



Failure to File and Reconcile Operational Flexibilities for Plan Years 2021 and 2022

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The information provided in this document is intended only to be a general informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance that it is based upon. This document summarizes current policy and operations as of the date it was presented. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law. We encourage readers to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information. This communication was printed, published, or produced and disseminated at U.S. taxpayer expense.



Disclaimer

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This document generally is not intended for use in the State-based Marketplaces (SBMs) that do not use HealthCare.gov for eligibility and enrollment. Please review the guidance on our Agents and Brokers Resources webpage (<http://go.cms.gov/CCIOAB>) and Marketplace.CMS.gov to learn more.

Unless indicated otherwise, the general references to “Marketplace” in the presentation only include Federally-facilitated Marketplaces (FFMs) and State-based Marketplaces on the Federal Platform (SBM-FPs).

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FTR Background: Requirement to File and Reconcile

- Taxpayers who received advance payments of the premium tax credit (APTC) generally must file a federal income tax return for the year of coverage and reconcile the APTC paid with the premium tax credit (PTC) allowed by filing IRS Form 8962.
- Taxpayers who do not do the required reconciliation typically will no longer be eligible for APTC for future plan years.
- Normally, taxpayers who have not met this requirement are put into the Failure to File and Reconcile (FTR) process with their Exchange.

FTR Background: Overview of the Typical FTR Process – Open Enrollment

- As part of the normal Open Enrollment (OE) processes in Exchanges that use the federal eligibility and enrollment platform (Exchanges using the federal platform), enrollees with an FTR status receive notices alerting them that IRS data show that they, or their taxpayer, have not filed a federal income tax return for the applicable tax year and reconciled APTC using IRS Form 8962.
- These OE notices encourage taxpayers with an FTR status to file their federal income tax return and complete the required reconciliation using IRS Form 8962.

FTR Background: Overview of the Typical FTR Process – Open Enrollment (continued)

- Enrollees are also encouraged when they create or update their new plan year application during OE to attest that they have filed and reconciled, if they have done so, by checking the box that says, “Yes, I reconciled premium tax credits for past years.”
- Enrollees who attest to having filed and reconciled on their application and enroll in coverage for the next plan year by the end of OE are able to continue receiving APTC during the next plan year, even if IRS data still has not updated to reflect their most current federal income tax filing status, pending further verification of their FTR status during the FTR Recheck process.

FTR Background: Overview of the Typical FTR Process – Batch Auto Re-Enrollment (BAR)

- Enrollees who do not actively re-enroll in coverage for the next plan year by the end of OE will generally be automatically re-enrolled in their current plan or, if that plan is not available, another plan intended to be similar to their current plan, based on their eligibility, through Batch Auto Re-Enrollment (BAR) processing.
- Taxpayers and enrollees identified as having an FTR status who do not actively enroll during OE will have their federal income tax filing status checked again with IRS in mid-December as part of BAR processing.

FTR Background: Overview of the Typical FTR Process – BAR (continued)

- After this December check, enrollees who no longer have an FTR status will be re-enrolled in coverage with APTC through BAR processing. Enrollees who still have an FTR status and did not attest that they filed and reconciled after the December IRS data check will be re-enrolled in coverage for the next plan year but without APTC.

FTR Background: Overview of the Typical FTR Process – FTR Recheck

- To ensure enrollees who attested during OE that they or their taxpayer(s) filed and reconciled prior APTC have actually done so, the Exchanges using the federal platform run FTR Recheck early in the new plan year.
- Under the FTR Recheck process, the Exchanges using the federal platform verify that enrollees who attested that they or their taxpayer(s) filed and reconciled, and maintained their APTC eligibility during OE, have in fact filed and reconciled.

FTR Background: Overview of the Typical FTR Process – FTR Recheck (continued)

- If IRS data at the time of FTR Recheck indicates that the taxpayer still has an FTR status, enrollees receive a notice that alerts them that their APTC will be discontinued unless the required reconciliation is completed.
- The Exchanges using the federal platform then do one final check of IRS data before ending APTC for enrollees whose taxpayer(s) still has an FTR status.

FTR Operational Flexibilities during the COVID-19 Public Health Emergency

- CMS will not be taking certain actions in the Exchanges using the federal platform to remove the financial help enrollees receive to help pay for their health coverage because of their FTR status in plan years 2021 and 2022.
- **This change is due to the impact of the COVID-19 pandemic on the IRS processing of 2019 and 2020 federal income tax returns, as well as a recent change passed by Congress regarding reconciliation of APTC with PTC for tax year 2020 under the American Rescue Plan Act of 2021, and the IRS' implementation of that change.**

FTR Operational Flexibilities during the COVID-19 Public Health Emergency (continued)

- As a reminder, the IRS recently announced that taxpayers whose 2020 APTC is more than their PTC allowed for 2020 (i.e., taxpayers who received more APTC than they were entitled to) are not required to reconcile their APTC with their PTC by attaching Form 8962, Premium Tax Credit, to their 2020 tax return.

FTR Operational Flexibilities for the Exchanges Using the Federal Platform in Plan Year 2021

- Enrollees with an FTR status who were previously notified during OE 2021 (Fall 2020) that CMS may recheck their FTR status **will not have their FTR status rechecked or have their APTC ended due to FTR Recheck in 2021.**
- However, enrollees who update their application during 2021 will still need to attest to having filed and reconciled, if they have done so, by checking the box that says **“Yes, I reconciled premium tax credits for past years.”**

FTR Operational Flexibilities for the Exchanges Using the Federal Platform in Plan Year 2021 (continued)

- Agents and brokers should note that it is still a requirement for taxpayers for whom APTC was paid in years other than 2020 to file federal income taxes and reconcile APTC for those tax years per statute and federal regulation at 26 CFR 1.36B-4(a)(1). This includes enrollees who submit an application update for additional APTC under the American Rescue Plan Act of 2021.
- **Enrollees who do not attest to having filed and reconciled in their 2021 application may lose their eligibility to have APTC paid to help subsidize 2021 coverage.**

FTR Operational Flexibilities for the Exchanges Using the Federal Platform in Plan Year 2022

- Because taxpayers with excess APTC for 2020 are not required to file Form 8962 to reconcile APTC for tax year 2020, CMS will not take any FTR actions based on 2020 tax returns for plan year (PY) 2022 for enrollees in the Exchanges using the federal platform.
 - As such, CMS will not warn enrollees via the Marketplace Open Enrollment Notice (MOEN) or FTR Direct Warning Notices when they have an FTR status.
 - CMS will also not take action during Open Enrollment 2022 to end APTC eligibility for consumers with an FTR status, including during BAR processing.
 - CMS will also not assess an applicant's FTR status in determining their APTC eligibility when an applicant submits an application through HealthCare.gov during Open Enrollment 2022 and at any point during the 2022 plan year.
 - Finally, CMS will suspend FTR Recheck in PY 2022 in the Exchanges using the federal platform.

What does this mean for consumers in the Exchanges using the federal platform?

- CMS continues to hear from stakeholders that consumers are concerned about losing their APTC eligibility due to IRS processing delays. In addition, the IRS recently announced that taxpayers with excess APTC for 2020 are not required to file Form 8962 for tax year 2020.
- Thus, CMS is taking a proactive stance to provide additional flexibilities to Exchanges for FTR operations during plan years 2021 and 2022, and **APTC will not be discontinued for most enrollees who have an FTR status in the Exchanges using the federal platform during the 2021 and 2022 plan years.**

What does this mean for consumers in the Exchanges using the federal platform? (continued)

- However, enrollees in the Exchanges using the federal platform who update their application or apply for new coverage during plan year 2021 and do not attest to filing and reconciling on their application, may continue to have APTC ended if they have an FTR status due to operational limitations. Therefore, **Exchange enrollees must attest to having filed and reconciled, if they have done so, to keep their APTC eligibility** by checking the box that says “Yes, I reconciled premium tax credits for past years.”

What does this mean for consumers in the Exchanges using the federal platform? (continued)

- Agents and brokers should note that since the general requirement to file and reconcile for any coverage year in which a consumer receives APTC remains unchanged, to avoid consumer confusion, CMS will not be sending consumers notices telling them that CMS will not run FTR operations in the Exchanges using the federal platform for plan years 2021 and 2022. Consumers should still be encouraged to file and reconcile as soon as possible, except in connection with any excess APTC received in 2020.
- NOTE: Consumers who received excess APTC in 2020 are not required to file and reconcile APTC (i.e., they do not need to submit IRS Form 8962).

What does this Mean for Taxpayers with Enrollees in any Exchange?

- Taxpayers generally still have a requirement to file and reconcile per IRS regulation for any plan year for which APTC was paid for someone in their household.
- Taxpayers who have still not filed a 2019 federal income tax return and reconciled APTC received in 2019 must do so immediately.
- However, the IRS recently announced that under the American Rescue Plan Act of 2021, for tax year 2020, taxpayers with excess APTC for 2020 are not required to file Form 8962, Premium Tax Credit, to reconcile their APTC with the amount of PTC they may claim for 2020.

What does this Mean for Taxpayers with Enrollees in any Exchange? (continued)

- Thus, consumers who received excess APTC in 2020 are not required to file and reconcile APTC (i.e., they do not need to submit IRS Form 8962).
 - Taxpayers who are entitled to additional PTC 2020 (referred to as net PTC), either for the taxpayer or someone in the taxpayer's household, must still file their 2020 federal income tax return and attach Form 8962 to claim the net PTC (i.e., to receive a refund of the PTC they are entitled to), and are encouraged to do so as soon as possible.
 - Taxpayers claiming a net PTC for 2020 with enrollees in the Exchanges using the federal platform can use the Form 1095-A they received from the Marketplace in early 2021 to complete their 2020 Form 8962.

FTR Flexibilities and State-Based Exchanges

- This announcement also provides additional flexibilities for FTR operations for State-Based Exchanges (SBEs) that operate their own eligibility and enrollment platforms for plan years 2021 and 2022. Enrollees residing in states with Exchanges that operate their own platforms should check with their SBE regarding specific changes that the SBE opts to implement for 2021 and 2022 as a result of this guidance, and any actions enrollees may need to take.

Key Takeaways

1. If a taxpayer received excess APTC in 2020 (taxpayer received more APTC than they were entitled to), the taxpayer does not have to file IRS Form 8962 to reconcile their APTC with the amount of PTC they were entitled to for 2020 when filing their 2020 federal income tax return.
2. If a taxpayer is eligible for “net PTC” in 2020 (taxpayer or someone they file taxes for did not receive all the PTC they were entitled to), they must file IRS Form 8962 when they file their 2020 federal income tax return to claim their refund.

Key Takeaways (continued)

3. If a taxpayer updates their 2021 application, or submits a new 2021 application, the taxpayer must attest that they have filed and reconciled for past tax years (if they have in fact done so) on their 2021 application. If the taxpayer does not attest that they have filed and reconciled for past tax years on their 2021 application, they are at risk of having their APTC ended due to system limitations.
4. CMS will not be running FTR operations for plan years 2021 and 2022, and will not be ending APTC for most enrollees in Exchanges using the federal platform who have an FTR status. ****However, taxpayers who submit or update a 2021 application and do not attest to having filed their federal income tax return and reconciled APTC for past tax years, may be at risk of having their APTC ended for plan year 2021.

Closing Remarks

