IRS Increases Percentage for Determining Affordability Under the ACA for 2015

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Quick Facts

- Several ACA provisions assess affordability of employer-sponsored health coverage, including the employer and individual mandates
- For 2015, the affordability percentage increases from 8% to 8.05% under the individual mandate
- For 2015, the affordability percentage increases from 9.5% to 9.56% under the employer mandate and premium tax credit eligibility rules
- This new percentage may not apply under the employer mandate's affordability safe harbors

For plan years beginning in 2015, the health coverage affordability percentage under the ACA's pay or play rules will generally increase slightly, from 9.5 percent to 9.56 percent.

Several key reforms under the Affordable Care Act (ACA) measure the affordability of employer-sponsored health coverage. 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.

On July 24, 2014, the Internal Revenue Service (IRS) released [Revenue Procedure 2014-37] (Rev. Proc. 2014-37) to index the ACA's affordability contribution percentage for 2015.

- For plan years beginning in 2015**, 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 **9.56 percent** of the employee's household income for the year.

  However, applicable large employers using an affordability safe harbor under the pay or play rules **may have to continue using a contribution percentage of 9.5 percent** to measure their plan's affordability.

- For plan years beginning in 2015, coverage is unaffordable for purposes of the individual mandate exemption if it exceeds **8.05 percent** of household income.
- Rev. Proc. 2014-37 also updates the table for determining the amount of any premium tax credit for plan years beginning in 2015.

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 shared responsibility penalty for applicable large employers is triggered when a full-time

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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 over the rate of income growth for the preceding calendar year.

For plan years beginning in 2015, Rev. Proc. 2014-37 adjusts this required contribution percentage to **9.56 percent**.

Employer Mandate

Starting in 2015, the ACA requires applicable large employers to offer affordable, minimum value health coverage to their full-time employees (and dependents) or pay a penalty. These rules are also known as the employer mandate or the "pay or play" rules.

The pay or play rules apply only to applicable large employers (ALEs), which 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 employees may have an additional year, until 2016, to comply with the employer mandate.

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.

This required contribution percentage is to be adjusted annually after 2014. As noted above, Rev. Proc. 2014-37 adjusts this required contribution percentage for plan years beginning in 2015 to **9.56 percent**.

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 employers may use to determine affordability based on information that is available to them.

The affordability safe harbors are all optional. An employer may choose to use one or more of the affordability 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.

The affordability safe harbors are:

- The Form W-2 safe harbor (affordability determined based on Form W-2 wages from that employer)
- The rate of pay safe harbor (affordability determined based on an employee's rate of pay)
- The federal poverty line (FPL) safe harbor (affordability determined based on FPL for a single individual)

The general employer mandate affordability rules determine affordability by reference to

the rules for determining premium tax credit eligibility. However, 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, **applicable large employers using any of the affordability safe harbors in 2015 will measure their plan's affordability using a required contribution of 9.5 percent** (instead of 9.56 percent).

Applicable large employers who are not using any of the affordability safe harbors in 2015 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 a required contribution of 9.56 percent.

The IRS may issue guidance in the future to address this disconnect.

Individual Mandate

Beginning in 2014, the ACA requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. This rule is often referred to as the "individual mandate." Individuals may be eligible for an exemption from the penalty in certain circumstances.

Under the ACA, 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.
- For **family members**, coverage is affordable if the required contribution for the lowest-cost family coverage does not exceed **8 percent** of household income.

This required contribution percentage is to be adjusted annually after 2014.

For plan years beginning in 2015, Rev. Proc. 2014-37 increases this percentage from 8 percent to **8.05 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. 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%

The percentages in this table will be adjusted annually after 2014.

For taxable years beginning in 2015, Rev. Proc. 2014-37 adjusts this table as follows:

Income Level	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%