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October 27, 2014

**RE: Comments on July 28, 2014 Temporary and Proposed Rules
Regarding the Health Insurance Premium Tax Credit**

Futures Without Violence strongly supports the provisions of this rule to ensure that people who have experienced domestic violence have to access affordable health insurance through the Health Insurance Marketplaces.

The Affordable Care Act (ACA) makes coverage affordable and provides a guaranteed and expanded set of benefits that women and their families need. For women who have stayed in unhealthy relationships for fear of losing their health insurance, the ACA offers options to access affordable health care not tied to their partner or the partner's employer. Unfortunately, during the first year of Open Enrollment some victims of domestic violence experienced challenges accessing financial help to purchase coverage.

Many domestic violence victims remain legally married even after they have fled their abusive relationship. Their spouse may not grant a divorce; they may be too afraid to ask for a divorce; or not enough time may have passed to be granted a divorce. These individuals no longer live with their spouse or have access to their spouse's income. They are beginning a new life on their own, and on their own salary. At tax time, these individuals will file taxes as "married filing separate."

To access premium tax credits (PTCs) or advanced premium tax credits (APTCs) through the Insurance Marketplace, anyone legally married must apply as "married filing jointly." This is to ensure that a family's total income is counted to see how much credit they are eligible for. But there was an unintended consequence: victims of domestic violence—who file as married filing separately—were not able to access these credits based solely on their own salary.

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In order to mitigate the devastating effect this policy had on victims of domestic violence who were seeking health insurance—the IRS corrected course and published guidance on March 26, 2014 that allows married victims of domestic abuse to claim a premium tax credit without filing a joint return in 2014. This rule said that a married taxpayer is allowed to file a 2014 tax returning using “married filing separately” if the taxpayer is living apart from the spouse at the time the taxpayer files a tax return; is unable to file a joint tax return because the taxpayer is a victim of DV; and attests to this fact. The Department of Health and Human Services (HHS) issued additional guidance as well that allowed people who fit this definition to apply as “unmarried” for coverage (and for premium tax credits) in states with Federally-facilitated Marketplaces (FFMs). It allowed victims of domestic violence to access the coverage they needed, and to make it affordable without having to count on their abusers income. This was a positive change that Futures Without Violence strongly supported.

The rule under consideration expands these changes through 2017 for victims of domestic violence. It also broadens the definition to provide relief to victims of spousal abandonment. Futures Without Violence thanks the IRS for the extension of this policy and strongly supports it.

Below, we offer additional comments and clarifications below that will ensure that victims of domestic violence will get the health coverage they need.

Duration

Victims of domestic violence may stay married for many years after they separate from their abuser. A spouse may refuse to grant a divorce; it may be unsafe to seek a divorce; or the spouse may disappear.

There should be no limit to the consecutive number of years a taxpayer can qualify for this exemption. In addition, it is important that there be no limit to the total number of years over a lifetime that a taxpayer can qualify for this exemption. We strongly encourage IRS to revise this part of the rule and eliminate the three-consecutive-year limit for a taxpayer to receive this exception.

At a minimum, the IRS should allow for good cause extensions for more than three years and provide a clear path to apply for the extension.

Definition

Futures Without Violence strongly supports the definition of domestic violence included in this rule. In particular, we support the inclusion of physical, psychological, sexual or emotional abuse, including efforts to control, isolate, humiliated and intimidate, or to undermine the victims ability to reason independently. This definition recognizes the many ways that domestic and intimate partner violence occurs. We also support the provisions that allow a taxpayer to qualify for this exemption if it is abuse to a dependent child.

We support the inclusion of abandoned spouses to this exception. We recommend that the definition of abandoned spouses be broadened from simply “unable to locate” to accommodate situations where the spouse can be found but who is uncooperative, pose a threat, or refuse grant a divorce.

Documentation

It is critically important that self-attestation of abuse is permitted and that documentation is not required to prove domestic violence. Asking for “proof” of domestic violence could have the



unintended consequence of deterring people from applying. They may fear that the tax forms could be used against them in the future, or that the abuser will learn they have been identified to the IRS as abusive. Some domestic violence will be hard to prove; and the goal of interventions is to help women safely flee before a police report is ever needed. The application should be similar to the application for the hardship exemption and provide a simple check box to certify domestic violence. At a maximum, language can be included that suggests that additional documentation may be provided but is not required.

Attestation to domestic violence should be documented on a separate, supplemental form and not on standard tax templates. The supplemental form should be separate, and subject to all privacy and confidentiality standards. Alternative methods of filing documentation should also be made available, for example, providing verbal documentation if the taxpayer is afraid to put the abuse in writing. In all cases, the abuser should not be notified or contacted.

On the forms and in all written instructions, the rules for documentation must be clearly defined as well as how the information will be used and stored. It must be clear to the taxpayer the circumstances in which the document can be shared with other parties—so that individuals can determine if they feel safe disclosing their abuse. Tax documents are often used in context other than annual tax filings, such as when applying for a mortgage. By having to report domestic violence in these contexts, the tax payer may be subject to discrimination or stigma. The documentation on domestic violence must be treated entirely separately from tax records and “sealed.” In addition, the IRS will not notify the spouse of the filer claiming the exception.

Protection Against Repayment of APTC

Victims of domestic violence should not get penalized for receiving an APTC if they otherwise meet the qualifications for this exception. The rule makes clear that victims of domestic violence and abandoned spouses can file separately, receive the tax credit, and will not be subject to repayment. We strongly support this provision and encourage the IRS to further ensure that taxpayers filing for this exception will not be subject to additional audits solely due to the conflicting information on their FFM application and their tax return (“unmarried” on the FFM application; “married filing separately” on their tax return).

The IRS must detail what supporting documentation of domestic violence will be needed in the case of an audit. If a victim of domestic violence is audited, clear directions for what documentation is needed must be provided, as well as clear instructions about how these documents will be used. A wide range of documents but be permitted including verbal attestation. The IRS must certify that these documents will not be shared with the abuser or shared in any other context.

Further clarification is needed to protect victims of domestic violence who separate from their spouse but reconcile before they file their taxes. These taxpayers should not have to repay the APTC for any months when they fit all the criteria for the exception.

Additional Situations

This rule provides significant help those victims who are able to leave their spouse; but additional help is needed for victims trapped in violent situations. Additional consideration should be provided for married victims of domestic violence whose spouse refuses to cover them through an employer-sponsored plan. These victims may not have an offer of their own employer-sponsored coverage or access to the resources needed to get their own coverage. They are ineligible for financial help in the



Marketplace because they technically have access to employer sponsored coverage. Victims of domestic violence should have access to APTCs in order to purchase much needed care even if they live with their spouse.

Similarly, this rule should establish a temporary eligibility period for victims of domestic violence who are planning to leave their spouse so that they can have the insurance in place as they leave their abuser.

Additional Considerations for HHS

We look forward to additional guidance from HHS to clarify that taxpayers eligible for this exception should mark “unmarried” on their application. Clear and concise instructions are needed: it is counter-intuitive provide incorrect information on a federal form (to mark “unmarried” if you are legally married). The instructions must specify that people who qualify will not be penalized for providing false information on their form. What is more, Navigators and Assisters, as well as the HealthCare.gov Call Center representatives must be trained and provided a script to help individuals apply for this exemption.

We also recommend that domestic violence trigger a special enrollment period (SEP) to apply for health insurance. This guidance only applies to situations when an individual is already permitted to apply for coverage in the Marketplace (Open Enrollment; a SEP). But domestic violence itself does not trigger a SEP. If an individual leaves her abuser as a result of domestic violence and needs to purchase coverage, the individual should receive a 60-day SEP to purchase coverage.

For additional information, please contact Kiersten Stewart, Director of Public Policy and Advocacy, Futures Without Violence, at kstewart@futureswithoutviolence.org.

