Health Care Reform **Bulletin**

Agencies Further Increase the ACA's Affordability Percentages for 2016

Provided by Scirocco Group

Quick Facts

On Nov. 21, 2014, the affordability contribution percentages were further increased for 2016.

The new percentage still does not apply under the employer mandate's affordability safe harbors.

The affordability percentages for 2016 are:

- **8.13%** under the individual mandate; and
- **9.66%** under the employer mandate and premium tax credit eligibility rules.

For plan years beginning in 2016, the health coverage affordability percentage under the ACA's pay or play rules was generally **further increased to 9.66 percent**.

Under the Affordable Care Act (ACA), the affordability of an employer's plan may be assessed in the following three contexts:

- The **shared responsibility penalty** for applicable large employers (also known as the pay or play rules or employer mandate);
- An exemption from the tax penalty imposed on individuals who fail to obtain health coverage (also known as the **individual mandate**); and
- The **premium tax credit** for low-income individuals to purchase health coverage through an Exchange.

Although all of these provisions involve an affordability determination, the test for affordability varies for each provision. The Internal Revenue Service (IRS) previously adjusted the affordability contribution percentage for 2015 in Revenue Procedure 2014-37 (Rev. Proc. 2014-37).

On Nov. 21, 2014, the IRS released **Rev. Proc. 2014-62** to index the ACA's affordability contribution percentage for 2016. **These updated affordability percentages are effective for taxable years and plan years beginning after Dec. 31, 2015**.

For plan years beginning in 2016**, e**mployer-sponsored coverage will generally be considered affordable under **both the pay or play rules and the premium tax credit eligibility rules** if the employee's required contribution for self-only coverage does not exceed **9.66 percent** of the employee's household income for the year. However, employers using an affordability safe harbor under the pay or play rules **will continue using a contribution percentage of 9.5 percent** to measure their plan's affordability.

Rev. Proc. 2014-62 also updates the table for determining the amount of any premium tax credit for plan years beginning in 2016.

Also on Nov. 21, 2014, the Department of Health and Human Services (HHS) released its 2016 Notice of Benefit and Payment Parameters Proposed Rule, which includes the 2016 affordability contribution percentage for the individual mandate exemption. For plan years beginning in 2016, coverage is unaffordable for purposes of the individual mandate exemption if it exceeds **8.13 percent** of household income.

Affordable Employer-sponsored Coverage

Under the ACA, employees (and their family members) who are eligible for coverage under an affordable employer-sponsored plan are generally not eligible for the premium tax credit. This is significant because the ACA's penalty for applicable large employers is triggered when a full-time employee receives a premium tax credit for coverage under an Exchange.

To determine an employee's eligibility for a tax credit, the ACA provides that employer-sponsored coverage is considered affordable if the employee's required contribution for self-only coverage does not exceed **9.5 percent** of the employee's household income for the tax year. After 2014, this required contribution percentage is adjusted annually to reflect the excess of the rate of premium growth.

Rev. Proc. 2014-37 previously adjusted this required contribution percentage to 9.56 percent for plan years beginning in 2015. **For plan years beginning in 2016, the required contribution percentage is 9.66 percent.**

Employer Mandate

Starting in 2015, the ACA's "employer mandate" or "pay or play" rules require applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees (and dependents) or pay a penalty. ALEs are employers that have, on average, at least 50 full-time employees (including full-time equivalents) during the preceding calendar year.

Many ALEs will be subject to the pay or play rules starting in 2015. However, ALEs with fewer than 100 full-time (and full-time equivalent) employees may have an additional year, until 2016, to comply.

Affordability Determination

The affordability of health coverage is a key point in determining whether an ALE will be subject to a penalty. The pay or play rules generally determine affordability of employer-sponsored coverage by reference to the rules for determining premium tax credit eligibility.

Therefore, for 2014, employer-sponsored coverage is considered affordable under the pay or play rules if the employee's required contribution for self-only coverage does not exceed **9.5 percent** of the employee's household income for the tax year. As noted above, this required contribution percentage was adjusted to:

- **9.56 percent** for 2015; and
- **9.66 percent** for 2016.

The affordability test applies only to the portion of the annual premiums for self-only coverage, and does not include any additional cost for family coverage. Also, if an employer offers multiple health coverage options, the affordability test applies to the lowest-cost option that also satisfies the minimum value requirement.

Affordability Safe Harbors

Because an employer generally will not know an employee's household income, the IRS created three affordability safe harbors that measure affordability based on:

- Form W-2 wages from that employer;
- The employee's rate of pay; or
- The federal poverty line (FPL) for a single individual.

The affordability safe harbors are all optional. An employer may use one or more of the safe harbors for all its employees or for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category.

Although the general pay or play affordability rules determine affordability by reference to the rules for determining premium tax credit eligibility, **these affordability safe harbors do not reference the premium tax credit eligibility rules**. Instead**, the safe harbor rules specifically use 9.5 percent** as the required contribution.

Thus, based on a literal reading of the affordability safe harbor rules, **ALEs using any of the affordability safe harbors in years after 2014 will measure their plan's affordability using a required contribution of 9.5 percent** (instead of the adjusted affordability percentage for the year).

ALEs who are not using any of the affordability safe harbors in years after 2014 will apply the required contribution percentage under the premium tax credit eligibility rules. As a result, these employers can measure their health plan's affordability using the adjusted affordability percentage for the year (9.56 percent in 2015 and 9.66 percent in 2016).

Although Rev. Proc. 2014-62 did not address this disconnect, the IRS may issue guidance in the future on this issue.

Individual Mandate
Beginning in 2014, the ACA's "individual mandate" requires most individuals to obtain acceptable health coverage for themselves and their family members or pay a penalty. However, individuals who **lack access to affordable minimum essential coverage are exempt** from the individual mandate. For purposes of this exemption:

- Coverage is affordable for **an employee** if the required contribution for the lowest-cost, self-only coverage does not exceed **8 percent** of household income.
- Coverage is affordable for **family members** if the required contribution for the lowest-cost family coverage does not exceed **8 percent** of household income.

For plan years beginning in 2015, Rev. Proc. 2014-37 previously increased this percentage to 8.05 percent. **For plan years beginning in 2016, the 2016 Notice of Benefit and Payment Parameters Proposed Rule increases this percentage to 8.13 percent**.

Premium Tax Credit
The ACA provides premium tax credits to help low-income individuals and families afford health insurance purchased through an Exchange. The amount of a taxpayer's premium tax credit is determined based on the amount the individual should be able to pay for premiums (expected contribution).

The expected contribution is calculated as a percentage of the taxpayer's household income, based on the federal poverty level (FPL). This percentage increases as the taxpayer's household income increases, as follows:

Income Level	Contribution Percentage
Up to 133% FPL	2%
133 – 150% FPL	3 – 4%
150 – 200% FPL	4 – 6.3%
200 – 250% FPL	6.3 – 8.05%
250 – 300% FPL	8.05 – 9.5%
300 – 400% FPL	9.5%

Rev. Proc. 2014-37 previously adjusted this table for taxable years beginning in 2015, as follows:

Income Level	2015 Contribution Percentage
Up to 133% FPL	2.01%
133 – 150% FPL	3.02 – 4.02%
150 – 200% FPL	4.02 – 6.34%
200 – 250% FPL	6.34 – 8.10%
250 – 300% FPL	8.10 – 9.56%
300 – 400% FPL	9.56%

For taxable years beginning in 2016, Rev. Proc. 2014-62 adjusts this table as follows:

Income Level	2016 Contribution Percentage
Up to 133% FPL	2.03%
133 – 150% FPL	3.05 – 4.07%
150 – 200% FPL	4.07 – 6.41%
200 – 250% FPL	6.41 – 8.18%
250 – 300% FPL	8.18 – 9.66%
300 – 400% FPL	9.66%