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**Section 1332 State Relief and Empowerment Waiver Pass-through Funding-  
Frequently Asked Questions (FAQ)  
February 28, 2019**

**Q1: What is pass-through funding in the section 1332 waiver context?**

A1: If a State Relief and Empowerment Waiver (also referred to as a section 1332 waiver or a State Innovation Waiver) eliminates or reduces the amount of premium tax credit (PTC) or small business tax credit (SBTC) that individuals and employers in the state would otherwise receive, the savings are paid from the federal government to the state. This payment is referred to as “federal pass-through funding” or “pass-through funding.” The Centers for Medicare and Medicaid Services (CMS) in the U.S. Department of Health and Human Services (HHS) and the Department of the Treasury (Treasury) (collectively, the Departments) are responsible for calculating the amount of pass-through funding. This calculation currently includes PTC and SBTC, as applicable, provided under the Patient Protection and Affordable Care Act (PPACA) that would have been paid on behalf of participants in the Exchange in the state in the absence of the waiver (referred to as the baseline), but will not be paid as a result of the waiver. This includes any amount of federal financial assistance under the PPACA not paid due to an individual not qualifying for financial assistance or qualifying for a reduced level of financial assistance resulting from a waived provision as a direct result of the waiver plan. The pass-through funding amount does not include any savings other than the reduction in PTC or SBTC. The pass-through funding amount will be reduced to account for any other increase in spending or decrease in revenue to the extent necessary to ensure deficit neutrality.<sup>1</sup>

**Q2: How does a state estimate federal pass-through funding amounts?**

A2: The pass-through funding amount is determined by the Departments. When applying for a section 1332 waiver and seeking pass-through funding, a state must explain why, under its state plan, the state anticipates that individuals would not qualify for, or would qualify for a reduced amount of, PTC or SBTC for which they would otherwise be eligible. The state must also provide analysis and supporting data to inform the Departments’ estimate of the pass-through funding amount. This may include information about enrollment, premiums and other information as may be required by the Departments. The state’s application must also explain

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<sup>1</sup> The guidance on State Relief and Empowerment Waivers contains a discussion of pass-through funding. This guidance is available online at <https://www.federalregister.gov/documents/2018/10/24/2018-23182/state-relief-and-empowerment-waivers>. The guidance provides information about the economic assumptions and methodologies used by the Departments and the states to evaluate compliance with the section 1332 statutory requirements and calculate pass-through funding payments

how the state plans to use the pass-through funding to implement the state's waiver plan. In addition, states must include actuarial analyses and certifications to support the state's estimates that the proposed waiver will comply with the comprehensive coverage requirement, the affordability requirement, and the scope of coverage requirement, and the deficit neutrality requirement.<sup>2</sup>

**Q3: How do the Departments calculate federal pass-through funding amounts?**

A3: The Departments calculate the federal pass-through funding amount for each waiver on an annual basis for approved waivers. Each year, the pass-through funding amounts are updated to reflect the latest data and changes in federal and state law, as applicable. For waivers approved to date, the pass-through funding amount has been calculated using a methodology developed by the Treasury Department's Office of Tax Analysis in consultation with the CMS Office of the Actuary using a tax microsimulation model that represents the U.S. population and simulates income taxes, including credits such as the PTC, and payroll taxes, over a ten-year budget period. More information about the methodology is available on the Center for Consumer Information and Insurance Oversight (CCIIO) website.<sup>3</sup>

**Q4: Why might the Departments' estimated pass-through funding amounts for an upcoming plan year vary from a state's initial estimates or current plan year amounts?**

A4: Pass-through funding amounts can vary (in both directions) from the state's initial estimates, current plan year amounts, or from the Departments' preliminary estimates for a variety of reasons, including:

- Changes in federal and/or state law after the state's initial application.
- Changes in economic conditions (including, for example, changes in expected enrollment) between the time of the application and the time of the determination of the pass-through funding amount.
- Differences between initial and final premium estimates. Final actual premiums under the waiver and final estimated premiums without the waiver are usually different from premiums estimated at the time of the waiver application. Some reasons for this potential difference could include:
  - Differences in the assumptions used by issuers in their rate filings relative to the assumptions used by the state in their initial estimates.
  - Differences in the impact of the waiver due to differences between individual plan-level premium rate impacts and average premium rate impacts. States sometimes make simplifying assumptions in their applications regarding the impact the waiver may have on premium rates and assume the premium rate impact will be the same on every plan in their waiver application. However, when issuers file their rates with the reinsurance program, those rates may vary the waiver's impact by plan. This includes the impact on the second-lowest cost

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<sup>2</sup> See 31 C.F.R. § 33.108; 45 C.F.R. § 155.1308.

<sup>3</sup> <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Treasury-Method-Calculation-1332-Pass-through-Amounts.pdf>

silver plan rates, which can directly influence PTC amounts. Thus, variances in plan-level premiums rate impacts with and without the waiver can have significant impacts on the estimated pass-through payments.

- Other differences between the state and federal models.

**Q5: What happens if a state’s federal pass-through funding is less than the state estimated? Is the state responsible for ensuring the program is fully funded or can they change the approved program if the federal pass-through funding is less than expected?**

A5: A state is responsible for ensuring that the approved state plan is fully funded, consistent with the terms and conditions for an approved waiver. As such, states should plan ahead for ways to make sure that the state’s program can be fully funded if the federal pass-through funding amount is less than the state expected. States have approached this possibility in different ways prior to submitting their application. Some states have appropriated the full amount of funding needed for their program to ensure that they have funding available. Other states have made conservative estimates by over-estimating the amount of the state portion in an effort to mitigate the possibility of lower than expected federal pass-through amounts. For reinsurance programs, some states have provided for the ability to adjust payment parameters for their reinsurance programs (for example, some states established some of their parameters, like the attachment point, at a later point than when the state submitted the application) to match the amount of state funding and pass-through funding available for the program. As an example of an approach, the federal reinsurance program provided an ‘estimated’ coinsurance rate but the final coinsurance rate was determined when there was more information on both collections and payments.<sup>4</sup> Some states also have given themselves flexibility to adjust the amount of their state assessment if needed to fund the state portion of the program.

**Q6: What happens if a state’s federal pass-through funding is more than the state preliminarily estimated?**

A6: A state is responsible for ensuring that the approved state plan is fully funded, consistent with the terms and conditions for an approved waiver. A pass-through funding amount higher than estimated may reduce the level of funding required by the state to implement the waiver. States that receive more pass-through funding than estimated must use all federal pass through funds to implement their state waiver plan, or return unused funds to the Treasury. In this situation, a state may not have to use all the state funds it anticipated.

**Q7: Can a state end a waiver early if the state funding estimates change or for any other reasons?**

A7: A state may only suspend or request withdrawal of all or portions of a waiver plan consistent with the requirements specified in the Specific Terms and Conditions (STCs) of the waiver approval.

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<sup>4</sup> See, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/2015ProRataCoinsuranceRate.pdf>

**Q8: How does CMS calculate the adjustment to the pass-through funding for the federal Exchange user fees?**

A8: CMS estimates the total premiums charged and enrollment in both the scenario where the waiver is in effect and when it is not. CMS then applies the user fee rates (3.5 percent for Federally-facilitated Exchanges (FFE) for 2019 and 3.0 percent for State-based Exchanges on the Federal Platform (SBE-FPs)) for 2019 to calculate the reduction in user fee collections due to the waiver.

**Q9: When do states receive their final pass-through funding amounts for the plan year?**

A9: Generally, states will receive an initial estimate of the federal pass-through funding amount in the fall of each year (before the beginning of the plan year). The initial federal pass-through funding amounts estimated in the fall of each year are informational and may be adjusted by the Departments as necessary to reflect subsequent developments such as changes in Federal or State laws. For example, if a state newly expanded Medicaid, the pass-through funding amount could change. The final federal pass-through funding amount or final administrative determination will be shared in a letter prior to the payment of the pass-through funding amount as provided in the specific terms and conditions of the approval letter (typically before the end of April of the plan year).

**Q10: What are some resources states may look to when they perform their actuarial analysis?**

A10: As part of a section 1332 waiver application, some states must submit an actuarial analysis to show the impact the program will have on premiums in the state, among other analysis described above. In preparing this analysis, a state may look at, among other information, claims data from the issuers in their state and Marketscan data to evaluate the impact of the waiver on premiums and, for reinsurance waivers, to predict how much financing it will take to reduce premiums by the desired amount through a waiver. CMS also has information on past Exchange Open Enrollment plan selections (available on the CMS website)<sup>5</sup>, which states might find helpful. The Internal Revenue Service (IRS) also has information posted on its website.<sup>6</sup>

**Q11: Where can I find more detailed information on how pass-through funding amounts for 2019 were calculated?**

A11: Additional information on the Department of the Treasury's methodology and estimated and actual premiums and other key components of the pass-through funding calculation is available at the CCIIO 1332 page.<sup>7</sup>

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<sup>5</sup> See, [https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/Plan\\_Selection\\_ZIP.html](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/Plan_Selection_ZIP.html)

<sup>6</sup> See, <https://www.irs.gov/statistics/soi-tax-stats-affordable-care-act-aca-statistics>

<sup>7</sup> <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Treasury-Method-Calculation-1332-Pass-through-Amounts.pdf>

**Q12: Does the Departments' analysis take into account APTC information or PTC information?**

A12: Persons who obtain health insurance coverage from an Exchange may be eligible to receive APTC. APTC is calculated based on the consumer's expected income and family size for the year, and paid to insurers on behalf of consumers to cover premiums each month. Consumers who receive APTC are required to file a tax return to determine the amount of PTC for which they are eligible, based on their actual income and family circumstances for the year. Taxpayers may receive additional PTC when tax returns are filed, or may be required to repay APTC in excess of the PTC to which they are entitled, up to a limit.

The amount of pass-through funding depends on the expected change in total PTC subsidy, attributable to the waiver. The total PTC subsidy is the APTC, less the amount of excess APTC repaid when tax returns are filed, plus the additional amount of PTC claimed on tax return.<sup>8</sup>

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<sup>8</sup>Total subsidy equals APTC plus net PTC claimed at tax filing minus excess APTC repaid at tax filing. APTC for 2016 was provided by CMS for AK, ME, OR WI and NJ. APTC for MN was provided by the state and APTC for MD was calculated using Form 1095A information. Net PTC is shown in cell B139 and excess APTC is in cell B105 of <https://www.irs.gov/statistics/soi-tax-stats-historic-table-2> for each state.