

RESOLUTION OF INQUIRY DIRECTING THE SECRETARY OF HEALTH AND HUMAN SERVICES TO PROVIDE TO THE HOUSE OF REPRESENTATIVES CERTAIN DOCUMENTS IN THE SECRETARY'S POSSESSION REGARDING THE REINTERPRETATION OF SECTIONS 36B(C)(2)(C)(I)(II) AND 5000A(E)(1)(B) OF THE INTERNAL REVENUE CODE OF 1986, COMMONLY KNOWN AS THE "FIX TO THE FAMILY GLITCH"

SEPTEMBER 28, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NEAL, from the Committee on Ways and Means,
 submitted the following

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 1262]

The Committee on Ways and Means, to whom was referred the resolution (H. Res. 1262) of inquiry directing the Secretary of Health and Human Services to provide to the House of Representatives certain documents in the Secretary's possession regarding the reinterpretation of sections 36B(c)(2)(C)(i)(II) and 5000A(e)(1)(B) of the Internal Revenue Code of 1986, commonly known as the "fix to the family glitch", having considered the same, reports unfavorably thereon without amendment and recommends that the resolution not be agreed to.

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I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H. Res. 1262 requests that the Secretary of Health and Human Services provide the House of Representatives certain documents in the Secretary’s possession regarding the reinterpretation of sections 36B(c)(2)(C)(i)(II) and 5000A(e)(1)(B) of the Internal Revenue Code of 1986, commonly known as the “fix to the family glitch.”

B. BACKGROUND AND NEED FOR LEGISLATION

On July 26, 2022, H. Res. 1262 was introduced by Representative Vern Buchanan. H. Res. 1262 is a resolution of inquiry, which is a means used by the House to obtain certain factual information from the Executive Branch. Under clause 7 of rule XIII, a resolution of inquiry is subject to a motion to discharge from committee if the resolution is not reported by the committee to which it was referred within 14 legislative days of its introduction.¹ Accordingly, the Committee on Ways and Means scheduled a markup of H. Res. 1262 within the 14-day period.

The Committee reported the resolution adversely because, among other flaws, the resolution is directed at the wrong federal agency. The Department of Health and Human Services (HHS) is not in charge of interpreting the provisions of the Patient Protection and Affordable Care Act of 2010 (ACA) contained in the Internal Revenue Code (IRC). Given that the resolution seeks documents regarding the interpretation of certain provisions under the IRC, the resolution is entirely misdirected. This resolution asks the Secretary of HHS to furnish to the House of Representatives documents which the Secretary neither possesses nor has authority over. The jurisdiction of interpreting provisions under the IRC is solely the responsibility of the Department of the Treasury and the Internal Revenue Service. Therefore, this resolution as introduced errs in its understanding of the authorities possessed by federal agencies of the Executive Branch.

Furthermore, this resolution would do nothing to help lower health care costs for hardworking American families. Under section 36B of the IRC as added by the ACA, Americans can qualify for a premium tax credit (PTC) to lower their monthly health insurance premiums through private insurance plans purchased on the ACA Marketplaces. Eligibility for the PTC is based on several factors, including income and whether someone is eligible for other forms of health coverage, including an offer of “affordable” employer-sponsored coverage. A February 2013 regulation based the definition of “affordable” offer of employer-sponsored coverage on

¹ Rules of the House of Representatives Rule XIII, clause 7.

the employee’s share of premium for self-only coverage, not family coverage.² As a result, many families found themselves unable to afford coverage through their employer or on the ACA Marketplaces, a situation some labeled the “family glitch”. Accordingly, following an Executive Order issued by President Biden to promote access to affordable health coverage consistent with statutory directives, the Treasury Department and the Internal Revenue Service proposed a new regulation in April 2022 that would base the test of an “affordable” offer for family members on coverage that includes the employee’s family members, not self-only coverage.³

The proposed changes would benefit everyday Americans immensely. Should the proposed change be made, the White House estimates that nearly 200,000 uninsured people would gain coverage, and approximately one million Americans would see their coverage become more affordable.⁴ Another independent analysis estimates that fixing the family glitch would reduce health care costs by \$4,152 for a typical family of four with an income of \$53,000 (i.e., 200 percent of the federal poverty level).⁵ A single parent with two children who earns \$43,920 (i.e., 200 percent of the federal poverty level) would save about as much—an estimated \$4,113 per year.⁶

As was made clear during its consideration, this resolution amounts to little more than a partisan political exercise carried out by those who have sought to thwart the success of the ACA at every turn. From trying to weaken pre-existing condition protections, promoting junk insurance plans that mislead consumers, to supporting litigation that would have overturned the entire ACA, supporters of this resolution have shown their true motives. Rather than work to strengthen the ACA and help reduce health care costs for lower- and middle-income Americans in their districts, this resolution is yet another partisan attempt to distract from their lack of a plan to expand access to affordable coverage.

C. LEGISLATIVE HISTORY

Background

H. Res. 1262 was introduced on July 26, 2022, by Representative Vern Buchanan and was referred to the Committee on Ways and Means.

Committee hearings

The committee held no hearings on H. Res. 1262.

²Patient Protection and Affordable Care Act; Health Insurance Market rules; Rate Review; Final Rule, 78 Fed. Reg. 13406 (February 27, 2013) (to be codified at 45 C.F.R. §§ 144, 147, 150, 154, and 156).

³Strengthening Medicaid and the Affordable Care Act, Exec. Order 14009, 86 Fed. Reg. 7793 (February 2, 2021); and Affordability of Employer Coverage for Family Members of Employees, 87 Fed. Reg. 20354 (April 7, 2022) (to be codified at 26 C.F.R. § 1).

⁴*FACT SHEET: Biden Harris Administration Proposes Rule to Fix “Family Glitch” and Lower Health Care Costs*, WHITE HOUSE (Apr. 5, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/05/fact-sheet-biden-harris-administration-proposes-rule-to-fix-family-glitch-and-lower-health-care-costs/>.

⁵David Kendall et al., *Capping Families’ Health Care Costs: Savings by State*, THIRD WAY (Apr. 13, 2022), <https://www.thirdway.org/report/capping-families-health-care-costs-savings-by-state>.

⁶*Id.*

Committee action

The Committee on Ways and Means marked up H. Res. 1262 on September 20, 2022 and ordered the resolution reported adversely (with a quorum being present).

II. EXPLANATION OF THE BILL

H. Res. 1262 directs the Secretary of Health and Human Services to provide to the House of Representatives certain documents in the Secretary’s possession regarding the reinterpretation of sections 36B(c)(2)(C)(i)(II) and 5000A(e)(1)(B) of the Internal Revenue Code of 1986, commonly known as the “fix to the family glitch.”

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H. Res. 1262, “Of inquiry directing the Secretary of Health and Human Services to provide to the House of Representatives certain documents in the Secretary’s possession regarding the reinterpretation of sections 36B(c)(2)(C)(i)(II) and 5000A(e)(1)(B) of the Internal Revenue Code of 1986,” on September 20, 2022. The resolution was ordered reported adversely to the House by a roll call vote of 25 yeas and 16 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Doggett	X	.....	.....	Mr. Brady .....	.....	X	.....
Mr. Thompson	X	.....	.....	Mr. Buchanan .....	.....	X	.....
Mr. Larson	X	.....	.....	Mr. Smith (NE) .....	.....	X	.....
Mr. Blumenauer	X	.....	.....	Mr. Kelly .....	.....	X	.....
Mr. Kind	X	.....	.....	Mr. Smith (MO) .....	.....	.....	.....
Mr. Pascrell	X	.....	.....	Mr. Rice .....	.....	X	.....
Mr. Davis	X	.....	.....	Mr. Schweikert .....	.....	X	.....
Ms. Sánchez	X	.....	.....	Mr. LaHood .....	.....	X	.....
Mr. Higgins	X	.....	.....	Dr. Wenstrup .....	.....	X	.....
Ms. Sewell	X	.....	.....	Mr. Arrington .....	.....	X	.....
Ms. DelBene	X	.....	.....	Dr. Ferguson .....	.....	X	.....
Ms. Chu	X	.....	.....	Mr. Estes .....	.....	X	.....
Ms. Moore	X	.....	.....	Mr. Smucker .....	.....	X	.....
Mr. Kildee	X	.....	.....	Mr. Hern .....	.....	X	.....
Mr. Boyle	X	.....	.....	Mrs. Miller .....	.....	X	.....
Mr. Beyer	X	.....	.....	Dr. Murphy .....	.....	X	.....
Mr. Evans	X	.....	.....	Mr. Kustoff .....	.....	X	.....
Mr. Schneider	X	.....	.....	.....	.....	.....	.....
Mr. Suozzi	X	.....	.....	.....	.....	.....	.....
Mr. Panetta	X	.....	.....	.....	.....	.....	.....
Mrs. Murphy	X	.....	.....	.....	.....	.....	.....
Mr. Gomez	X	.....	.....	.....	.....	.....	.....
Mr. Horsford	X	.....	.....	.....	.....	.....	.....
Ms. Plaskett	X	.....	.....	.....	.....	.....	.....
Chairman Neal	X	.....	.....	.....	.....	.....	.....
Totals	25	.....	.....	Totals .....	.....	16	.....

IV. BUDGET EFFECTS OF THE BILL**A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS**

Clause 3(d) of rule XIII of the Rules of the House of Representatives is inapplicable.

**B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX
EXPENDITURES BUDGET AUTHORITY**

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable.

**C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee advises that the Congressional Budget Office did not provide a cost estimate of the resolution.

**V. OTHER MATTERS TO BE DISCUSSED UNDER THE
RULES OF THE HOUSE**

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill does not authorize funding, so no statement of general performance goals and objectives is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by the bill.

E. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the bill does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(2) of the Congressional Accountability Act.

**F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND
LIMITED TARIFF BENEFITS**

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. HEARINGS

In compliance with clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the Committee states that no hearings were held on this resolution.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that H. Res. 1262 does not make any changes to existing law.

VII. DISSENTING VIEWS

Committee Republicans strongly oppose the Committee's action of unfavorably reporting H. Res. 1262, Resolution of inquiry directing the Secretary of Health and Human Services to provide to the House of Representatives certain documents in the Secretary's possession regarding the reinterpretation of sections 36B(c)(2)(C)(i)(II) and 5000A(e)(1)(B) of the Internal Revenue Code of 1986, commonly known as the "fix to the family glitch."

Congressional oversight is one of the most important responsibilities of the U.S. Congress, and Resolutions of Inquiry (ROIs) are one of the methods used by the U.S. House of Representatives to obtain information from the executive branch. ROIs simply demand that the administration turn over basic information to Congress. This information is critical because it allows the Congress to ensure the executive branch's compliance with congressional intent; evaluate program performance; prevent the executive branch's encroachment on the legislative branch's powers; assess an agency's ability to manage and carry out program objectives; and acquire information from the executive branch that can inform policymaking.

Moreover, Congressional Republicans have repeatedly sought information from the Administration about the expected and actual impact of these policies. Transparency is essential because it promotes accountability and provides information for the Congress and Americans about what the federal government is doing. Despite the Biden Administration stating that President Biden would "bring transparency and truth back to the government to share the truth, even when it's hard to hear," the Administration has ignored the need for congressional oversight and completely failed on its promise. The American people deserve to know how their government works and we will hold the Biden Administration accountable for its disastrous policies.

This resolution seeks White House Communications with the U.S. Department of Health and Human Services (HHS) regarding the decision to reinterpret the meaning of the aforementioned sections of the Internal Revenue Code of 1986. We expect that this decision was pushed by the White House and coordinated between the White House, HHS, and the U.S. Department of Treasury, over potential objections expressed by programmatic staff at their respective agencies dating back to the Obama Administration. This resolution seeks to understand whether and how the White House put politics over the law in pressuring agencies to take an unlawful action.

The ACA established the premium tax credits (PTCs) to subsidize private health insurance purchased on the individual market. Those ACA subsidies are both generous and costly, so the law was designed with a limit that ensures employees—and their family members—that receive an offer of affordable coverage from their

employer would not qualify for PTCs. This determination of affordability, in the statute, was tied to whether the coverage was considered affordable for the employee. The question then became whether the employee's family members would qualify for ACA subsidies. Despite significant political pressure at the time to extend PTCs to the employee's family members, the letter of the law was clear—those family members were ineligible for ACA subsidies because of the employee's offer of affordable coverage. Some have called this a “family glitch” since dependents may not have access to PTCs or robust coverage through their parent's plan, but it seems the provision was intentional, and the statute Democrats passed in 2010 is crystal clear.

On April 5, 2022, President Biden announced a “fix” to the so-called Affordable Care Act's (ACA) “family glitch” via executive action even though the Obama Administration previously determined that it could not fix the “family glitch” without congressional action. The statutory text is clear, and the Biden Administration's actions overturns a decade of statutory and legal interpretation.

On April 7, 2022, the Biden Administration proposed a rule to reverse this long-held interpretation. This decision is damaging to the administration's credibility and the trust American people have in the executive branch, and the decision also represents bad policy. It has been estimated that about 90 percent of the roughly five million people affected by this illegal expansion of a federal program already have health insurance coverage. Even worse, the rule displaces private sector health care spending with \$45 billion in government spending. Congress could change this policy but has been unwilling to justify such a massive spending program with relatively little return on investment. By allowing the Administration to make this policy decision Democrats are seemingly content to let the Biden Administration violate the Separation of Powers and carry out actions that are inherently legislative in nature—actions that should be reserved to, and carried out by, the Congress. It is disappointing that Committee Democrats have blocked the request for this information instead of protecting the powers granted exclusively to Congress in Article I of the Constitution.

KEVIN BRADY,
Ranking Member.
VERN BUCHANAN.

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