# CENTERS FOR MEDICARE & MEDICAID SERVICES

**Moderator: Sarah deLone**
**October 6, 2011**
**12:30 p.m. ET**

Operator: All lines have been muted to prevent any background noise. After the speaker's remarks, there will be a question and answer session. If you would like to ask a question at that time, press pound 7-1 on your telephone keypad. If you would like to withdraw your question, press pound 7-2. I will now turn the call over to Ms. Sarah deLone. Ma'am, please go ahead.

Sarah deLone: Thanks, Alaina. And hi, everybody. This is Sarah deLone and I also have Stephanie Kaminsky is here also. And some other of our colleagues who are – should feel free to chime in if they have things to add. I'm going to not – I'm going to sort of dispense with any introductions. We did the first MAGI call. I think you know probably who we are, but we work here at CMS, and we've had a hand in writing, drafting and working through the policies that are proposed in the NPRM.

There's – so this is a follow-up call for MAGI. We're really going to sort of jump right into the weeds here today not with a lot of overview or preliminaries. I hope you all had a chance to hear the first call and if not, more of that overview has now been posted and a link to the recording was sent out earlier this morning for that, so you can go back and listen to that again; and for the first time, if you haven't.

We've got a lotta, lotta, lotta material to cover today. We may not get through it all. We're going to do our best. You received this morning both some scenarios that we took from a State that had done some very nice diagrams and pictures and whatnot, and we really just – they were very generous to let us lift those and send those out to you. They do not represent CMS sort of work product or official CMS policy or interpretation of the NPRM. They are really for discussion purposes only.

And this whole discussion I should say is really for – it's really sort of a discussion. We, Stephanie and I, were obviously very involved in the drafting of the NPRM. We are going to share with you what our – the intention behind it was. But you know, I'm sure you can probably appreciate and recognize that it's a large organization, and even amongst ourselves sometimes, we read the same provision in the same proposed rule, and we may have a little bit of a different take on it. So, this call is meant to really help you to understand it. We will encourage you, although probably not a lot of time on this call, but in your comments, to push back, even on our interpretation of the rule; and also, of course, on what you think the interpretation of the ACA and the ultimate final rule should be.

So I also hope, in addition to the materials that were sent out, you all have a copy of your reg. If you don't, and you have one sort of close at hand, I'd encourage you to pull it out. I think we'll be referencing it as we go through this call, and it would probably be handy to be able to look at the actual proposed reg text.

In terms of the structure for the call today, what we thought is that we would spend about 45 minutes going through, probably not all of the scenarios, but a good chunk of them, to really drill down. Then we will break, and allow you to ask questions about the scenarios we've gone through. And then we will turn then to the questions that we've received through the NPRM Qs and As website. And we will try to get through as many of those as we can today.

So let's pull out our scenarios. So it's the document called "MAGI Scenarios." Again, these were – we really appreciate the State that sent these in, and appreciate our being able to just sort of pilfer them from them and send them out to you to help our discussion today.

You know, I said this before, but I do – you know, these are complicated. They are complicated. And so I think it's always important to keep in the back of our mind, that for the vast majority of people who come through the system, the rule that gets applied is not complicated. It's parents and children living together. It's – or a single adult. And we're really focusing today on where the complexities arise. It's a small minority of cases, but they certainly are there, which is why we have to have the rules. But I just always want us to keep in mind that we are dealing with a complexity for a small portion of the population that we have to deal with here. It's not sort of the overwhelming number of people who actually come through the system.

Stephanie Kaminsky: And to rephrase that I think, Sarah, what you're saying is that the vast majority – from the vast majority, even of Medicaid applicants, et cetera, beneficiaries – we're talking about 36B rules. And that's what we're going to focus on today are the few minority of cases where we're deviating from 36B, often because of non-filing status.

Sarah deLone: Right, because of non-filing status, or because the 36 – the tax rules just don't – don't fit well with the low income population, and the needs, and the reality of the low income population that we're – that the program was historically meant to serve.

That said, you know, we – in developing these rules, it's a balancing – it's a balance between the simplicity of just picking up the tax rules, versus trying to deviate from them in order to accommodate particular kinds of situations. We put out in the proposed rule, where we think our best thinking was as to where that balance was struck. But we welcome you to think that a different balance is the right one. And we welcome if you think we should've deviated less, or more, from the 36B tax rules. That's helpful for us to hear. It's also helpful for us to hear if you think we actually got it right, or the places in which you think we got it right. Because – just because it's in the proposed rule and you like it, doesn't mean it necessarily will end up in the final rule. It depends on, sort of, the whole mix of comments and perspectives that we get back.

So let's jump in then to the scenarios. We'll start – we're not going quite in the order of the slides, but I'll tell you which one I'm on. I'm going to start with the first scenario, and this is, sort of a – maybe just to get us kind of warmed up. And it illustrates the general principle that's going to apply in most cases, which is that we will be using 36B rules. And so, in our rule, that's reflected in – we're always in 435.603, subparagraph (f)(1) for tax filers, and (f)(2) for individuals who are claimed by a tax filer.

So the scenario here is that you have a married couple and they have a child. She's – the child, Jane – is 22 years old, and she's a student living in another State, attending a university. Bob is a taxpayer and he claims both Mary and Jane as tax dependents.

Just a side note, the State that we took these scenarios from typically did a husband and wife scenario with one claiming the other spouse as a dependent. I think typically, and what's required actually for the premium tax credit, is that they file a joint tax return so that they both will be considered to be the taxpayer in the 36B rules. And they would both fall under our rule at (f)(1), but the result isn't any different. So I think we'll just take the scenarios as they are and sort of – and consider the spouse, the wife here, to be claimed as the tax dependent, but that may be possible under the IRS rules. I'm actually not sure, and we can find out. But typically, what you're going to have is a joint filing.

But anyway, so let's jump back to the scenario. So, what we have here – we're going to look at Bob as the taxpayer, so we would look at paragraph (f)(1). And the basic rule for him is that he and everybody whom he claims as a tax dependent are in his household, so that would be Bob and Mary and Jane, all three of them. Mary and Jane are both being claimed as tax dependents, and they would fall into (f)(2). None of the exceptions apply. They are either the child or a spouse of a taxpayer who's claiming them as a tax dependent. And so they would – their household would be the same household as Bob's, and so all three individuals would also be in their household.

In terms of the other thing, which is not reflected on this scenario, that we have to always consider, is whose income counts and our rules for whose income, you know. First, you figure out who's in the household, and then you figure out – okay, of the people who are in the household, whose income counts when you're totaling up total household income? And that's in paragraph (d) of our rule. And under that rule, you have – you definitely have the income of the taxpayer, so Bob's income counts.

And, well let me back up, so the rule is generally, everybody's income in the household counts, but then there's an exception that's provided. And that's for where you've got a tax dependent who's being – somebody who's being claimed as a tax dependent on another individual's tax return. Their income counts. The tax dependent's income counts only if the tax dependent, him or herself, is required to file a tax return – has enough income to file a tax return.

So, in this case, let's assume that Mary doesn't have income, but let's assume that Jane, as a twenty – as a student, she has some income. If she has – if she earns, say $3,000 a year, that's not enough money that she's required to file a tax return. It doesn't matter whether she actually does or not, but she's not required to file a tax return, so her income wouldn't be counted.

Let's suppose Jane earns $12,000 a year. She would be required to file a tax return. That's over the filing threshold, which is somewhere around $9,000 some odd dollars a year. And her income would be counted. It would be counted in determining the eligibility of every member of the household. So if she's in Bob's household, her income would count. And if she's in Mary's household, her income would count. So, in that case, you would have Bob's and Jane's income counting in determining the Medicaid eligibility of everybody in the household.

The other thing that this scenario helps to illustrate is the ways in which Medicaid rules under, in 2014, under MAGI, differ from current Medicaid rules. Let's suppose Bob is a stepfather. The result is the same, if he's a stepfather or not. It's also – Jane here is twenty-two. And because she's being claimed as a tax dependent, it doesn't matter that she's over – that she's twenty-one or older, which under today's rules, would exclude her from her parents' household. Under the MAGI rules, since she's being claimed as a tax dependent, she's going to be included in the household and her parents are going to be included in her household.

I want to jump next to, actually, to scenario number eight, so if everybody wants to flip their slides. And here we have, probably one of the most common exceptions that's going to occur to the use of the 36B tax rules. So here we have a three generation household with a grandmother as the taxpayer. So Mary is the mother of Jane, and Jane is the mother of Pete, so Mary is the grandmother of Pete. The grandmother Mary files taxes and claims both her child (Jane) and Pete (the grandchild) as tax dependents.

And so this household illustrates a couple of different rules. It illustrates the rule that, most fundamentally, that there's an exception for individuals who are claimed as a tax dependent if they are not the child or spouse of the taxpayer. There's an exception for them. And we'll get to that in a second.

It also illustrates just sort of a general principle and a technique, if you will, for the way I think it's easiest to tackle these rules, which is to look at each individual member of the household separately, and look at the rules, and say – okay, which rule applies to this person? And then you're done with that person. And then you go to the next person, and you look, and say – okay, where does this – how does this person fit into the rule?

So, if we take – because even though all these three live in the same household, they're not – and they're all related – they're not all going to end up with the same Medicaid household for purposes of determining their own eligibility.

So let's take Mary. She's going to illustrate our basic principle. Picking up the 36B tax rules in (f)(1), the basic rule for taxpayers is that her Medicaid household is herself and everybody she claims as a tax dependent. So she's got herself, Jane, and Pete all in her Medicaid household for determining her Medicaid eligibility.

Jane is claimed as a tax dependent, so she – we start out assuming she's going to be in (f)(2), the basic rule for individuals claimed as a tax dependent. There's no exception for her either. Let's assume – no, we don't have to assume anything. There's no exception that applies to her. She's being claimed as a tax dependent by her mother, so her household is the same as that of her mother. It's Mary, Jane, and Pete.

Then we look at Pete. Pete's the grandchild. He fits into the exception at (f)(2)(i) for individuals other than a spouse or a child who are claimed as a tax dependent by another taxpayer. He's a grandchild of the taxpayer Mary, not her child. So for him, we're going to apply – we're going to pretend that he's in a non-filing family, and we're going to apply the rules per the direction in (f)(2). We're going to apply the rules for non-filers that are in (f)(3). And for him, what we end up with by applying those rules is himself and his mother Jane in the same Medicaid household. In terms of whose income counts, again, then you look at each of the members of the household who are in each person's household.

So in the case – let's say, if Jane works and is required to file a tax return, her income would count in determining Mary's eligibility, as well as Mary's income, of course. Her income would count in determining her own eligibility. And, in the case of Pete, we'd only have Jane's income counting. Pete, we'll assume is a baby, and he doesn't have any income. If Jane's income is less than – oh, well, let me just – yes, if Jane's income is less than the filing threshold amount, then she's not required to file a tax return. When you're looking at Mary's total household income, therefore, her income doesn't count. It's too low to count.

Stephanie Kaminsky: Jane's income doesn't count.

Sarah deLone: Jane's income doesn't count – yes, sorry – thank you. So Mary's – the only income that would count in determining Mary's eligibility for Medicaid would be Mary's income for a household size of three. This actually illustrates I think where we may have our rule – the text of our rule may not match what our intention was when we come to looking at Pete's income.

For Jane, it's the same. It's the same situation as Mary. Mary, Jane, and Pete are all in Jane's household. Mary's income certainly counts. She's in the household. There's no exception for her. Jane is a tax dependent without enough income such that she's required to file, so her income is too low to have to file, so her income doesn't count.

When we come to Pete, the intention of the rule was actually to mirror what the 36B tax rules are. The 36B tax rules always count the income of the taxpayer. So it's always, if you have a person filing singly, their income will always count. It doesn't matter if they're required to file or not. Their income counts. If you have a parent with a child, the only – you're assuming you're in a world with taxpayers, so you're assuming a world where somebody is filing taxes – and so the way the 36B rules work, is when you have a parent and a child together, the parent's income will always count. And you're only looking at whether or not the tax dependent has sufficient income such that the dependent's income is also counted.

The way we drafted our rule and our exception at (d)(2) is that we made that exception for a tax dependent specific to children, and I think actually that that is probably wrong. Because if you think about it here, here in the case of Jane, although in this particular case it's not going to matter. Her income is so low, it's not going to matter. There are other situations in which it might matter. And the way we've written the rule is that Jane in (d)(2) – Jane fits the definition there in (d)(2). Jane is being claimed as a tax dependent of her parent. She's in her parent's household. In fact, it's not so much that she's claimed as a dependent, but she's in her parent's household. And under (d)(2), therefore, her income doesn't count. And we don't distinguish in our rule between what is Jane's sort of position in the household that we're considering. So the way we've written the rule, Jane's income wouldn't be counted for Pete's household either, and I think that that's actually wrong.

I know that was really complicated, and probably confusing, and I probably lost seventy-five percent of the people on the call. But I think it actually is a mistake in our rule, and so I particularly would like to have some people flag that and comment on it, so we have an opportunity to correct it, unless you think it's right and good the way we have it. In which case you should say so. I would welcome anybody who wants to talk about that a little bit more with me, to give me a call or shoot me an email, just because I – it is something that I would like to get some comments on. Alright, so let's – time check, how am I doing Stephanie?

Stephanie Kaminsky: (INAUDIBLE)

Sarah deLone: Not so good. So let's go now to scenario four, which is the general principle – and I think we'll be able to start moving a little faster here. The general principle is very similar to the one –scenario eight – in terms of the application of the rules.

So here we have Bob, a single parent of Jane. Mary is unrelated and living in Bob's house. And Bob is claiming both Jane and Mary as tax dependents. So, in this case, Bob is the taxpayer. You look at (f)(1). His household is himself and both Mary and Jane, whom he's claiming as tax dependents.

Next, we go to let's say Jane. Jane is being claimed as a tax dependent by her parent, so she fits neatly into (f)(2) – no exceptions. Her household – there's actually a mistake on the slide here. Okay, so this is one of the reasons of going through this. And again, to emphasize that this is not sort of CMS work product here. And totally understandable that a State might get it wrong. And actually every time I do the slides myself, I sort of have a little bit of an Escher fainting moment, where I think I see it, and then I lose it, and then I get it again. So Jane is a tax dependent being claimed by her parent, so there's no exception to (f)(2). So her household – Medicaid household is the same as Bob's. So in her household should be herself and Bob and Mary.

Mary illustrates an exception. Mary is an individual who's being claimed by somebody other than a parent or a spouse as a tax dependent, so Mary fits into the exception at (f)(2)(i). And for her, we're going to apply the non-filer rules, which is her and her kids living together, but she doesn't have any kids, so she's her own household. Mary is in her own household, a household of one.

Just looking at whose income counts for Mary – oh, so the mistake is that Jane should have a dot under Mary, and the two should be a three. Jane's household should look identical to Bob's, her father's. Let's just look at, in terms of whose income counts for Mary. So, again, this would illustrate I think how we got the wording, not the principle, but the wording behind our paragraph (d)(2) is – doesn't work here. Mary's income should count for herself. That's the intention behind the rule, and I think we need to fix what the text says.

But nobody else is in her household, so Bob's income doesn't count for Mary. Under paragraph (d)(3), actually available cash support provided by Bob to Mary is counted, so that's another exception from the 36B rules. And that's to sort of mirror more closely the reality of what those people's situation is ninety-nine percent of the time, and address a concern that's perceived or real, that a very wealthy relative would be taking care of their niece or somebody, and their niece would be getting Medicaid, when in fact, the family clearly can afford otherwise. So that was to address that concern.

The other thing to note about this scenario is just that if Bob's income is below 133 percent of the federal poverty level for his household size. In terms of knowing whether or not Mary is eligible for Medicaid or not, you can sort of stop with Bob's household, even though technically she has her own household. She would be eligible for Medicaid using Bob's household, and so there would be no need, in terms of the programming of the system, to necessarily break Mary off into her own household. A State could do it either way I think. It's an operational implementation issue. But I just want to flag it, for a – as a way that – again, there will be a number of these cases where there appears to be a complexity, but when it's operationalized, we may be able to sort of simplify it for another chunk of the population and the people who will be seeking coverage through our programs.

Okay, so let's go backwards now to scenario three. And here we have – and I'm just going to walk through these a little bit faster now. We have – and just to sort of get our facility with looking at the rules, applying the rules, so that hopefully when you all go think about more complex situations, you can do sort of the same thing, even though they're more complex.

So here you have unmarried parents of Jane who file taxes separately. The father Bob claims Jane as a dependent. So if we look at Bob, he falls under – applying the tax rules, he's got himself. Therefore he and Jane are in his tax household – that's also his Medicaid household. There's no reason to apply an exception. Mary, although Jane's mother, they're not married, so our rule for spousal income always counting for each other doesn't apply. So Bob is just himself and his daughter Jane.

Mary is filing on her own. There's also no exception to apply. So although she has her daughter living with her, she is a household of one under our rule.

Jane does fall into an exception. Jane falls into the exception at (f)(2)(ii) for individuals under 21 living with both parents if the parents are not married. So for Jane, we're going to apply the non-filer rules in (f)(3), and both of her parents with whom she is living are going to be included in her household. So Jane's household will be Bob, Mary, and Jane.

And I just want to flag for you. It may come up later in one of the questions and answers, too, that I also think we may have – in my zest for, or our zest, but I'll take personal responsibility, for trying to get away from using as much as possible the tax lingo in our reg. That the exception for individuals that are living with both parents but aren't being claimed as tax dependents by both parents is characterized as if both parents are not married. I think what it really needs to be – and I suggest – and I sort of urge those of you who love to sort of look at these scenarios and think them through to play with it and think about it.

But I think that we may want to have that be where they're living with both parents, but aren't being claimed by both parents as a tax dependent. So that it's really not so much the marital status, but let's say that you had Bob and Mary are married, but they're not filing a joint tax return and only Bob claims Jane as a tax dependent. I don't think we want to end up – then our exception at (ii), (f)(2)(ii) wouldn't apply, because the parents are married, and by its literal terms, it wouldn't apply. But where you have a situation like that, you really want – I think we really want both parents' incomes should count in determining whether or not the child is eligible for Medicaid. So it's another place I think we may have not been accurate enough in our characterization of the exception that we're trying to carve out, and would welcome comments and feedback on that.

I was going to do slide two, but I think I'm tempted to not, in the interest of time. So let's go instead next to a situation which we got a number of questions also about. So we will be returning to this type of scenario. So scenario number five, where we have a non-custodial parent claiming a child as a tax dependent. And in this case, so this is going to fall – so we have Bob and Mary are unmarried, separated, divorced, or maybe they were never married, parents of Jane. They live in separate households. Mary is the non-custodial parent. They file taxes separately and Mary files – Mary claims Jane as her tax dependent. Bob submits a request for Medicaid for himself and his daughter Jane. So, here we have the exception at (f)(2)(iii) for individuals under 21 claimed as a tax dependent by a non-custodial parent.

So let's go through the households one by one. Another scenario where it illustrates where it's really helpful, and you really have to look at each individual and construct each individual's household separately. So, for Bob, there's really no exception to apply here. Looking at his Medicaid household, it's himself. He doesn't claim any tax dependents. For Jane, she falls under this exception. So she's going to be treated as a non-filer and under the non-filer rules at (f)(3), Mary – Jane – Jane's the daughter right? Yes. Jane would be considered to be a member of her father's household, because she's living with her father, her custodial parent, so Jane's household is Bob and Jane, a household of two. Mary, who does not live with Jane, but is claiming Jane as a tax dependent – there's no exception that applies to her. The tax rules apply. The fact that she's claiming Jane as a tax dependent means she's actually providing a significant amount of support for Jane. Don't quote me on this, but I think it's sort of more than half of Jane's support as a non-custodial parent. But that's a tax rule, so don't quote me on it. But there is certainly a threshold, but so – at any rate, so Mary claims Jane as a tax dependent, and Mary and Jane would be in Mary's Medicaid household.

And I think I was going to go through six and seven, but I think I just want to have you look at six and just – and you can study it later. I want to flag six because I think it's, again, a place where we would welcome – it illustrates a situation that we didn't think about in drafting these rules, and whether or not we should change our rule or not. And the question that I pose to you as you think through this scenario, is whether or not sons and daughters-in-law who are claimed as a tax dependent by their parents-in-law should be treated the same as children, step-children, biological children, adopted children. If they're being claimed as a tax dependent, should the same sort of parent-child rules apply, which under our rules, they don't? Daughters-in-law and sons-in-law are treated like extended family members – extended relatives who are claimed as a tax dependent.

And that, I think – instead of trying to do any more scenarios, because there's probably enough there to generate questions and whatnot – I think, at this point, Alaina, we should open it up for questions.

Operator: Okay, if you would like to ask a question at this time, please press pound (AUDIO GAP) on your telephone keypad. We'll pause for a moment to allow you to get in line to ask questions. Again, that is pound 7-1 on your telephone keypad to ask a question. Okay, we have a question.

Operator: Now joining the floor, Idaho Department of Health and Welfare.

Idaho Department of Health and Welfare: Yeah, we just have a question when you had talked about the scenario where Bob, Mary, and Jane were in Bob's household. I think it was scenario number eight. And then at the end Mary was unrelated, and so Mary was the only one in her household. And you had said that if Bob's household income was below 133 percent, that we wouldn't have to go to the step to put Mary in her own household?

Sarah deLone: Right, because we know that if Mary is being claimed as an unrelated individual or an extended family member who's being claimed as a tax dependent, we know that her income is very low. She has – her income has to actually be below the exemption amount, which is certainly under $4,000 a year. So we know as a practical matter that she's going to be eligible for Medicaid.

Idaho Department of Health and Welfare: And that's because she didn't file on her own, that we know her income is lower?

Sarah deLone: It's because in order for Bob to claim her as a tax dependent, her income has to be extremely low. In order for a taxpayer to claim an unrelated individual or anybody other than their child as a tax dependent, the income of the person being claimed – so if I'm claiming my niece, or a sister, or a friend, I – there's two tests. One is that I have to provide a threshold level of support, and I don't know exactly what that is, but I think it's sort of at least half. I think it's probably more than that, but it's a threshold of support. I don't know what it is, but it's significant. And the income of the person I'm claiming as a tax dependent has to below a certain threshold and that threshold is quite low.  It's around the amount that you get as an exemption on your tax return when you take a tax dependent.  So, by definition, if she's being claimed – unless there's tax fraud going on, but we're assuming here we don't have tax fraud, and I don't think we're – nobody's expecting States to go and sort of investigate tax fraud.  That's the IRS' job.  So in order for him to be claiming Mary as a tax dependent, her income has to be very, very low.

Idaho Department of Health and Welfare:  Okay, thank you.

Sarah deLone:  You're welcome.

Operator:  Now leaving the floor, Idaho Department of Health and Welfare.  Now joining the floor, Steve Tobak, Oregon.

Steve Tobak, Oregon:  Hi, I just wanted to comment that I think that the language in (f)(2) and (3) is somewhat confusing.  I mean, you just clarified that an individual claimed as a tax dependent by a non-custodial parent – actually, their household is them and the custodial parent.  At least, I think that's what you clarified.  But if you read (f)(2), it says that the rule for those individuals is the rule under (f)(3), but then the rule under (f)(3) starts off with "in the case of individuals who do not file a tax return and are not claimed as a tax dependent, the household consists of the" such and such.  So you are saying that somebody who is claimed as a tax dependent is treated the same as somebody who is not claimed as a tax dependent, and I think that there must be a way to write the rule so that that's not as confusing.

Sarah deLone:  Okay, put that – please submit that comment in writing.  I think our intention was, because in (f)(2), we say "except that the household for these exceptions must be determined in accordance with paragraph (f)(3)," but if it's creating confusion for you, we also got a question about that.  It may well be creating confusion for others, so we can certainly look to make that clearer.  The intention was to, for these exceptions, even though somebody is claimed as a tax dependent, that we would treat them as if they're a non-filer and apply these same rules.  So, thank you, we will look to clarify that.  But we do need that comment – we need that comment in writing.  Anything that we get from you on this call, or in any other informal context, we cannot consider, in the final rulemaking.  Thank you.

Steve Tobak, Oregon:  Thank you.

Operator:  Now leaving the floor, Steve Tobak, Oregon.  Now joining the floor, Barbara Otto, Chicago.

Barbara Otto, Chicago: Hi, Sarah.

Sarah deLone: Hi, Barbara.

Barbara Otto, Chicago: I have a question, and you may defer this to later, but I was looking at the MAGI questions for the October 6th audio conference. And I think that, under mixed households, question 21, when you talk about mixed households, where there might be individuals either on SSI who are not currently included in the household of family-related Medicaid programs. It asks – do you have those questions in front of you? Do you want to discuss that?

Sarah deLone: We're going to go through the questions, Barbara, after we first – we wanted to go through the scenarios, which seems to be what the most are yearning for. Many of the questions, hopefully, will be easier for people to understand having walked through some of the scenarios. But we were going to – I would rather pend that until we actually get to the questions.

Barbara Otto, Chicago: Okay, I'm sorry. I didn't realize you were going to go through the questions next.

Sarah deLone: Yes. And yes, these are questions I'll add – just as received from States and others who submitted questions through our mailbox. We didn't edit the questions. Okay, thank you. Let's take a couple more questions if there are any, Alaina.

Operator: There are no questions on the floor at this time.

Operator: Now leaving the floor, Barbara Otto, Chicago.

Operator: I will now terminate the Q and A session at this time.

Sarah deLone: I feel like R2D2 or somebody is giving us directions here. So I'm going to turn it now over – oh, we get to have a little break. You don't have to hear my voice droning on any more. I'm going to turn it over to Stephanie Kaminsky. We've broken up the questions into a number of different topic areas and we'll plow through as many as we can get to. And I think, leaving some room, we'll just end with our presentation at 12:15, I mean at 2:15 our time. Whatever time that is, your time, and open it up for questions.

Stephanie Kaminsky: I think that makes sense. Because, maybe, we're going to get to it if you can just hang in there until the next question or two or three questions down the line. We really tried to pick some representative samples for this call. So here we go – income counting methodologies. I think – just because I'm not clear that everybody received these questions in time for today's call, or maybe just to make sure we're all on the same page, we're going to read the questions out loud before we try to answer them. So this first one I thought was a great question. It about 603(h)(1), and it says:

"If states are to use current monthly income and calculate MAGI from that, the NPRM at 435.603(h)(1) contains no instructions about how to process current monthly income into MAGI which is annual in nature, or conversely, how to break MAGI down to a monthly amount if required. If applicants are determined eligible based upon current monthly income pursuant to (h)(1), how will they ever become financially eligible for Medicaid using the MAGI-based methods as a beneficiary? How much time must pass before an applicant subject to (h)(1) moves to being considered a current beneficiary subject to (h)(2)?"

So, I think that our answer to this question is really similar to way that things would be handled today, in many respects. I think that States have always had to calculate current income based on a variety of different sources—past income and information about changes in income since the last documentation available. And the State uses all of – well, pull together – anybody who's doing eligibility will pull together information on the source and type of income, the amount, and also, importantly, how often it's received. And based on the reported frequency, the amount of each source of income is calculated on a monthly basis, and added up by the system.

So we think that the MAGI-based methods for calculating monthly income should be similar to each State's current method, except that there's going to be more databases available for verifying income, and less need to require documentation from applicants. The same source of methodologies that the State uses today to, kind of, convert information that's not broken down into monthly segments would be applied to get to point-in-time monthly budget period type MAGI that we are –that will be required under the MAGI-based rules.

So we anticipate that because there'll no longer be disregards, except the five percent general disregard, the calculation of monthly income should be simplified in some respects, but generally, the approach to doing it – we didn't specify in our NPRM rules around how to get from a number that's not expressed in terms of a monthly number to a monthly number. As we – as some of us internally discussed this question, we questioned whether it made sense, given where we're at, to put out rules to specify that going forward. And, if in fact, States or anybody on the call, thinks that that's a good idea, we would welcome that comment specifically going forward, and we would certainly take that under consideration. But the bottom line is that we're trying to get to a monthly number, based on a variety of sources, some of which won't be expressed in terms of monthly numbers. And there are techniques today to kind of average and divide up to get there, and those techniques will still be applicable.

Sarah deLone: Right, so I guess I'm thinking of sort of an example, and this may not be the best example, but like today, interest income is something that's counted under MAGI and it's counted today. It's probably not a type of income, or source of income, that's frequently in any appreciable amount experienced by our populations, which is probably true with many of the different kinds of income that appear also on your 1040 – sort of those line items on your 1040 form that either get added into or subtracted from.

So this sort of – it's sort of – there's a dual intersection here I think between – as Stephanie said today States have to deal with this. You have any number of types of income that people may have that aren't received on a weekly or a monthly basis and you have to somehow figure out nonetheless what is the monthly income. And that will be true to a certain extent under MAGI. But there's also sort of the operational kind of operationalization and the verification pieces of this, which Stephanie's comment alluded to, which will – what information do you have to collect? How do you verify it? Then how do you use it? All of these questions are – some of them are – we've got sort of our MAGI rules, which are kind of black and white, but then there's the implementation of it, which frankly, we're all working through this together. So, those are – in part, it's the answer that Stephanie gave in terms of our rule. I think, in part, it's also how this – how the rules get operationalized and how we build the systems and how the verification processes work. And we will be talking about that somewhat more. We have a call in a couple of weeks scheduled on – We're combining the application and verification provisions of the reg for the call to walk through, and we'll be talking, having more conversation about this type of issue from that angle on that call.

Stephanie Kaminsky: And then just to, I think, answer the (h)(1) to (h)(2) question – (h)(1) is for applicants and new enrollees, and (h)(2) is for somebody who's a current beneficiary, somebody. And so the (h)(2) methodology, which is where the State gets a choice between point-in-time or evening out that income in an annual way – that is really for redetermination purposes.

Sarah deLone: Well, it happens right away. It happens as soon as somebody is on the rolls, have been determined eligible, and then let's say, the next month, they – yes, redetermination, but not just regular redetermination – at any point at which they experience a change, after they're on the rolls. So there's no time lag, basically.

Stephanie Kaminsky: Right. Okay, moving right along.

In the presentation, and this is referring back to our – what was it, September 15th or the previous – the presentation that we gave a few weeks ago, where we did the overview of MAGI. There was a slide that included which lines of the IRS form 1040 considered income (7 to 22), and the deductions allowed (23 to 36) in order to get to the AGI. The Affordable Care Act removes disregards and deductions other than the 5 percent, but with the use of the AGI plus adding back excluded gross income under section 911 and tax-exempt interest for the determination of MAGI, are we not then allowing disregards and deductions? Maybe it's implied, but at the conference it was a blanket no disregards/deductions allowed without the caveat that only those allowed by tax laws.

And I won't finish it, because I think that the rest of it is encapsulated in the beginning part of it. And so, my bad, we should've made caveats when we were talking about what we were talking about by no disregards. Although, we here consider disregards to be kind of a technical term that's encapsulated in a different part of the statute, (INAUDIBLE) the Social Security Act, versus, or in other parts of, which we refer to in Medicaid eligibility, versus in 36B of the Internal Revenue Code, which is where these deductions are spelled out and articulated. Yes, those deductions that I talked about last time (Lines 23-36) will be incorporated into the calculation of modified adjusted gross income. So, they're kind of like disregards, but we consider them to be slightly a different animal and they do apply.

Okay, the next one is about supplemental needs trusts, and I'm going to read it out loud, and then I'm going to talk about our reaction to it.

The exceptions to MAGI income include lump sum payments et cetera. What if a disabled individual's income is placed into a supplemental needs trust (an exception trust). Under trust rules, the income is not considered income for purposes of Medicaid eligibility. This applies not only to the disabled individual's eligibility but also to any family member's eligibility. How will this be taken into consideration in the MAGI methodology?

So this was probably my favorite income counting question that we received, only because it's a really hard one. And because it's a really hard one, we really don't have an answer yet that we can share with everybody. We can just kind of talk a little bit about some of the thinking that's gone into it so far. But we are far from at a definitive answer. And part of the reason that we're far from a definitive answer – we've consulted even with the IRS to talk about this one a little bit, and we've spoken amongst ourselves – is because these special needs trusts can be – these instruments can be set up in so many different ways. And depending on how that trust instrument is set up, the tax consequences may be quite different. So that is the very cautious kind of non-answer which I always hate giving, but it's kind of the way things are. And so if there are some more specific scenarios that people would like to run by us, getting into some more details about these trusts, that would be very helpful.

There are factors that are under – factors that are considered, just even on the Medicaid side, let alone the tax side, in terms of whether or not this is truly excepted money or money or resource has to do with whether or not a person actually has access. A beneficiary has access to this trust property and/or whether or not there are distributions. And some of those same factors may or may not be at issue on the tax side of the house. That's part of what the IRS is contemplating right now. So we are really kind of looking at it very carefully.

The other part of this question deals with how income is – the frequency with which a distribution may be received, assuming there is a distribution. I mean, some of the debate here was that in many cases there are not distributions for these trusts. In which case, they may or may not be considered resources. In which case, they may or may not be, or they would not likely be counted under MAGI. So as you hear me kind of bumbling along here, you can hear that it's complicated, and a lot of "if, thens" about the way that we would analyze the question and answer.

If there is trust income, and it is received on a one-time basis, then lump sum rules might come into play. And then, of course, we've got our special rule that we articulated in the NPRM, or our special proposed rule which is that money is only considered as income in the month of receipt, and would be considered a resource thereafter. So that if the money was received several months prior to the application, it would likely be a resource, and it would not be at issue. And then, of course, if it's at the time of application or thereafter, it's a question of – it would be, again, income in the month of receipt and then a resource thereafter, if it was known about, but likely it would be, or maybe not.

So that's our kind of very general take on this. I think that it is a really good question. I think it's worth our continuing to kind of noodle about, because it's possible that the tax implications here, and the way that this kind of – these kinds of instruments are characterized and considered for tax purposes, and whether or not they become part of the MAGI calculation, including even to be counted for family members – are all really right on the money questions. And there may be some new twists that need to be taken into consideration that may have not been taken into consideration when some of these instruments were drafted, because they were drafted when considering a different set of rules. So it's – we'll continue to look at this and think about it, and hope to be able to be more definitive at some point in the not-so-distant future.

Okay, moving right along. If support is voluntarily paid by the non-custodial parent to the custodial parent with whom a child lives, will this be considered child support and not counted? Does it matter whether the payments are court ordered or not? How does the IRS treat this income?

Our understanding is that this income is not counted. It does not matter if it is court ordered or not. If somebody did not characterize it as child support, it would not be part of MAGI. And it just doesn't matter if it is court ordered or not. I'm repeating myself, I realize, but those are the salient parts of the answer. So there are some other kind of real world considerations that go into whether or not these types of payments are considered child support or not. And as I understand it, there are times where there is some ambiguity around child support and alimony payments. And there may be times where there are some tensions between somebody wanting to deduct something for alimony versus somebody wanting to not claim something as child support – a kind of tension there. But those are kind of the way things are going. Those are kind of operational questions, if you will, important for the IRS et cetera to be thinking about, and us to be thinking about, but the rule of thumb here, in terms of just the policy going forward, is that even when they're not court ordered, in general, these child support payments would not be counted.

The next question is about AI/AN, the exception in the rule for American Indian and Alaska Native types of exemptions. The question – I'm going to break it up into bits – starts with:

"Some of the income types specific to Native Americans listed in 603(e) are currently only excluded up to $2,000 per year. Was the intent to exclude them completely? For example, certain Indian Land Lease Payments and Royalties when the land is held in trust."

Okay, so my understanding based on consultation with my AI/AN subject matter expert colleague, to whom I'm always so grateful, is that the $2,000 per year limitation on the exclusion was eliminated in ARRA, section 5006(b). Indian Trust Land Lease Payments and Royalties are now completely excluded, which is why we didn't have any limitations in our NPRM. So these items have been defined by statute as excluded as resources. And even monies received from conversion of a resource to cash are still resources and are not counted as income under the Indian exemption rule. So, as noted, the question goes on to ask:

"As noted in the preamble, 1902(ff) broadened exemptions related to certain AI/AN financial interests, but they are resource exemptions, not income."

And yes, that is what we did, and so again, I want to reiterate that resources that are converted to cash are still resources and not counted as income. And because these items are defined by statute as resources, they cannot also be considered income. There will be no resource test, as we have said a number of times. I'll just repeat for the record, but I think we all know now, there's no resource test under MAGI, and the NPRM language is meant to ensure that these payments, even derived from conversions of excluded resources, are not incorrectly treated as income.

And then finally, in that question five, the questioner went on to ask about specific language in our NPRM. It says that:

"The language does not reference specific statutes and regulations, and some parts could be interpreted to include other income types not currently excluded by law."

And so I'm not – I was not clear what was being referred to here. It would be helpful if the questioner could give examples and/or, of course, submit comments, to kind of clarify what was being kind of implied by the question, for us to give further consideration to it, if our language currently is not clearly written, or not, or is causing any kind of confusion.

Okay, so then I think the last one that we've characterized as an income counting question right now is a question about families whose only income is child support or RSDI. And I have to say for the record, I don't know what RSDI is, so if anybody wants to come forward and clarify at some point that would be helpful, but I'll answer the question in terms of child support for now. And again, I just want to reiterate what I said before. Oh, well let me finish the question:

"Currently, many of these children are placed on CHIP because of the Sneede rules for counting a child's income. However, under MAGI, where child support income is not counted, it appears that these families would have an income of zero and placed into Medicaid. Is this a correct assumption that child support is not counted in MAGI at all?"

And to repeat for the record – yes, yes, yes – that is the rule that we are going by now. That is how MAGI works.

And then, the other part of the question is:

"Will the State be able to continue to claim enhanced FMAP for these children or will there be another mechanism to compensate States for previously Title XXI-funded children who drop into Title XIX coverage as a result of the MAGI conversion?"

So, we think that the answer to this – again, I want to just repeat what Sarah said in the beginning. This is Sarah and Stephanie, and some of this, we're just, you know, giving you our gut, and our impression based on our understanding of the policy, et cetera. Some of this we are in the midst of trying to talk about internally, and get more consensus around. But our thinking is that these kids would be considered Medicaid expansion kids, who do not meet the Medicaid eligibility requirements for children in effect in June 1997; and therefore, for whom Title XXI enhanced match would continue to be available.

We are trying to think through some operational questions that come around the implications operationally for this. In particular, how these kids would be identified. This creates some of the – some similar challenges to what we've talked about in other contexts around the FMAP for the newly eligible in the eight group. We don't want States to be running dual eligibility systems, and so we're trying to think through how, without running these kids through current eligibility systems to test that June 1997 income level, how we would identify these kids. But technically speaking, if they did drop into Medicaid because the child support was no longer counted, we believe that a CHIP match would be available. But then again, CHIP matching goes beyond the bounds of what this call is about.

Sarah deLone: Which is why it's Sarah and Stephanie – our view. But shouldn't be. It's a tough one, and we're just – I guess the bottom line is we're thinking it through. We're working through our general counsel. That is our gut. It also – hopefully, our thinking helps you to think about it yourself – that you're analyzing it. That's how we're sort of approaching the question. And so we just sort of offer that in hopes that it's helpful to you, pending a definitive answer, both on the policy as well as the operationalization of the policy.

Oh, that's it. We're back to me. How fun. Okay, so household composition methodology. We'll get into some of the specific questions you all had. So, question number seven.

"In cases where a married couple files a joint tax return, do the proposed rules recognize each spouse as a taxpayer? Or is the spouse with his/her name on the return considered the taxpayer while the other spouse is considered a dependent?"

I will confess, maybe this is TMI, but I've never been married, so I've never filed a joint tax return, so I've never thought about this, but I assume that both names on the joint tax return appear on the tax return. And my currently or previously married colleagues aren't shaking their heads. So, yeah, and certainly the anticipation in our rule is that both spouses on the joint tax return are considered a taxpayer and they would be treated under our (f)(1). They would fall under that category and they would both be included in the same household. I'll have to take a closer look and welcome you to take a closer look if you think we need to be clearer about that in (f)(1). We can certainly do that, but that is the intention and certainly the way it works on the Exchange side under the 36B tax rules.

We actually – I omitted a question, so I want to – inadvertently, so I want to read it, and it sort of goes along with question number eight. The missed question was:

"The option for States to define a child up to the age of 21 is being retained. How will eligibility for children ages 19 and 20 be affected by MAGI rules in a State that elects this option?"

And the next question – "Are we required to include children up to 21 in the household? Whether or not they are, if they are or are not required to pay taxes?"

So, just looking at all of those, let's just talk about how kids are treated under the rule. There's no longer an option for how – when a child is considered to be a child under our rules or not. And the rules that exist for when you're considered to be a child in your parents' household, if you will, and have your parents' income count in determining your eligibility, and when that's not the case, are different depending on whether you are in a tax-filing sort of family status or a non-filer family status.

If we look at tax-filing families, so we're in our (f)(1), (f)(2) rules, the age of the child is actually irrelevant, so if you're being claimed as a tax dependent by your parents, you are in their household. If you're under 19 or under 23 and a full time student, there's one set of rules that your parents can claim you as a qualifying child. If you're over that age limit, you could still be claimed as a tax dependent. You would just fall under the qualifying relative rules in the tax code, which are the more stringent rules that we talked about before – a higher support test and a lower amount of income that the child, the older child would be able to have, and be claimed as a tax dependent.

So for taxpayers, 21 sort of does not – paying families, 21 is not the dispositive question. Of course, if you are living with your parents but you're not being claimed as a tax dependent, but they are tax filers, you would get bumped into the rule for non-tax filers. So if you either fall into that boat, let's say you're an eight-year-old and your parents think they can get you Medicaid by not claiming you as a tax dependent, the answer would be wrong – they can't. You would – the child would be treated as a non-filer.

Or if you're legitimately in a non-filing family – our rules for tax filers – there's no State option here. If you are under 19 and you are living with your parents, you are in their household. So 19 sort of becomes a – one sort of threshold age. If you are 21 and a full time student, then you are also considered to be in your parents' household if you are living with your parents.

I don't want to get into a long explanation about why we did the 19 and the 21. We do have some discussion of it in the preamble, but it was really essentially to avoid – we initially were going to just make it a flat-out 21, but we would've created a potential gap in coverage for certain 19 and 20-year-olds who may not be a full time student but are living with their parents, and are, maybe they earn too much money to be claimed as a tax dependent, so the parents can't actually claim them as a tax dependent under the tax rules.

So you might have a 20-year-old, let's say, not a full time student, not claimed by the parents as a tax dependent; and therefore, not part of the parents' tax household. When the Exchange goes to evaluate, or the Medicaid agency were to go evaluate that child for Medicaid eligibility, and we were to say – well, you're under 21, you're living with your parents, therefore your parents' income counts. If the parents' income is over 133 percent of the federal poverty level, that 20-year-old is not going to be eligible for Medicaid. But when they went to the Exchange to look for eligibility for a premium tax credit, the Exchange would say – well, you're not claimed as a tax dependent by your parents, so you're not in the tax household of the parents. You can't get a premium tax credit, or enrollment in the Exchange. So we had a gap in coverage, which is why we did under 19 – all individuals under 19 – if they're living with their parents, are in their parents' household. And then we limited the under 21, so for 19 and 20-year-olds to full time students, because they can clearly be claimed as a tax dependent by their parents, and we would avoid that gap in coverage.

And the issue about whether or not the 21-year-old is required to pay taxes or not required to pay taxes, that relates to whether or not – if such an individual is in the parents' household – that question is dispositive of whether or not the individual's, the child's income counts, but doesn't have to do – isn't part of the analysis in terms of whether – what the household composition for the individual is.

So when you're analyzing this; first, look at the household composition rules. Figure out what the household is, and then go and look at whose income counts. And that's when, depending on if the individual situation – if it's the individual under 21, or 21-year-old or 22-year-old for that matter – is included in the parents' household, if they're not required to file a tax return, their income doesn't count. If they make enough that they are required, their income does count.

So, moving to question nine.

"Please clarify whether it is really a state choice to count a pregnant woman as one or two people if she is married and filing a joint return. Our understanding of the tax law is that, among married couples who file a joint return, each spouse is considered a taxpayer. Based on this, and the application of 435.603(b), it would seem that a pregnant woman who is a taxpayer would always be counted as two persons regardless of whether she is applying for Medicaid on her own or as part of a household."

She is – our rule is – I mean, two points. One is that this is a place where we actually deviate from the tax rules. Under the tax code, you can't claim a tax dependency for an unborn child. So a married couple – if the wife is pregnant, they are a household of two. If she's a single woman and she's pregnant, she's a household of one. Until that baby is born, she doesn't have – she's just a household of one, she's herself. Or if she's married, they're a household of two. But that – our rule doesn't tie to the tax rule. Our rule ties to the way it works in Medicaid today. And we did this, as explained in the preamble, in order to avoid – to promote continuity of coverage for women whose income, if they were counted as just one while pregnant, and then as soon as the child was born, were counted as two, that all of a sudden their household income as a percentage of the federal poverty level would drop because of the increase in household size. And we saw that many of them would then have to shift into Medicaid at that point. So to promote continuity of coverage, we decided to pick up the Medicaid rule here, which we don't think is an operational big deal. You just add one to the household size.

So is it really a State choice to count the pregnant as one or two? It's not for, again, this gets to the – if you think about it. First, let's look at the pregnant woman's household size, and then let's look at her husband's household size. In this case, the requirement is that the pregnant woman, in determining her eligibility, she is two. So her husband – she and her husband – let's say, file a joint tax return. And they have whatever income they have, and you're going to look at her eligibility for Medicaid. She's going to be considered based on a household of three. It's a State option whether to consider the unborn child, the fetus, for the husband or not. So he could be a household of two or three at the State's option. If the State really wants to maximize the alignment and the continuity of coverage for everybody in the family, they would want to pick up that option. But, we didn't – it's a State option today, and we didn't see we had any basis to require States to count the unborn child for every member of the pregnant woman's household. So we left that at State option.

Next question – also, about pregnant women.

"Do we count multiple unborn children for pregnant women or just always two, regardless of the number of unborn children?"

I understand there is a State that asked this question before, in another context – that they count everyone today. So if there's five in utero, she's counted as six. Our rule is two. If you think we should – you should be required or have the flexibility, or States should be required or have the flexibility, to count every unborn child as more than one, we welcome those comments. But under the proposed rule, it's two, regardless of the number of actual unborn children in utero.

Next question –

"Are spouses on military service and children away at school not considered part of the household and therefore their income will not be counted nor will they be included in the household?"

So here I think again you have to look at our rules – you have to look at the rule separately for taxpayers. And then for households that are non-filers. For taxpayers, it is the tax status that governs. So it doesn't matter where somebody is living. If they're claimed as a tax dependent, they're filing a tax return together, or they're claimed as a dependent, they're in the same Medicaid household unit, just like they're in the same tax household unit.

If the rules for non-filers are applicable, I think there's some gray area here. There's gray area today and there's gray area that remains in the rules. As sort of a practical matter, with these two particular cases that are given – children away at school. Although our residency rules are distinct from our household composition rules, and maybe we shouldn't make this – so let me preface this with this is an area that probably we would welcome some comment about whether you think we should do more, be clearer, be more prescriptive, or whether you think it's good for there to be some flexibility in States, in terms of how they define when a family is considered to be living together as part of the same household, even though some people may be physically located elsewhere.

So but that – so then jumping back into this, you give the example of children away from school. Our residency rule retains the flexibility that States currently have to consider those children to be members of the parents' household or not, and we retain that flexibility. It would certainly make sense from a policy perspective to have that be sort of the same – to have the residency rule sort of equate to the household composition rule. If you're going to consider those children away at school to be a resident of the State of the parents, then you should also consider them to be in the parents' household, assuming they meet the age requirements for non-filers for non-filing households. But I would say that our residency rules aren't explicitly cross-referenced here, so there is still some gray area and perhaps arguably you could do it differently. That maybe is an area that we should be clearer about.

I think there may, in the case of military spouses, right now, there's actually a rule under AFDC that those spouses are considered to be part of the same household. AFDC rules don't actually carry over to MAGI, so that wouldn't necessarily have to be the case, but that's certainly how it's done today. You might imagine, though, there's a situation in which you have a husband or a wife who has a job in another state for an extended period of time. That certainly happens. My instinct is that – they're considering themselves to be an economic unit and the husband is contributing, they're still married, and the husband is contributing to the family. I would think, me, Sarah deLone, would think you would want to consider them to be part of the same household. But our rule is not explicit on this, and so I think one area for comment would be whether you think leaving the ambiguity there and State flexibility is good, because maybe there's other situations where it's not so clear, or whether it would be most helpful actually for our rules to be more explicit, either at a regulatory or a subregulatory level. And if so, what you think that more explicit rule should be.

Let's see, number twelve –

"The section 435(f) and page blah-blah in the NPRM imply that non-elderly grandparents, uncles, aunts, non-caretaker relatives living with and being claimed as tax dependents by the taxpayer would not be in the taxpayer's household; however, when looking at the exception at (f)(2)(i) and referring to (f)(3) as instructed by (f)(2), a non-filer, tax dependent is not addressed."

Okay, I think, I'm guessing maybe this was the same person who asked the clarifying question. I think this is right along the lines that was asked earlier when we talked about – somebody asked from Oregon – asked about – thought that our text was not so explicit and needed to be clearer in (f)(2) and (f)(3). If somebody is being claimed as a tax dependent but they fit in one of those exceptions at (f)(2), our intention is, and we can certainly make this clearer in the final rule, that the rules for non-filers would apply. We will treat them as non-filers, even though they're actually being claimed as a tax dependent.

I think that takes care of that. If it doesn't, I welcome the person to – there's some issue about. Let me, let me read the last bullet –

"Does a person sent from (f)(2) to (f)(3) need to be living with the taxpayer who is claiming them as a tax dependent?"

No, 'living with' doesn't have anything to do with it. 'Living with' may have to do with what their household composition is once you get to (f)(3), but you don't have to be living with a taxpayer in order to get sent to (f)(3).

"If there are situations where individuals can make choices about which household they are in, that needs to be captured in the regulations (for example, 50/50 custodial situations, or if a child chooses Exchange coverage in the non-custodial parent locale)."

Okay, I'm actually – we are – I think we will definitely have time – we're going to get to that very situation, whether there's a 50/50, or the custodial situations. And so, we'll talk about it.

The last one, before we get to the non-custodial parent scenarios or questions.

"In determining household size under MAGI rules, which laws defining marriage will apply – federal versus state?"

That's a fun question. Well, our rule should say. I can tell you what I think the rule should say. I welcome comments, because we should probably clarify. I think that probably you're going to want, whatever the politics in your State are, and whatever my particular politics on this may be – I think that since the Exchanges most certainly will be applying the federal rules, we would probably have some problems if we had different – we're applying State rules around marriage, when it's the federal rules that govern whether two people can file a joint tax return for example. So I haven't thought it through in all the minute detail. Maybe it'll work okay if State law is followed. My gut is that we would have problems, Houston. But we will think through it more carefully. I welcome the questioner, and whoever else, to think through it more carefully. And we should address it in the final rule, unless it can be State option.

So going on to custodial parents. Under the household exception – actually, this – I'm going to leave this one to you guys, to you all to read, because basically, I think the questioner got it exactly right. So read it. It's a really great scenario, and it helps to illustrate it. And we talked about the scenario in one of our – we walked through a similar scenario, so let me just leave that alone, and say that it's a good – it's a good case study.

Ginni Hain: Sarah, in case somebody doesn't have the questions in front of them, can you just reference which question it is? Thank you.

Sarah deLone: Oh, it's number fourteen.

Ginni Hain: Thank you.

Sarah deLone: Thanks, Ginni.

Number fifteen –

"The child under 21 who is a tax dependent of a non-custodial parent is not included in the household and family size of the custodial parent, nor would that child's income, if a required tax filer, be counted in the household of the custodial parent."

I think that actually – you know what, let's flip to our scenarios. Scenario five, I think was the non-custodial parent. Just because I like to have a little picture in front of me, and maybe it'll help you all, too. So in this case we're saying that the tax dependent – so in scenario five, Jane – of the non-custodial parent is not included in the household and family size – in this case – of Bob, who is the custodial parent, nor would that child's income, if a required tax filer – so nor would Jane's income if she has to file a tax – be counted in the household income of her custodial parent – of Bob, in scenario five.  That's correct.

"In these situations, the custodial parent clearly provides support for the child, regardless of who is taking the tax deduction for the child."

I would agree.

"Moreover, these parents often trade off taking children as tax deductions.  Leaving this child out – sorry, flipping the page – out of the household of the custodial parent is a huge change from existing Medicaid rules.  Why does this make sense?"

I completely agree with this, and this scenario is completely perfectly set up, provided that the custodial parent is also filing a tax return.  If the custodial parent doesn't file a tax return – and we're going to assume that we have a family operating above the law here, so therefore, isn't required to file a tax return under the non-filer rules – Jane would be included in Bob's household if he's a non-filer.  So let's assume that Bob is a tax filer.  And the scenarist is absolutely right.  This particular scenario was really, really, really hard to figure out where the best balance strike.  There's no perfect rule for these children and their families.  The rule we put out we think strikes the best balance, but we explicitly requested comments on it, precisely because it's really hard, and there's a lot of competing factors, and we really want to know whether people think we got it right or not.  So we welcome comments.

We came out where we did because we thought that to include the child – first of all, you have to take as a given, that for purposes of the premium tax credit, the child is considered part of the non-custodial parent's household. There's nothing we can do about that.  (AUDIO GAP)  I'm sorry, I had to just do a sidebar really quickly.

So we know that Jane in our household is going to be a part of Mary's household for purposes of the premium tax credit.  If we were to consider Jane to be part of Mary's, the non-custodial parent's household for Medicaid purposes, particularly where you've got parents living in two different States, or two different – or even two different regions of the State, that could provide completely meaningless coverage for the child.  So that rule didn't make any sense – seems like a bad sort of choice.  So then we were left with Jane being part of – the child being part of the custodial parent's household for purposes of her eligibility, which we think is the best for Jane.

So the question – that if Jane – let me just say, that if Jane isn't eligible for Medicaid based on Bob's income.  If his income is too high, then her only avenue for publicly supported coverage through one of the insurance affordability programs would be through her non-custodial parent claiming her as a tax dependent.  I think the way it would most likely play out – let's say they're living in different States – is that she would enroll in a child-only plan, and the tax credit would flow through Mary.  That's the only way that it could work, unless there is a plan in Mary's State through the Exchange that covers individuals in other States.  So that's – but that's an Exchange question.

The questioner is really getting at is this a fair treatment of Bob?  For simplicity's sake, because we were trying to align and keep the tax rules – apply them to the maximum extent possible, and deviate from them as little as possible.  Our thinking was that Bob and Mary do have some element of choice.  Maybe there's a court order, so it's not total choice, but we can't solve everything, but there's some element of parental sort of choice or involvement here in terms of who claims the child as a tax dependent, and they made their selection.  And we have to live with it.

We could, I think, and if you think we should do this, you should let us know in your comments, deviate from the 36B rules here, too.  And say, for non-custodial parents who are tax filers and their children are being claimed as a tax dependent by the other parent, we will consider – we'll sort of consider them as non-filers and apply that rule and consider the child to be part of their household also.  That, I think, would be a legitimate rule.  I think it increases the level of complexity.

I think that parents – there is some element of choice, and there is an extent to which if the non-custodial parent is claiming the child as a tax dependent, they clearly are providing significant levels of support.  But this is a tough – this is a really tough issue.  This is a tough call.  I think we could all sort of come at it in different ways.  I don't think we necessarily thought – and would weigh all the considerations the same as everybody else.  So, please, please, please, we really wrestled with this, let us know what you think.  Let us know if you think the rule should be different.  And we will definitely take that into consideration in the final rule.

Number sixteen –

"Two parent household with one common child and one child from the mom's previous marriage. The child from the previous marriage is claimed on his father's taxes as a dependent. Currently he would be included in the current household and child support income would be counted. Under MAGI, if following IRS rules, would that child be included?"

Well this is a place where we're deviating from IRS rules. So, currently, under the IRS rules, he would be counted under the father's tax return – I mean, in the father's household. But under our rules, he is going to be included in the custodial parent's household, for purposes of determining his eligibility, this child's eligibility.

"Is child support included?"

Stephanie addressed that – no, child support is not included.

"If they applied and were not tax filers, how would we correctly identify the household composition?"

I think I'm going to leave that as a question that was – the type of thing that would be – it's going to be addressed through the development of the application process. It's really a household composition question, but the general is – it's likely to be similar to today. People will fill out an application and they'll say who's living in their household. And there'll be questions to get at what the relationship is between people, whether they're parents, kids, somebody else. Not dissimilar to today, but we're certainly working through what's the simplest way to get, ask, and collect the information that we need for both tax filing and non-filing households in order to apply the rules correctly and fairly.

So this next question number seventeen –

Stephanie Kaminsky: Sarah, can you pause for one second about the time? We are starting to take two hours, where we said we were going to do questions. And we haven't gotten through a lot of other categories of questions. I'm wondering if it makes some sense to try to – although we did say we'd talk about the 50/50 scenario, which is question nineteen. And then I don't know if it makes some sense to just pick a few from a few other categories, since we've done quite a few of the custodial parent ones.

Sarah deLone: Yeah, I think that's probably a good idea.

Stephanie Kaminsky: And if we have time, or not enough questions, or whatever, we could flip back to these guys on the custodial parent scenarios or non-custodial parent scenarios.

Sarah deLone: Okay, I will just – this will be quick. So the 50/50, because I did say I would address it. We didn't – truly 50/50 joint physical custody – not addressed, we didn't think of it – mea culpa. So let us know what you think. I mean, you could – we could – I mean, I could think of a couple of things. If you've got a tax paying family, we could default to the parent that's claiming the child as a tax dependent. Maybe you default to the parent with the higher income. Maybe if you're a non tax filing family, maybe whichever one submits the application. I'm not sure what the best way is to handle it. Those are sort of a couple of ideas. Let us know what you think. Leave it to State flexibility? Comments would be welcome.

So mixed households – why don't we do a couple from mixed households?

Stephanie Kaminsky: Yeah, I think so. I think that would be – (INAUDIBLE)

Sarah deLone: And maybe what I'll do is try and do the general principle, without getting into the specific details. So the general – sort of an overarching question:

"The rules don't discuss MAGI methodology as it applies to blended households (i.e., household where some individuals are subject to MAGI methodology and some individuals are subject to traditional net income methodology)."

So I'm thinking, predominantly that's going to be where some individuals are under a MAGI-exempt group, and you're using your SSI-based methodologies.

"Are there any scenarios where the combination of methodologies would have an adverse impact on the eligibility of a household member?"

So looking at the first part of the question first, where you've got individuals who are, sort of, are going to be eligible under – let me back up, so MAGI, we've talked about before, is a methodology to be used for determining financial eligibility for certain groups. They're going to be the new adult group, groups for children, pregnant women, and parents and caretaker relatives, to the extent that to which those live and retain vitality for you in your State. The rules for determining – and you may have in those groups, (INAUDIBLE) adult group, you may have a disabled adult, just like you might have a disabled child who's eligible today in a low income group for children, the methodology for which is AFDC methods today. In 2014, a disabled child or a disabled adult could be determined eligible for the children's or the adult's group using MAGI methodology.

So you have – MAGI is a methodology for those groups. And then you have, if somebody needs to be evaluated for coverage under a MAGI-exempt status, for example, based on disability or based on the need for long term care services, you have the methodologies that are used today, based on SSI methods. So, as with looking at each member as a household, where MAGI rules were going to apply to all of them, the same principle really applies.

So the fact, if you're a – let's say you have a disabled parent, and you've got a wife, a disabled husband, and a child, and I think somebody sent in a scenario – I think this may be one of our scenarios down here. That, first, you're going to (INADUIBLE) – the first thing you're going to do is to see – the fact that the husband is disabled doesn't mean that he won't necessarily or can't possibly be eligible for this new adult group based on MAGI. So for each of those members of the family, in this case they're all going to – you're going to say – Who's their household for determining eligibility under the adult group or under the children's group? Well, in this case it's pretty simple, right? We've got a married couple and a kid. All three of them are in a – they all have the same Medicaid household.

Let's say their MAGI is 150 percent of the federal poverty level. And adults are covered up to 133, and kids are covered up to 200 percent. The parents are not eligibility for Medicaid based on MAGI. The child is. And the husband's income, if he's working, would be counted the same as anybody else, any other parent's income under the MAGI rules. So now we say, okay, the parents aren't eligible based on MAGI, but let's say the State covers optional eligibility groups for disabled individuals. So now we're going to evaluate the father's eligibility under one of those groups.  Then you would apply the SSI methodologies to that family situation, and his situation.  And the whatever – I don't know, I'm not an expert in the SSI methodologies, so the allocation and the deeming procedures and sort of, the way that income is done then, would apply.  And if the father meets the income eligibility requirements for the optional disabled group, then he would be eligible for it.

So the exemption for MAGI doesn't sort of carry – doesn't attach to a person and apply for all purposes, no matter what.  You have to sort of think – who's eligibility are we evaluating? What's their household?  How do we count income for the household for this person?  And then when you're done with that, you sort of move on to the next.

So I hope that sort of covers what would be the general theme for any of these particular scenarios and situations.  I will say, though, that one of the things – and I think that we'll try and get into this more next week – we are going to address, as well as eligibility simplification, we're going to talk a little about the treatment of individuals with disabilities under MAGI.  All of these scenarios do illustrate some issues that we are frankly wrestling with now, in terms of how the interface of the rules works where you've got somebody who needs long term care services, where maybe the post eligibility rules apply, the transfer of assets rules apply, a State recovery, and most fundamentally, the eligibility of somebody for long term care services if they're in the new adult group, but the new adult group doesn't cover long term care services.  How do we address that?

So those are issues, all these scenarios – what I explained to you was sort of the basic rule about how you would approach determining the person's eligibility, but we acknowledge that there's a synergy that's maybe not quite a happy, harmonized synergy between some of the methodologies and the rules that relate particularly around individuals who need long term care services with the MAGI rules, and we're wrestling with those now.  We haven't figured it all out.  We'll be engaging with you all as best we can in the weeks and months to come to sort of figure out how that will work, and it may require some adjustments of the rules on our part.

The other – looking at question number twenty-three –

"How will MAGI be determined for mixed households where you've got some citizens, some qualified immigrants, and maybe some undocumented immigrants, or immigrants who aren't eligible for coverage themselves?"

And it's the same rule.  Actually, under our rule – if you look through it – there's no exception for treating if you've got, say, an undocumented parent with a citizen child, there's nothing in our rule that would treat that undocumented parent's income or membership in the household any differently than if you've got a citizen parent who is applying for coverage on their own behalf.  So the rules apply no differently.

And although I'm not going to try and explain the relatively complex formula that's set out in the ACA that applies to the Exchanges in determining premium tax credit eligibility – an amount of eligibility under the Exchange – we think actually that the result is identical, and a couple of different people, both in-house and people in some think tanks, have run a lot of different examples of this.  And it comes out the same.  So we think actually the rule aligns there.  But our rule is basically don't treat them any differently than you would treat any other member of the household.

Stephanie Kaminsky:  So it's often the case that they will be in the household composition constellation, and their income will be counted in a lot of situations, even if they themselves are not eligible for Medicaid coverage themselves.

Sarah deLone:  Yes, could we pause and then – I mean, fairer would be, too – if there are one of these questions that we didn't answer, is one that's hot on your list.  Let's – we were going to – we will leave the last ten minutes here to open up for questions, either on answers that we've already given, or if there's some questions, that I'm sorry we didn't get to today, and it's a burning question for you, fire away with that question.

Stephanie Kaminsky:   And the other thing to mention, of course, is that Sarah and I are both available for ongoing questions between now and the end of the comment period.  Our names are on the NPRM with our phone numbers.  We can give them out during this call, or you can just double-check there, but you know, we are accessible for ongoing dialogue outside of the parameters of this call.

Sarah deLone: So, Alaina, can we open up for questions?

Operator: If you would like to ask a question at this time, press pound 7-1 on your telephone keypad. We'll pause for a moment to allow you to get in line to ask a question. Again, that's pound 7-1 on your telephone keypad to ask a question.

Operator: Now joining the floor, OCSE.

Joseph Bodmer, OCSE: Hi, this is Joe Bodmer, with the Division of State and Tribal Systems in Washington. My question would be relating to the counting or not counting of child support collections as income. When that child support collection also includes spousal support, are you going to count that as just child support collections, and not break out the difference between the two, or will you be separating those amounts, and will we need to be reporting those separately to you that way.

Stephanie Kaminsky: Hi, so this is Stephanie, and I guess I sort of touched on that. I hinted about that during my discussion about child support payments. My understanding is that spousal support payments follow different rules, and that they would need to be accounted for differently. That they are counted under MAGI, and they would need to be, as you say, broken out. Your question does touch on other issues that we are really working on right now actively, in terms of developing the so-called single stream-lined application and how we are going to be asking for various types of information. How we're going to be gathering that up. There are going to be other calls on topics that are related to that going forward. But in terms of just this strict policy question, spousal support is a different type of (AUDIO INTERFERENCE) than child support. And while child support is not counted, spousal support is.

OCSE: Very good. Thanks.

Operator: Now leaving the floor, OCSE. Now joining the floor, Steve Tobak, Oregon.

Sarah deLone: Hi, Steve. Go ahead.

Steve Tobak, Oregon: Hi, I think actually, this might be on tap for next week. But there is a question that I talked to Sarah about a couple of weeks ago, which she said she'd throw in as a bonus MAGI question, which is – Why the heck is there still a parent/caretaker relative separate category when all of the parents and caretaker relatives should be under 133 FPL? Maybe that's in the eligibility simplification call next week, but I just want to be sure that it's going to be addressed at some point.

Sarah deLone: We will, Steve. And I meant to shoot you an email and say I overreached when I said promise. And we couldn't get to that on this call. But we will address that on the call next week.

Steve Tobak, Oregon: Okay, so I will throw in an actual MAGI question, which is – do you know yet from the IRS whether they are going to be able to give us information – here is people's MAGI, or will we have to, in every case, ask people – do you happen to have foreign-earned income or tax-exempt interest income? Because that would seem to be – I mean, the answer for the vast majority of people it's going to be – no. And, but I guess if all we get from the IRS is AGI, we're going to have to ask that.

Sarah deLone: No, I think you'll get – all these discussions about exactly what States are going to be able to get from the IRS and not, are still – they're ongoing, and it's obviously one of the million-dollar questions that's out there. In terms of that particular piece, my understanding – I can't speak definitively for them, but my understanding is that they will provide the MAGI. I mean, they will do that – they will do that adding back in or out. I guess back in, in both cases, back in, of those two items that have to be added back in, from to get from the adjusted gross income to the modified adjusted gross income. So that piece I'm pretty confident will be available for an individual taxpayer. It's the greater granularity of what other information in terms of the line items or deductions that go into the AGI or MAGI that is more of at issue.

Steve Tobak, Oregon: Okay.

Sarah deLone: But in terms of an actual, that actual number, I think that will be forthcoming from the IRS. Stephanie is shaking her head.

Stephanie Kaminsky: I am.

Sarah deLone: So good, at least, consensus there.

Steve Tobak, Oregon: Thanks.

Sarah deLone: Thanks for your question.

Operator: Now leaving the floor, Steve Tobak, Oregon.

Sarah deLone: Alaina, are there any other questions?

Operator: No, there are no more questions on the floor.

Sarah deLone: Wow, well – (INAUDIBLE)

Operator: You just received one question. I'll go ahead and allow them on the floor. Now joining the floor, Utah.

Sarah deLone: Go ahead, Utah.

Unidentified Participant from Utah: Hi. I just – kind of going back to the scenarios that we discussed earlier talking about the household where a tax filer is claiming someone who is not a spouse or a child. They're either unrelated or they're some other form of relative, that may be an adult in some cases obviously. When that tax filer puts this information in an application and we have an adult who is being claimed as a tax dependent on their forms or their household – generally speaking, if we have unrelated persons trying to apply for Medicaid, they would each need to file on their own, so that they sign an application, so that they've given the assignment of rights, so that we know that we have permission to share information back and forth. Any thought given to how do we deal with that? If a tax filer just provides this information about this unrelated person who's an adult, what are we supposed to do about getting their permission, basically, to see if they're eligible for Medicaid?

Sarah deLone: It's a great question. And it really goes into the design of the single coordinated application that the Secretary is charged and which we're working on developing. And we'll be engaging more and more with you all and other stakeholders to design that application. So it really gets into the design of that application. And not just as a sort of a simple, like a single piece of paper, but what's the dynamic process for getting that information – if you're in a web-based system, an application or not.

I think clearly, if I file an application and I put my sister down on the application – my guess is that, as a practical matter, often, if I have my sister as living with me, and I'm claiming her as a tax dependent, I may; or if I'm not claiming her as a tax dependent, I'm probably not going to put her on the application to start with. She's probably going to submit her own application.

But let's say she does. Or let's say she's a tax dependent, and she does. And then the State needs to be able to follow up with information to get her on the rolls. And it's probably – at least to get her consent to enroll her. I mean, you can be pretty sure that if she's being claimed as a tax dependent, then her income is very – not just pretty sure, you are, can be sure – her income is very, very low. She's going to be eligible. But you probably need some kind of consent just to enroll her in the program. You don't want to start paying a managed care company a capitated rate if she's not said like – "Yeah, I want coverage and I'm going to access it." So there would certainly have to be at some point along the way, where you'd have to – you know, that tax dependent is going to have to have contact. Or if it's a child, somebody is acting responsibly on behalf of the child. And which, in this case, could be the taxpayer.

So, it's a great question. It's sort of a more of an operational design of the application, design of the process. How is this all going to play out and be operationalized?

Stephanie Kaminsky: And certainly we've done some thinking around the other way, which is – if that adult is applying, and you need to access the tax filer's information, how will that kind of work out, too. That's another, that's sort of the reciprocal part of it that we're trying to work through.

Unidentified Participant from Utah: Well, and given that, if the tax filer – you know, you've got this unrelated adult. The tax filer doesn't really have a financial obligation to support that person, even though they presumably are. That's why they're able to claim them as a dependent on their tax form. This person can apply on their own. It seems like just their income would be countable, because the tax filer really doesn't have that financial obligation. I mean, the way we would do it now is, the unrelated live-in girlfriend/boyfriend, or whatever, would be a separate household. And we wouldn't deem income from someone who is not their spouse. And then the other thing is that the tax filer might be ineligible for Medicaid, but this unrelated adult would qualify.

Sarah deLone: Right, and so you would – I mean, that's the point, the thing that you/we raised about – that's what happens today. This person would file on their own. We wanted to preserve that, because we didn't think it made sense to say that if somebody's financially supporting somebody whom they don't have a legal obligation to support, that it didn't make sense, and therefore, they're claiming them as a tax dependent, that it was not the – it was not the right policy to say, therefore you should also – that taxpayer, in order to take advantage of that tax exemption that they can get for providing that support, has to assume the financial burden of providing health care coverage, particularly if they're in the income range of the Exchange. Because although it's – you get a premium tax credit – it's going to be a sizeable contribution on the part of the families, to purchase coverage through the Exchange, certainly much more than it costs to be in Medicaid. So that's why, under our rule, you would not have that deeming of the income from the taxpayer to this unrelated or extended family member.

I suspect, as a practical matter, often they will present the same way as it does today and they will be filing their own application, which would be fine. But if they do show up on – and in many cases you'll probably have a sister living with her sister and there's no tax dependency being claimed, and so then we don't really have an issue. But if we do end up with a situation where a tax filer does claim somebody like this as a tax dependent, we want to build into the process a way to identify that person, so that they can be treated as their own household, and without necessarily – you've got the person that is known to you, they're known to your system. You've got their name on the application, and you want to continue to process that application and get them into coverage, instead of requiring that they necessarily file a separate application. So I hope that helps.

We're at 2:30. Alaina, I don't know if we're allowed to go over. If there's another question, we could take one more. Otherwise, is there anybody else in queue?

Operator: There are no questions on the floor at this time.

Sarah deLone: Well, that's amazing. So thank you, everybody. This was a lot. And hopefully we answered at least a good portion of your questions and cast some illumination on the NPRM.

And we welcome your comments. Again, it's really important for us to have written comments on the rule. And we welcome, within reason, follow-up phone calls and emails directly to us, Stephanie and Sarah, so that we can further the dialogue and further your understanding of what we're proposing so you can give us good feedback.

Ginni Hain: This is Ginni. I just want to thank all the presenters today. You guys are amazing. And I want to just remind, again, everyone on the call that we can't respond to scenarios and discussions that we're having verbally. So you've got to, got to, got to help us by putting them in writing, even if you got your question answered. Anything you have a question about, please put it in writing.

Sarah deLone: And if we didn't answer your question, and we're not able to answer it before the close of the comment period, just send the question in as your comment, because that opens up the ability for us to look at it and examine it and alter the rule if we need to.

So with that, thank you to everybody, and more to come later. We will be having a call next Thursday. Barbara Washington will be sending out an appointment we hope tomorrow, and that will be on the simplification of eligibility and we'll also address the treatment of individuals with disabilities under MAGI. And we invite you to come and listen to that call as well.

Thank you. Thank you very, very much.

Stephanie Kaminsky: Bye, everyone.

Sarah deLone: Bye-bye.

Operator: Thank you, ladies and gentlemen. This concludes today's conference call. You may now disconnect.

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