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May 16, 2022

Internal Revenue Service
Department of the Treasury
Washington, D.C. 20044

Submitted via www.federalregister.gov

Re: Docket No. REG-114339-21; Affordability of Employer Coverage for Family Members of Employees

Dear Secretary Yellen:

Thank you for the opportunity to comment on your agency's proposed regulations under section 36B of the Internal Revenue Code. These proposed regulations would amend existing regulations regarding eligibility for the premium tax credit to provide that affordability of employer-sponsored minimum essential coverage for family members of an employee is determined based on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee.

First Focus on Children, a bipartisan advocacy organization that prioritizes children and families in federal budget and policy decisions, is writing to express our support for the proposed regulations to fix the so-called "family glitch." Since the passage of the Affordable Care Act (ACA), this regulatory flaw has made health insurance coverage unaffordable for roughly 5 million people — more than half of them children.[1] Through no fault of their own, they suffered the consequences of an unintended flaw in the interpretation of the ACA – a bill that was meant to expand access to health care coverage and make it affordable to individuals and families, just as we argued a decade ago along with over 100 other organizations.[2]

By modifying the "affordability rule" to include related individuals, more children will have access to affordable health insurance. We agree with the intent of the new proposed regulations which clarify that an eligible employer-sponsored plan is affordable for related individuals if the portion of the annual premium the employee must pay for family coverage, that is, the employee's required contribution, does not exceed 9.5 percent of household income. Until now, children and other family members of employees were either going without health insurance coverage or paying hundreds of dollars a month for premiums in the private insurance market because they were not eligible for premium tax credits under the ACA.

First Focus on Children also agrees with the interpretation that the lack of a separate minimum value rule for related individuals is inconsistent with the overall goal of the ACA in providing comprehensive, affordable health coverage, as well as the goal of improving access to quality and affordable health care. We support the new proposed regulations that an eligible employer-sponsored plan satisfies the minimum value requirement

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[1] Cox et al., The ACA Family Glitch and Affordability of Employer Coverage, KFF, Apr 07, 2021, https://www.kff.org/health-reform/issue-brief/the-aca-family-glitch-and-affordability-of-employer-coverage/

[2] First Focus Campaign for Children, "Fix the Family Glitch: To the President and Congressional Leaders," March 2012. https://campaignforchildren.org/wp-content/uploads/sites/2/2012/03/Family-Glitch-Lettter.pdf

only if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60 percent, similar to the existing rule for employees. We also support the proposed regulations that require eligible employer sponsored plans to include substantial coverage of inpatient hospital services and physician services.

For over a decade, First Focus on Children has been a strong advocate for fixing the family glitch because over half of the individuals who are negatively impacted are children. For the roughly 2.8 million children under the age of 18 who fall into the family glitch, there are essentially two scenarios for families.[3] In the first scenario, the consequences of children going without health insurance are serious. Without health insurance, children often forgo well-child visits, important vaccinations, and specialty care. As a result, children can suffer many unintended consequences. Social, emotional and developmental delays may be detected too late, serious chronic and acute medical conditions may go untreated and children may suffer unnecessary long-term harm.[4] In the second scenario, families who fall into the family glitch and purchase private insurance on the open market often pay more than their fair share of health insurance premiums and suffer financial hardship. Paying high insurance premiums without being eligible for premium tax credits has meant that these families have hundreds of dollars less to spend each month on food, clothing, housing and other important necessities which improve the well-being of their children.[5]

As of January 1, 2023, the 2.8 million children who fall into the family glitch will receive fair and equal treatment under the ACA if these proposed rules are finalized by the end of the year. While it has been over a decade that children and their families have suffered this hardship,[6] First Focus on Children and other children's advocacy organizations celebrate this moment. We appreciate the hard work by the Department of the Treasury and the Internal Revenue Service to craft a thoughtful regulatory package to fix the family glitch.

Thank you for the opportunity to submit this comment. If you have any questions, please contact me at 202.657.0605 or BruceL@Firstfocus.org

Sincerely,

Bruce Lesley

Bruce Lesley
President

[3] *Ibid, 1.*
[4] Dalpiez, Elaine and Olivia Gomez, "Fact Sheet: Removing the 'Family Glitch' from the ACA," *First Focus on Children,* Jan. 2022. https://firstfocus.org/resources/fact-sheet/fact-sheet-removing-the-family-glitch-from-the-aca
[5] *Ibid, 4.*
[6] *Ibid, 2.*