ACA Mandates—Different Measures of Affordability

Several key Affordable Care Act (ACA) reforms measure the affordability of employer-sponsored health coverage. Under the ACA, affordability of an employer’s plan may be assessed in the following three contexts:

1. The **employer shared responsibility penalties** for applicable large employers (ALEs) (also known as the pay or play rules or the employer mandate);

2. An exemption from the **individual mandate** tax penalty imposed on individuals who fail to obtain health insurance coverage; and

3. The **premium tax credit** for low-income individuals to purchase health coverage through an ACA Exchange.

Although all of these mandates involve an affordability determination, the test for affordability varies for each provision. This ACA Overview summarizes the different measures of affordability for each of these ACA mandates.

**LINKS AND RESOURCES**

The IRS adjusts the affordability contribution percentages each year.


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This ACA Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.
## Overview of the Affordability Requirement

<table>
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<tr>
<th>ACA Mandate</th>
<th>Summary</th>
<th>Affordability for Employees</th>
<th>Affordability for Family Members</th>
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<tbody>
<tr>
<td>Employer Shared Responsibility Penalties</td>
<td>ALEs that do not offer health coverage to their full-time employees (and dependents), or offer coverage that is either unaffordable or does not provide minimum value, may be subject to a penalty.</td>
<td>Coverage is affordable if the employee portion of the premium for the lowest-cost <strong>self-only coverage</strong> that provides minimum value does not exceed <strong>9.5 percent of an employee’s W-2 wages, rate of pay or the federal poverty level (FPL) for a single individual.</strong></td>
<td>Coverage is affordable if the employee portion of the premium for the lowest-cost <strong>self-only coverage</strong> that provides minimum value does not exceed <strong>9.5 percent of an employee’s W-2 wages, rate of pay or the FPL for a single individual.</strong> The cost of family coverage is not taken into account.</td>
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<tr>
<td>Individual Mandate</td>
<td>Most individuals must obtain minimum essential coverage (MEC) for themselves and their family members or pay a penalty. Individuals who lack access to affordable MEC are exempt.</td>
<td>Coverage is affordable if the required contribution for the lowest-cost <strong>self-only coverage</strong> does not exceed <strong>8 percent of household income.</strong></td>
<td>Coverage is affordable if the required contribution for the lowest-cost <strong>family coverage</strong> does not exceed <strong>8 percent of household income.</strong></td>
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<td>Premium Tax Credit</td>
<td>The premium tax credit helps eligible individuals purchase coverage through an Exchange. Employees (and their family members) who are eligible for coverage under an affordable, minimum value employer-sponsored plan are not eligible for a premium tax credit.</td>
<td>Coverage is affordable if the employee’s cost for <strong>self-only coverage</strong> does not exceed <strong>9.5 percent of household income.</strong></td>
<td>Coverage is affordable if the employee’s cost for <strong>self-only coverage</strong> does not exceed <strong>9.5 percent of household income.</strong> The cost of family coverage is not taken into account.</td>
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Employer-sponsored coverage will generally be considered affordable under **both the employer shared responsibility rules and the premium tax credit eligibility rules** if the employee’s required contribution for self-only coverage does not exceed:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage of Employee's Household Income</th>
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<tbody>
<tr>
<td>2014</td>
<td>9.5%</td>
</tr>
<tr>
<td>2015</td>
<td>9.56%</td>
</tr>
<tr>
<td>2016</td>
<td>9.66%</td>
</tr>
<tr>
<td>2017</td>
<td>9.69%</td>
</tr>
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</table>

On Dec. 16, 2015, the IRS confirmed in **Notice 2015-87** that ALEs using an affordability safe harbor may rely on these adjusted affordability contribution percentages.

Coverage is unaffordable for purposes of the **individual mandate exemption** if it exceeds:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage of Employee's Household Income</th>
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</thead>
<tbody>
<tr>
<td>2014</td>
<td>8%</td>
</tr>
<tr>
<td>2015</td>
<td>8.05%</td>
</tr>
<tr>
<td>2016</td>
<td>8.13%</td>
</tr>
<tr>
<td>2017</td>
<td>8.16%</td>
</tr>
</tbody>
</table>

**EMPLOYER SHARED RESPONSIBILITY PENALTY**

Under the ACA’s employer shared responsibility rules, ALEs that do not offer MEC to their full-time employees and dependents, or that offer coverage that is either unaffordable or does not provide minimum value, may be subject to a penalty. An ALE is one with **50 or more full-time and full-time equivalent (FTE) employees**.

These employer penalties were set to take effect on Jan. 1, 2014. However, in July 2013, the Treasury **delayed the employer penalties and related reporting requirements for one year, until 2015**. Therefore, no penalties applied in 2014. Smaller ALEs may also have been eligible for an additional one-year delay.

On Feb. 12, 2014, the IRS published **final regulations** on the employer shared responsibility rules. Under the final regulations, **ALEs that have fewer than 100 full-time and FTE employees generally had an additional year, until 2016, to comply with the employer shared responsibility rules**. ALEs with 100 or more full-time and FTE employees were required to comply with these rules starting in 2015.

**Affordability Determination**

Affordability of health coverage offered by an ALE is a key point in determining whether the employer will be subject to an employer shared responsibility penalty. Coverage is considered affordable if the
employee’s portion of the **self-only premium** for the employer’s lowest-cost coverage that provides minimum value does not exceed **9.5 percent** of the employee’s household income for the tax year (adjusted to 9.56 percent for 2015, 9.66 percent for 2016 or 9.69 percent for 2017).

This determination applies regardless of whether the employee is eligible for another level of health plan coverage, such as family coverage. Thus, **the cost of family coverage is not taken into account** to determine whether an employer’s health plan is affordable for purposes of the employer shared responsibility penalties.

Because employers may be largely unaware of the income levels of their employees’ family members, they could find it difficult to assess whether the coverage they offer would be considered affordable. To address this issue, the IRS provided **three optional affordability safe harbors** that allow an ALE to determine the affordability of its health coverage without knowing an employee’s household income:

- **Form W-2**—Under the **Form W-2 safe harbor**, an ALE compares the cost of self-only coverage to an employee’s wages from that ALE that are required to be reported in Box 1 of the employee’s Form W-2 to determine whether the cost exceeds 9.5 percent of income (as adjusted).

- **Rate-of-Pay**—Under the rate-of-pay safe harbor, affordability is determined by comparing the cost of self-only coverage to an employee’s rate of pay. For salaried employees, the ALE uses the employee’s monthly salary to determine affordability. For hourly employees, the ALE multiplies the employee’s hourly rate of pay by 130 hours per month and determines affordability based on the resulting monthly wage amount.

- **Federal Poverty Level (FPL)**—The FPL safe harbor measures affordability based on the FPL for a single individual in effect within six months before the first day of the plan year.

On Dec. 16, 2015, the IRS confirmed in **Notice 2015-87** that ALEs using an affordability safe harbor **may rely on the adjusted affordability contribution percentages for 2015 and future years**.

**INDIVIDUAL MANDATE**

Beginning in 2014, the ACA requires most individuals to obtain acceptable health coverage for themselves and their family members or pay a penalty. Because this provision has the effect of “requiring” individuals to have coverage, it is often referred to as the “individual mandate.” The delay for the employer shared responsibility penalties did not affect the individual mandate’s effective date.

The penalty will be assessed against an individual for any month during which he or she does not maintain MEC, beginning in 2014 (unless an exemption applies). The requirement applies to individuals of all ages, including children. MEC includes coverage under:

- A government-sponsored program (such as coverage under Medicare or Medicaid, CHIP, TRICARE and certain types of veterans’ health coverage);

- An eligible employer-sponsored plan (including COBRA and retiree coverage);
• A health plan purchased in the individual market; or
• A grandfathered health plan.

MEC also includes any other types of coverage that HHS designates as MEC, or when the sponsor of the coverage follows a process to be recognized as MEC. However, MEC does not include specialized coverage, such as coverage only for vision or dental care, workers’ compensation, disability policies or coverage only for a specific disease or condition.

**Affordability Exemption**

The ACA includes a number of exemptions from the individual mandate. Under one of these exemptions, individuals who lack access to affordable MEC are not subject to the individual mandate penalty. This exemption avoids requiring an individual to pay a penalty if his or her only health coverage option is unaffordable. For purposes of this exemption:

- Coverage is unaffordable to an employee if the required contribution for the lowest-cost, self-only coverage would be more than 8 percent of household income (8.05 percent for 2015, 8.13 percent for 2016 or 8.16 percent for 2017).

- For family members who are eligible to purchase coverage through an employer-sponsored plan, coverage is unaffordable if the required contribution for the lowest-cost, family coverage would exceed 8 percent of household income (8.05 percent for 2015, 8.13 percent for 2016 or 8.16 percent for 2017).

Thus, unlike the employer shared responsibility penalty and the premium tax credit, the individual mandate’s measure of affordability for family members takes into account the cost of family coverage.

Under the individual mandate’s exemption rules, the required contribution for self-only coverage under an employer-sponsored plan may cost less than 8 percent of household income, while the required contribution for family coverage under the same employer plan may cost more than 8 percent of household income. In this case, the employee is not exempt from the individual mandate, while the employee’s spouse and other dependents would be exempt.

**PREMIUM TAX CREDIT**

The ACA created a premium tax credit to help eligible individuals and families purchase health insurance through an Exchange. By reducing a taxpayer’s out-of-pocket premium costs, the credit is designed to make coverage through an Exchange more affordable. To be eligible for the credit, a taxpayer:

- Must have household income for the year between 100 and 400 percent of FPL for the taxpayer’s family size;
- May not be claimed as a tax dependent of another taxpayer; and
- Must file a joint return, if married.
In addition, to receive the premium assistance, a taxpayer must enroll in one or more qualified health plans through an Exchange, and cannot be eligible for MEC (such as an eligible employer-sponsored plan or coverage under a government-sponsored program). Employees who may enroll in an employer-sponsored plan—and individuals who may enroll because of a relationship with an employee—are generally considered eligible for MEC if the plan is affordable and provides minimum value.

**Affordability Determination**

Employees (and their family members) who are eligible for coverage under an employer-sponsored plan that is affordable and provides minimum value are not eligible for the premium tax credit. To determine an employee’s eligibility for a premium tax credit, the ACA provides that employer-sponsored coverage is considered affordable if the employee’s cost for **self-only coverage** does not exceed **9.5 percent** of the employee’s household income for the tax year (adjusted to 9.56 percent for 2015 plan years, 9.66 percent for 2016 plan years or 9.69 percent for 2017 plan years).

On Feb. 1, 2013, the IRS released a **final rule** to confirm that an employer-sponsored plan is affordable for family members if the portion of the annual premium the employee must pay for **self-only coverage** does not exceed **9.5 percent of the taxpayer’s household income** for the tax year (as adjusted). Thus, affordability for families is determined **based on the cost of self-only coverage**, not family coverage.