U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman

Uncovering the True Impact of the Obamacare Tax Credits: Increases the Deficit, Expands Welfare through the Tax Code, and Implements a New Marriage Tax Penalty

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Executive Summary

- The Congressional Budget Office (CBO) projects that Obamacare's refundable health insurance tax credits and Medicaid expansion will increase the nation's debt burden by $1.36 trillion in the first seven years that these provisions are fully implemented.

- The CBO estimates that about three-quarters of the cost of the Obamacare tax credits will be new spending since many of the filers who claim the health insurance tax credit will lack positive income tax to offset.

- The CBO has estimated that Obamacare's health insurance tax credits will grow significantly more expensive over time. According to the CBO, the tax credits are projected to increase the deficit by $55 billion in 2015, $87 billion in 2016, $104 billion in 2017, $115 billion in 2018, $123 billion in 2019, $130 billion in 2020, and $137 billion in 2021 – the last year of the ten-year budget window.

- The Joint Committee on Taxation (JCT) estimates that in 2020 about 14 million tax filers will claim Obamacare's health insurance credit but only about two million of these households will have positive income tax liability after benefitting from the credit.

- 85 percent of filers who claim the credit will end the year with zero or negative income tax liability. Since the tax credit is refundable, nearly all 11.3 million of these filers will have negative income tax liability and will no longer pay the cost of government by contributing federal income taxes.

- By 2020, the health insurance tax credits will directly move between 7.4 million and 8.1 million tax filers off the tax rolls.

- The Obamacare tax credit will result in many additional filers in the middle class and, some in the upper-middle class receiving net payments through the tax code.

- Nearly half of the beneficiaries of the Obamacare tax credit will be single individuals without any dependent children and most of the other beneficiaries will be single parents.

- According to the JCT estimates, married couples will receive only 14 percent of the PPACA's tax credits. At most, only two million married couples (out of nearly 60 million married couples) are projected to benefit from the health insurance tax credit in any year through 2021. The evidence suggests, therefore, that Obamacare introduces a substantial new marriage penalty into the tax code. Over time, PPACA's marriage penalty will directly cause fewer individuals to marry.

- The result of linking the tax credit to the FPL is that two individuals who make between $61,600 and $91,200 in 2014 will not benefit from the tax credit if they decide to marry but both individuals can qualify for the tax credit if they remain unmarried or if they decide to divorce.

- Under Obamacare, the tax code will continue to treat otherwise identical individuals very differently, depending on the source of their health insurance. Many workers and employers will have a significant incentive to drop employer-sponsored health insurance because of the sizeable health insurance tax credits created by the law. For example, a family of four headed by a 50-year old making around $50,000 per year will benefit by approximately $7,500 from not receiving health insurance. Employers dropping ESI en masse would lead to a staggering increase in the budget deficit.

Health Law Harms Marriage, Reduces Tax Fairness, and Results in Fewer Taxpayers

President Obama's health care law, the Patient Protection and Affordable Care Act (PPACA),[1] creates refundable tax credits to assist certain individuals in purchasing health insurance. Individuals in households below 400 percent of the federal poverty level (FPL) qualify for a tax credit unless they are eligible for Medicare or Medicaid or someone in the household has an offer of "affordable" coverage at work.[2] The PPACA also expands Medicaid by requiring that states enroll all applicants who live in households below 133 percent of the FPL. The Congressional Budget Office (CBO) projects that the tax credits and the Medicaid expansion will increase the nation's debt burden, excluding interest costs, by $1.36 trillion from 2015-2021,[3] the first seven years that these PPACA provisions are fully implemented.

A tax credit offsets the amount of income tax that a household would otherwise owe to the Internal Revenue Service (IRS). A tax credit is therefore more generous than a tax deduction since a deduction reduces the amount of income that is subject to the tax. Similar to the earned income tax credit (EITC), the PPACA's health insurance tax credit is refundable. This means that if the amount of the credit is greater than the amount of the income tax that the household would otherwise owe to the IRS, the IRS rebates the difference to the taxpayer. If this occurs, a taxpayer has negative federal income tax liability.

The PPACA tax credit is configured to limit the percentage of out-of-pocket income that qualifying households would pay for insurance purchased through a state health insurance exchange.[4] The value of the tax credit is based on household income with the credit decreasing in value as household income increases. Households at 133 percent of the FPL receive a credit so that their out-of-pocket premium is three percent of household income while households between 300 percent and 400 percent of the FPL receive a credit so their out-of-pocket premium

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[1] PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111–148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111–152.

[2] The PPACA requires that employer-sponsored insurance (ESI) cover at least 60 percent of the cost of benefits. The PPACA defines ESI as "unaffordable" if the out-of-pocket premiums exceed 9.5 percent of income for self-only coverage.

[3] Douglas W. Elmendorf, Testimony before the U.S. House of Representatives Committee on Energy and Commerce Health Subcommittee "CBO's Analysis of the Major Health Care Legislation Enacted in March 2010," March 30, 2011 available at http://republicans.energycommerce.house.gov/Media/file/Hearings/Health/033011/Elmendorf.pdf.

[4] State health insurance exchanges will be set either by the state or by the federal government if a states refuses to set up its own exchange. The exchanges are basically portals where individuals can purchase health insurance. Many individuals who purchase insurance through an exchange will qualify for a tax credit. The reference plan for calculating the size of the tax credit will have actuarial value of 70 percent, which means that for all enrollees in a typical population, the plan will pay 70 percent of the total expenses for covered benefits. Individuals can purchase plans with actuarial values greater or less than 70 percent, but the value of the credit is determined by the second-lowest cost plan in an exchange that has an actuarial value of 70 percent.

is 9.5 percent of household income.[5] For example, a family of four at 200 percent of the FPL (about $48,677 in 2016)[6] cannot pay more than 6.3 percent of their income for health insurance. The CBO estimates that the average cost of the reference insurance plan (the plan used to calculate the tax credit) will be $14,100 for family coverage in 2016.[7] Therefore, a family of four that qualifies for a credit in 2016 and that makes $48,677 would be required to pay about $3,067 for health insurance (6.3 percent of household income). The difference, $11,033, is the value of this family's refundable tax credit.

According to the CBO, 20 million Americans will receive health insurance tax credits in 2020 at a cost of $130 billion.[8] This means the average tax credit per person receiving it will be about $6,500. The Oversight and Government Reform Committee requested that the Joint Committee on Taxation (JCT) produce estimates of the distributional impact of the PPACA's tax credit on Americans' tax status. On September 6, 2011, the JCT provided the Committee with these estimates.[9]

The JCT estimates that in 2020 about 14 million tax filers will claim the health insurance credit and only about two million of these households will have positive income tax liability after benefitting from the credit. The vast majority of the remaining 12 million households, about 85 percent of the households claiming the credit, will have negative tax liability, meaning they will receive more from the U.S. Treasury than they pay in.[10] By 2020, the health insurance tax credits will directly move between 7.4 million and 8.1 million tax filers off the tax rolls.[11] As a result, these households will have a disincentive to care about the growth of government.

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[5] Individuals in household below 133 percent of the FPL cannot pay more than 2 percent of their income in personal premium contributions. The applicable percentage for individuals in households between 300 percent and 400 percent of FPL is 9.5 percent. Those percentages for individuals between 133 percent and 300 percent of the FPL are based on a sliding scale with a linear interpolation for individuals in the middle of 5 FPL levels. The applicable percentages are: 3 percent for individuals at 133 percent of the FPL, 4 percent for individuals at 150 percent of the FPL, 6.3 percent for individuals at 200 percent of the FPL, 8.05 percent for individuals at 250 percent of the FPL, and 9.5 percent for individuals at 300 percent of FPL.

[6] In 2011, 200 percent of the FPL is $44,700. The CBO projects the growth in the CPI will be 1.3 percent in 2011 and 2012, and 2.0 percent in 2013-2016. Using these projections yields an estimated 200 percent of the FPL of $48,677 in 2016.

[7] Douglas W. Elmendort, Letter to Evan Bayh, "An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act," November 30, 2009 available at http://www.cbo.gov/ftpdocs/107xx/doc10781/11-30-premiums.pdf.

[8] Douglas W. Elmendorf, Testimony before the U.S. House of Representatives Committee on Energy and Commerce Health Subcommittee "CBO's Analysis of the Major Health Care Legislation Enacted in March 2010," March 30, 2011 available at http://republicans.energycommerce.house.gov/Media/file/Hearings/Health/033011/Elmendorf.pdf.

[9] See the Attached letter sent from Thomas A. Barthold to Congressman Darrell Issa, September 6, 2011.

[10] Most of these households owe payroll taxes, but the value of the PPACA tax credit is so large that many more filers will get more back through the income tax code than they owe through payroll taxes.

[11] In Table 1 of the JCT estimates, 8.1 million filers move from positive income tax liability before the credit to zero or negative liability after the credit. In Table 2 of the JCT estimates, the corresponding number is 7.4 million filers.

Nearly half of the beneficiaries of the tax credit will be single individuals without any dependent children and most of the other beneficiaries will be single parents. Most of the dependent children in this group will not benefit from the tax credit, however, since they will qualify for the Children's Health Insurance Program (CHIP); and children who qualify for CHIP are not eligible for the PPACA's tax credits.[12] The JCT estimates that only 14 percent of the filers who claim the health insurance credit will be married couples. The evidence suggests, therefore, that the PPACA introduces a substantial new marriage penalty into the tax code. Moreover, since the credit is not available to people who get insurance through their employer, the PPACA introduces a major new inequity in the tax code. These outcomes may not have been intended, but they are significant collateral damage from the law's unaffordable addition to the welfare state.

The PPACA Takes Millions Off Tax Rolls

Because of massive new government spending and declining revenues, over 40 percent of federal spending over the past three years has been financed by borrowing.[13] This combination has added more than $4 trillion to the national credit card since President Obama took office.[14] In 2008, the year before federal revenue cratered and budget deficits exploded, the federal government collected about $2.52 trillion in tax revenue.[15] Tax revenue flows from mainly three sources: the income tax (45.4 percent of total federal tax revenue in 2008), the payroll tax (35.7 percent of total federal tax revenue in 2008), and the corporate tax (12.1 percent of total federal tax revenue in 2008). The payroll tax is the primary funding source for Social Security and Medicare Part A (Hospital Insurance), although in 2010 the Medicare Part A payroll tax only financed about three-quarters of Part A expenditures and the Social Security payroll tax failed to cover program expenditures for the first time in the program's history.[16] Federal spending on other items, such as national defense, grants to the states, welfare, national parks, and federal employees' salaries has traditionally been largely financed out of income tax and corporate tax revenue.

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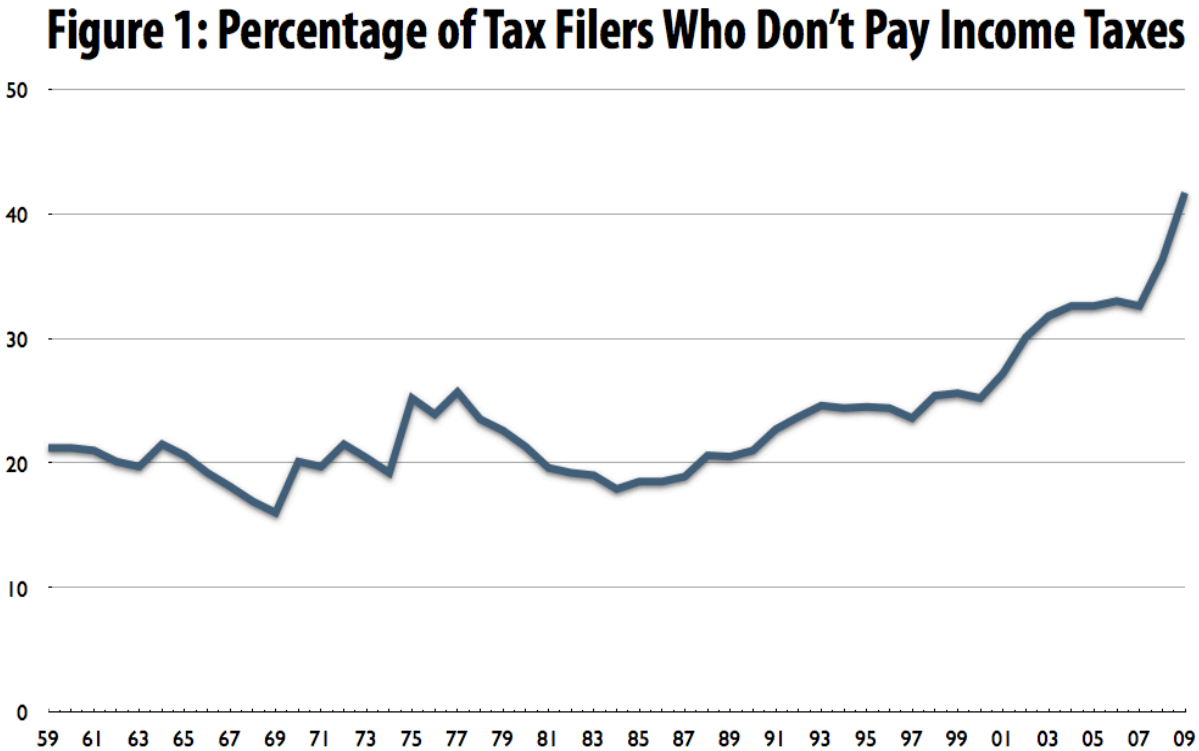
[12] U.S. Department of the Treasury Notice of Proposed Rulemaking, Health Insurance Premium Tax Credit, 26 CFR Part 1 Federal Register Vol. 76, No. 159, August 17, 2011, available at http://www.gpo.gov/fdsys/pkg/FR-2011-08-17/pdf/2011-20728.pdf.

[13] Office of Management and Budget, "Historical Tables – Budget of the U.S. Government Fiscal Year 2011," available at http://www.gpoaccess.gov/usbudget/fy11/pdf/hist.pdf.

[14] *Id.*

[15] Tax Policy Center, "Historical Federal Receipt and Outlay Summary," March 25, 2011 available at http://www.taxpolicycenter.org/taxfacts/displayafact.cfm?DocID=200&Topic2id=20&Topic3id=23.

[16] The Boards of Trustees Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, THE 2011 ANNUAL REPORT OF THE BOARDS OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE AND FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUNDS, May 13, 2011 (hereinafter THE 2011 ANNUAL REPORT OF THE BOARDS OF TRUSTEES),available at http://www.cms.gov/ReportsTrustFunds/downloads/tr2011.pdf.



* Tax Foundation based on IRS data

According to the Tax Foundation, 41.7 percent of filers (58.6 million returns out of the 140.5 million total returns filed) had zero or negative income tax liability in 2009.[17] Since many of the tax credits that these 58.6 million households claim are refundable, most of these households actually receive net payments through the income tax code. The health insurance tax credits in the PPACA will directly remove millions of additional households from the tax rolls. If the PPACA was in effect in 2009, the percentage of filers without federal income tax liability would be nearly 47 percent.[18] In April 2011, the JCT produced estimates for the Senate Finance

[17] Tax Foundation, "Federal Individual Income Tax Returns with Zero or Negative Tax Liability, 1950-2009," October 18, 2011 available at http://taxfoundation.org/research/show/25587.html.

[18] According to the Tax Foundation calculations based on IRS data, 140.5 million tax returns were filed in 2008 and 58.6 million of these returns had zero or negative income tax liability. Under the assumptions of current policy, the 6.9 million households in 2016 will go from positive income tax liability to zero or negative income tax liability. Adding 6.9 million households to the 58.6 million households without income liability would result in over 41 percent of households with zero or negative federal income tax liability.

Committee that included non-filers and showed 51 percent of tax filers and non-filers in the aggregate paid no federal income tax in 2009.[19]

According to the JCT estimates, 13.3 million tax filers will claim the health insurance tax credit in 2016, the third year the tax credits will be in place and 14.0 million tax filers will claim the credit in 2020.[20] Both the refundable and non-refundable pieces of the credit will increase the federal budget deficit. The federal government will bring in less tax revenue from the tax offset (the non-refundable piece of the credit) and the tax credit will cause the federal government to increase spending (the refundable piece of the credit) since many of these filers lack positive income tax to offset. According to the CBO, about three-quarters of the cost of the tax credit is from the refundable component.[21] By definition, this amounts to new spending for the benefit of Americans who do not contribute to the cost of government through federal income taxes.

The CBO has estimated that the health insurance tax credits will grow significantly more expensive over time. According to the CBO, the tax credits are projected to increase the deficit by $55 billion in 2015, $87 billion in 2016, $104 billion in 2017, $115 billion in 2018, $123 billion in 2019, $130 billion in 2020, and $137 billion in 2021 – the last year of the ten-year budget window.[22]

In 2016, the health insurance tax credit will directly move around seven million tax filers (4.2 million single filers, 1.3 million joint filers, and 1.4 million head of household filers) from positive income tax liability before the credit to zero or negative liability after the credit.[23] The number of filers removed from the federal income tax rolls will increase over time as more filers claim the credit.[24] Of the 13.3 million filers projected to claim the credit in 2016, only two million of them (15 percent of filers claiming the credit) will have positive tax liability as a result

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[19] Joint Committee on Taxation, "Information on Income Tax Liability for Tax Year 2009," April 29, 2011, at http://finance.senate.gov/newsroom/ranking/release/?id=e7723a9e-ed4a-4e10-af90-a56dfb0ccec5 (click the PDF labeled "JCT Analysis Income Tax Liability for Tax Year 2009")

[20] Thomas A. Barthold letter to Darrell Issa, September 6, 2011. In this letter, the Joint Committee on Tax presented the Oversight and Government Reform Committee with two tables of the estimated number of returns receiving the health insurance tax credit and the change in tax status from the size of the tax credit. Table 1 provides estimates based on current law, which means the tax rates would return to the rates in place before 2001, the alternative minimum tax (AMT) would be in effect. Table 2 provides estimates on the assumption that the current tax rates are kept in place, the AMT is fixed, and the exemption amounts in 2011 are adjusted annually for inflation. Since the leaders of both political parties believe that the tax rates should not be increased for all households making below $250,000, the estimates in Table 2 are likely more realistic and are therefore the estimates cited in this paper. For all practical purposes, there are not significant differences between the two sets of estimates.

[21] Douglas W. Elmendorf, Letter to the Honorable Nancy Pelosi, March 20, 2010. The estimate reflects the combined effects of H.R. 3590 (Public Law 111-148)), the Patient Protection and Affordable Care Act, and H.R. 4590, the Health Care and Education Reconciliation Act of 2010. Available at http://www.cbo.gov/ftpdocs/113xx/doc11379/Manager'sAmendmenttoReconciliationProposal.pdf .

[22] Thomas A. Barthold letter to Darrell Issa, September 6, 2011.

[23] *Id.*

[24] *Id.*

of claiming the credit.[25] This means that about 85 percent of filers who claim the credit will end the year with zero or negative income tax liability. Since the tax credit is refundable, nearly all 11.3 million of these filers will actually have negative income tax liability and will receive more money from the government than they pay in income tax. In addition to the seven million filers whose status changes from a taxpayer to a tax receiver, four million of the credit beneficiaries (30 percent of filers claiming the credit) are households that had negative income tax liability *before* claiming the credit and around 300,000 additional filers had zero income tax liability *before* claiming the credit.[26]

The Committee calculated the impact of the PPACA health insurance tax credit combined with the EITC, the child tax credit, and the average tax deduction taken by households in a particular income bracket to show the overall tax impact of the credit for certain households.[27] For example, a single parent with two children earning $40,000 in 2014 would qualify for a tax credit of $7,540, would not owe income taxes, and would get $7,953 back from the IRS at the end of the year. This family would have to earn $68,942 before it paid any net federal income tax. A 40-year old married couple with two children that makes $80,000 qualifies for a tax credit of $4,530, would not owe income taxes, and would get $729 back from the IRS at the end of the year. A 50-year old couple with 3 kids that earns $90,000 would qualify for a tax credit of $8,035, would not owe income taxes, and would get $4,319 back from the IRS at the end of the year. These examples illustrate that the PPACA tax credit will result in many additional filers in the middle class and, depending on the state,[28] some in the upper-middle class receiving net payments through the tax code. With record budget deficits and the onslaught of baby boomers beginning to collect Social Security and Medicare, the PPACA's extension of welfare payments this high up the income spectrum is imprudent and unaffordable.

The PPACA Contains Incentives to Drop ESI and Pass Costs to Taxpayers

The federal government currently provides a generous subsidy of health insurance through the employer-sponsored health insurance (ESI) tax exclusion. When a worker gets health insurance through his or her employer, the premium is exempt from both federal income

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[25] *Id.*
[26] *Id.*
[27] The methodology used by the Committee in calculating these estimates was based upon the methodology used by Paul Winfree in his paper, "Obamacare Tax Subsidies: Bigger Deficit, Fewer Taxpayers, Damaged Economy," Heritage Foundation, May 24, 2011 available at http://www.heritage.org/Research/Reports/2011/05/Obamacare-Tax-Subsidies-Bigger-Deficit-Fewer-Taxpayers-Damaged-Economy. The value of the tax credit was derived from the Kaiser Family Foundation Health Reform Subsidy Calculator, available at http://healthreform.kff.org/SubsidyCalculator.aspx.
[28] Census Bureau American Community Survey, "Estimated State Median Income, by Family Size and by State for FY 2009," available at http://www.cec.sped.org/Content/NavigationMenu/SpecialEdCareers/ESTIMATED_STATE_MEDIAN_INCOME.pdf.

and payroll taxes. Individuals who purchase health insurance on their own do not get this favorable tax treatment. This means the tax code discriminates against people who do not have access to health insurance through their employer. The PPACA left the ESI tax exclusion in place, but also contained a provision that will prevent individuals with an offer of ESI from claiming the PPACA's health insurance tax credit.[29] The result is that the tax code will continue to treat otherwise identical individuals very differently, depending on the source of their health insurance.[30]

Although employers that offer ESI generally pay the vast majority of the premium,[31] workers actually bear most of the cost. This is because employees can be compensated with some combination of wages and benefits. Workers who receive a greater share of their compensation in the form of health insurance benefits will therefore see less of their compensation in wages. Individuals who claim the health insurance tax credits, on the contrary, will end up passing most of the cost of their health insurance to the shrinking set of individuals that are paying income taxes and to future generations of Americans through additional deficit spending.

The tax credits in the PPACA are the law's primary fiscal time bomb because they present businesses with an incentive to drop health insurance coverage. A recent McKinsey and Company survey showed 30 percent of employers are seriously considering dropping ESI, and employers who are more familiar with the PPACA are more likely to indicate they will drop ESI.[32]

> More than 30 percent of employers overall, and 28 percent of large ones, say they will definitely or probably drop coverage after 2014 …. Interest in these alternatives rises with increasing awareness of reform, and our survey educates respondents about its implications for their companies and employees before they were asked about post-2014 strategies. The propensity of employers to make big changes to ESI increases with awareness largely because shifting away will be

[29] U.S. Department of the Treasury Notice of Proposed Rulemaking, Health Insurance Premium Tax Credit, 26 CFR Part 1 Federal Register Vol. 76, No. 159, August 17, 2011, available at http://www.gpo.gov/fdsys/pkg/FR-2011-08-17/pdf/2011-20728.pdf.

[30] For a discussion of the substantial inequities created by the PPACA, *see* Gene Steurle, "When Health Reform Violates Standards of Equal Justice," November 10, 2009 available at http://www.tax.com/taxcom/features.nsf/Articles/E91F35F1FF72076F8525766A00671B94?OpenDocument.

[31] The average national employee contribution share for single coverage is 20.1 percent and the employee share for family coverage is 27.5 percent.

[32] Shubham Singhai, Jeris Stueland, and Drew Ungerman, "How US health care reform will affect employee benefits," McKinsey Quarterly, June 2011, available at https://www.mckinseyquarterly.com/Health_Care/Strategy_Analysis/How_US_health_care_reform_will_affect_employee_benefits_2813.

economically rational not only for many of them but also for their lower-income employees, given the law's incentives.[33]

Douglas Elmendorf, the director of the CBO, testified before Congress earlier this year that "[t]here is clearly a tremendous amount of uncertainty about how employers and employees will respond to PPACA and the Reconciliation Act, and there is little direct evidence on the issue up to now. Models of the insurance system are based on observed differences in behavior in response to more modest changes in incentives, but last year's legislation is much more sweeping in its nature."[34] Although there is "a tremendous amount of uncertainty in how employers and employees will respond to PPACA," CBO only projected one million fewer individuals, on net, would be receiving ESI as a result of the law.[35]

Former CBO Director Douglas Holtz-Eakin, however, has argued that "the massive federal subsidies are money on the table inviting a vast reworking of compensation packages, insurance coverage, and labor market relations."[36] Holtz-Eakin and Cameron Smith calculated that lower-income workers (those in households with income below about $50,000 for a family of four) can substantially benefit from replacing workplace insurance with subsidized coverage in an exchange.[37] And the employer will have more than enough left from the savings of dropping coverage that the company will be better off as well. According to Holtz-Eakin and Smith, "CBO estimated that only 19 million residents would receive subsidies, at a cost of about $450 billion over the first 10 years. [Our] analysis suggests that the number could easily be triple that (19 million plus an additional 38 million in 2014) – the gross price tag would be roughly $1.4 trillion."[38]

In August 2011, economists Richard Burkhauser, Sean Lyons, and Kosali Simon suggested another way employers and employees can take advantage of the health insurance tax credits.[39] Many workers will have a strong incentive to request their employer reduce the employer's contribution to health insurance. This is because if the coverage is "unaffordable," the employee will be able to qualify for subsidized coverage in a state exchange. Firms will set the employee's premium contribution at a level that is affordable for high wage workers and unaffordable for low wage workers. This will result in high wage earners continuing to benefit

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[33] *Id.*

[34] Douglas W. Elmendorf, "CBO's Analysis of the Major Health Care Legislation Enacted in March 2010," Testimony before the Subcommittee on Health Committee on Energy and Commerce, March 30, 2011, page 22, available at http://republicans.energycommerce.house.gov/Media/file/Hearings/Health/033011/Elmendorf.pdf.

[35] *Id.*

[36] Douglas Holtz-Eakin and Cameron Smith, "Labor Markets and Health Care Reform: New Results," American Action Forum, May 2010, available at http://americanactionforum.org/files/LaborMktsHCRAAF5-27-10.pdf.

[37] *Id.*

[38] *Id.*

[39] Richard Burkhauser, Sean Lyons, Kosali Simon, "The Importance of the Meaning and Measurement of "Affordable" in the Affordable Care Act," NBER Working Paper 17279, August 2011, available at http://www.nber.org/papers/w17279.

from the tax exclusion for ESI while low wage workers qualify for tax credits because their premium contribution is "unaffordable."[40] The firms will be in compliance with non-discrimination rules that require employers to offer the same coverage to all of their workers because the offer to each employee will be the same. The difference is the required employee contribution will be "affordable" for some workers in the firm and "unaffordable" for other workers in the firm. Burkhauser, Lyons, and Simon show that the net benefit for many workers and employers will exceed the penalty that many employers likely face for failing to offer health insurance, and their research also suggests that the CBO may have significantly under-estimated the costs of the PPACA.

Table 1 shows the magnitude of the incentive for one-person and four-person households to prefer the PPACA's health insurance tax credit to receiving health insurance through the workplace. The assumption underlying these estimates is that health insurance benefits reduce worker wages and that a company that failed to offer health insurance would have to increase wages in order to attract the same caliber of workers. The estimates in Table 1 represent household income after federal income and payroll taxes and out-of-pocket health insurance payments. The advantage to workers of being offered employer-sponsored insurance (ESI) is that the dollars the employer spends on premiums are not subject to federal income and payroll taxes, while the advantage to qualified workers of not being offered ESI is the PPACA tax credits for premium assistance. For ease of calculations, six specific federal poverty levels (FPLs) were used to represent the amount of employee compensation split between wages and health insurance benefits. For example, the row '200% FPL' represents a household with total compensation (wages plus health insurance benefits) that equals 200 percent of the FPL in 2014 - $22,797 for a one-person household and $46,787 for a four-person household.

The column titled 'Income With ESI' represents household income after federal income and payroll taxes for a household that obtains health insurance through work. The health insurance plan through work is assumed to have a 70 percent actuarial value, which makes it equivalent to the reference plan in the exchanges used to calculate the PPACA tax credit. The column titled 'Income Without ESI' represents household income after federal taxes and the out-of-pocket health insurance premium payment for a household that does not receive health insurance through the workplace but who benefits from a PPACA tax credit. The column titled 'DIFF' is the difference between the 'Income Without ESI' column and 'Income With ESI' column and is an estimate of how much better off the worker is from not being offered health insurance through the employer. It is important to note that this difference is solely driven by the tax treatment of ESI and the PPACA tax credits. And this difference accounts for the fact that the worker in both scenarios has health insurance of identical actuarial value.

[40] Coverage is unaffordable if it covers less than 60 percent of the cost of benefits or premiums exceed 9.5 percent of income.

Table 1: Magnitude of the Incentive for Workers to Prefer the Tax Credit Instead of ESI in 2014 Once the PPACA Takes Effect (Difference in Household Income After Federal Taxes and Health Insurance Payments)

	Four-person household with family coverage			Individual with self-only coverage		
	Income With ESI	**Income Without ESI**	**DIFF**	**Income With ESI**	**Income Without ESI**	**DIFF**
Household head is 30 Years Old						
150% FPL	$23,785	$30,253	$6,468	$12,454	$14,386	$1,932
200% FPL	$33,602	$38,270	$4,668	$17,105	$18,126	$1,021
250% FPL	$43,044	$45,557	$2,512	$21,513	$21,677	$163
300% FPL	$52,092	$52,645	$553	$25,922	$25,130	-$791
350% FPL	$61,139	$60,581	-$558	$30,330	$29,347	-$983
400% FPL	$70,187	$68,518	-$1,669	$34,738	$33,756	-$983
Household head is 40 Years Old						
150% FPL	$22,061	$30,253	$8,192	$11,648	$14,386	$2,738
200% FPL	$32,064	$38,270	$6,205	$16,341	$18,126	$1,785
250% FPL	$41,600	$45,557	$3,957	$20,756	$21,677	$921
300% FPL	$50,648	$52,645	$1,998	$25,164	$25,130	-$34
350% FPL	$59,695	$60,581	$886	$29,573	$28,997	-$576
400% FPL	$68,742	$68,518	-$225	$33,981	$32,864	-$1,117
Household head is 50 Years Old						
150% FPL	$18,029	$30,253	$12,225	$9,763	$14,386	$4,623
200% FPL	$28,469	$38,270	$9,801	$14,457	$18,126	$3,669
250% FPL	$38,101	$45,557	$7,456	$18,986	$21,677	$2,691
300% FPL	$47,270	$52,645	$5,375	$23,394	$25,130	$1,736
350% FPL	$56,318	$60,581	$4,264	$27,803	$28,997	$1,195
400% FPL	$65,365	$68,518	$3,153	$32,211	$32,864	$653
Household head is 60 Years Old						
150% FPL	$11,902	$30,253	$18,352	$7,115	$14,386	$7,272
200% FPL	$22,704	$38,270	$15,566	$12,027	$18,126	$6,099
250% FPL	$32,638	$45,557	$12,919	$16,704	$21,677	$4,972
300% FPL	$42,138	$52,645	$10,507	$21,113	$25,130	$4,018
350% FPL	$51,186	$60,581	$9,395	$25,521	$28,997	$3,476
400% FPL	$60,233	$68,518	$8,284	$29,930	$32,864	$2,935

This table compares household income net federal taxes and the cost of health insurance for households who have identical worth to a business based on whether the household is offered ESI or not. Total household compensation (wages plus the value of health insurance benefits) is represented by the FPL in Column 1. 100 percent of the FPL in 2014 is estimated to be $11,398 for a one-person household and $23,394 for a four-person household. Staff calculations are derived from the Kaiser Family Foundation Health Reform Subsidy Calculator and IRS tax information. For a full explanation of the methodology, please see the technical appendix.

Table 1 also breaks down the estimates by age and income. Age is relevant for these calculations because the PPACA allows insurers to charge the oldest individuals in the market three times as much as the youngest individuals.[41] Since health insurance premiums rise as people age, the value of the tax credit is higher for older individuals. This is because the tax credit is based on a restriction of the amount a family is required to pay out-of-pocket for health insurance. Table 1 illustrates how dramatically the benefit of not receiving ESI increases as people age. For example, a four-person household headed by a 30-year old earning total compensation equal to 250 percent of the FPL benefits by $2,512 if not offered ESI. A four-person household headed by a 60-year old earning that same amount of compensation benefits by $15,566 if not offered ESI.

Income is relevant for these calculations because the size of the tax credit falls as household income rises for a given family size. The value of having ESI (and taking advantage of the tax exclusion) increases relative to the advantage of not having ESI (and taking advantage of the PPACA tax credit) as household income rises. However, Table 1 shows that in most cases, there is a greater benefit for households in this income range to not receive insurance through their employer so they can claim the credit.[42] Table 1 also illustrates that the magnitude of this effect is much greater for families than for individuals, since premiums for family health plans are more expensive.

For instance, a four-person household headed by a 50-year old whose total compensation (wages plus health insurance benefits) equals 250 percent of the FPL ($58,484 in 2014) would receive income after federal taxes of $38,101 if offered ESI and $45,557 if not offered ESI.[43] The $45,557 is the result of this person paying $4,474 in payroll taxes, $3,745 in income taxes, and $4,708 in out-of-pocket health insurance premiums.[44] All else equal, this employee is going to choose a job where he is not offered ESI since he is able to pocket an additional $7,456 while obtaining health insurance of an equal value.

Table 1 also illustrates the rough magnitude of the incentive that employers and employees will face to drop ESI, or at a minimum to reconfigure ESI as Burkhauser, Lyons, and Simon suggest is possible. In many cases, the gain to workers from not having ESI dwarfs the $2,000 penalty that companies would face for failing to offer ESI (and this penalty only applies to firms will more than 50 full-time workers). On October 20, 2011, the *New York Times* reported that Wal-Mart, the largest employer in the United States, "is substantially rolling back

[41] The PPACA compresses the age rating band since individuals in their 60s spend about six times as much on health care as individuals in their 20s.
[42] The calculation of whether employers will offer ESI after 2014 is much more complicated than the numbers in this table suggest. For example, if an employer has more than 50 full-time workers, he would be subject to a $2,000 penalty on all full-time workers (beyond the first 30).
[43] These calculations are explained in depth in the Technical Appendix.
[44] The out-of-pocket premium payment was the difference between the cost of family coverage for a 50-year old in 2014 ($16,858) and the value of this household's tax credit ($12,150).

(health) coverage for part-time workers and significantly raising premiums for many full-time staff."[45] As the estimates in Table 1 show, this decision by Wal-Mart will benefit both the firm as well as many Wal-Mart workers since a greater share of the firm's and workers' health insurance costs will be passed to taxpayers starting in 2014.

The PPACA Penalizes Marriage and Two-Parent Families

According to the JCT estimates, married couples will receive less than 15 percent of the PPACA's tax credits. At most, only two million married couples (out of nearly 60 million married couples in the country)[46] are projected to benefit from the health insurance tax credit in any year through 2021.[47] Almost half of the beneficiaries of the tax credit will be unmarried individuals without dependent children.[48] About forty percent of the individuals who are projected to claim the credit will file as the head of a household.[49] These households mostly consist of a single parent with at least one dependent child. These numbers suggest that an impact of the PPACA's health insurance tax credit will be to introduce a significant new marriage penalty into the tax code. It is also important to note that most children of tax filers who claim the credit are not themselves beneficiaries of the credit. This is because a child cannot benefit from a tax credit if they are eligible for a state's Children Health Insurance Program (CHIP) and most of the children in households that clam the credit will qualify for CHIP.[50]

Although it may seem unfair that the tax credits fail to benefit married couples, this result is a product of the way the law was written and the regulations the Obama Administration has proposed. One reason that the PPACA discriminates against married individuals is that the tax credit amount is linked to the federal poverty level (FPL) and the FPL does not increase proportionally as household size increases. In 2014, 400 percent of the FPL will be about $45,600 for a one-person household, increasing roughly $16,000 for each additional household member ($61,600 for a two-person household).[51] Thus, the result of linking the tax credit to the FPL is that two individuals who make between $61,600 and $91,200 (twice the FPL of a one-

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[45] Steve Greenhouse and Reed Abelson, "Wal-Mart Cuts Some Health Care Benefits," New York Times, October 20, 2011 available at http://www.nytimes.com/2011/10/21/business/wal-mart-cuts-some-health-care-benefits.html.
[46] *See* Table 4 in "Marital Events of Americans: 2009", American Community Survey Reports, August 2011 available at http://www.census.gov/prod/2011pubs/acs-13.pdf.
[47] Thomas A. Barthold letter to Darrell Issa, September 6, 2011.
[48] *Id.*
[49] *Id.*
[50] U.S. Department of the Treasury Notice of Proposed Rulemaking, Health Insurance Premium Tax Credit, 26 CFR Part 1 Federal Register Vol. 76, No. 159, August 17, 2011, available at http://www.gpo.gov/fdsys/pkg/FR-2011-08-17/pdf/2011-20728.pdf.
[51] In 2011, 400 percent of the FPL is $44,700. The CBO projects the growth in the CPI will be 1.3 percent in 2011 and 2012, and 2.0 percent in 2013-2016. Using these projections yields an estimated 400 percent of the FPL of $45,594 in 2014.

person household) will not benefit from the tax credit if they decide to marry since they will be over 400 percent of the FPL for a two-person household. These two individuals can benefit from the tax credit, however, if they remain unmarried or if currently married, they decide to divorce.

The second reason for the marriage penalty is because of the Administration's interpretation of the PPACA. The Administration has proposed a rule that if one spouse is offered health insurance at work, then no one in the family is eligible for the tax credits.[52] The proposed rule issued by the Administration, therefore, disqualifies a family from claiming the credit if either spouse is offered an insurance plan at work with an out-of-pocket premium less than 9.5 percent of household income for *self-only coverage*.[53] For example, if a 40-year old married couple with two children makes $70,000 per year and neither spouse has an offer of ESI, the family would qualify for a tax credit of $5,579.[54] If either spouse has an offer of ESI, however, the couple would not qualify for the tax credit. Under the status quo, nearly all employees who are offered coverage at their workplace will likely have an offer of affordable coverage because most employees pay less than 9.5 percent of household income for their portion of the total premium.[55] Thus, married couples and their families will generally be ineligible for the credits if either spouse has access to coverage through his or her employer. It is important to note, however, that if employers and workers respond by reworking compensation packages to pass more health insurance costs to taxpayers, more married couples will have access to the tax credits and their ultimate cost may be significantly higher than what CBO has projected.

The following example illustrates how the tax credit discriminates against married couples and penalizes marriage. For illustration purposes assume a 40-year old couple with two children: the husband makes $40,000 per year and the wife makes $30,000 per year. The wife's employer does not offer coverage through work but the husband's does. The husband's company provides only self-only coverage and the employee only pays a small percentage of the total premium. This company would satisfy the criteria of the PPACA's employer mandate provision even though they don't offer family coverage. Since the husband has access to ESI, the rest of the family is not eligible for the PPACA tax credits. The family would be faced with the decision of buying private coverage at an annual cost exceeding $10,000 for the mom and

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[52] U.S. Department of the Treasury Notice of Proposed Rulemaking, Health Insurance Premium Tax Credit, 26 CFR Part 1 Federal Register Vol. 76, No. 159, August 17, 2011, available at http://www.gpo.gov/fdsys/pkg/FR-2011-08-17/pdf/2011-20728.pdf.

[53] *Id.*

[54] The value of the tax credit was derived from the Kaiser Family Foundation Health Reform Subsidy Calculator, available at http://healthreform.kff.org/SubsidyCalculator.aspx. There is a slight difference from the amount given by the calculator for this household ($5,504) because of a small difference in assumptions about the estimated FPL in 2014.

[55] Richard Burkhauser, Sean Lyons, Kosali Simon, "The Importance of the Meaning and Measurement of "Affordable" in the Affordable Care Act," NBER Working Paper 17279, August 2011, available at http://www.nber.org/papers/w17279.

kids (unless the kids are covered by the state's CHIP) or foregoing insurance and being forced to pay the tax penalty instituted by the health care law for individuals who lack health insurance.[56]

If the father and mother are unmarried, however, the woman and the two children would qualify for a tax credit of $10,895 to use to purchase a policy that would cost about $12,130.[57] Because of the PPACA, marriage costs this family $10,895. As this example illustrates, the PPACA health insurance tax credit will create an enormous marriage penalty for many families. Over time, PPACA's marriage penalty is bound to influence behavior and will directly cause fewer individuals to decide to marry and more couples to decide to divorce. Since social scientists have found profound social benefits to marriage,[58] policy that punishes marriage is a significant concern.

The PPACA Was the Wrong Policy Prescription

President Obama's deficit commission issued its final report in December 2010.[59] According to the Commission, one of their guiding principles and values was to reform and simplify the tax code:

> The tax code is rife with inefficiencies, loopholes, incentives, tax earmarks, and baffling complexity. We need to lower tax rates, broaden the base, simplify the tax code, and bring down the deficit.[60]

Reform of the tax code is needed because it has become littered with deductions, credits, and carve-outs since the Tax Reform Act of 1986.[61] There are currently more than 72,000 pages of

[56] The PPACA contains a tax penalty for individuals who fail to obtain health insurance that meets the law's requirements. The tax penalty for an individual is $695, indexed to inflation. A family of three (two parents and one child under 18) would face a tax penalty of $1,737 in 2016 and a family of four (two parents and two children under 18) would face a tax penalty of $2,085 in 2016. Blue Cross/Blue Shield of Rhode Island, Federal Healthcare Reform: Patient Protection and Affordable Care Act Individual Mandate and Subsidy, available at https://www.bcbsri.com/BCBSRIWeb/pdf/Individual_Mandate_Fact_Sheet.pdf.

[57] The value of the tax credit was derived from the Kaiser Family Foundation Health Reform Subsidy Calculator, available at http://healthreform.kff.org/SubsidyCalculator.aspx. There is a slight difference from the amount given by the calculator for this household ($5,504) because of a small difference in assumptions about the estimated FPL in 2014.

[58] For example, see A. Scott Loveless and Thomas B. Holman "The Positive Impact of Marriage on Society: The Case for Public Policy" 2007. *The Family in the New Millennium: World Voices Supporting the 'Natural' Clan* (Eds). Westport, CN: Praeger.

[59] The National Commission on Fiscal Responsibility and Reform, "The Moment of Truth," December 2010 available at http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf.

[60] *Id.*, page 12

[61] Joint Committee on Taxation, "General Explanation of the Tax Reform Act of 1986," October 1987, available at http://www.jct.gov/jcs-10-87.pdf.

federal tax rules.[62] Earlier this year, President Obama endorsed the Commission's approach on tax reform in a major policy address at George Washington University:

> I'm calling on Congress to reform our individual tax code so that it is fair and simple – so that the amount of taxes you pay isn't determined by what kind of accountant you can afford. I believe reform should protect the middle class, promote economic growth, and build on the Fiscal Commission's model of reducing tax expenditures so that there is enough savings to both lower rates and lower the deficit.[63]

Once again, the President's rhetoric contradicts the reality of his policies. Despite the President's rhetoric, his health care law complicates the tax code by introducing a new, expensive tax expenditure. While the intent of the PPACA was probably not to penalize marriage and take millions of people off the tax rolls, it will be the result. Rather than broadening the tax base, the PPACA's tax credits narrow the base by removing 8 million households from the tax rolls by the end of the decade.[64] The number of households coming off the tax rolls will be much higher, however, if experts such as former CBO director Douglas Holtz-Eakin are correct and there is a much more robust response by employers and workers to the changed law. Moreover, instead of simplifying and equalizing the tax treatment of health insurance, the PPACA introduces another inequity into the tax code, effectively harming many middle-class and working-class Americans who get health insurance through their employer while introducing a powerful incentive for employers to drop workplace health insurance coverage.

The health care law's tax credits serve as a backdoor welfare program and directly contradict the principles of the fiscal commission that the President endorsed. At a time of record budget deficits, the United States simply cannot afford PPACA's tax credits and for our country's fiscal future, Congress should repeal them. The fact that the tax credits produce so many perverse effects only adds to the necessity of repealing and replacing the PPACA as soon as possible.

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[62] CCH Standard Federal Tax Reporter, "Federal Tax Law Keeps Piling Up," available at http://www.cch.com/wbot2011/WBOT_TaxLawPileUp_(28)_f.pdf.
[63] The Wall Street Journal, "Text of Obama Speech on the Deficit," April 13, 2011 available at http://blogs.wsj.com/washwire/2011/04/13/text-of-obama-speech-on-the-deficit/.
[64] Thomas A. Barthold letter to Darrell Issa, September 6, 2011.

Technical Appendix

According to the provisions of the Patient Protection and Affordable Care Act, variation in premiums for insurance plans will almost entirely be based upon the age of the head of household. This is because premiums are allowed to reflect age, but little else, as long as they do not vary outside the 3-to-1 age banding. Premiums by age for individual and family coverage for 2014 were calculated based off the Health Subsidy Calculator found on the Kaiser Family Foundation website.

The following are the premiums estimated by the Calculator by the age of the head of household and coverage type in 2014:

Age	Individual	Family
30	$3,440	$10,108
40	$4,500	$12,130
50	$6,978	$16,858
60	$10,172	$24,042

The 2011 federal poverty levels were adjusted using the Congressional Budget Office's estimates of the growth in the Consumer Price Index for 2011, 2012, and 2013.[65] Incomes in 2014 by poverty level for individuals and four families of four are estimated to be:

FPL	Individual	Family
150%	$17,098	$35,090
200%	$22,797	$46,787
250%	$28,496	$58,484
300%	$34,195	$70,181
350%	$39,895	$81,878
400%	$45,594	$93,574

The primary assumption for the calculations is that employers compensate individuals with wages and health insurance benefits and if health insurance benefits are provided, then wages will necessarily be reduced. For example, let's say a worker with a spouse and two children is worth $46,787 to an employer and he gets paid entirely in wages. The payroll (Social Security and Medicare Part A) tax is assessed on the full value of his wages, and the income tax is assessed on his wages minus applicable exemptions and deductions. This aggregate amount of taxes is subtracted from the value of his wages. This worker qualifies for a PPACA health insurance tax credit if neither he nor his spouse has an offer of "affordable" ESI. Since there

[65] The CBO's projected increase in the consumer price index is 1.3 percent in 2011 and 2012 and 2.0 percent in 2013.

household income is below 400 percent of the FPL, he is eligible for a refundable tax credit.[66] But, this individual only receives the tax credit for purchasing health insurance, and the individual will be responsible for a portion of the cost of the premium. The estimates in the table for households with the tax credit equal the worker wages plus the amount of the health insurance tax credit minus federal income and payroll taxes minus the total cost of the premium, which is referenced in the above table.[67] These calculations ultimately yield the amount of income this household has after paying his federal taxes and after purchasing health insurance.

The calculations for a worker with ESI are different. First, it is necessary to calculate the wages that an employer would offer to an individual who is worth $46,787 to the firm. The calculations assume that the employer pays the full cost of the health insurance, but this assumption makes little difference because if the employer reduces what it pays in health insurance premium it will have to increase wages to attract the same caliber workers. But, this worker will have to pay more of his wages in his health insurance premium.

The employer does not pay his share of the payroll tax (7.65 percent of income) on compensation in the form of health insurance premium payments. So, 7.65 percent the cost of the premium is added back into the worker's wages. A benefit of ESI to the worker is that taxes are not applied on the value of the health insurance. So, the payroll and income taxes are only assessed on the value of the wages. Since the employer pays the full insurance premium, this reduces the amount of payroll taxes paid by the worker (and probably biases the compensation figures slightly in the favor of a worker with ESI). The estimates in the table for households with ESI equals the dollar amount associated with the FPL level minus the cost of health insurance plus the 7.65 percent of the cost of health insurance (amount of the payroll tax revenue saved by the employer and thus added to worker wages) minus federal income and payroll taxes.

Example of calculations for a 50-year old family of 4 at 250 percent of the FPL

In 2014, 250% of the FPL is estimated to be $58,484.[68] If the worker does not receive any of his compensation as health insurance, he will receive this entire amount in wages. The employee portion of the Social Security and Medicare payroll tax is 7.65 percent and would amount to $4,474 for this family. The CBO estimates that in 2014 the standard deduction for a married couple is estimated to be $12,200 and the personal exemption is estimated to be $3,850.[69] This adds up to a net reduction in taxable income for this family of $27,600. Therefore, the family has $30,884 of taxable income (ignoring all other possible deductions as

[66] The PPACA requires that employer-sponsored insurance (ESI) cover at least 60 percent of the cost of benefits. The PPACA defines that ESI is "unaffordable" if the out-of-pocket premiums exceeds 9.5 percent of income for self-only coverage.
[67] The premium minus the amount of the tax credit is equal to the subsidized cost of insurance for this household.
[68] In 2011, 250% of the FPL was $55,875. Projections of the growth rate in the CPI were made to adjust the FPL into an estimate for 2014.
[69] The standard deduction for an individual is estimated to be $6,100 and if Congress fixes this marriage penalty (as is current policy) the standard deduction for a married couple would be $12,200 in 2014.

well as any interest income). The marginal rate for married couples filing jointly is 10 percent for taxable income below $17,750 and 15 percent for taxable income between $17,750 and $72,000.[70] The family's federal income tax bill would amount to $3,745.

Subtracting the net cost of the federal payroll and income taxes leaves this family with $50,265 of net income. However, the family would be eligible for a premium assistance tax credit through Obamacare. A family at 250 percent of the FPL can only pay 8.05 percent of their income in out-of-pocket health insurance premiums. This amounts to $4,708 for this family while the net value of insurance with a 70 percent actuarial value to this family (as obtained using the Kaiser Foundation Health Reform Subsidy Calculator) is $16,858. Therefore the family would qualify for a premium assistance subsidy of $12,150, the difference between the premium and the out-of-pocket expenses. In order to finish the calculation of the wages after federal income and payroll taxes and health insurance payments, the $4,708 is subtracted from the $50,160. The final result is $45,557, which is the amount of income this family has after paying federal income and payroll taxes and its health insurance premiums for the year.

The calculations for a worker with ESI are somewhat different. A business offering this worker ESI will have to subtract the value of the insurance coverage from their wages and add back in the employer portion of the Social Security tax. Thus the net wages would be $42,916 which includes the gross wages with a reduction of 92.35 percent of the value of the premium (the employer does not pay its share of the payroll tax and thus that component can be passed to the worker), which is $16,858 for this family. The worker pays Social Security and income taxes on the wages, excluding the value of the employer's contribution to worker health insurance. The Social Security taxes amount to $3,283 and the income taxes amount to $1,532. Subtracting his net wages by his total federal tax liability yields a net after tax income of $38,101 for this individual.

The difference between these two amounts is $7,456 and this represents the advantage to this household of not being offered affordable health insurance at work.

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[70] These tax brackets are projected brackets for 2014 assuming the tax relief of 2001 and 2003 is extended for individuals in these lower tax brackets.