

## **Proposed Regulations Released Relating to Health Insurance Premium Tax Credits under Affordable Care Act while Eleventh Circuit Finds Individual Mandate Unconstitutional**

August 12, 2011 by [Michelle Capezza](#)

On August 12, 2011, the Departments of Treasury and Health and Human Services released Proposed Regulations to provide guidance to individuals who enroll in qualified health plans through State-based Exchanges, as envisioned under the Affordable Care Act, and to provide guidance to Exchanges that make qualified health plans available to individuals and employers. The Exchanges will be one-stop marketplaces where consumers can buy private health insurance plans. The premium tax credit is designed to help individuals and families with incomes between 100% and 400% of the federal poverty level (approximately \$22,350 to \$89,400 for a family of four in 2011) afford health insurance where they are not otherwise eligible for other coverage such as Medicare, Medicaid or affordable employer-sponsored coverage (*i.e.*, the employee only premium exceeds 9.5% of household income or fails to cover 60% of total allowed costs). These Proposed Regulations provide that the credit may be advanced by the Department of Treasury directly to the insurance company. Under related employer mandate rules, applicable large employers will be liable for excise taxes effective in 2014 if they have any full-time employees that are certified to receive a premium tax credit or cost-sharing reduction in connection with enrollment in health insurance through a State Exchange and either the employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in an employer sponsored plan that provides “minimum essential coverage” or offers such a plan that is unaffordable. The Proposed Regulations relating to the premium tax credits indicate that it is anticipated that future guidance will provide a safe harbor permitting employers to base the affordability calculation on wages they pay their employees rather than on a household income basis.

While coordination of efforts appear to be underway as they pertain to the employer mandate and individual mandate under the health reform law, the U.S. Court of Appeals for the Eleventh Circuit also issued a decision on August 12, 2011 ruling that the individual mandate under the Affordable Care Act is unconstitutional. The Court opined that the individual mandate requires Americans to buy an expensive product from a private insurance company from birth to death and that Congress cannot mandate such purchases. However, there is now a split in the appeals courts as the U.S. Court of Appeals for the Sixth Circuit has found that the individual mandate is constitutional.



It remains to be seen whether a ruling from the U.S. Supreme Court as to the constitutionality of the individual mandate will be issued prior to 2014 and the impact it will have on the role of the Exchanges and employer mandate taxes. This issue will need to be followed closely in order to properly plan and maintain employer-provided health coverage.