar amount (the “applicable dollar amount”) as shown in Table 2 below (one-half of the applicable dollar amount shown in Table 2 for unmarried individuals who are not surviving spouses or filing as heads of households).⁵

Table 2.—Reconciliation

<i>Household income (expressed as a percent of FPL)</i>	<i>Applicable dollar amount</i>
Less than 200%	\$600
At least 200% but less than 300%	\$1,500
At least 300% but less than 400%	\$2,500

If the premium assistance credit for a taxable year received through advance payment is less than the amount of the credit to which the taxpayer is entitled for the year, the shortfall in the credit is also reflected on the taxpayer’s tax return for the year.

Reasons for Change

The Committee believes that overpayments resulting from certain Federally-subsidized health insurance programs should be fully recouped and that failure to do so will result in the mismanagement of taxpayer funds. The Committee believes that it is appropriate to align repayment requirements for this program with those of similar tax credits, like the earned income tax credit. Given that, in the case of an exchange subsidy underpayment, the Federal government

⁵ Section 36B(f)(2), as amended by section 208 of the Medicare and Medicaid Extenders Act of 2010, Pub. L. No. 111-309, and section 4 of the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Pub. L. No. 112-9.

is required to pay the filer the additional appropriate amount of funds, the Committee believes it is appropriate for the government to be able to recoup overpayments. Thus, the Committee believes that recipients should be required to repay the full amount of any overpayment of the advance premium assistance credit.

Explanation of Provision

The legislative recommendation repeals the present-law provision under which, in the case of an individual with household income below 400 percent of FPL, liability for an overpayment resulting from excess advance payments is limited to the applicable dollar amount. Thus, under the legislative recommendation, an individual would be required to repay the full amount of the overpayment.

Effective Date

The legislative recommendation is effective for taxable years ending after December 31, 2013.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of “Budget Reconciliation Legislative Recommendations Relating to Recapture of Federally-Subsidized Health Insurance Overpayments.”

MOTION TO TRANSMIT RECOMMENDATION

The budget reconciliation legislative recommendation was ordered favorably transmitted without amendment by a voice vote (with a quorum being present).

VOTES ON AMENDMENTS

Roll call votes were conducted on the following amendments to the budget reconciliation legislative recommendation.

An amendment by Mr. Stark, which would preclude the application of the proposal for a taxable year with respect to which the Department of the Treasury makes a specified certification, was not agreed to by roll call vote of 22 nays to 14 yeas (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp		✓		Mr. Levin	✓		
Mr. Herger		✓		Mr. Rangel			
Mr. Johnson		✓		Mr. Stark	✓		
Mr. Brady		✓		Mr. McDermott	✓		
Mr. Ryan		✓		Mr. Lewis	✓		
Mr. Nunes		✓		Mr. Neal	✓		
Mr. Tiberi		✓		Mr. Becerra	✓		
Mr. Davis		✓		Mr. Doggett	✓		
Mr. Reichert		✓		Mr. Thompson	✓		
Mr. Boustany		✓		Mr. Larson	✓		
Mr. Roskam		✓		Mr. Blumenauer	✓		
Mr. Gerlach		✓		Mr. Kind	✓		
Mr. Price		✓		Mr. Pascrell	✓		
Mr. Buchanan		✓		Ms. Berkley	✓		
Mr. Smith		✓		Mr. Crowley	✓		
Mr. Schock		✓					
Ms. Jenkins		✓					
Mr. Paulsen		✓					
Mr. Marchant		✓					
Mr. Berg		✓					
Ms. Black		✓					
Mr. Reed		✓					

An amendment by Mr. Crowley, which would preclude the application of the proposal for a taxable year with respect to which the Department of the Treasury makes a specified certification, was not agreed to by roll call vote of 22 nays to 14 yeas (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp		✓		Mr. Levin	✓		
Mr. Herger		✓		Mr. Rangel			
Mr. Johnson		✓		Mr. Stark	✓		
Mr. Brady		✓		Mr. McDermott	✓		
Mr. Ryan		✓		Mr. Lewis	✓		
Mr. Nunes		✓		Mr. Neal	✓		
Mr. Tiberi		✓		Mr. Becerra	✓		
Mr. Davis		✓		Mr. Doggett	✓		
Mr. Reichert		✓		Mr. Thompson	✓		
Mr. Boustany		✓		Mr. Larson	✓		
Mr. Roskam		✓		Mr. Blumenauer	✓		
Mr. Gerlach		✓		Mr. Kind	✓		
Mr. Price		✓		Mr. Pascrell	✓		
Mr. Buchanan		✓		Ms. Berkley	✓		
Mr. Smith		✓		Mr. Crowley	✓		
Mr. Schock		✓					
Ms. Jenkins		✓					
Mr. Paulsen		✓					
Mr. Marchant		✓					
Mr. Berg		✓					
Ms. Black		✓					
Mr. Reed		✓					

IV. BUDGET EFFECTS OF THE PROVISION

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the “Budget Reconciliation Legislative Recommendations Relating to Recapture of Federally-Subsidized Health Insurance Overpayments,” as transmitted.

The budget reconciliation legislative recommendation, as transmitted, is estimated to have the following effects on budget receipts for fiscal years 2013-2022:

<u>Item</u>	<u>Fiscal Years</u> <u>[Billions of Dollars]</u>											
	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2013-17</u>	<u>2013-22</u>
Recapture of Overpayments Resulting from Certain Federally-Subsidized Health Insurance [1].....	---	1.1	2.6	4.1	5.0	5.5	5.9	6.1	6.6	6.9	12.9	43.9

NOTE: Details do not add to totals due to rounding.

[1] Estimate includes the following effects:

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2013-17</u>	<u>2013-22</u>
Off-budget effects.....	[2]	[2]	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.2	-0.6
Outlay effects.....	---	-0.9	-1.9	-3.0	-3.6	-4.0	-4.2	-4.4	-4.8	-5.1	-9.3	-31.9

[2] Loss of less than \$50 million.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the budget reconciliation legislative recommendation involves no new or increased budget authority. The Committee states further that the budget reconciliation legislative recommendation involves no new or increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by the CBO is provided.

[Insert A -- CBO letter/estimate]

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the budget reconciliation legislative recommendation amending the Internal Revenue Code of 1986: the effects of the legislative recommendation on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of the budget reconciliation legislative recommendation that the Committee concluded that it is appropriate to transmit the legislative recommendation to the Committee on the Budget.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the budget reconciliation legislative recommendation contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizing funding is required.

C. Constitutional Authority Statement

The Committee states that the Committee's action in transmitting this budget reconciliation legislative recommendation is derived from Article I of the United States Constitution, Section 8, Clause 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . ."), and from the 16th Amendment to the United States Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the budget reconciliation legislative recommendation contains one private sector mandate: changes to the limitations on recapture of overpayments resulting from advance premium assistance tax credits for Federally-subsidized health insurance. The Committee has determined that the budget reconciliation legislative recommendation does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the budget reconciliation legislative recommendation, and states that the provisions of the legislative recommendation do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the budget reconciliation legislative recommendation contains no provisions that amend the Code and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

G. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the budget reconciliation legislative recommendation, and states that the provisions of the legislative recommendation do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

**VI. CHANGES IN EXISTING LAW MADE BY THE BUDGET RECONCILIATION
LEGISLATIVE RECOMMENDATION, AS TRANSMITTED**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the budget reconciliation legislative recommendation, as transmitted, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

[Insert B -- Office of Legislative Counsel's "Ramseyer" language]



CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Douglas W. Elmendorf, Director

April 24, 2012

Honorable Dave Camp
Chairman
Committee on Ways
and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for the committee's reconciliation recommendation related to the Recapture of Overpayments Resulting From Certain Federally Subsidized Health Insurance, as approved on April 18, 2012.

If you wish further details on this estimate, we will be pleased to provide them. The staff contact is Sarah Anders, who can be reached at 226-9010.

Sincerely,

A handwritten signature in cursive script that reads "Douglas W. Elmendorf".

Douglas W. Elmendorf

Enclosure

cc: Honorable Sander M. Levin
Ranking Member



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

April 24, 2012

Recapture of Overpayments Resulting From Certain Federally Subsidized Health Insurance

As approved by the House Committee on Ways and Means on April 18, 2012

SUMMARY

H. Con. Res. 112, the Concurrent Budget Resolution for fiscal year 2013, as passed by the House of Representatives on March 29, 2012, instructed several committees of the House to recommend legislative changes that would reduce deficits over the 2012-2022 period. As part of that reconciliation process, the House Committee on Ways and Means has approved three separate provisions as reconciliation recommendations. The following analysis presents estimated budgetary effects for one of those three provisions.

The legislation would require collections of certain overpayments of health insurance subsidies. The staff of the Joint Committee on Taxation (JCT) and CBO estimate that this proposal would have no impact in 2012 or 2013, and would reduce the deficit by \$12.9 billion over the 2013–2017 period and \$43.9 billion over the 2013–2022 period. This reduction would come from net increases in revenue as well as decreases in direct spending. The estimate of budgetary effects would be the same for any assumed enactment date this year because those effects would not begin until 2014.

JCT has determined that the provision contains no intergovernmental mandates and one private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). Based on information provided by JCT, the cost of the provision's private-sector mandate would exceed the annual threshold established in UMRA for private-sector mandates (\$146 million in 2012, adjusted annually for inflation) beginning in 2014.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effects of the proposal are shown in the following table. The spending effects of this proposal fall within budget function 550 (health).

	By Fiscal Year, in Billions of Dollars												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-2017	2012-2022
CHANGES IN DIRECT SPENDING													
Estimated Budget Authority	0	0	-0.9	-1.9	-3.0	-3.6	-4.0	-4.2	-4.4	-4.8	-5.1	-9.4	-31.9
Estimated Outlays	0	0	-0.9	-1.9	-3.0	-3.6	-4.0	-4.2	-4.4	-4.8	-5.1	-9.4	-31.9
CHANGES IN REVENUES													
Estimated Revenues	0	0	0.2	0.7	1.1	1.4	1.5	1.7	1.7	1.7	1.9	3.5	12.0
On-budget	0	0	0.3	0.7	1.2	1.5	1.6	1.7	1.8	1.8	2.0	3.6	12.6
Off-budget ^a	0	0	*	*	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.2	-0.6
NET INCREASE OR DECREASE (-) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES													
Impact on Deficits	0	0	-1.1	-2.6	-4.1	-5.0	-5.5	-5.9	-6.1	-6.6	-6.9	-12.9	-43.9
On-budget	0	0	-1.1	-2.6	-4.2	-5.1	-5.6	-6.0	-6.2	-6.6	-7.0	-13.0	-44.4
Off-budget ^a	0	0	*	*	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.6

Source: Staff of the Joint Committee on Taxation.

Notes: Numbers may not sum to totals because of rounding.

* = decrease in revenues of less than \$50 million.

a. All off-budget effects would come from changes in revenues. (Payroll taxes for Social Security are classified as "off-budget.")

BASIS OF ESTIMATE

Under current law, starting in 2014, qualified taxpayers will become eligible to receive refundable tax credits to assist in the purchase of health insurance through the health insurance exchanges established by the Affordable Care Act. The amount of those premium assistance credits will be based on family size and income, and the advance payments of the credits will be based on income estimated from tax returns for prior years. If taxpayers' circumstances change to the extent that their advance payments exceed the premium assistance credits to which they are entitled, they may be required to repay some or all of the credits, subject to certain limits based on income.

Enacting the overpayments provision would eliminate existing limits on the amounts to be repaid by taxpayers whose advance payments exceed the premium assistance credits to which they are entitled. Taxpayers would therefore be liable for the full amount of overpayments. CBO and JCT expect that, under the provision, fewer people would apply for premium assistance credits and purchase insurance through exchanges than under current law. Some people would not apply for the credits because of concern that

unforeseen changes in their income or family composition could result in a large repayment liability they would have difficulty meeting. Others would anticipate changes in income or family composition that would reduce the subsidy they would receive to purchase health insurance or could cause a larger increase in liability under the proposal.

Reduced enrollment in exchanges is expected to result in an increase in the number of people who obtain health insurance through an employer and an increase in the number of people without health insurance. Among individuals who continue to apply for and receive premium assistance credits, some would update their income information to reduce overpayments while others would end up repaying more as a result of the proposal. JCT estimates that the proposal would reduce net outlays for premium assistance credits and cost-sharing subsidies by nearly \$32 billion over the 2013–2022 period and increase net revenues by about \$12 billion over the same period. That effect on revenues includes reductions of less than \$1 billion from payroll taxes for Social Security, which are off-budget.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

JCT has determined that the provision related to overpayments of health insurance subsidies contains no intergovernmental mandates and one private-sector mandate as defined in UMRA. That mandate would eliminate existing limits on the amounts taxpayers would be required to repay for advance premium assistance tax credits associated with health insurance exchanges, in the event of an overpayment. Based on information provided by JCT, the cost of the mandate would exceed the annual threshold established in UMRA for private-sector mandates (\$146 million in 2012, adjusted annually for inflation) beginning in 2014.

ESTIMATE PREPARED BY: JCT and Sarah Anders

ESTIMATE APPROVED BY:

Holly Harvey
Deputy Assistant Director for Budget Analysis

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 36B OF THE INTERNAL REVENUE CODE OF 1986

SEC. 36B. REFUNDABLE CREDIT FOR COVERAGE UNDER A QUALIFIED HEALTH PLAN.

(a) * * *

* * * * *

(f) RECONCILIATION OF CREDIT AND ADVANCE CREDIT.—

(1) * * *

[(2) EXCESS ADVANCE PAYMENTS.—

[(A) IN GENERAL.—If the]

(2) EXCESS ADVANCE PAYMENTS.—If the advance payments to a taxpayer under section 1412 of the Patient Protection and Affordable Care Act for a taxable year exceed the credit allowed by this section (determined without regard to paragraph (1)), the tax imposed by this chapter for the taxable year shall be increased by the amount of such excess.

[(B) LIMITATION ON INCREASE.—

[(i) IN GENERAL.—In the case of a taxpayer whose household income is less than 400 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed the applicable dollar amount determined in accordance with the following table (one-half of such amount in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year):

If the household income (expressed as a percent of poverty line) is:	The applicable dollar amount is:
Less than 200%	\$600
At least 200% but less than 300%	\$1,500
At least 300% but less than 400%	\$2,500

[(ii) INDEXING OF AMOUNT.—In the case of any calendar year beginning after 2014, each of the dollar amounts in the table contained under clause (i) shall be increased by an amount equal to—

[(I) such dollar amount, multiplied by

[(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting “calendar year 2013” for “calendar year 1992” in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.】

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April 24, 2012

DISSENTING VIEWS ON RECOMMENDATION TO CUT AFFORDABLE CARE ACT PREMIUM TAX CREDITS

These recommendations to the Budget Committee follow a disturbing but familiar pattern. Once again, the Majority has targeted seniors, children, people with disabilities, and middle-income families rather than ask the very wealthiest Americans to pay their fair share. We strongly oppose this unfair approach, these specific legislative proposals, and the complete lack of consultation, public discussion, or analysis of the consequences of these policies that preceded our Committee action. We support a fair and balanced approach to deficit reduction. The Majority's recommendation is neither fair nor balanced.

We oppose the provision that would amend the premium tax credits that are provided under the Affordable Care Act (ACA). This provision is designed to undercut the ACA's guarantee of quality, affordable health care for all.

The Affordable Care Act uses tax credits to make health coverage affordable to those with lower and middle incomes. While most uninsured individuals and families (or those at risk of becoming uninsured) have incomes at or below 200 percent of the poverty level – approximately \$45,000 for a family of four in 2012 – the premium tax credits are adjusted according to income and are fully phased-out at 400 percent of poverty. These tax credits are provided in advance to the insured's insurance company based on the individual or family's prior year income and then are reconciled with the individual or family's actual income for the year the health coverage is purchased.

Advance payment of the credits is critical to providing quality, affordable health care because individuals and families need real-time assistance in purchasing coverage. A credit that is reimbursed to the individual or family via their tax refund two or four or more months after the end of the year for which they were paying premiums is no assistance at all. Because people necessarily must use income information from prior tax

years to qualify for advance payment of the tax credits, it is very possible that their actual incomes will be higher or lower for the year for which they are purchasing coverage.

Naturally, income from a previous year cannot reflect income fluctuations resulting from job loss or changes, raises or bonuses; likewise, it cannot anticipate or reflect changes in family size, including those due to death or divorce, which will affect the poverty level calculation and size of the credit. While the ACA requires some repayment in recognition of this income fluctuation, it also recognizes that full repayment may create an unacceptably large and unanticipated burden on families that are struggling to get back on their feet. Therefore, the ACA also limited the amounts individuals and families would need to pay back if income increases.

Already Congress has revised this provision several times. The first modification, enacted at the end of 2010 in the Medicare and Medicaid Extenders Act of 2010 (Public Law 111-309), contained a significant improvement in that it eliminated payment cliffs at 400 percent of poverty. The second modification, enacted early in 2011 in the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (Public Law 112-9), eliminated this improvement. The Joint Committee on Taxation (JCT) estimated that 265,000 individuals would lose health coverage as a result.

Now, the majority seeks to eliminate the payment cap protection entirely.

We oppose this provision because it will lead to further coverage losses and unfairly penalize individuals and families for economic progress or personal tragedy. JCT estimates that 350,000 individuals would lose coverage as a result of this provision.

We also oppose this provision because it is a tax increase on lower-income and middle-class individuals and families. According to JCT, this provision raises revenues by \$43.9 billion dollars. This is clearly a tax increase on the middle class. The language of the section of the Internal Revenue Code that this provision amends makes that abundantly clear: "If the advance payments to a taxpayer ... exceed the credit allowed by this section ..., the tax imposed by this chapter for the taxable year shall be increased by the amount of such excess." Section 36B(f)(2) of the Internal Revenue Code (emphasis added). The reference to "this chapter" is to the income tax that is contained in Subtitle A and Chapter 1 of the Internal Revenue Code.

A final reason for our opposition is because the ACA already contains a strong penalty in the case of fraud in the application for advance payment of the premium tax credits. Section 1411(h)(1)(B) of the ACA provides for a civil penalty of up to \$250,000 in such

cases. This budget reconciliation legislative proposal does not prevent fraud or abuse. It is not an effort to penalize only those who intentionally misrepresent their income and receive a credit under dubious circumstances. This proposal only serves to raise taxes on families in certain circumstances, including families where one spouse is able to finally find full-time employment in his or her field, after a substantial period of unemployment or under-employment—due perhaps to a prior layoff, finishing job training or education, or raising children or caring for a dependent relative. For this reason, this provision will impose a significant and unexpected tax burden on middle-class individuals and American families whose employment or family circumstances have changed unexpectedly, or because of events beyond their control, and are still struggling financially on account of these circumstances.

We are committed to bringing our budget into balance, but do not believe that children, senior citizens and the disabled should be targeted for massive cuts, as the wealthiest among us are asked to contribute nothing. We attempted to substitute these and other cuts with an equal amount of deficit reduction through the so-called “Buffett Rule,” which would have affected only those with annual incomes of \$1 million or more a year. Regrettably, the majority refused to allow a vote on this more equitable approach for reducing our deficit.

Sander Levin

A handwritten signature in blue ink, appearing to read "Sander Levin", is written over a horizontal line. The signature is stylized and cursive.