Congressional Research Service

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To: House Committee on Education and the Workforce
Attention: Todd Spangler

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Subject: **Multiemployer Plans and the Patient Protection and Affordable Care Act**

This memorandum responds to your question concerning whether an individual enrolled in a multiemployer health plan funded by a Taft-Hartley trust could be eligible for a premium tax credit under the Patient Protection and Affordable Care Act (ACA).[1] This memorandum explores your question by considering two different scenarios: (1) an individual who is eligible for a multiemployer health plan applying for a premium tax credit; and (2) a multiemployer health plan being offered in a health benefit exchange.

Given Congress's interest in the ACA and premium tax credits, the content of this memorandum may appear in other Congressional Research Service products.

Multiemployer Plan Enrollees Accessing Premium Tax Credits

New federal premium tax credits were authorized under the ACA to help certain individuals pay for health insurance offered through health benefit exchanges —marketplaces offering comprehensive, private health plans. The ACA specifies that premium tax credits will be available to "applicable taxpayers" in a "coverage month" beginning in 2014.[2]

An "applicable taxpayer" is an individual who is part of a tax-filing unit, is enrolled in an exchange plan, and has household income at or above 100 percent of the federal poverty level (FPL), but not more than 400 percent of the FPL. A "coverage month" refers generally to a month in which the applicable taxpayer paid for coverage offered through an exchange, not including any month in which the taxpayer was

[1] Pub. L. No. 111-148, 124 Stat. 119 (2010).

[2] ACA § 1401(a)(1), 26 U.S.C. § 36B(c)(1).

eligible for "minimum essential coverage." Thus, pursuant to this definition, an individual will not be eligible for a premium tax credit if she is eligible for minimum essential coverage.

The term "minimum essential coverage" includes coverage under specified government-sponsored programs, as well as coverage under an eligible employer-sponsored plan.[3] An eligible employer-sponsored plan is a group health plan or group health insurance coverage offered by an employer to an employee that is either a governmental plan, or any other plan or coverage offered in the small or large group market within a state.[4]

Under the Taft-Hartley Act, an employer is prohibited generally from providing money or any other thing of value to a union that represents individuals employed by the employer.[5] The Act exempts, however, funds paid to a trust fund established by the union for pension, health, or other welfare benefits that are available "for the sole and exclusive benefit" of the employees, their families, and their dependents.[6] Multiemployer health plans that are funded by these trusts are collectively bargained and maintained by one or more employers.[7] Despite sponsorship by more than one employer, multiemployer health plans are considered generally to be employee benefit plans subject to regulation under the Employee Retirement Income Security Act.[8]

Because a multiemployer health plan would seem to constitute minimum essential coverage for purposes of the definition for a "coverage month", it seems unlikely that an individual who is enrolled in a multiemployer health plan would be eligible for a premium tax credit. As noted, a premium tax credit is available only for applicable taxpayers in a "coverage month". If an individual is eligible for minimum essential coverage in any month, she would not be in a coverage month, as defined under the ACA, and thus would be ineligible for a premium tax credit.

Offering Multiemployer Plans in Exchanges

In order for a health plan to be offered through a health benefit exchange, the exchange must certify that the plan meets the required minimum criteria applicable to "qualified health plans" (QHPs).[9] Exchange QHPs must comply with numerous benefit, cost-sharing, and other standards.[10] Moreover, the QHP must be offered by a state-licensed issuer that is in good standing with the state and complies with all applicable statutory and regulatory requirements.[11] It has been reported that over 90 percent of multiemployer plans are self-insured and not offered by health insurance issuers.[12] Thus, it seems that these plans could not be considered QHPs and could not be included in an exchange.

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[3] *See* ACA § 1501(b), 26 U.S.C. § 5000A(f)(1).

[4] ACA § 1501(b), 26 U.S.C. § 5000A(f)(2).

[5] 29 U.S.C. § 186.

[6] 29 U.S.C. § 186(c)(5).

[7] *See* Paul M. Secunda, *The Forgotten Employee Benefit Crisis: Multiemployer Benefits Plans on the Brink*, 21 Cornell J.L. & Pub. Pol'y 77, 78-79 (2011).

[8] 29 U.S.C. §§ 1001 *et seq*.

[9] Nearly all exchange plans must be certified as meeting the QHP requirements, with limited exceptions permitted.

[10] ACA § 1301(a), 42 U.S.C. § 18021(a). Exchange QHPs must provide at least the "essential health benefits package," as specified in § 1302 of ACA, 42 U.S.C. § 18022. The package includes benefits from ten statutorily-identified categories (e.g., "prescription drugs"), as well as cost-sharing limits, and actuarial value standards.

[11] ACA § 1301(a)(1)(C), 42 U.S.C. § 18021(a)(1)(C).

[12] *See* Timothy Stoltzfus Jost, *Loopholes in the Affordable Care Act: Regulatory Gaps and Border Crossing Techniques and How* (continued...)

Other concerns would appear to exist for a multiemployer health plan that is fully insured. For example, such a plan would have to satisfy the criteria applicable to QHPs before it could be available through an exchange. In addition, the issuer of the plan would be required to offer insurance on a guaranteed issue basis.[13] In other words, an issuer would be required to provide coverage to any person or group that applies for it, as long as that person or group agrees to the terms and conditions of the coverage, such as the benefit package and premium. The Taft-Hartley Act, however, appears to contemplate only a health plan for employees, their families, and dependents. At least one observer has questioned the availability of a multiemployer plan to nonemployees or individuals who are not family members or dependents: "It's unlikely that trusts would want to – or be legally allowed to – set up an insurance company and sell coverage to people outside of the trust's core membership."[14]

Given the Taft-Hartley Act's requirements and the ACA's requirements for QHPs, it appears unlikely that a multiemployer plan could be made available through a health benefit exchange.

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to Address Them, 5 St. Louis U. J. Health L. & Pol'y 27, 74 (2011).

[13] ACA § 1201, 42 U.S.C. § 300gg-1. This provision applies to issuers both in and outside of exchanges.

[14] *Group Wants Taft-Hartley Plans Deemed QHPs, Workers to Get Exchange Subsidies*, Inside Health Ins. Exchanges (Atlantic Info. Services, Wash, D.C.), Nov. 2011, *available at* http://www.nccmp.org/pdfs/HEX1111.pdf (quoting Prof. Timothy Stoltzfus Jost, Wash. & Lee Univ. School of Law)