

**Congress of the United States**  
Washington, DC 20515

May 20, 2021

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services (HHS)  
200 Independence Avenue, SW  
Washington, D.C. 20201

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service (IRS)  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Dear Secretary Becerra and Commissioner Rettig,

We write today to request the Department of Health and Human Services' (HHS) plan for verifying eligibility of new enrollees and expanded advance premium tax credits (APTC), or subsidies, provided under the American Rescue Plan Act (ARPA; P.L. 117-2). The U.S. Government Accountability Office (GAO) has found that these subsidies are susceptible to significant improper payments. With the federal deficit projected to grow to record levels this year, fiscal accountability has never been more important.

Prior to the enactment of the ARPA, the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) projected that in 2021 the federal government would spend about \$60 billion on subsidies for coverage established by the Affordable Care Act, or Obamacare.<sup>1</sup> As you know, a portion of the \$1.9 trillion spending contained in the ARPA temporarily expanded these Obamacare subsidies. The vast majority of this additional spending has gone to insurance companies to cover individuals who already had health insurance. However, it is not just existing enrollees that receive additional taxpayer subsidies from this law. Taxpayers will spend at least \$3 billion to subsidize the health insurance premiums of certain high-income earners, or those making over 750 percent of the federal poverty level.<sup>2</sup> In addition, the ARPA prevents tax credit reconciliation for plan year 2020, a move that is estimated to cost taxpayers over \$6 billion. When combined, these temporary Obamacare provisions are projected to cost taxpayers nearly \$45 billion.<sup>3</sup>

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<sup>1</sup> Congressional Budget Office, "Federal Subsidies for Health Insurance Coverage for People Under 65: 2020 to 2030," September 29, 2020: <https://www.cbo.gov/system/files/2020-09/56571-federal-health-subsidies.pdf>

<sup>2</sup> Internal JCT score

<sup>3</sup> Congressional Budget Office, "Estimated Budgetary Effects of H.R. 1319, American Rescue Plan Act of 2021," March 10, 2021: <https://www.cbo.gov/publication/57056>

On March 23, 2021, HHS announced the availability of the ARPA tax credits for certain individuals starting on April 1, 2021, and a special enrollment period that lasts through August 15, 2021. Further, it announced that tax credits for those receiving unemployment benefits would be available in the summer, but noted that these consumers can enroll starting April 1, 2021. To date, neither the Internal Revenue Service (IRS) nor HHS has released information on how it plans to verify subsidy eligibility for unemployment benefit recipients. We respectfully request the following information to ensure these temporary changes are implemented in a fiscally responsible manner:

1. As you know, the ARPA provides certain individuals free COBRA coverage. Will the offer of COBRA coverage be considered an affordable offer of employment-based coverage? If so, how will this offer be verified?
2. What documentation will be required for those eligible for Obamacare subsidies due to unemployment status? How will HHS track eligibility when someone who was unemployed becomes re-employed and is offered affordable coverage through their new employer?
3. What IT systems have required updating in order to verify eligibility for the expanded Obamacare subsidy authorized in the ARPA? When were these changes submitted to the IT vendor(s), and when were the changes completed?
4. Will HHS match applicants' information with information from other federal data sources, such as from the IRS?
  - a. If so, what actions will HHS and IRS take to resolve inconsistencies in cases where the applicant's information does not match information from other federal data sources?
  - b. What steps, if any, has HHS taken to ensure it is sharing accurate enrollment data with the IRS?<sup>4</sup>
  - c. Given that the IRS is working to reimburse taxpayers who filed a tax return and paid an excess APTC, is the IRS checking to ensure enrollment and other eligibility data are accurate prior to issuing a reimbursement to taxpayers for the 2020 APTC?
5. Please detail specific steps HHS and the IRS will take to reduce the APTC program's susceptibility to improper payments.
6. To date, an improper payment rate for the APTC has not been reported. Please provide additional details on the structure of the improper payment program, including compliance strategies and the recovery of improper payments, for the federal exchange, the status of the development of the improper payment rate for state-based exchanges, and a timeline for completion of both improper payment rates.<sup>5</sup>
7. How will HHS enforce the abortion coverage surcharge, required by section 1303 of Obamacare that prohibits the use of certain federal funds to pay for coverage of abortions for which payment would not be permitted under the Hyde Amendment, in exchange plans with otherwise zero-cost premiums?

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<sup>4</sup> Department of Health and Human Services Office of Inspector General "CMS Authorized Hundreds of Millions of Dollars in Advanced Premium Tax Credits on Behalf of Enrollees Who Did Not Make The Required Premium Payment," March 2021: <https://oig.hhs.gov/oas/reports/region2/21902005.pdf>

<sup>5</sup> Government Accountability Office, "Improvements Needed in CMS and IRS Controls over Health Insurance Premium Tax Credit," July 2017: <https://www.gao.gov/assets/gao-17-467.pdf>



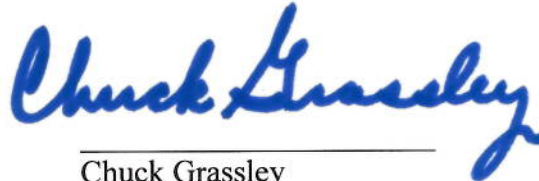
We look forward to your timely response to our questions. In the meantime, we request a joint agency staff briefing to review existing protocols for eligibility verification and plans to improve oversight of taxpayer dollars.

Sincerely,



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Mike Crapo  
Ranking Member  
Committee on Finance



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Chuck Grassley  
Member  
Committee on Finance



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John Cornyn  
Ranking Member  
Subcommittee on International Trade,  
Customs, and Global Competitiveness  
Committee on Finance



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John Thune  
Ranking Member  
Subcommittee on Taxation  
and IRS Oversight  
Committee on Finance



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Richard Burr  
Member  
Committee on Finance



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Pat Toomey  
Member  
Committee on Finance



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Bill Cassidy, M.D.  
Ranking Member  
Subcommittee on Fiscal Responsibility  
And Economic Growth  
Committee on Finance



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James Lankford  
Ranking Member  
Subcommittee on Energy, Natural  
Resources, and Infrastructure  
Committee on Finance



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Steve Daines  
Ranking Member  
Subcommittee on Health Care  
Committee on Finance



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Todd Young  
Ranking Member  
Subcommittee on Social Security,  
Pensions, and Family Policy  
Committee on Finance



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John Barrasso  
Member  
Committee on Finance



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Kevin Brady  
Ranking Member  
Committee on Ways and Means



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Devin Nunes  
Ranking Member  
Subcommittee on Health  
Committee on Ways and Means



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Vern Buchanan  
Ranking Member  
Subcommittee on Trade  
Committee on Ways and Means



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Adrian Smith  
Ranking Member  
Subcommittee on Select Revenue Measures  
Committee on Ways and Means



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Tom Reed  
Ranking Member  
Subcommittee on Social Security  
Committee on Ways and Means



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Mike Kelly  
Ranking Member  
Subcommittee on Oversight  
Committee on Ways and Means



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Jason Smith  
Member  
Committee on Ways and Means




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Tom Rice  
Member  
Committee on Ways and Means



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David Schweikert  
Member  
Committee on Ways and Means



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Jackie Walorski  
Ranking Member  
Subcommittee on Worker and Family Support  
Committee on Ways and Means



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Darin LaHood  
Member  
Committee on Ways and Means



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Brad Wenstrup, D.P.M.  
Member  
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Jodey C. Arrington  
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A. Drew Ferguson, IV  
Member  
Committee on Ways and Means



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Lloyd Smucker  
Member  
Committee on Ways and Means



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Kevin Hern  
Member  
Committee on Ways and Means



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Carol D. Miller  
Member  
Committee on Ways and Means