

## IRS Increases Shared Responsibility Affordability Percentages and Assessment Amounts

The IRS has increased the applicable contribution percentage used for determining whether employer-sponsored coverage is affordable for purposes of premium tax credit eligibility. It also clarified that the same applicable percentage applies to the shared responsibility affordability safe harbors and increased the \$2,000 and \$3,000 shared responsibility assessment amounts. We've summarized these, and other ACA indexed amounts, in a table at the end of this *FYI*.

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### Recap of Final ACA Regulations

The Affordable Care Act added Sections 36B and 4980H to the Internal Revenue Code. Section 36B created a premium tax credit to help middle- and lower-income individuals pay for health coverage in the public marketplaces. Section 4980H sets out the two “shared responsibility assessments” to which an applicable large employer (ALE) may be subject if it fails to offer affordable, minimum value, minimum essential coverage (MEC) to its full-time employees and their dependent children.

#### Premium tax credit eligibility

An individual who is offered employer-sponsored MEC as or through an active employee (e.g., the employee's spouse or child) is not eligible for the premium tax credit if the MEC is affordable and provides minimum value. Section 36B provides that employer coverage will be considered affordable if the employee's required contribution for self-only coverage is no greater than 9.5% of the employee's household income, but that this percentage would be subject to adjustment (36B adjustment) for plan years beginning in 2015 and later. The 36B adjustment increased the affordability limit to 9.56% of household income for 2015 and to 9.66% for 2016.

#### Applicable Large Employer

An employer that employs on average at least 50 full-time employees or full-time equivalent employees on business days during the preceding calendar year (100 full-time or full-time equivalent employees for 2015 only).

## Employer Shared Responsibility Assessments

ALEs are potentially subject to one of two nondeductible "shared responsibility" assessments if they have at least one full-time employee who receives a premium tax credit:

**“Play or pay” assessment.** This assessment may be imposed when an ALE fails to offer MEC to substantially all of its full-time employees and their dependent children during a month and at least one of its full-time employees receives a premium tax credit through a public marketplace. In 2015, an ALE satisfied the “substantially all” standard for any given month if it offered coverage to at least 70% of its full-time employees and their dependent children during that month. For 2016 and subsequent years, this threshold increased to 95%.

**“Play and pay” assessment.** This assessment may be imposed when an ALE offers MEC to substantially all of its full-time employees but a full-time employee receives a premium tax credit because: (1) the employer-offered coverage is unaffordable or fails to provide minimum value, or (2) the employee was not offered employer-sponsored coverage.

The assessments initially were to be first effective for the 2014 calendar year; however, imposition was delayed until 2015. For 2014, the “play or pay” assessment would have been one-twelfth of \$2,000 for each calendar month the employer failed to offer MEC times the number of full-time employees, disregarding the first 30; the “play and pay” assessment would have been one-twelfth of \$3,000 for each calendar month in which a full-time employee received a premium tax credit. Section 4980H provided that both of these assessments were subject to indexing for subsequent years.

## Employer Shared Responsibility Affordability Safe Harbors

Recognizing that employers generally would not know an employee’s household income (the basis for determining premium tax credit eligibility based on affordability), IRS created affordability “safe harbors” that enable an employer to avoid a shared responsibility assessment even when a full-time employee receives a premium tax credit because the employer’s coverage was considered not affordable under Section 36B. These safe harbors, set out in the final shared responsibility regulations, provide that employer coverage will be considered affordable for purposes of the employer shared responsibility assessment if the required employee contribution for the lowest cost option offered to the employee does not exceed 9.5% of one of the following:

- The employee’s wages for the calendar year reported on the Form W-2 (W-2 safe harbor)
- An amount equal to 130 hours multiplied by the lower of the employee’s hourly rate of pay as of the first day of the coverage period or lowest rate of pay during the calendar month (rate of pay safe harbor)

### The FPL safe harbor amount is also used to determine whether an employer:

- Must provide an employee with an effective opportunity to decline coverage. Generally, an employer will not be treated as having made an offer of coverage unless an employee is provided an effective opportunity to decline it. However, an opportunity to decline is not required for an offer of coverage that provides minimum value and does not require an employee to pay more than the FPL safe harbor amount for self-only coverage.
- Can use the “qualifying offer” method of shared responsibility reporting. An employer can use this method if it offers coverage that provides minimum value at a cost that does not exceed the FPL safe harbor amount for self-only coverage and includes an offer of MEC to the employee’s spouse and dependents, if any. For more information about the qualifying offer method, see our [March 6, 2014, FYI Alert](#).

- An amount equal to the federal poverty line for a single individual, divided by 12 (FPL safe harbor). Under the FPL safe harbor, employers use the FPL in effect six months prior to the beginning of the plan year to allow adequate time to establish premium amounts in advance of the plan's open enrollment period.

The final regulations also provide that multiemployer plan coverage will be considered affordable if the employee's required contribution, if any, toward self-only health coverage does not exceed 9.5% of the employee's wages reported to the multiemployer plan.

Neither the final shared responsibility regulations nor the reporting regulations provided for any adjustment to the 9.5% threshold. For more information about shared responsibility assessments and the affordability safe harbors, see our [April 17, 2014 FYI In-Depth](#).

The applicable FPL for 2016 is \$11,880, so an employer with a calendar year plan satisfies the FPL safe harbor in 2017 if the required employee contribution for its lowest cost self-only coverage under the plan does not exceed \$95.93 per month ( $.0969 \times \$11,880/12$ ).

## Adjustments to Premium Tax Credit Affordability Percentages and Shared Responsibility Amounts

The IRS increased the 2017 premium tax credit affordability percentage and the two shared responsibility assessments. It also clarified that the applicable percentage used to determine affordability for premium tax credit purposes also applies to the shared responsibility affordability safe harbors.

### Premium Tax Credit Affordability Percentage

Earlier this year, IRS issued [Revenue Procedure 2016-24](#), which provides indexing adjustments to certain amounts set out in Section 36B. In addition to making changes to the table used to calculate the amount of an individual's premium tax credit, the guidance also sets out the 36B adjustment for plan years beginning in 2017. As a result of that adjustment, an applicant for a premium tax credit will be considered eligible for affordable employer coverage (and thus not eligible for the credit) in 2017 only if the employee's required contribution for self-only coverage does not exceed 9.69% of his or her household income.

### Adjustments to the Shared Responsibility Assessment Amounts

[Notice 2015-87](#) set out adjustments to the shared responsibility assessment amounts. It provides that for calendar year 2015, the adjusted \$2,000 "play or pay" assessment is \$2,080 and for calendar year 2016, is \$2,160. The adjusted amounts for the \$3,000 "play and pay" assessment are \$3,120 for calendar year 2015 and \$3,240 for calendar year 2016. The notice states that the IRS and Treasury anticipate that adjustments for future years will be posted on the irs.gov website.

### Adjustments to the Affordability Safe Harbors

In Notice 2015-87, the IRS indicated its intention to amend the final shared responsibility regulations to provide that any adjustments to the affordability contribution percentage under Section 36B would also apply to each of the affordability safe harbors. It also stated that employers could rely on those adjustments pending such amendment.

Thus, for 2015, employer coverage will be deemed affordable for purposes of the employer shared responsibility assessment if the required employee contribution for the lowest cost self-only option offered by the employer did not exceed 9.56% of

### ACA Indexed Amounts

Plan sponsors need to be aware of other ACA indexed amounts as well. [The table](#) on the next page sets out these amounts in one place.

the applicable safe harbor amount. This percentage is increased to 9.66% for 2016 and to 9.69% for 2017. These adjustments also apply to determining affordability of coverage under a multiemployer plan and whether an employer has to provide an employee with an opportunity to decline coverage. The IRS also specified that it would similarly amend the shared responsibility reporting regulations with respect to the qualifying offer reporting method and that employers could rely on the adjustment.

## In Closing

Employers should take into account the adjustments to the affordability contribution percentage in developing a premium design strategy — they may be able to increase the required employee contribution for their lowest cost self-only coverage and still satisfy one of the safe harbors. They also need to consider their potential exposure to higher shared responsibility assessments.

ACA Indexed Dollar Amounts								
	Out-of-Pocket Maximums <sup>(1,5)</sup>					Employer Shared Responsibility Annual Assessments <sup>(1,4,6,7,8)</sup>		
	Self-Only	Other Than Self-Only	PCORI Fee <sup>(2,5)</sup>	Transitional Reinsurance Fee <sup>(6)</sup>	Health FSA Salary Reduction Cap <sup>(3,5)</sup>	4980H(a) – Failure to Offer Coverage	4980H(b) – Failure to Offer Affordable, Minimum Value Coverage	Affordability Threshold Under 4980H(b)
2017	\$ 7,150	\$ 14,300	Not available	N/A	\$ 2,600 (Est.)	\$ 2,260 (Est.)	\$ 3,390 (Est.)	9.69%
2016	\$ 6,850	\$ 13,700	Not available	\$ 27	\$ 2,550	\$ 2,160	\$ 3,240	9.66%
2015	\$ 6,600	\$ 13,200	\$ 2.17	\$ 44	\$ 2,550	\$ 2,080	\$ 3,120	9.56%
2014	\$ 6,350	\$ 12,700	\$ 2.08	\$ 63	\$ 2,500	\$ 2,000	\$ 3,000	9.50%
2013	N/A	N/A	\$ 2.00	N/A	\$ 2,500	N/A	N/A	N/A
2012	N/A	N/A	\$ 1.00	N/A	N/A	N/A	N/A	N/A

### Notes:

- (1) Indexed to increase in average per capita premium for U.S. health insurance coverage in prior calendar year. Out-of-pocket maximum does not apply to grandfathered plans or retiree-only plans
- (2) Indexed to increases in national health expenditures
- (3) Indexed for CPI-U
- (4) One-twelfth of annual amount assessed on monthly basis. No assessments for 2014
- (5) Applicable dollar amount affected by when plan year ends
- (6) Applies on a calendar year basis
- (7) 2017 amounts have not been released. Estimate based on increase in average per capita premium for U.S. health insurance coverage as determined by HHS
- (8) Affordability threshold adjusted consistent with 36B(b)(3)(A)(i)

N/A – Not applicable

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