

United States Senate

WASHINGTON, DC 20510

June 25, 2024

The Honorable Heather Mills
Acting Treasury Inspector General for Tax Administration
U.S. Treasury Department
901 D Street, SW, Suite 600
Washington, D.C. 20024

Dear Acting Inspector General Mills,

I write to you with questions about the Affordable Care Act (ACA) marketplaces' refundable premium assistance tax credits (PTCs) and efforts to reduce improper payments. The latest estimate from the non-partisan Congressional Budget Office (CBO) suggests that taxpayers could spend over \$1.7 trillion in the coming decade on the ACA marketplace and related spending if Congress extends these credits and subsidies permanently for households earning over 400 percent of the federal poverty level (FPL).¹ Given the Treasury Inspector General for Tax Administration's (TIGTA) recent analysis of PTC improper payments, I would like to better understand the program's improper payment controls.

The ACA provides subsidizations of non-group private insurance through a government-run marketplace administered by the federal government and state governments through Section 1332 waivers. Subsidization can also be a reduction in cost-sharing at certain income levels.² From 2014 to 2020, subsidization was not provided to households with incomes at or above 400 percent of FPL.³ Under the 2021 reconciliation law, federal subsidies were made available to those with household incomes at or above 400 percent of FPL for calendar year (CY) 2021 and 2022, as long as households paid more than 8.5 percent of their income on health insurance premiums before receiving any subsidization.⁴ At the time of passage, the Joint Committee on Taxation calculated that in CY 2021 and 2022, taxpayers would spend at least \$3 billion to subsidize health insurance premiums of certain high-income earners for those making over 750 percent of FPL.⁵ The 2022 reconciliation law extended the federal subsidies for those at or above

¹ Congressional Budget Office (CBO) baseline for June 2024; CBO, "Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues," May 8, 2024, <https://www.cbo.gov/publication/60271>; CBO email to Senate Budget Committee. June 18, 2024.

² Capretta, J., American Enterprise Institute, "The Widening Gap between ACA and ESI Subsidies," January 29, 2024, <https://www.aei.org/economics/the-widening-gap-between-aca-and-esi-subsidies/>.

³ Congressional Research Service (CRS), "Health Insurance Premium Tax Credit and Cost-Sharing Reductions," January 17, 2023, <https://crsreports.congress.gov/product/pdf/R/R44425>.

⁴ Public Law 117-2, <https://www.congress.gov/bill/117th-congress/house-bill/1319>.

⁵ Multiple Senators Letter to Department of Health and Human Services (HHS) Secretary Xavier Becerra and IRS Commissioner Charles Rettig, May 20, 2021, <https://www.lankford.senate.gov/wp-content/uploads/media/doc/APTC%20Subsidy%20Letter.pdf>.

400 percent of FPL through CY 2025.⁶ At 750 percent of FPL, a household of four making \$234,000 and a single individual making \$112,950 qualify for subsidies.⁷

The ACA marketplace direct subsidization of middle- and higher-income earners has resulted in an increase in federal outlays and an ever-growing projection of outlays as seen in the most recent CBO baselines. When you compare the same 10-year period (FY 2022-2031) from CBO's July 2021 estimate to the June 2024 estimate (including actuals in 2022-2023), outlays increased from \$577 billion to \$1,048 billion, an 81.7 percent (\$471 billion) increase.⁸ In addition, CBO routinely estimates outlays for extending these subsidies permanently. CBO's May 2024 estimate found that making the enhanced ACA subsidies permanent would increase the deficit by \$335 billion over 10 years (FY 2025-2034).⁹ The total cost of premium tax credits would increase by \$432 billion, partially offset by \$97 billion reflecting the effects on other program costs and revenues.¹⁰ The ever-growing projection of ACA outlays as seen in the most recent CBO baselines warrants a closer look at improper payment controls for the program.

To ensure Congress understands the improper payment controls in place for ACA credits and the administration of the program integrity controls, please provide detailed answers to the following questions by no later than July 25, 2024:

1. In TIGTA's FY 2017 report on tax year (TY) 2016, it noted that "[g]iven the interdependency of the advanced PTC and PTC, we believe the [Internal Revenue Service (IRS)] and [Centers for Medicare and Medicaid Services (CMS)] would benefit from working together to develop an overall assessment of PTC improper payments that includes the risk of error in both advanced PTC and PTC payments."¹¹ TIGTA also wrote that "a collaborative risk assessment would enable both agencies to evaluate all potential causes of PTC improper payments and develop a more comprehensive strategy for reducing improper advanced PTC and PTC payments." Has the IRS and CMS satisfied this recommendation? What were the conclusions of any such risk assessment and what, if any, changes in the administration of the PTC have IRS and CMS implemented as a result?
2. The IRS notes that in its FY 2023 report, it will be reducing the number of correspondence audits for premium tax credit and instead "[focus] more attention on reaching underserved communities to provide education and real-time assistance in claiming available credit and

⁶ Public Law 117-169, <https://www.congress.gov/bill/117th-congress/house-bill/5376/>.

⁷ HHS, "2024 Poverty Guidelines: 48 Contiguous States (all states except Alaska and Hawaii)," <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>.

⁸ Note: July 2021 data is estimates for FY 2022-2031 and the June 2024 data includes actuals for FY 2022-2023 and estimates for FY 2022-3031.

⁹ CBO, "Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues," May 8, 2024, <https://www.cbo.gov/publication/60271>.

¹⁰ Note: Over the 2025-2034 period, CBO estimated this policy would increase the deficit by \$335 billion, comprised of an increase in outlays of \$275 billion and a decrease in revenues of \$60 billion.

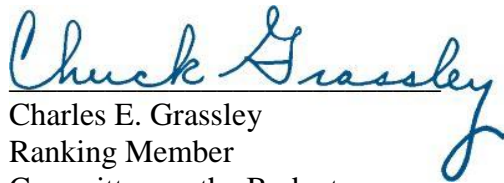
¹¹ Treasury Inspector General for Tax Administration (TIGTA), "Revised Refundable Credit Risk Assessments Still Do Not Provide an Accurate Measure of the Risk of Improper Payments," April 28, 2017, <https://www.tigta.gov/sites/default/files/reports/2022-02/201740030fr.pdf>.

incentives.”¹² Given this includes PTCs for those making over 400 percent of FPL, what assurance can you provide on the nature of audits of those making over 400 percent FPL and potential misuse of PTCs?

3. Beginning in FY 2022, the IRS began reporting the improper payment rate for PTCs. The FY 2022 improper payment rate was 27.4 percent (or \$578 million improperly paid) and the FY 2023 improper payment rate was 26.0 percent (or \$958 million improperly paid).¹³ This information is based on the Treasury Department’s Payment Accuracy data found in *Table A*. Given this is the highest improper payment rate among other government-funded health care programs, what additional audits or monitoring activities does TIGTA have planned to ensure IRS and CMS take appropriate steps to address this outlier?
4. Based on TIGTA’s analysis, between FY 2016-2022, (for tax years 2015-2021), individuals received an excess of \$24 billion in PTCs. Of this amount, \$10 billion was provided in excess, but not required to be returned based on the rules established under the ACA even though individuals were not entitled to the excess amounts. The \$14 billion of the \$24 billion was required to be collected by the IRS. This data is based on TIGTA’s data provided to the Senate Committee on the Budget, which is summarized in *Table B*. What amount, if any, of the \$14 billion has IRS recovered? What are the primary collection activities taken by IRS to recover PTC overpayments? Please list the dollar amount of PTC recoveries by collection action.

I appreciate TIGTA’s work to ensure vulnerable Americans receive the health care coverage they are eligible for under the law. I take a strong interest in ensuring the IRS and CMS are responsibly administering the program for taxpayers.

Sincerely,


Charles E. Grassley
Ranking Member
Committee on the Budget

¹² TIGTA, “Assessment of Fiscal Year 2023 Compliance With Improper Payment Reporting Requirements,” May 17, 2024, <https://www.tigta.gov/sites/default/files/reports/2024-05/2024400026fr.pdf>.

¹³ Office of Management and Budget, “*PaymentAccuracy*, Treasury Departments Annual Improper Payments Datasets – 2023 Dataset,” <https://www.paymentaccuracy.gov/payment-accuracy-the-numbers/>.

APPENDIX

Table A:
Treasury Department’s Payment Accuracy Annual Improper Payments Datasets
from the 2023 Dataset for the Internal Revenue Service –
Refundable Premium Assistance Tax Credit (in \$ millions)¹⁴

| Fiscal Year | Outlays Amount | Amount Properly Paid | Payment Accuracy Rate | Improper Payment Amount | Improper Payment Rate |
|--------------------|-----------------------|-----------------------------|------------------------------|--------------------------------|------------------------------|
| 2022 | \$ 2,106.98 | \$ 1,529.04 | 72.57% | \$ 577.94 | 27.43% |
| 2023 | \$ 3,679.55 | \$ 2,721.40 | 73.96% | \$ 958.15 | 26.04% |

Table B:
TIGTA’s Analysis of PTC Improper Payments as Portrayed in TIGTA Reports
(in \$ billions)¹⁵

| Fiscal Year | Tax Year | APTC Payment Benefit in Excess | APTC Payment Benefit in Excess (Not Required to Be Returned) | APTC Payment Benefit in Excess (Required to be Returned) |
|--------------------|-----------------|--|---|---|
| 2016 | 2015 | \$3.8 | \$1.4 | \$2.4 |
| 2017 | 2016 | \$5.8 | \$3.5 | \$2.3 |
| 2018 | 2017 | \$3.7 | \$1.0 | \$2.7 |
| 2019 | 2018 | \$4.5 | \$1.3 | \$3.2 |
| 2020 | 2019 | \$4.3 | \$1.3 | \$3.0 |
| 2021 | 2020 | \$2.2 | \$1.7 | \$0.5 |
| 2022 | 2021 | <i>This data is no longer published since the improper payment data is now published annually.</i> | | |
| 2023 | 2022 | | | |
| Total | | \$24.3 | \$10.2 | \$14.1 |

¹⁴ Office of Management and Budget, “PaymentAccuracy, Treasury Departments Annual Improper Payments Datasets – 2023 Dataset,” <https://www.paymentaccuracy.gov/payment-accuracy-the-numbers/>.

¹⁵ TIGTA email to Senate Budget Committee. May 31, 2024.