



## **FAQs on Safe Harbor and Repayment Caps for Low-Income Consumers Who Receive Excess APTCs**

### **Q1. What are excess APTCs, and why do consumers owe them to the IRS?**

Consumers get advance premium tax credits (APTCs) when they enroll in a qualified health plan (QHP) based on their predicted household size and income. Sometimes they end up receiving more APTCs than they were eligible for. This amount is called “excess APTCs” and it must be repaid to the IRS, unless the consumer has a low enough income that qualifies them for either the *safe harbor* or *repayment caps*.

### **Q2. How do consumers end up getting excess APTCs?**

When consumers prepare their taxes for 2015, they usually will have received excess APTCs for one of two reasons:

- If their *actual income for 2015 was higher than they predicted* when they enrolled because they got a raise, or someone in their tax household got a job or a raise, etc.
- If their *household size at tax-filing is smaller than they planned* when they enrolled because one of their household family members ends up not being claimed as a tax-dependent.

If a consumer’s household size or income changed in this way and the consumer did not report that change to the Marketplace, then it is likely they received more APTCs in 2015 than they should have.

### **Q3. When must a consumer pay the IRS what they owe?**

Consumers must file a tax return if they received APTCs. When they do the amount they owe, if any, will be deducted from their tax return or added to the amount of federal tax they must pay. This is called “reconciliation.” The IRS offers a monthly payment plan for consumers who need it – apply [here](#). See also this IRS [fact sheet, \*Can’t Pay the Tax You Owe?\* \(Pub. 4849\)](#).

### **Q4. If they owe any excess APTCs, do they have to repay the whole amount?**

Whether consumers must repay their excess APTCs (or their entire amount of APTCs) depends on how their *actual 2015 household modified adjusted gross income* (MAGI) compares to the federal poverty level (FPL).

When the household income is below 100% of FPL qualifying consumers will not need to repay any APTCs. In fact, these low-income consumers could actually get a bigger refund when they file their taxes. (Note: They must file their taxes because they received APTCs.)

If their income is between 100% and 399% of FPL there are limits, or repayment caps, on how much a consumer must repay. If their income is exactly 400% of FPL, they must repay only the amount of excess APTCs they might have received. And if their income is 401% or more of FPL, they are not allowed to have a tax credit or tax subsidy (PTCs) to purchase insurance. Aside from two narrow exceptions<sup>1</sup>, these consumers with an income greater than 400% of FPL must repay all the APTCs that they received, not just the excess amount.

Actual 2015 household MAGI is ...	Result:
...below 100% of FPL	No repayment – they are in the repayment safe harbor – See FAQ5
...between 100% and 399% of FPL	The amount they must repay is limited or capped – See FAQ6
...exactly 400% of FPL	Must pay back all excess APTCs
...more than 400% of FPL	Must pay back the entire amount of APTCs they received, excess and otherwise

#### **Q5. What is the *repayment safe harbor*? Who qualifies for it and who doesn't?**

If a consumer's actual annual household MAGI for 2015 ends up being less than 100% of the 2014 FPL, they will not have to repay any excess APTCs that they received. The Affordable Care Act created a "safe harbor" to protect consumers in this situation. In fact, they may even get a bigger tax refund because their income went down.

To qualify for this important "safe harbor" a consumer must meet all five of these criteria:

- i. When they first applied, the marketplace determined that their household income (MAGI) would be between 100% and 400% of FPL;
- ii. The consumer or a member of their tax household actually enrolled in a QHP;
- iii. The consumer or a member of their tax household actually received these APTCs (usually in the form of reduced-cost premiums for their plan);
- iv. The consumer's *actual* 2015 household MAGI<sup>2</sup> must be less than 100% of the 2014 federal poverty level; and
- v. Except for the fact that their income is below 100% of FPL, the consumer is otherwise eligible<sup>3</sup> for APTCs.

<sup>1</sup> The exceptions include consumers who qualify for the alternative calculation for the year of marriage and taxpayers who enrolled an individual that another taxpayer will claim as a personal exemption. See IRS Instructions for Form 8962 (2015) at page 7.

<sup>2</sup> MAGI is calculated in nearly the same way here as it is for APTC-eligibility purposes, except it is based on actual (not projected) amounts - the Adjusted Gross Income (AGI) from a tax return, "plus certain income that is not subject to tax (foreign earned income, tax-exempt interest, and the portion of social security benefits that is not taxable)." See instructions for IRS [Form 8962](#), or consult a free VITA volunteer tax assister or professional tax assister.

<sup>3</sup> A person who was determined to be eligible for Medicaid after they enrolled in a QHP is treated as eligible for APTCs for the remaining months of the year that they remain enrolled in the QHP. (See this [IRS guidance](#) at Q# 26.) In contrast, a consumer who was not lawfully present or who was incarcerated is not eligible for APTCs or for the safe harbor or repayment cap. See *Q8. Who does not qualify for the safe harbor or for the repayment caps?* below.

*TIP: APTC tax reconciliation for calendar year 2015 looks at 2014 FPL levels!*

For consumers receiving APTCs in 2015 for all U.S. states except Alaska and Hawaii, here are the relevant 2014 Federal Poverty Levels (FPLs):

Size of tax household	1	2	3	4	5
Income at 100% FPL	\$11,670	\$15,730	\$19,790	\$23,850	\$27,910
Income at 400%FPL	\$46,680	\$62,920	\$79,160	\$95,400	\$111,640

For more info on FPL amounts for larger households, or for consumers living in the state of Alaska or Hawaii, see [IRS Instructions for Form 8962](#), page 6. To calculate 200% of FPL, simply multiply 100% of FPL by two.

#### **Q6. What are the *repayment caps* for incomes between 100 - 399% of FPL?**

If the consumer's actual household MAGI in 2015 is 100% of FPL or more but less than 400% of FPL, they should qualify for a limitation, or cap, on repaying any excess APTCs they received. Depending on their income and tax-filing status, low-income consumers will not need to repay any more than the amounts in the chart below.

Repayment Caps <i>(The maximum amount per year of any excess APTCs that a low-income consumer must repay to the IRS when they reconcile their APTCs.)</i>		
Household MAGI is ...	Tax filing status	
	‘Single’	any other filing status
100% - 199%	<b>\$300</b>	<b>\$600</b>
200% - 299%	<b>\$750</b>	<b>\$1,500</b>
300% - 399%	<b>\$1,250</b>	<b>\$2,500</b>
exactly 400%	(must repay all excess APTCs – cap does not apply)	

Source: IRS Instructions for Form 8962 (2015), page 14, Table 5, available at <https://www.irs.gov/pub/irs-pdf/i8962.pdf>.

For instance, consider a single consumer with an income of 220% of FPL who had received \$889 in excess APTCs. That consumer must repay only \$750, not the full amount of \$889, thanks to the repayment limit. But if that same consumer was filing taxes as Married, they would have to repay the entire \$889 amount because the repayment limit for tax filers of any status other than single, for a consumer in that income range, is \$1,500. If the amount of excess APTCs a consumer owes is less than the limit or cap, the consumer must repay all their excess APTCs.

**Q7. If a consumer received APTCs for only some months of the year, is this repayment cap ‘pro-rated’ by month?**

Unfortunately no. If a consumer was enrolled in a QHP for only six months, and then they became eligible for other coverage - employer-sponsored insurance or Medicaid, for instance - they must use their total annual income for 2015. The repayment limits are annual and are not pro-rated for each month.

**Q8. Who does not qualify for the *safe harbor* or for the *repayment caps*?**

If a consumer is an unlawfully present immigrant and somehow received APTCs, then they must repay all the APTCs they received for their own individual enrollment in a QHP. They do not qualify for the safe harbor or the repayment caps. They may receive APTCs as an applicable taxpayer on behalf of a family member who is lawfully present.

Similarly, a person who is incarcerated or held in jail or prison after a conviction is no longer eligible for APTCs for themselves nor can they use the safe harbor or repayment caps. But they can receive APTCs as a taxpayer on behalf of a member of their tax household.

**Q9. Is there another safe harbor? Something about ESI and affordability?**

Yes, there is another safe harbor that is different and it is much more limited. The *ESI-affordability safe harbor* applies to consumers who have an offer of employer-sponsored-insurance (ESI) but who get APTCs because the Marketplace determined that their ESI plan was unaffordable at the time they applied. A consumer qualifies for this *ESI-affordability safe harbor* even if their actual 2015 income went up, and this made their premium amount for an offered ESI plan end up being “affordable” - meaning it cost less than 9.56% of their actual income in 2015. Under this *ESI-affordability safe harbor*, a consumer is treated as if they had no ESI offer at all, so long as they meet all of these three criteria:

- i. At the time they applied for APTCs, the consumer provided information to the marketplace about their costs for their ESI plan and the information was as accurate and correct as the consumers could find;
- ii. And the Marketplace determined that the plan was unaffordable;
- iii. And if there were any subsequent changes to the offered ESI plan(s), the consumer notified the marketplace about these changes and the Marketplace re-determined that the ESI plan continued to be unaffordable.

Note: this *ESI-affordability safe harbor* is limited - qualifying for it simply means that the consumer is not disqualified from receiving APTCs because they had an offer of ESI, and that ESI plan ended up being affordable, in retrospect, at the end of the year. But this taxpayer still must reconcile their APTCs, just like any other taxpayer.

Also, this safe harbor may not apply for any months that a consumer fails to return to the Marketplace to get an updated ‘unaffordability’ determination in response to changes that could make their offered ESI plans become newly affordable. See box below.

*TIP: If you assist a consumer who has an offer of ESI and the Marketplace initially determines it's unaffordable, you should advise the consumer that they must be on the lookout for any announcements by their employer about changes to the ESI plans that are offered. Many changes could affect affordability, especially if the employer:*

- *Has an ESI plan year that does not start or end on the calendar year*
- *Offers a new ESI plan*
- *Changes the amount that the employee must pay*

*If their ESI plan changes in any way while they are getting APTCs, the consumer must return to the Marketplace and get an updated determination that their ESI continues to be unaffordable. If they don't, the consumer may be required to repay all the APTCs they receive for the months after the ESI plan changes.*

## Q10. Where can I learn more?

To learn more about the safe harbor and repayment caps:

- [IRS Instructions for Form 8962 \(2015\) Premium Tax Credit](#) - the safe harbor at page seven and the repayment caps at Table 5, page 14, and the affordability-safe harbor at page three.
- <http://navigatorguide.georgetown.edu/index.html>, look for question [1.4.19].

To learn more about APTCs and reconciliation:

- IRS: [Questions and Answers on the Premium Tax Credit](#)
- Health Reform: Beyond the Basics: [FAQ on Premium Tax Credits \(December 2015\)](#)
- Consumer Reports: [Premium Tax Credits and Reconciliation \(October 2015\)](#)

To provide consumers with resources to help them file their taxes, try these IRS websites:

- IRS: [Volunteer Income Tax Assistance \(VITA\) - Free Tax Return Preparation for Qualifying Taxpayers](#)
- IRS: [Top Ten Tips to Help You Choose a Tax Preparer](#)

## Two important reminders for all consumers receiving tax subsidies (APTCs):

1. Any consumer who received any tax subsidy (APTCs) to buy health insurance **must file a tax return**, even if their income is below the normal tax filing threshold.
2. Any consumer who is receiving a tax subsidy to buy health insurance has a duty to report any changes to their household income, household size, any offers of employer-sponsored health insurance, or any changes to their eligibility for Medicaid, CHIP or Medicare. They must report these changes to the marketplace within 30 days. If they don't, they could be required to repay some or all of the APTCs that they received.