

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 THEIR
REQUIRED PREMIUM PAYMENTS**

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March 2021
A-02-19-02005

Office of Inspector General

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Report in Brief

Date: March 2021

Report No. A-02-19-02005

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

The Patient Protection and Affordable Care Act established health insurance marketplaces in all 50 States and the District of Columbia. The Centers for Medicare & Medicaid Services (CMS) operates the Federal marketplace and is responsible for generating advanced premium tax credits (APTCs) made to qualified health plans (QHPs). We previously audited CMS's interim process for approving financial assistance payments on an aggregate basis for the 2014 benefit year. We determined that CMS did not ensure that payments were made only for confirmed enrollees and in the correct amounts. This audit reviewed CMS's permanent process for authorizing APTCs to QHP issuers on a policy-level basis for the 2018 calendar year.

The objectives of this audit were to determine whether CMS: (1) ensured APTCs were allowable; and (2) reported accurate enrollment data to the Department of the Treasury's Internal Revenue Service (IRS) for the IRS to use when reconciling APTCs.

How OIG Did This Audit

Our audit covered 5,339,562 policies for individuals enrolled through the Federal marketplace with APTCs totaling \$42.5 billion from January 1 through December 31, 2018. We reviewed a stratified random sample of 155 policies and the associated APTC payments made to QHP issuers on behalf of the associated enrollees.

CMS Authorized Hundreds of Millions of Dollars in Advanced Premium Tax Credits on Behalf of Enrollees Who Did Not Make Their Required Premium Payments

What OIG Found

For 13 of the 155 sampled policies, APTCs totaling \$43,455 authorized by CMS were unallowable because they were made on behalf of enrollees who did not make their required premium payments. Specifically, for seven sampled policies enrollees were improperly confirmed (i.e., treated as if they had made their first premium payments) or provided coverage by their QHP issuers when their policies should have been terminated for nonpayment of premiums. In addition, for nine sampled policies CMS reported inaccurate enrollment data to the IRS, thereby preventing the IRS from recouping APTCs paid on behalf of enrollees who did not make their required premium payments. Three sampled policies contained both deficiencies.

On the basis of our sample results, we estimated that \$950 million out of \$42.5 billion in authorized APTCs during 2018 for 659,143 policies of 5.3 million policies were unallowable because they were made on behalf of enrollees who did not make their required premium payments.

What OIG Recommends and CMS Comments

We recommend that CMS work with the Department of the Treasury and QHP issuers to recover or take other remedial action for: (1) the \$43,455 in improper APTCs identified in our sample; and (2) the remaining improper APTCs, which we estimate to be \$950 million, for policies for which the payments were not allowable. We also made one procedural recommendation.

In written comments on our draft report, CMS did not concur with our monetary recommendations but concurred with our procedural recommendation. CMS noted that many of the findings we identified were related to data submission errors by QHP issuers. Additionally, CMS disputed the legal basis for recovering unallowable APTCs.

We maintain that our findings and recommendations are valid. Even if CMS appropriately authorized APTCs based on QHP issuers' data, these APTCs are still unallowable because enrollees did not pay their premiums on time as required. Since CMS and the IRS jointly administer the operations of the APTC program, CMS will need to work with the IRS and QHP issuers to determine whether the unallowable APTCs can be recovered or otherwise remedied.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Patient Protection and Affordable Care Act (ACA) established health insurance marketplaces to allow individuals and small businesses to shop for health insurance in all 50 States and the District of Columbia.¹ A marketplace allows insurance companies (issuers) to offer individuals private health insurance plans, known as qualified health plans (QHPs), and enrolls individuals in those plans. The Centers for Medicare & Medicaid Services (CMS) operates the federally facilitated marketplace (Federal marketplace) and is responsible for reviewing and authorizing financial assistance payments made to QHPs for Federal and State-based marketplaces.

We previously audited CMS's interim process for approving financial assistance payments (advanced premium tax credits (APTCs) and cost-sharing reductions (CSRs)) for policies associated with individuals who enrolled in QHPs operating through the Federal marketplace for the 2014 benefit year.² In that audit, we determined that CMS's interim process did not ensure that financial assistance payments were made only for confirmed enrollees and in the correct amount. We conducted the current audit to review CMS's permanent process for authorizing APTCs to QHP issuers on an individual, policy-level basis that CMS implemented for the Federal marketplace in May 2016.³

OBJECTIVES

Our objectives were to determine whether CMS: (1) ensured APTCs were allowable; and (2) reported accurate enrollment data to the Department of the Treasury's (Treasury's) Internal Revenue Service for the IRS to use when reconciling APTCs.

BACKGROUND

Health Insurance Marketplaces

A marketplace is designed to serve as a one-stop shop where individuals get information about their health insurance options, are evaluated for eligibility for premium tax credits, and enroll in

¹ The Patient Protection and Affordable Care Act, P.L. No. 111-148 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (Mar. 30, 2010), is known as the Affordable Care Act.

² *CMS Did Not Always Accurately Authorize Financial Assistance Payments to Qualified Health Plan Issuers in Accordance With Federal Requirements During the 2014 Benefit Year* ([A-02-15-02013](#)), issued Aug. 8, 2018.

³ We did not review CSRs as part of this audit since, on Oct. 12, 2017, the Department of Health and Human Services (HHS) determined that it would no longer make CSR payments to QHP issuers. (See <https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf>. Accessed on May 19, 2020). Accordingly, CMS stopped authorizing CSR payments as of that date. Nevertheless, to comply with ACA regulations, QHP issuers are required to offer plans with CSR benefits, even though the Federal Government will not reimburse QHP issuers for these CSR payments. ACA § 1402(a).

the QHP of their choice. Individuals in States without a State-based marketplace can choose a QHP through the CMS-administered Federal marketplace. States can also establish a State marketplace-Federal platform through which States perform all core functions but rely on the Federal marketplace to enroll individuals. As of January 1, 2020, 38 States were using the Federal marketplace, and 12 States and the District of Columbia were operating State-based marketplaces.⁴

Advanced Premium Tax Credits

Under ACA, individuals who enroll in QHPs may be eligible for premium tax credits. The premium tax credit reduces the cost of a QHP's premium and is available at tax-filing time or in advance. When paid in advance, a credit is referred to as an APTC.^{5, 6} APTCs are paid monthly by the Federal Government directly to QHP issuers on behalf of enrollees to offset a portion or all premium costs. Enrollees are then responsible for paying the remaining premium amount to the QHP issuer monthly.⁷ Enrollees must include the amount of any APTC payments made on their behalf on their individual tax returns.

A confirmed enrollee is entitled to keep his or her premium tax credits only for the months for which the enrollee pays his or her monthly premium.^{8, 9} A confirmed enrollee who misses a premium payment is entitled to a grace period of 3 consecutive months to pay his or her outstanding premium(s). If the enrollee does not pay his or her outstanding premium(s) within the grace period, the QHP issuer must terminate the enrollee's policy and return the APTCs for the second and third months of the grace period to the Federal Government.¹⁰ If the enrollee fails to pay the outstanding premium for the first month of the grace period prior to the tax filing deadline, the enrollee is responsible for repaying the APTC through his or her individual tax return.

⁴ Six States that operate through the Federal marketplace established a State marketplace-Federal platform.

⁵ ACA §§ 1401, 1412 and 45 CFR § 155.20 (definition of "advance payments of the premium tax credit").

⁶ Enrollees may elect to receive any portion of the maximum allowable amount of the credit in advance.

⁷ For example, if an enrollee who selects an insurance plan with a \$500 monthly premium qualifies for a \$400 monthly APTC payment (and chooses to use it all in advance), the enrollee is responsible for paying \$100 to the QHP issuer each month. The Federal Government pays the remaining \$400 to the QHP issuer.

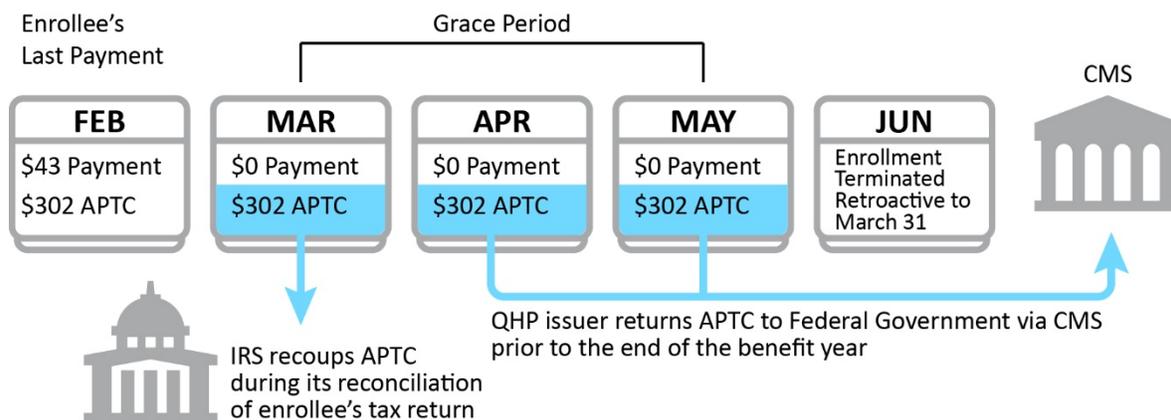
⁸ Confirmed enrollees are defined as those who have paid their first month's premium or an amount within the premium payment threshold, if applicable (45 CFR §§ 155.400(e) and (g)).

⁹ Issuers may implement a premium payment threshold policy under which issuers can consider an enrollee to have paid all amounts due if the enrollee makes a payment that is less than the enrollee's entire premium responsibility amount but within the threshold established by the issuer (45 CFR § 155.400(g)).

¹⁰ The termination effective date is the last day of the first month of the grace period.

Figure 1 (below) illustrates how APTCs are recouped when an enrollee fails to pay outstanding premiums before the end of the grace period.

Figure 1: Example of How APTCs Are Recouped When an Enrollee Fails To Pay Outstanding Premiums Before the End of the Grace Period¹¹



CMS's Policy-Based Process for Authorizing Advanced Premium Tax Credits

CMS operates the Federal marketplace and is responsible for reviewing and authorizing advance payments of premium tax credits for the Federal and State-based marketplaces. Under a memorandum of understanding (MOU), CMS and the IRS have established a policy-based process through which CMS authorizes APTC payments issued by Treasury to QHP issuers. After the Federal marketplace makes an eligibility determination, the individual is redirected from the Federal marketplace to the selected QHP issuer in order to pay the individual's portion of the first month's premium.

In addition, the Federal marketplace sends an electronic enrollment transaction to the QHP issuer with information on the individual applying for health insurance, the plan selected, the plan's total monthly premium amount, and the monthly APTC amount elected by the individual.¹² Once an individual pays the portion of the first month's premium, the QHP issuer returns an electronic enrollment transaction to the Federal marketplace confirming the individual's enrollment.

Based on the confirmed enrollment data maintained by the Federal marketplace, CMS provides a monthly preliminary payment report with policy-level APTC payment information to the QHP issuers. The report also details any policy-level adjustments for APTCs made during prior months, including APTCs recouped by the Federal Government when QHP issuers determined that they were not entitled to receive them. CMS then aggregates all APTC payments to be made to each

¹¹ The example illustrated in the figure assumes that the enrollee did not pay his or her outstanding premium to the QHP issuer before filing a tax return.

¹² The electronic enrollment transaction is known as an 834 transaction. The 834 format is used by CMS to transfer enrollment, termination, and other information between the Federal marketplace and QHP issuers.

QHP issuer and authorizes these payments each month through Treasury's Secure Payment System.

Reconciliation Process for Advanced Premium Tax Credit Payments

CMS maintains the electronic transactions for enrollees who have applied for health insurance coverage through the Federal marketplace. QHP issuers should send an electronic termination transaction to the Federal marketplace if an individual's enrollment is terminated at any point in the benefit year. The electronic termination transaction should include the effective date of the termination and the reason for termination (e.g., nonpayment of premiums). The Federal marketplace reconciles enrollment data with QHP issuers on a monthly basis to ensure the accuracy of the enrollment information it maintains.¹³ Termination transactions can also be sent to the Federal marketplace through the monthly reconciliation data submission. Throughout the benefit year, CMS monitors QHP issuers' enrollment transactions and monthly reconciliation data submissions, and works with QHP issuers that experience difficulties with the quality of their enrollment data.¹⁴

At the close of each benefit year, CMS provides the IRS with annual enrollment data for all individuals enrolled in QHPs operating through the Federal marketplace. The IRS then uses this data to reconcile APTCs made to QHP issuers on enrollees' individual tax returns. CMS also provides a Form 1095-A, *Health Insurance Marketplace Statement* to individuals who were enrolled in QHPs operating through the Federal marketplace. Form 1095-A contains information about an enrollee's health insurance coverage for the prior year, including all monthly APTCs paid on his or her behalf, to be used in filing individual tax returns. The IRS compares the information on an individual's tax return to the annual enrollment data provided by CMS to reconcile APTC payments made during the prior year. If the premium tax credit that an individual is eligible to receive is more than the APTCs made on the individual's behalf during the benefit year, the difference increases the individual's refund or reduce the individual's tax liability. However, if the amount of APTCs made on an individual's behalf is greater than the eligible premium tax credit amount, the difference reduces the individual's refund or increases the individual's tax liability.

¹³ During the reconciliation process, CMS sends a data file containing the Federal marketplace's enrollment records to QHP issuers, and QHP issuers return a data file to the Federal marketplace. This often results in updates to the Federal marketplace's records or the QHP issuers' records.

¹⁴ Beginning in 2020, CMS is performing an internal audit of authorized APTC payments made to QHP issuers operating in the Federal marketplace during the first year of its policy-based payment process (benefit year 2016).

HOW WE CONDUCTED THIS AUDIT

Our audit covered 5,339,562 policies for individuals enrolled through the Federal marketplace with APTCs totaling \$42.5 billion from January 1 through December 31, 2018, known as the 2018 benefit year.¹⁵ We reviewed a stratified random sample of 155 policies and the APTC payments made to QHP issuers on behalf of the enrollees associated with these policies.¹⁶ We worked with the Treasury Inspector General for Tax Administration (TIGTA) to estimate the total amount of unallowable payments associated with these policies during the 2018 benefit year using APTC reconciliation data.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology, Appendix B contains our statistical sampling methodology, and Appendix C contains our sample results and estimates.

FINDINGS

Some APTCs authorized by CMS to QHP issuers through its policy-based payment system were not allowable. In addition, in some instances, CMS did not accurately report enrollment data to the IRS for it to reconcile APTC payments to enrollees' tax returns. For 142 of the 155 sampled policies, APTCs authorized by CMS to QHP issuers were allowable and related enrollment data were accurately reported to the IRS. However, for 13 sampled policies APTC payments totaling \$43,455 were authorized by CMS but were unallowable because they were made on behalf of enrollees who did not make their required premium payments. Specifically, for seven of the sampled policies enrollees were improperly confirmed or provided coverage by their QHP issuers when their policies should have been terminated for nonpayment of premiums. In addition, for nine sampled policies, CMS reported inaccurate enrollment data to the IRS, thereby causing the IRS to not recoup APTCs paid on behalf of enrollees who did not make their required premium payments.¹⁷

¹⁵ A policy can cover one or more individuals. For this report, a policy includes all policies associated with an enrollment application. For example, an individual in our sample was enrolled in one policy from January through May 2018 before electing to enroll in a different policy from June through December 2018. We included the two policies associated with this enrollment application as one sample unit.

¹⁶ We did not review enrollee eligibility to receive APTCs. This work is detailed in *The Federal Marketplace Properly Determined Individuals' Eligibility for Enrollment in Qualified Health Plans but Improperly Determined That an Estimated 3 Percent of Individuals Were Eligible for Insurance Affordability Programs (A-09-18-01000)*, issued Feb. 7, 2020.

¹⁷ The total number of deficiencies exceeds 13 because 3 of the sampled policies contained both deficiencies.

On the basis of our sample results, we estimated that \$950 million out of \$42.5 billion in authorized APTCs during the 2018 benefit year for 659,143 out of 5.3 million policies were unallowable since they were made on behalf of enrollees who did not make their required premium payments.¹⁸

ADVANCED PREMIUM TAX CREDITS WERE PAID ON BEHALF OF ENROLLEES WHO DID NOT MAKE THEIR PREMIUM PAYMENTS

To be eligible for premium tax credits, individuals must enroll in a QHP through one of the marketplaces.¹⁹ In addition, the marketplaces must allow enrollees to pay directly to QHP issuers any applicable premium owed.²⁰ CMS is responsible for ensuring that APTC payments are made only for confirmed enrollees.²¹ As described earlier, a confirmed enrollee is defined as an enrollee who has paid the first month's premium to the QHP issuer and had the enrollment information verified by the QHP issuer.

Confirmed enrollees who receive APTCs and then fail to pay their monthly premiums are provided a 3-month grace period to pay any outstanding premiums.²² If the grace period lapses without payment of all outstanding premiums, the QHP issuer must terminate an enrollee's policy and return to the Federal Government the APTCs for the second and third months of the grace period.²³ For terminations resulting from nonpayment of premiums and exhaustion of the 3-month grace period, the effective date of termination is the last day of the first month of the grace period.²⁴

For 7 of the 155 sampled policies, CMS authorized APTCs on behalf of enrollees who were improperly confirmed or provided coverage by their QHP issuers when their policies should have been terminated for nonpayment of premiums; therefore, the enrollees were ineligible for all or some premium tax credits. Specifically:

¹⁸ Our actual estimate is \$950,402,740 in unallowable APTCs. The 90-percent confidence interval for the unallowable APTC estimate ranges from \$208,517,686 to \$1,692,287,795. The 90-percent confidence interval for the number of policies with unallowable APTCs estimate ranges from 349,061 to 969,224.

¹⁹ 26 CFR § 1.36B-2(a)(1) and 45 CFR §§ 155.305(f), 156.460.

²⁰ 45 CFR § 155.240(a).

²¹ MOU between the IRS and CMS; CMS control number MOU 13-150 (effective Jan. 31, 2013).

²² ACA § 1412(c)(2)(B)(iv)(II).

²³ 45 CFR §§ 156.270(e)(2) and (g).

²⁴ 45 CFR § 155.430(d)(4).

- For three sampled policies, CMS authorized payments to QHP issuers that did not properly terminate enrollees' policies for nonpayment of premiums and return APTC payments for the second and/or third months of the grace period. APTC payments for these associated enrollees did not continue beyond the grace period; therefore, the QHP issuers were required to return the APTC payments for only the second and/or third months of the grace period.

Example: QHP Issuer Did Not Return Unallowable APTC for Second Month of Grace Period

CMS authorized APTC payments for one sampled policy for January through July 2018. However, the associated enrollee did not make the premium payments for June and July and voluntarily terminated the policy effective July 31. The enrollee's grace period started on June 1 and ended on August 31. After the grace period ended, the QHP issuer should have retroactively terminated the enrollee's policy for nonpayment of premiums, effective June 30, and returned the unallowable APTC payment that CMS authorized for July. However, the QHP issuer did not terminate the enrollee's policy or return the payment.

- For two sampled policies, CMS authorized payments to QHP issuers that had not properly terminated the associated enrollees' policies for nonpayment of premiums. APTC payments for these enrollees continued beyond the end of the grace period to the end of the benefit year.

Example: QHP Issuer Did Not Terminate Enrollee's Policy for Nonpayment of Premiums

CMS authorized APTC payments for one sampled policy for January through December 2018. However, the associated enrollee did not make the premium payment for March during a March 1 through May 31 grace period. Specifically, the enrollee did not make all outstanding premium payments until June 22. However, by that time the QHP issuer was required to have terminated the enrollee's policy for nonpayment of premiums retroactive to March 31.²⁵ Therefore, the enrollee should not have remained enrolled in the QHP for April through December 2018 and the QHP issuer should have returned unallowable APTC payments made on behalf of the enrollee for those months.

- For two sampled policies, CMS authorized payments to QHP issuers for enrollees who either did not pay their first month's premium, or made their initial payment after the required deadline and were therefore not confirmed enrollees.

²⁵ When an enrollee's coverage is terminated for nonpayment of premiums, he or she cannot reenroll until the next open enrollment period (45 CFR §155.420(e)). However, if an enrollee becomes eligible for a Special Enrollment Period based on other circumstances, the individual may enroll in a QHP during the same benefit year.

Example: CMS Authorized APTCs to Enrollee Who Was Not Confirmed

CMS authorized APTC payments for one sampled policy, beginning in January 2018, even though the associated enrollee never paid the first month’s premium (i.e., the individual was not a confirmed enrollee). This occurred because the QHP issuer improperly sent an electronic enrollment transaction to CMS indicating that the enrollee paid the first month’s premium (January). Accordingly, CMS authorized APTC payments for January through March 2018. Subsequently, the QHP issuer terminated the enrollee’s policy with an effective date of March 31 after 3 months passed without the enrollee ever having made a monthly premium payment.²⁶ As a result, the QHP issuer inappropriately provided health insurance coverage for January through March and did not return any of the unallowable APTC payments for those months.

These deficiencies occurred because QHP issuers did not comply with Federal regulations or reported incorrect enrollment data to CMS. In addition, CMS did not have an effective process to ensure that QHP issuers complied with Federal requirements when confirming enrollments and terminating the policies of enrollees who did not pay their outstanding monthly premiums before the end of the grace period. Specifically, CMS did not collect information—either through electronic transactions or its monthly enrollment data reconciliation process—related to enrollees’ premium payments; therefore, it could not effectively ensure that QHP issuers’ reported enrollment information was accurate or whether terminated policies for nonpayment of premiums were appropriate. CMS also stated that QHP issuers either did not submit or submitted incorrect “reason codes” associated with enrollees’ terminations in their electronic transactions. While CMS monitors QHP issuers’ monthly enrollment data and conducts outreach to QHP issuers, CMS has not implemented a process through which QHP issuers are required to submit correct termination reason codes.²⁷

CMS REPORTED INACCURATE ENROLLMENT DATA TO THE INTERNAL REVENUE SERVICE

Confirmed enrollees who receive APTCs but fail to pay their monthly premiums are provided a grace period of 3 consecutive months to pay any outstanding premiums.²⁸ If the grace period lapses without the enrollee paying all outstanding premiums, the QHP issuer must terminate the enrollee’s policy and return to the Federal Government the APTCs for the second and third

²⁶ No reason code was provided with the termination transaction, contributing to the inaccuracy of the Federal marketplace data. Without a reason code, CMS cannot easily isolate and analyze policies terminated for nonpayment.

²⁷ CMS stated that it intended to implement this process in May 2020 but has since delayed the implementation to allow QHP issuers to focus efforts on the COVID-19 pandemic.

²⁸ ACA § 1412(c)(2)(B)(iv)(II).

month of the grace period.²⁹ If the enrollee fails to pay the outstanding premium for the first month of the grace period prior to the tax filing deadline, the APTC for that month is unallowable and the enrollee is responsible for repaying it through an individual tax return.^{30, 31}

The Federal marketplace is required to annually report enrollment information, including the amount of APTCs paid for coverage during each month of an enrollee's policy, to the IRS.³² As outlined in an MOU between CMS and the IRS, the IRS is responsible for reconciling APTCs made to QHP issuers on behalf of confirmed enrollees to enrollees' individual tax returns.

For 9 of the 155 sampled policies, CMS reported inaccurate enrollment data to the IRS, thereby preventing the IRS from recouping APTCs paid on behalf of enrollees who did not make required premium payments.

Example: CMS Reported Inaccurate Enrollment Data to the IRS

For one sampled policy, CMS incorrectly reported to the IRS that the associated enrollee made the monthly premium payment for the first month of a grace period that began in February 2018. Specifically, the enrollee made a single payment for January 2018 and no subsequent payments. The QHP issuer correctly terminated the enrollee's policy at the end of the grace period with an effective date of February 28 and subsequently returned the APTCs for the second and third month of the grace period (March and April), as required. Because CMS reported to the IRS that the enrollee paid the \$43 portion of the monthly \$345 premium payment for February rather than reporting \$0 in premium payments, the IRS did not recoup the \$302 APTC for that month during the reconciliation process.

These deficiencies occurred because CMS did not collect any information from QHP issuers related to enrollees' premium payments; therefore, it did not report this information to the IRS for its use in reconciling allowable APTCs. Specifically, CMS was unable to determine whether enrollees who had outstanding premium payments related to the first month of the 3-month grace period had made those payments by the tax filing deadline, as required. Since CMS cannot distinguish which enrollees had made outstanding premium payments related to the first month of the 3-month grace period, CMS made the decision to report to the IRS that all enrollees who entered into a 3-month grace period due to nonpayment of premiums had made their first

²⁹ 45 CFR §§ 156.270(e)(2) and (g).

³⁰ Premium tax credits are only allowed for coverage months. A month is considered a coverage month for an individual if the taxpayer pays their share of the plan premium for the month by the due date for filing the taxpayer's income tax return for that taxable year (26 CFR §§ 1.36B-3, 1.36B-4).

³¹ ACA § 1401(a); 26 CFR §§ 1.36B-3, 1.36B-4; and 77 Fed. Reg. 18310, 18429 (Mar. 27, 2012).

³² 45 CFR § 155.340(c) and 26 CFR § 1.36B-5(c).

month's premium payments. As a result, the IRS was unaware that some enrollees were not entitled to receive APTCs for the first month of 3-month grace periods.

RECOMMENDATIONS

We recommend that the Centers for Medicare & Medicaid Services:

- work with Treasury and QHP issuers to recover the \$43,455 in improper APTCs identified in our sample, or take other remedial action;
- work with Treasury and QHP issuers to recover the remaining improper APTCs, which we estimate to be \$950 million, or take other remedial action for policies for which the payments were not allowable; and
- develop a process to collect from QHP issuers: (1) information related to individuals' premium payments paid during the benefit year; and (2) enrollees' policy termination information so that it can provide accurate enrollment data to the IRS.

CMS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, CMS did not concur with our first and second recommendations but concurred with our third recommendation and described steps it has taken toward implementing a process to collect premium payment and policy termination information from QHP issuers. CMS also generally disagreed with our financial findings. Specifically, CMS noted that many of the findings we identified were related to data submission errors by QHP issuers and that CMS appropriately authorized APTC payments based on data it received from QHP issuers. Furthermore, CMS disputed the legal basis for our recommendations related to the recovery of unallowable APTCs for policies in instances when QHP issuers did not adhere to CMS requirements. CMS stated that although it agrees that QHP issuers did not meet CMS requirements, some enrollees associated with these APTCs did make their premium payments, albeit late, and were subsequently provided health insurance coverage. CMS contends that an enrollee may be eligible for premium tax credits when health insurance coverage is in place, even if the QHP issuer did not follow CMS regulations. CMS also disputed the soundness of our estimate for unallowable APTCs.

We maintain that our findings and recommendations are valid.³³ Specifically, for the sampled policies for which we identified unallowable APTCs, either (1) QHP issuers did not comply with Federal regulations and CMS requirements related to the termination of an enrollee's policy for premium nonpayment, or (2) the data collected by CMS and reported to the IRS related to enrollee premium nonpayment were not complete or accurate. As a result, APTCs were paid on behalf of enrollees associated with these sampled policies even though they did not meet the

³³ We revised our first and second recommendations to clearly indicate that CMS should work with QHP issuers and the IRS to determine whether and how to recover the improper APTCs, or take other remedial action.

requirements to receive them. We referred to these APTCs as “unallowable” in our report.

While we maintain that the APTCs for the months in which enrollees made premium payments late were unallowable because the associated enrollees did not meet the requirements to receive them, we acknowledge that CMS, by itself, may not have a legal basis for recovery of these APTCs. We also recognize that CMS and the IRS jointly administer the operations of the APTC program. Accordingly, for these sampled policies, if it is determined after working with the IRS and QHP issuers that the unallowable APTCs will not be recovered, we believe CMS’s proposal to implement our third recommendation and to impose civil money penalties on QHP issuers for noncompliance addresses these findings. However, we maintain that the unallowable APTCs for the months for which enrollees never made their premium payments remain subject to recovery. The IRS may be able to recover unallowable APTCs if CMS provided it with updated premium payment information. We did not audit the IRS’s processes for recoupment and cannot recommend that the IRS take specific action. Consequently, our recommendations are limited to CMS working with the IRS to recover unallowable APTCs or take other remedial action, as appropriate.

We additionally note that, while CMS is questioning the legal basis for it to recover unallowable APTCs for policies in instances when QHP issuers did not follow CMS requirements and enrollees made premium payments late, a majority of our findings were not related to what CMS describes as “QHP issuer noncompliance” but were related to CMS reporting inaccurate enrollment data to the IRS for enrollees who made no payments on their outstanding premiums. We encourage CMS to enact changes to its data collection and reporting processes going forward to allow for the timely recoupment of any unallowable APTC payments (i.e., within the applicable benefit year or tax filing deadline). We maintain that our estimate is statistically valid and fairly reflects the amount of unallowable APTCs paid for the 2018 benefit year.

Our detailed responses to CMS’s comments are provided below. CMS also provided separate technical comments on our draft report, which we addressed as appropriate. CMS’s comments, excluding the technical comments, are included as Appendix D.

ISSUERS THAT DID NOT COMPLY WITH CMS REGULATIONS

CMS Comments

CMS noted that many of the errors identified in the draft report were related to instances in which QHP issuers did not comply with CMS enrollment requirements. In these instances, CMS stated that it appropriately authorized payments based on the required data reports submitted by QHP issuers. Additionally, CMS stated that it uses its audit program to monitor QHP issuers’ compliance with these requirements, including that they comply with requirements related to initial payments to confirm enrollees and grace periods. CMS indicated that it has completed audits of APTCs authorized during the 2014 benefit year. When these audits identified cases of QHP issuers that erroneously provided health insurance coverage to enrollees (cases comparable to those we identified), CMS generally did not consider it appropriate to penalize enrollees

through retroactive changes to past coverage. In addition, CMS does not consider recouping the associated unallowable APTCs from the QHP issuer to be appropriate. Instead, CMS stated that it has the authority to impose civil money penalties on QHP issuers for instances in which QHP issuers participating in the Federal marketplace violated Federal regulations and CMS requirements.³⁴ CMS also stated that, in addition to its authority to impose civil money penalties, it uses its audit results to educate QHP issuers on common data reporting errors to further improve QHP issuers' compliance with Federal requirements.

Office of Inspector General Response

We agree that, for all sampled policies we identified as errors, CMS appropriately authorized APTCs based on QHP issuer data submitted to CMS when the payments were authorized. Nevertheless, we determined that these APTCs are unallowable because the associated enrollees did not make their required premium payments on time. If CMS does not have an effective process going forward to ensure that QHP issuers comply with Federal requirements and collect accurate enrollment data and premium payment information from QHP issuers, it will not be able to provide to the IRS complete and accurate information regarding the enrollees' enrollment status throughout the benefit year. Therefore, the IRS will not be able to appropriately reconcile enrollees' tax returns at the close of a benefit year to recover any unallowable APTCs made during that period.

We also acknowledge that CMS's audits and education efforts are significant tools for improving its administration of authorizing APTCs; however, delays in its audits prevent the timely recovery of unallowable APTC payments made as a result of QHP issuer noncompliance. Additionally, our financial recommendations do not explicitly indicate the manner in which CMS should ensure the recovery of unallowable APTCs, and we encourage CMS to work with the IRS and QHP issuers to recover or otherwise remedy these unallowable APTCs. We acknowledge that CMS, by itself, is not able to recoup these unallowable APTC payments. However, as previously stated, the IRS may be able to recover unallowable APTCs if CMS provides it with updated premium payment information.

LEGAL BASIS FOR RECOMMENDING RECOVERY OF UNALLOWABLE PAYMENTS

CMS Comments

CMS disputed the legal basis of our recommendations regarding the recovery of unallowable APTCs authorized to QHP issuers that may not have followed CMS's enrollment requirements. Specifically, CMS referenced our determinations of sampled policies with unallowable APTCs related to instances when QHP issuers either inappropriately confirmed or failed to terminate an enrollee's policy yet continued to provide health insurance coverage even though the enrollee had not met required premium payment deadlines. CMS stated that QHP issuers' compliance with CMS regulations may affect whether an enrollee obtains or maintains health insurance

³⁴ 45 CFR § 156.800(a)(1).

coverage but, once health insurance coverage is in place, enrollees may be eligible for premium tax credits (if they otherwise meet eligibility criteria) even if QHP issuers have not fully adhered to CMS's enrollment requirements. CMS further stated that, while QHP issuers must comply with Federal marketplace regulations and standards (e.g., grace periods and associated termination dates), it considers these to be "operational requirements" and not attached to conditions for APTC payments. CMS added that, even if a QHP issuer should not have provided health insurance coverage to an enrollee and therefore should not have received APTC payments on the enrollee's behalf, the enrollee could still have been eligible for premium tax credits according to IRS regulations.³⁵

Office of Inspector General Response

CMS is responsible for ensuring that APTC payments are made only for confirmed enrollees.³⁶ Furthermore, Federal regulations indicate that QHP issuers must terminate an enrollee's policy if the 3-month grace period to pay any outstanding premium lapses without the enrollee paying all outstanding premiums, and QHP issuers must return to the Federal Government the APTCs for the second and third months of the grace period.³⁷ IRS regulations state that premium tax credits are only allowed for coverage months which are defined, in part, as months for which an individual pays their share of the policy premium. If the enrollee fails to pay the outstanding premium for the first month of the grace period prior to the tax filing deadline, then the APTC for that month is unallowable and the enrollee is responsible for repaying it through an individual tax return.³⁸ As CMS stated in its comments, if an enrollee does make the premium payment for a given month, albeit late, then the enrollee may have met IRS requirements for coverage for that month. However, if an enrollee fails to pay the premium for any month prior to the tax filing deadline, then the enrollee does not meet requirements for coverage for that month and the associated unallowable APTC may be recovered in accordance with the requirements above.

While the cause of these findings was in part due to what CMS describes as "QHP issuer noncompliance," the APTC payments made on behalf of the enrollees were nevertheless unallowable because these enrollees did not meet all of the Federal requirements to obtain or maintain health insurance coverage (i.e., the required premiums were not paid by the end of the first month to confirm health insurance coverage or within the grace period to maintain health insurance coverage). As previously discussed, we acknowledge that CMS may not have a legal basis for recovery of unallowable APTCs for months in which enrollees made premium payments late. However, the unallowable APTCs for months for which enrollees never made their premium

³⁵ 26 CFR § 1.36B-2.

³⁶ MOU between the IRS and CMS; CMS control number MOU 13-150 (effective Jan. 31, 2013).

³⁷ 45 CFR §§ 156.270(e)(2) and (g).

³⁸ ACA § 1401(a); 26 CFR §§ 1.36B-3, 1.36B-4; and 77 Fed. Reg. 18310, 18429 (Mar. 27, 2012).

payments remain subject to recovery.³⁹ Because CMS and IRS jointly administer the operations of the APTC program, CMS will need to work with QHP issuers and the IRS to determine whether the unallowable APTCs we identified can be recovered or otherwise remedied. The IRS may be able to recover unallowable APTCs if CMS provides it with updated information.

We additionally note that CMS is questioning the legal basis of recovery of unallowable APTCs for policies for which QHP issuers did not meet CMS requirements and enrollees made premium payments late. However, a majority of our findings were not related to these instances of QHP issuer noncompliance but were a result of CMS reporting inaccurate enrollment data to the IRS for enrollees who did not make any payments toward their outstanding premiums. As a result, these enrollees would not have met IRS requirements for premium tax credit eligibility during the affected month(s), and the associated unallowable APTCs may be recovered.

ESTIMATION OF UNALLOWABLE PAYMENTS

CMS Comments

CMS disputed the accuracy of our estimate of unallowable payments, specifically noting that 2 of the 13 sampled policies for which we identified unallowable APTCs accounted for approximately 80 percent of the total unallowable APTC amount. In addition, CMS stated that our estimation methodology did not consider the amount of unallowable APTCs made to a particular QHP issuer, but rather the total number of policies with unallowable APTC payments. CMS also stated that for any errors identified in its prior audits of QHP issuers' data reports of APTC payments, the QHP issuers were required to identify all other cases involving the same type of error across all of their records for purposes of quantifying the overall impact.

Office of Inspector General Response

We acknowledge that 2 of the 13 sampled policies with APTCs that we identified as unallowable accounted for a majority of the amount of unallowable APTCs used for our estimate. Although the distribution of errors in our sample impacts the precision, it does not affect the validity of our estimate. We properly executed our statistical sampling methodology in that we defined our sampling frame and sampling unit, randomly selected our sample, applied relevant criteria in evaluating the sample, and used statistical sampling software (i.e., RAT-STATS) to apply the correct formulas for the extrapolation. We addressed the uncertainty of the estimation process by calculating and reporting the two-sided 90-percent confidence interval of our estimate. This approach results in an interval that is designed to contain the actual improper payment amount 90 percent of the time. The impact of our findings across the full scope of this interval is that hundreds of millions of dollars in APTCs were paid on behalf of enrollees who were not entitled to receive them, which makes these payments unallowable.⁴⁰ We acknowledge CMS's efforts to

³⁹ 26 CFR §§ 1.36B-3, 1.36B-4.

⁴⁰ Our actual estimate is \$950,402,740 in unallowable APTCs. The 90-percent confidence interval for the unallowable APTC estimate ranges from \$208,517,686 to \$1,692,287,795.

quantify the impact of specific QHP issuers that did not comply with Federal regulations and CMS requirements. We also encourage CMS to work with Treasury to address our audit findings and develop a process for recovering the unallowable APTCs paid on behalf of enrollees who were not entitled to receive them.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered 5,339,562 policies for individuals enrolled through the Federal marketplace for which CMS authorized APTCs totaling \$42.5 billion from January 1 through December 31, 2018 (the 2018 benefit year). The scope of our audit was limited to an assessment of the allowability of APTC payments made.⁴¹ We limited our review of CMS's internal controls to those applicable to the administration of APTC payments authorized by CMS to QHP issuers on behalf of individual enrollees.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and other requirements (e.g., the CMS-IRS MOU) related to the administration of APTC payments;
- met with CMS and IRS officials to gain an understanding of processes for administering APTC payments and ensuring accurate enrollment data;
- obtained from CMS multiple databases containing all policies for individuals who elected to have APTCs paid to QHP issuers operating through the Federal marketplace and the associated payments for the 2018 benefit year and reconciled these amounts to CMS's financial management system record of total APTC payments made for the 2018 benefit year;
- created a sampling frame of 5,339,562 policies from CMS's Payment File with APTC payment amounts totaling \$42,479,131,523;
- selected a stratified random sample of 155 policies for which APTC payments were made to QHP issuers on behalf of Federal marketplace enrollees, and for each sampled policy:
 - obtained from CMS the associated Form 1095-A, *Health Insurance Marketplace Statement* listing the amount of premiums and any APTCs paid to QHP issuers related to each policy for the 2018 benefit year;

⁴¹ We did not review whether enrollees were eligible to receive financial assistance payments. That work is detailed in *The Federal Marketplace Properly Determined Individuals' Eligibility for Enrollment in Qualified Health Plans but Improperly Determined That an Estimated 3 Percent of Individuals Were Eligible for Insurance Affordability Programs (A-09-18-01000)*, issued February 2020.

- obtained from the associated QHP issuer documentation supporting APTC payments authorized by CMS, including the associated electronic health insurance records detailing premium tax credit amounts determined by the Federal marketplace, documentation detailing the receipt of premium payments by the enrollee, and APTC payment amounts received by the QHP issuer through Treasury’s Secure Payment System; and
- determined whether the associated enrollee paid the monthly premiums in order to be eligible to receive APTCs;
- estimated the total number of policies associated with unallowable APTC payments and the total amount of unallowable APTC payments in the sampling frame;
- obtained from TIGTA the calculation of the total amount of unallowable APTC payments using APTC reconciliation data (i.e., Federal tax information (FTI)) for the 155 sampled policies and the estimated total amount of unallowable payments authorized during the 2018 benefit year;⁴² and
- discussed the results of our review with CMS officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁴² We did not have the authority to access FTI for this audit. Therefore, TIGTA used an Office of Inspector General, Office of Audit Services (OIG/OAS) calculation tool in conjunction with enrollees’ FTI to determine the estimated total amount of improper APTC payments, adjusted for reconciliation data. We did not obtain any FTI for enrollees associated with our sampled policies.

APPENDIX B: STATISTICAL SAMPLING METHODOLOGY

SAMPLING FRAME

Our target for this audit was all policies for individuals enrolled through the Federal marketplace for whom APTC payments were authorized by CMS during the period January 1 through December 31, 2018 (the 2018 benefit year).

We obtained from CMS a data file consisting of 18,643,647 line items, totaling \$42,479,131,523, that included all policies associated with individuals who applied for health insurance coverage through the Federal marketplace during the 2018 benefit year. We removed all line items for which APTC payments were not authorized during the 2018 benefit year and for those policies that were cancelled before being confirmed.⁴³ We then grouped all line items containing authorized APTC payments by policy. The resulting sampling frame consisted of an Access database containing 5,339,562 policies with authorized APTCs totaling \$42,479,131,523.⁴⁴

SAMPLE UNIT

The sample unit was a policy.

⁴³ All line items removed contained a \$0 APTC payment amount.

⁴⁴ The data provided by CMS contained the monthly amount of APTCs authorized for a benefit period. For stratification purposes, OIG estimated the annual APTC amount for each policy by multiplying the monthly amount by the number of elapsed days in the benefit period. Because the multiplier used elapsed days rather than months, there was a slight discrepancy between the actual APTC amounts dispersed for the 2018 benefit year and the sampling frame total calculated by OIG. The actual 2018 APTC disbursement amount provided by CMS was \$42,500,564,886. All policy sample item amounts reported in Appendix C are actual amounts, not the approximations derived for stratification purposes.

SAMPLE DESIGN AND SAMPLE SIZE

We used a stratified random sample as follows:

Stratum Number	Stratum Definition	Total APTC Payment Amount	Frame Count	Sample Size
1	Policies with annual APTC payments ≤\$6,300	\$8,505,232,286	2,675,201	35
2	Policies with annual APTC payments >\$6,300 and ≤\$9,924	8,492,899,614	1,055,344	30
3	Policies with annual APTC payments >\$9,924 and ≤\$13,584	8,499,178,357	734,894	30
4	Policies with annual APTC payments >\$13,584 and ≤\$19,296	8,487,086,906	529,917	30
5	Policies with annual APTC payments >\$19,296	8,494,734,360	344,206	30
Totals		\$42,479,131,523	5,339,562	155

SOURCE OF RANDOM NUMBERS

We generated the random numbers using the Office of Inspector General, Office of Audit Services (OIG/OAS) statistical software.

METHOD FOR SELECTING SAMPLE UNITS

We consecutively numbered the policies in each stratum, generated random numbers in accordance with our sample design, and then selected the corresponding frame items for review.

ESTIMATION METHODOLOGY

We used OIG/OAS statistical software to estimate the total number of policies with unallowable APTC payments and the total unallowable APTC payment amount. We calculated a point estimate and a two-sided 90-percent confidence interval for each estimate.

Using a calculation tool in an Excel spreadsheet we provided, TIGTA used APTC reconciliation data (i.e., FTI) in conjunction with our results to calculate the adjusted estimate of total improper APTC payments. TIGTA also used this calculation tool to provide the corresponding lower and upper limit of the two-sided 90-percent confidence interval.

APPENDIX C: SAMPLE RESULTS AND ESTIMATES

Sample Detail and Results

Stratum Number	Policies in Frame	Sample Size	Value of Sample	Policies Containing Unallowable APTC Payments	Value of Unallowable APTC Payments in Sample
1	2,675,201	35	\$119,525	6	\$3,696
2	1,055,344	30	236,326	4	3,563
3	734,894	30	341,428	1	1,050
4	529,917	30	476,252	2	35,147
5	344,206	30	739,210	0	0
Totals	5,339,562	155	\$1,912,741⁴⁵	13	\$43,455⁴⁶

Estimated Number of Policies With Unallowable APTC Payments and Estimated Value of Improper APTC Payments⁴⁷
(Limits Calculated at the 90-Percent Confidence Level)

	Total Number of Policies With Unallowable APTC Payments	Total Value of APTC Payments Associated With These Policies⁴⁸	Total Value of Reconciled Unallowable APTC Amounts
Point Estimate	659,143	\$1,054,354,826	\$950,402,740
Lower Limit	349,061	305,576,319	208,517,686
Upper Limit	969,224	1,803,133,334	1,692,287,795

⁴⁵ These values are the actual APTC disbursement amounts for the 155 sample items.

⁴⁶ The individual stratum values do not add to the total value because of rounding.

⁴⁷ Reconciled APTC amounts were included in the calculation of the total value of payments associated with these policies based on the calculation tool used by TIGTA referenced in Appendix B.

⁴⁸ We calculated these values using OIG/OAS statistical software. However, because these values do not include reconciled APTC amounts, we did not use them for the statistical estimate in this report.

APPENDIX D: CMS COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: October 15, 2020

TO: Christi A. Grimm
Principal Deputy Inspector General

FROM: Seema Verma 
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: CMS Authorized Approximately \$950 Million in Advance Premium Tax Credits on Behalf of Enrollees Who Did Not Make Their Required Premium Payments (A-02-19-02005)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report on advance payments of the premium tax credit (APTC) for individuals enrolled in qualified health plans (QHPs) through the Federally-facilitated Exchanges (FFE).¹ CMS is committed to working with QHP issuers to ensure the accuracy of APTC payments.

CMS considers this report's conclusions to be a gross misunderstanding of the accuracy of APTC payments made to issuers on the FFEs in 2018. First, CMS notes that while the OIG characterizes these payments as "authorized" by CMS, many of the errors that OIG identified were examples of issuer non-compliance with CMS enrollment regulations, where CMS appropriately made payment based on issuer reporting as required by its own regulations. CMS uses its audit program to monitor issuer compliance with these regulations. Second, CMS disputes the legal basis for OIG's recommendation regarding recovery of APTC for the types of issuer errors that the OIG identified because the issuer provided effectuated coverage. Finally, CMS disputes the soundness of the OIG's extrapolation, noting that approximately 80 percent of the OIG's recovery estimate is based on issuer errors found on just two of the more than five million policies provided by FFE issuers in 2018.

CMS takes the stewardship of tax dollars seriously and has implemented a series of payment and system controls to assist in making accurate and timely APTC payments to QHP issuers. In May 2016, CMS fully transitioned QHP issuers operating through the FFEs to an automated payment system, allowing for the processing of APTC payments on a policy-level basis. The automated system allows CMS, the FFEs, and QHP issuers to share enrollment and health insurance information, such as individuals covered by a policy, the QHP selected, the associated premium amount, and the APTC payment amount, if applicable. Between 2018 and 2020 CMS transitioned all State-based Exchanges (SBEs) to the automated payment system.

Both the Government Accountability Office (GAO) and the OIG have previously reviewed the automated payment system, with GAO reporting that CMS properly designed and implemented control activities related to the accuracy of APTC made to QHP issuers² and OIG indicating that CMS can independently verify financial assistance payment data.³ In addition, under CMS'

¹ As in the OIG's draft report, for purposes of this response, references to FFEs include State-based Exchanges on the Federal-Platform.

² "IMPROPER PAYMENTS: Improvements Needed in CMS and IRS Controls over Health Insurance Premium Tax Credit" (GAO-17-467, Released July 13, 2017).

³ "Initial Review of the Centers for Medicare & Medicaid Services' Automated System for Processing Financial Assistance Payments" (A-02-17-02001, Released May 8, 2017).

Office of Management and Budget A-123 internal controls review over financial reporting, key controls surrounding the payment process were tested and determined to be operating effectively. Moreover, an independent certified public accounting firm conducted its review of the payment process and reported no significant issues. Lastly, CMS has undergone an Agreed Upon Procedures review to evaluate the payments and controls under the payment processes. These reports are shared with GAO and the Internal Revenue Service (IRS) annually. No major findings were noted during fiscal years 2014-2020.

Instituting strong program safeguards to ensure that only individuals who are eligible for coverage are enrolled in such coverage, and that they are only receiving the amount of APTC, if any, for which they are eligible is essential to ensuring that the FFEs operate as intended. In order to better protect consumers and taxpayer dollars, CMS has implemented a number of initiatives to enhance operations with a focus on program integrity. As part of its program integrity framework, CMS has process controls, including parallel processing, multiple levels of review of the data at CMS, and a robust enrollment reconciliation system to ensure data accuracy. In addition, CMS has developed a coordinated, risk-based audit process to determine the accuracy and integrity of past years' APTC payments to QHP issuers, which includes verification of premium payment for a sample of QHP issuer records. To date, CMS has completed 33 audits of FFE QHP issuers that received APTC for the 2014 benefit year. These 33 out of 199 FFE QHP issuers represented approximately 50 percent of the FFE APTC payments made in 2014. The net refund to CMS resulting from the 33 audits was over \$5 million, representing 0.1 percent of total payments to audited QHP issuers.⁴

CMS is currently auditing FFE APTC payments for benefit years 2015 and 2016, and, like 2014 FFE audits, will publicly post completed audit reports.⁵ CMS is planning to audit FFE APTC payments for benefit years 2017, 2018, and 2019 concurrently starting in late 2020, with each of these audits targeting over 40 issuers. Over the course of its audits of FFE issuers for benefit years 2016 through 2020, CMS will review payments for 100 percent of FFE issuers.

CMS audits of FFE policy-based payments are far more robust than the OIG's auditing method. CMS requires issuers to submit a full audit file reflecting 100 percent of policies for the year(s) being audited, and verifies that the coverage and APTC that the issuer provided to the enrollee match what was reported to CMS for payment. In addition to this 100 percent record review, CMS also reviews the issuer's enrollment records to identify policies at higher risk of error and performs a deep-dive review of policy-level documentation to verify binder payment, APTC application, premium collection, and grace period application. Our audit program provides far greater insight into payments, issuer reporting errors, and potential recoveries to identify and correct known errors on specific policies.

By contrast, the OIG sampled only 155 of the 5.3 million policies from 2018, representing a sample size of 0.003 percent. Of the \$43,455 of authorized APTC identified from this sample as unallowable in the OIG's report, \$35,147, or approximately 80 percent, was for payment on just two policies. For both of these policies, the OIG asserts that CMS should recover APTC for the full year of coverage, in spite of the fact that the enrollee may have paid premium for additional months during the coverage year. For example, in one case the issuer failed to terminate

⁴ "CMS Issuer Audits of the Advance Payments of the Premium Tax Credit." April 1, 2019. <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/2014-CMS-APTC-Audits.PDF>.

⁵ "Advance Payments of the Premium Tax Credit (APTC) Audits." <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/AuditReports>.

coverage when an enrollee's binder payment for a single month early in the year was late, despite the fact that the enrollee did ultimately pay their premium for that month and also continued to pay for and receive coverage for later months of that year. Based on this assertion, the OIG then reported an extrapolated dollar figure of \$950 million based on the highly erroneous assumption that any error identified would be appropriate to recover, which led to the misleading title of this report. While CMS has not yet audited policies from the benefit year OIG examined in its report (2018), CMS's audit approach is far more thorough and provides actionable corrections to issuer and FFE operations.

Issuers are responsible for collecting premium payments and providing QHP coverage in accordance with FFE standards and requirements as described in 45 CFR § 155.400(e) and 155.430. CMS oversight and audits are intended to ensure QHP issuers fulfill this responsibility, including complying with requirements related to binder payments and grace periods. When these audits identify cases where an issuer erroneously provided coverage through an Exchange to an enrollee such as the instances that the OIG identified, CMS generally does not consider it appropriate to penalize an enrollee through retroactive changes to that enrollee's past coverage, or recoupment of APTC from the issuer. Instead, through its authority at 45 CFR § 156.805, CMS may impose civil money penalties (CMPs) in instances in which QHP issuers participating in a FFE have violated those standards and requirements. In 2019, CMS notified FFE issuers that we will begin issuing CMPs for non-compliance with enrollment guidance in our audits of benefit year 2020 FFE coverage. In addition to the CMP authority, CMS uses audit results to educate all QHP issuers on common reporting errors to further improve compliance.

OIG's recommendations and CMS' responses are below.

Recommendation

We recommend that CMS ensure the recovery of the \$43,455 in improper APTCs identified in our sample.

CMS Response

CMS non-concurs with this recommendation. CMS disagrees with the legal basis for OIG's recommendation to recover APTC for effectuated FFE coverage in cases where the QHP issuer may not have followed CMS' enrollment policy.

An applicable taxpayer is eligible for the premium tax credit (PTC) under section 36B of the Internal Revenue Code of 1986 if he or she meets eligibility requirements, including that the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer is covered by a QHP in which such individual was enrolled through an Exchange. CMS makes advance payments of the PTC, known as APTC, to QHP issuers on behalf of applicable taxpayers. Issuer compliance with CMS regulations could affect whether a consumer obtains or retains coverage, but when coverage is in place, a taxpayer may be eligible for PTC (if they otherwise meet eligibility criteria), even if the issuer has not fully adhered to operational regulations. In addition, APTC are reconciled against PTC when the applicable taxpayer files an annual federal income tax return. While QHP issuers must comply with FFE regulatory requirements and standards such as premium payment deadlines, grace periods, termination dates, and record retention requirements, these are operational requirements, and not conditions for payment of PTC. Therefore, even if an issuer should not have provided coverage and therefore received APTC payments for an applicable taxpayer, the taxpayer could still have been eligible for PTC.

Two examples responsible for approximately 80 percent of the error that the OIG identified illustrate this point. In one case, the issuer erroneously effectuated the enrollee's enrollment despite the member's binder payment being received one day after the regulatory deadline. The enrollee paid premium to remain enrolled for the full year, and the OIG considered the enrollee's full year of APTC (\$18,900) unallowable, accounting for 43 percent of the total identified error in the OIG's report. Similarly, in a second case, an issuer failed to terminate the coverage of an enrollee who had paid only a part of past-due premium by the end of the enrollee's grace period in March. Because the enrollee's coverage should have been terminated back to the end of January but the enrollee made later payments to remain covered for the rest of the year, the OIG considered all APTC paid for this enrollee for February through December (\$16,247) unallowable, accounting for another 37 percent of the total identified error. In both of these cases, and in similar cases of issuer misapplication of CMS guidance on premium collection with smaller financial impact, CMS does not consider it reasonable or legally permissible to retroactively cancel or terminate enrollment from the 2018 benefit year for purposes of recovering APTC paid for that enrollment, which could be financially harmful to the enrolled consumer who may have made decisions to seek care based on having coverage. Such retroactive terminations would also be inconsistent with the statute, which provides for subsidies for eligible consumers enrolled in coverage through an Exchange.

Instead, CMS can impose penalties on issuers for non-compliance with operational requirements in a prior benefit year. CMS' authority to assess CMPs to penalize QHP issuers for non-compliance with FFE standards and requirements is set forth in 45 CFR § 156.805. Of the 13 policies that make up OIG's findings, CMS is currently auditing five of the 10 QHP issuers represented in these policies for the 2016 benefit year audits. As noted above, CMS is planning to audit FFE APTC payments for benefit years 2017, 2018, and 2019 concurrently starting in late 2020. In 2019, CMS notified FFE issuers that we will begin issuing CMPs for non-compliance with enrollment guidance in our audits of benefit year 2020 FFE coverage.

CMS will also continue to educate all QHP issuers on common reporting issues, including those found in OIG's audit, such as grace periods, binder payments, and the timely processing of termination dates.

Recommendation

We recommend that CMS work with Treasury and QHP issuers to recover the remaining improper APTCs, which we estimate to be \$950 million, for policies for which the payments were not allowable.

CMS Response

CMS non-concurs with this recommendation. As discussed in our response to the previous recommendation, CMS disagrees with the legal basis for OIG's recommendation to recover APTC for effectuated FFE coverage in cases where the QHP issuer may not have followed CMS' enrollment policy.

In addition to disagreeing with the legal basis for OIG's recommendation, CMS disputes the accuracy of the extrapolation method OIG used to arrive at this recommendation and the feasibility of recovering the remaining improper APTCs, which OIG estimates to be \$950 million (2.2 percent of total authorized APTC for all enrollees in FFEs in 2018). This method does not consider the amount of APTC to be collected from a particular QHP issuer, but rather is an estimate based on the total policies with unallowable APTC payments. As we noted above, more than 80 percent of the \$43,455 identified in the sample that was the basis of the OIG's

extrapolation is for payment for just two of the 5.3 million policies providing 2018 FFE coverage.

In contrast to the methods used by OIG, we again note that CMS' payment audits included checks against FFE records on 100 percent of each of the selected QHP issuer's enrollment records, as well as more detailed checks of policy-level documentation of a larger sample of policies based on the risk profile of each issuer. For any errors identified in a sample of records, the QHP issuer was required to identify all other cases involving the same error across their records for purposes of quantifying overall impact. CMS considers this method of assessing total error more robust than extrapolation. CMS will also continue to educate all QHP issuers on common reporting issues, including those found in OIG's audit, such as grace periods, binder payments, and the timely processing of termination dates.

Recommendation

We recommend that CMS develop a process to collect from QHP issuers: (1) information related to individuals' premium payments paid during the benefit year; and (2) enrollees' policy termination information so that it can provide accurate enrollment data to IRS.

CMS Response

CMS concurs with and is already pursuing this recommendation. CMS notes that the financial impact of the policies for which the OIG identified this issue represents just 12 percent of the error estimate in the OIG's report.

CMS has strengthened oversight of premium collection through guidance to QHP issuers on terminating coverage for failure to pay premiums through updates to the Enrollment Manual. QHP issuers are required to collect the first month's "binder" premium (or an amount within the premium payment threshold if the QHP issuer utilizes such a threshold) to effectuate coverage, and observe a three consecutive month grace period before terminating coverage for those enrollees who, when failing to timely pay premiums, are receiving APTC. If an individual fails to pay his or her premium, the QHP issuer is required to terminate the individual's coverage for failure to pay a premium after the appropriate grace period, and to notify the FFE.

For the past several years, CMS has been implementing a process to ensure enrollment data contains termination reasons to identify enrollees whose coverage is terminated for nonpayment of premiums, which will address the OIG's recommendation that CMS develop a process to collect enrollees' policy termination information. Termination reasons will help protect the integrity of the Exchanges by supporting oversight and audit of the grace period by indicating enrollees whose coverage was terminated for non-payment and therefore may not have paid some of their premium during the grace period. However, due to the COVID-19 pandemic and QHP issuers' need to focus on flexibilities relating to QHP coverage and collection of premium payments during this time, CMS has slightly delayed the final steps of this implementation.

As the OIG report notes, if an enrollee fails to pay an outstanding premium for the first month of the grace period prior to the tax filing deadline, then the PTC for that month is unallowable. CMS has not yet fully implemented a data collection process that would enable it to determine with precision whether the enrollee paid their portion of the premium for the first month of the APTC grace period (referred to as the "paid through date"), or the capability to reflect these data in reporting to the IRS and on the Form 1095-A for tax reconciliation. CMS analysis to date has shown that this data collection process will require significant operational changes both for QHP issuers and CMS, along with a need for additional technical assistance and education for QHP

issuers to ensure compliance and accuracy of the data, creating significant issuer burden. CMS is exploring options for cost-effective processes to collect from QHP issuers information related to individuals' premium payments that do not result in undue burden to issuers and that minimize consumer confusion and administrative burden.