PARAGON HEALTH INSTITUTE POLICY BRIEF

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Policy Changes Needed to Reduce Massive Improper Affordable Care Act Subsidy Expenditures

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Background on ACA subsidies

Under the Affordable Care Act (ACA), individuals can receive a premium tax credit (PTC) to cover some or all of an exchange plan's premium.[1] The amount of an individual's PTC is based on the cost of a benchmark plan—defined as the second-lowest-premium silver plan on the exchange in a particular rating area—relative to the individual's income. The PTC amount does not change based on the plan selection, so more expensive plans would require individuals to pay more out-of-pocket. Individuals offered 'affordable' employer coverage or eligible for a separate government program, particularly Medicaid or Medicare, are not eligible for a PTC.

An individual can receive their PTC as a lump sum when they file their taxes, but very few people do this because the exchange premiums are so expensive and there are large incentives to receive the subsidy in the form of advance monthly payments. Those payments go to the insurer that offers the plan selected by the enrollee.

In 2025, 92.4 percent of exchange enrollees received an advance PTC (APTC).[2] The amount of the APTC is based on estimated income, and there is a reconciliation process when the individual files their income taxes. Previous experience with advance credits indicates they are fertile ground for fraud and abuse. The advance Earned Income Tax Credit was repealed in part because "as many

KEY TAKEAWAYS

Current law caps the amount of excess Affordable Care Act (ACA) advance premium tax credits (APTCs) that enrollees must repay, while automatic re-enrollment perpetuates improper eligibility determinations and amplifies fraud. This creates powerful incentives for individuals, brokers, and insurers to misstate applicant income or turn a blind eye to such misstatements.

The One Big, Beautiful Bill (OBBB) contains provisions that would discourage income manipulation and fraud by applicants and brokers for the purpose of maximizing ACA subsidies and related commissions, and would reduce improper subsidies by at least $10 billion annually.

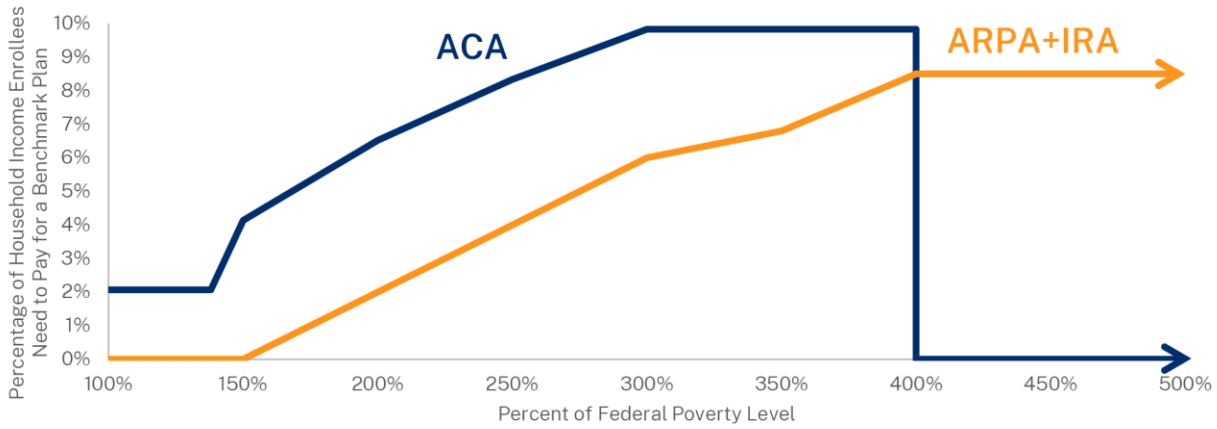
With policies that include eliminating repayment caps, requiring pre-enrollment income verification, and ending automatic re-enrollment, the OBBB would help protect taxpayer dollars and better ensure subsidies only go to eligible recipients.

Permitting Biden's COVID credits—the temporary expanded APTC subsidies—to expire as scheduled will provide the strongest disincentive against waste, fraud, and abuse. More substantive reforms would include financial penalties on unscrupulous brokers and insurers and basing the advanced subsidy determinations on actual income, not estimated income.

as 80 percent of recipients did not comply with at least one of the program requirements," according to the Government Accountability Office.[3]

The ACA limited PTC eligibility to individuals claiming income between 100 and 400 percent of the federal poverty level (FPL). The passage of the American Rescue Plan Act (ARPA) increased PTCs — Biden's COVID credits — as a temporary "emergency" boost for individuals during the COVID-19 pandemic and set them to expire at the end of 2022. Biden's COVID credits were further extended for three more years with the passage of the Inflation Reduction Act, and they are currently set to expire in 2025. As Figure 1 demonstrates, current law does not require individuals making between 100 and 150 percent of the federal poverty level (FPL) to pay any monthly premium for the benchmark plan, which

Figure 1: Legislation Signed by President Biden Significantly Increased ACA Subsidies by Lowering Enrollee Premium Share



SOURCES: CMS, *Plan Year 2023 Qualified Health Plan Choice and Premiums in HealthCare.gov Marketplaces*, October 26, 2022, https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/2023QHPPremiumsChoiceReport.pdf.

NOTE: ARPA is the American Rescue Plan Act and IRA is Inflation Reduction Act.

Table 1: Excess Subsidy Recapture Limits for the 2025 Tax Year

Household Income (% FPL)	For Unmarried Individuals*	For All Other Taxpayers
Less than 100%	Not subject to recapture	Not subject to recapture
At least 100%, less than 200%	$375	$750
At least 200%, less than 300%	$975	$1,950
At least 300%, less than 400%	$1,625	$3,250
At least 400%	No limits	No limits

*Note: Other than surviving spouses and heads of household.

SOURCE: IRS Revenue Bulletin: 2024-40.

has a 94 percent actuarial value for enrollees at that income level.[4] This legislation made PTCs more generous for everyone who qualified for them and lifted the cap at 400 percent FPL.

Some individuals who received a larger APTC than they were legally entitled are required to pay back some percentage of the excess subsidy. As Table 1 shows, the repayment amount for excess APTCs is capped for people in households below 400 percent FPL.[5]

In the event of excess APTC, the liability to repay a portion of the excess is on the individual—not the insurer that directly received the payment. The enrollee is liable under the rationale that the insurer would receive the full premium regardless, and the enrollee was legally obligated to cover a greater share of the premium out-of-pocket. As we explain below, the limits on subsidy recapture—particularly when combined with Biden's COVID credits—create a significant incentive for enrollees, lead generators, unscrupulous brokers, and insurers to cheat.

Little Incentive to Honestly Report Income

Since individuals are not required to repay the full amount of excess subsidies they receive, there are significant incentives for enrollees to misstate income. In a recent report we coauthored, we provide an example using 2025 plan year information:

> For a 40-year-old enrollee at 290 percent FPL, the incentive for estimating income at just under 150 percent FPL is $1,471 on average. He would receive an APTC of $5,958 to cover the full premium of insurance coverage with an actuarial value of 94 percent. At 290 percent FPL, he was eligible for a PTC of $3,512—receiving $2,446 of excessive subsidy for a much less generous coverage with a 70 percent actuarial value. He would need to repay $975, which would leave him better off by $1,471 in premium subsidies due to underestimating his income—and from the added benefit of coverage with significantly reduced cost-sharing.[6]

Figure 2 illustrates the incentives individuals have to misstate income at certain income levels. Individuals earning less than 100 percent or more than 200 percent of the FPL benefit financially from misstating their income because they receive significantly more in subsidies than they would owe in recoupments.

Given the larger incentives to cheat with Biden's COVID credits, there has been a significant shift in the number of enrollees claiming income between 100 and 150 percent FPL, demonstrated in Figure 3. In 2025, 55 percent of enrollees in states using the federal exchanges claimed an income between 100 and 150 percent of FPL.

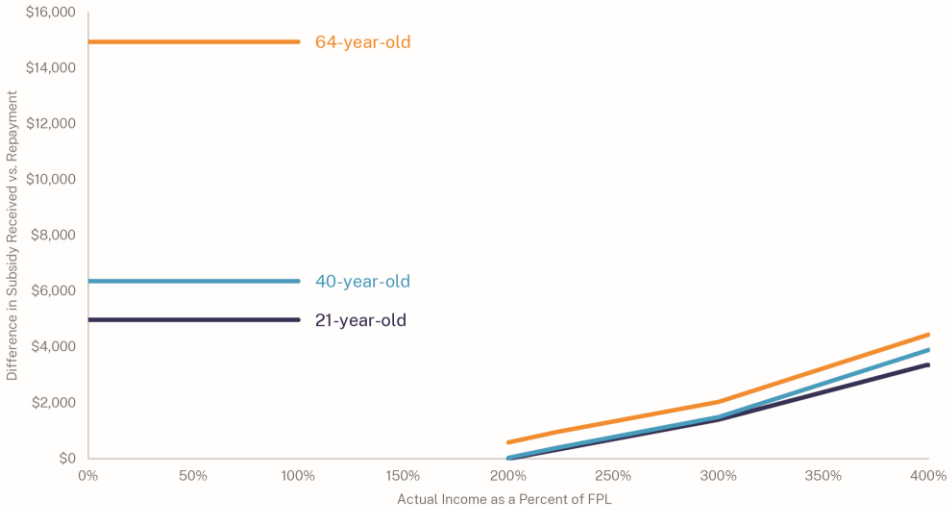
Incentives to Cheat for Lead Generators, Brokers, and Insurers

As described in the Paragon paper "Unpacking the Great Obamacare Enrollment Fraud," lead generators "facilitate the buying and selling of personal information used to fill out applications," though they do not actually enroll individuals into plans directly.[7] That paper goes on to explain that these lead generators would:

> [T]arget lower-income individuals by marketing $0 health coverage, misrepresenting the value of the ACA subsidy as a cash benefit, and offering gift cards to enrollees. Once an individual clicks on the ad, the person is prompted to

Figure 2: Incentive to Cheat

Benefit of Reporting Income Between 100% and 150% FPL, Based on Actual Income

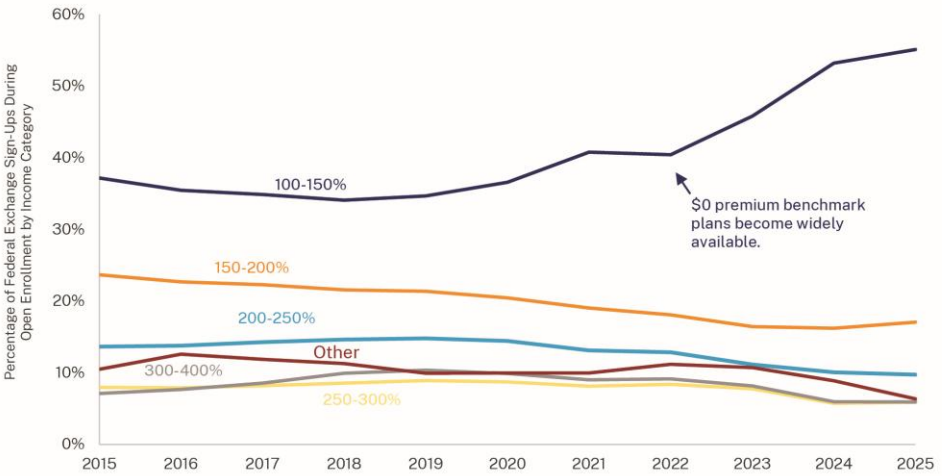


SOURCE: KFF Marketplace Subsidy Calculator and IRS.

NOTE: For those under 100% FPL, incentives for older populations increase, because the cost of a benchmark plan increases by age. Those between 100% and 150% FPL are correctly reporting income and so gain no benefit. There are minimal effects for people 150%-200% FPL. Enrollees over 200% FPL have an incentive to underestimate income, and the differences in the lines account for a greater benefit that older enrollees receive from the 94% actuarial value plan through the CSR program.

Figure 3: Fully Subsidized Plans Driving More Cheating

55% of Federal Exchange Enrollees Reported Income Between 100-150% in 2025



SOURCE: Compiled from CMS Marketplace Open Enrollment Period Public Use Files.

NOTE: The lines represent percentages of the federal poverty level (FPL). The other category includes people with income below 100% FPL, those above 400% FPL, and those with uncertain income.

> provide his or her name, date of birth, state of residence, and phone number. Critically,

this is the information any web broker can use to create or access an application account for that person. This information is then sold to agents, large broker agencies, and call centers.

Combined with a lack of CMS oversight, a deluge of deceptive marketing enrolled many individuals in exchange plans without their knowledge.[8] A Bloomberg News exposé quoted agents saying that half the people they enrolled had no idea they were signing up for health insurance. As one agent put it, "You have to throw away a little bit of your morality." Acting ethically, however, comes at a cost when agents can make $6,000 a day and drive luxury cars and fly by private jet.[9]

Unscrupulous brokers have large incentives to encourage enrollees to misstate income. Brokers are paid a commission by the insurance company for every enrollee they sign up. No-cost premiums are a huge selling point, since many individuals will not pay for health insurance if there is any premium.[10] Unscrupulous brokers also abuse what's known as "enhanced direct enrollment," where brokers host their own eligibility platforms and pass enrollment information to HealthCare.gov.[11] The absence of a recapture amount for individuals under 100 percent FPL gives brokers a powerful incentive to encourage income misstatements, making it easier for both outright fraudsters and brokers who may otherwise be generally inclined to follow the law to sign up low-income individuals.

CMS requires little personal information about the applicant from the broker to sign people up or switch them into different plans through application loopholes, which has resulted in people being switched out of their existing insurance plans without their knowledge. In effect, these unscrupulous brokers are actively changing individuals' insurance plans, including provider networks and out-of-pocket amounts, without their consent. Enrollees often do not find out until they receive a surprise bill at the pharmacy counter or doctor's office.[12] Several DOJ investigations have targeted major fraud rings, including one investigation alleging that taxpayers were swindled out of $161.9 million in government subsidies.[13] Some brokers have even targeted the homeless and people with mental health and substance use disorders.[14]

Insurers benefit from improper enrollment as well. They have little incentive to prevent fraudulent sign-ups by brokers, because insurers receive subsidies for all enrollees, fraudulently enrolled or not. Since all tax penalties are placed on the enrollee, there are no meaningful consequences for insurers who turn a blind eye to (or openly encourage) unscrupulous brokers committing rampant fraud.

Fraud is a Longstanding Problem with the ACA Subsidies

As a result of the incentives to misstate income, millions of exchange enrollees claim income between 100 and 150 percent of FPL but do not actually meet that threshold. An analysis of exchange data from 2015 to 2017 conducted by current and former Congressional Budget Office experts found that this problem is longstanding:

> The precise incomes reported by marketplace enrollees suggest that they were aware of the cutoff for PTC eligibility at the FPL. Consider single-person households in non-expansion states in 2015, for whom the lower bound for eligibility for the PTCs was $11,670… [S]o

> many enrollees reported income between $11,670 and $12,500 to Healthcare.gov that actual marketplace enrollment was 136% of estimated potential enrollment in that range. Furthermore, many of these enrollees reported [modified adjusted gross income] precisely equal to $11,670, $11,700, or $12,000, suggesting that they were aware of the cutoff for PTC eligibility and reported just enough income to exceed it. Other spikes correspond to round values, like $15,000, or inflation-adjusted round values from 2014.[15]

A 2019 estimate by the Treasury Department provides additional evidence of rampant improper enrollment.[16] Treasury estimated that more than one-fifth of all exchange subsidies ($11.32 billion) in 2020 were for people with income below 100 percent of FPL, and that 1.70 million tax filers receiving PTCs would have income below the FPL.

Explosion of Fraudulent Enrollment Under Biden Administration

In *The Greater Obamacare Enrollment Fraud*, we estimated improper enrollment in the 100 to 150 percent FPL category by state.[17] We define improper enrollment as the difference between the number of individuals claiming income between 100–150 percent of FPL and the number actually eligible in that range. We found that 62.3 percent of individuals reporting income between 100-150 percent in states using the federal exchange (HealthCare.gov) were not eligible for the subsidy they claimed. In 29 states, the number of sign-ups claiming income between 100-150 percent FPL exceeds the number of eligible potential enrollees.

The problem is especially acute in non-expansion states that use HealthCare.gov. In Florida alone, there are nearly five times as many enrollees claiming income between 100 and 150 percent FPL than are eligible. There were 14 other states with more than twice as many sign-ups as eligible enrollees.

Using conservative assumptions, we estimate that 6.4 million people improperly enrolled for subsidized health coverage on the exchanges in the 100 to 150 percent FPL category in 2025 — up from 5.0 million in 2024 — at an estimated cost of more than $27 billion this year.

The Problem of Automatic Re-Enrollment

Automatic re-enrollment further exacerbates the fraud problem by allowing fraudulent sign-ups year after year with few, if any, checks for eligibility. Forty-five percent of enrollees were automatically re-enrolled in 2025, up from 31 percent in 2024.[18] Automatic re-enrollment means that people continue with the heavily subsidized exchange plan even if they secured alternative coverage, lost interest in coverage, moved to another state, or died. In other words, because of such rampant automatic re-enrollment, taxpayers are likely fully subsidizing insurance coverage for millions of people who are not using it or are not aware they are enrolled. A 2023 Biden administration rule worsened the problem by requiring CMS to wait two years to terminate coverage after an enrollee fails to file a tax return or reconcile their APTC.[19]

The One Big Beautiful Bill Reduces the Incentives to Cheat

The House-passed version of OBBB would remove the caps on subsidy repayment, end automatic re-enrollment, and require pre-enrollment income

verification. Given the extent of fraud and abuse, these reforms are sensible steps toward addressing the systemic problems with the exchanges. According to CBO's estimates of these provisions — some of which were initiated by a Health and Human Services (HHS) rule to improve exchange program integrity — the savings will exceed $10 billion a year, largely from reduced improper enrollment.[20] Federal agencies implementing this policy must ensure that all tax requirements — and penalties for non-compliance — are clearly communicated to all enrollees.

Recapturing Excess Advanced Subsidy Payments

Requiring full repayment of excess subsidies would eliminate a major incentive for both enrollees and brokers to misstate income. Unscrupulous brokers could no longer encourage individuals to deliberately understate their earnings with little or no risk of significant repayment.

The House version removed the subsidy recapture limits for all income groups. Originally, the Senate version included a provision to exempt those who earn less than 100 percent FPL. However, Congressional Democrats argued that the exemption violated the Senate's parlimentary rules for reconciliation and the exemption was stripped from the legislation that passed the Senate.

While exempting individuals with income below 100 percent FPL may be well-intentioned, it would enable rogue brokers to continue manipulating applications and exploiting the system. We estimate that two-thirds of all estimated improperly-enrolled individuals in expansion states — and half of improperly enrolled individuals nationwide — have income below 100 percent FPL.

Requiring Income Verification and Ending Automatic Re-Enrollment

The OBBB would reverse the Biden administration's lax oversight of the exchanges by requiring annual eligibility checks and mandating that states verify income before enrollment. The income verification provision would require individuals to provide household income, legal residency status, and place of residence, all of which would then be verified by the exchange. This requirement would also apply to special enrollment periods (SEPs), with limited exceptions for qualifying life events such as marriage, birth or adoption, and divorce. Furthermore, the OBBB disallows individuals from receiving PTCs if they enrolled in a plan during a non-qualifying life event SEP. Because SEPs are especially vulnerable to fraud and adverse selection, these policies would improve program integrity and help lower premiums.

The requirement to verify consumers' eligibility would also end automatic re-enrollment for APTCs since consumers would have to take an affirmative step to annually verify that they are eligible. Ending automatic re-enrollment will protect taxpayers and consumers in at least two key ways. First, such a policy prevents improper eligibility determinations, which have been common, from being carried over from year to year. Second, this policy protects individuals who were enrolled in a plan without their knowledge because they would otherwise be held liable for paying back some of the erroneous subsidies.

Larger Reforms, Beyond OBBB

While the OBBB includes several reforms to ensure more accurate payment of ACA subsidies, there are two larger sets of reforms for Congress

to consider: financial penalties on brokers and insurers for extensive improper eligibility determinations, and advance subsidy determinations based on verified income rather than projections. Most importantly, Congress should allow the Biden COVID credits to expire as scheduled.

Imposing Financial Penalties on Unscrupulous Brokers and Insurers

To fully protect individuals who were signed up without permission, Congress should consider ways to hold brokers and insurers accountable for erroneous subsidy payments. Congress should impose large civil monetary penalties on unscrupulous brokers and plans if they represent a large portion of individuals who are found to receive excess APTCs. Targeted civil monetary penalties would help to significantly reduce instances of documented broker fraud and incentivize insurers to crack down on errant brokers. These unscrupulous brokers are functionally encouraged by the insurers who employ them, since the insurers gain more subsidy payments from the federal government as more individuals are enrolled. Ensuring that enrollees are not the only ones penalized—especially when they may not have been aware of fraudulent activity—is an important part of reducing large-scale exchange enrollment fraud.

Moving Away from Estimated Income

The extensive amount of improper enrollment and fraud in the ACA merits fundamental reform of the ACA subsidies. One fundamental reform that maintains the ACA's general infrastructure would base APTCs on income reported on IRS tax data from the prior two years. Such a reform would allow for contingencies if people do not have recent tax returns or if the enrollee could demonstrate—through valid means—their income.

Permitting Biden's COVID Credits to Expire

Biden's COVID Credits are the main driver of the recent increase in waste, fraud, and abuse in the ACA exchanges. Originally passed into law during the pandemic as an "emergency" measure, the Biden COVID credits should be allowed to expire at the end of 2025 and reduced to pre-pandemic levels. Otherwise, there will continue to be large incentives for corporations and individuals to cheat the system at the expense of taxpayers.

Minimum Repayment Amount

Senate Republicans' original OBBB draft intended to exempt people earning less than 100 percent of FPL from subsidy recapture. The final version excluded this provision, however, reportedly because Senate Democrats raised a point of order that this exemption violated parlimentary rules. In the event Congress reconsiders this issue, it should consider a minimum repayment of $300 for a single individual and $600 for a couple. A repayment is important to reduce the incentive to cheat. A $300 repayment is approximately two percent of a single household's annual income at 100 percent FPL, which is the prescribed amount that households at that income level had to originally pay for an ACA benchmark plan. Imporantly, if Congress permits Biden's COVID credits to expire, then increasing subsidy recapture limits for low-income enrollees would be less imperative to reduce fraud and improper expenditures.

About the Authors

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[18] CMS, "Health Insurance Exchanges 2025 Open Enrollment Report," https://www.cms.gov/files/document/health-insurance-exchanges-2025-open-enrollment-report.pdf.

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