

# Affordable Care Act 201: Employer Shared Responsibility Provisions

**July 2013**

***These materials are provided for informational purposes only and are not intended as legal or tax advice. Readers should consult their legal or tax professionals to discuss how these matters relate to their individual business circumstances.***



# Affordable Care Act

## Employer Shared Responsibility for Employee Health Coverage

Note: Transition relief means that no employer responsibility payments will be owed for 2014

# Reliance on Proposed Regulations

## Key Points

- Proposed regulations were issued in December 2012
- Employers may rely on the proposed regulations for purposes of compliance until final regulations or other guidance are effective
- If final regulations are more restrictive, they will apply prospectively, and employers will be given sufficient time to comply

## Provisions

The health care law does not require an employer to provide coverage to its employees. However, an employer with an average of 50 or more full-time employees (including full-time-equivalent (FTE) employees) could be subject to a Shared Responsibility Payment if:

- The employer does not offer coverage to at least 95% of its full-time employees (and their dependents).

**OR**

- The employer offers coverage to its full-time employees that is not “affordable” or does not provide “minimum value”.

**AND**

At least one full-time employee receives a Premium Tax Credit to purchase coverage in the Health Insurance Marketplace.

## How does a business know if it's large enough to be subject to the Employer Shared Responsibility rules?

- An employer averaging 50 or more full-time (or combination of 50 full-time and full-time equivalent) employees is subject to these rules.
- An employer averaging less than 50 full-time (or combination of 50 full-time and full-time equivalent) employees is not subject to these rules.
- To determine whether it is subject to Employer Shared Responsibility for a given calendar year, the employer looks to the size of its workforce in the **prior** calendar year.

# Employer Shared Responsibility Provisions:

## *Key Definitions*

- **Employer:** Includes for-profit, non-profit and government entity employers
  - Common law definition of “employee” and “employer” applies
- **Full-Time Employee:** An employee who is employed on average at least 30 hours per week (or 130 hours per month)
- **Full-Time-Equivalent (FTE) Employee:** A combination of employees, each of whom individually is not a full-time employee because he/she is not employed on average at least 30 hours per week, but who, in combination, are counted as the equivalent of a full-time employee
  - *For example, two employees, each of whom works 15 hours per week, are the equivalent of one full-time employee*

## How does an employer count its full-time and FTE employees to know whether it has 50 or more?

- An employer is subject to Employer Shared Responsibility if it averaged a combination of full-time employees (including seasonal employees) and full-time equivalents that equals at least 50.

**Example:** Company X has 40 full-time employees working 40 hours per week, along with 20 part-time employees working 15 hours per week. The 20 part-time employees are counted as 10 full-time equivalent employees. Company X has 50 full-time employees and is subject to the employer shared responsibility provisions.

# How does a business know whether it is large enough to be subject to Employer Shared Responsibility?

1

## Full-time Employees

(Employee who averages 30 hours per week or 130 hours per month)

Qty.

Subject to ESR if avg is  $\geq 50$  per month for the prior calendar year<sup>1</sup>

OR

2

## Full-time Employees

(Employee who averages 30 hours per week or 130 hours per month)

*and*

## Full-time Equivalent Employees

(Aggregate hours worked by non-full-time employees in a month divided by 120)

Qty.

+

Qty.

Sum

Subject to ESR if avg is  $\geq 50$  per month for the prior calendar year<sup>1</sup>

1 See Proposed Treasury Regulation §54.4980H-2 (<http://www.irs.gov/pub/newsroom/reg-138006-12.pdf>) for controlled group rules and examples in determining whether an employer is subject to employer shared responsibility. Also see [IRS's FAQs](#) on Employer Shared Responsibility.



# Special counting rules for determining whether an employer is subject to Employer Shared Responsibility

- **Aggregation Rule:** Certain affiliated employers with common ownership or who are part of a controlled group must aggregate their employees for purposes of determining whether they are subject to employer shared responsibility.

**Example:** For 2015 and 2016, Corporation P owns 100% of all classes of stock of Corporations S and T. This makes P, S, and T a controlled group of corporations under tax rules. P has no employees at any time in 2015. For every month in 2015, S has 20 full-time employees and T has 15 full-time employees and 15 full-time equivalents (FTEs). Because P, S, and T have a combined total of at least 50 full-time employees (or equivalents) during 2015, each of P, S, and T is subject to employer shared responsibility for 2016. Because P has no employees, it would not owe any payment.

- **Seasonal Worker Exception:** If an employer's workforce equals or exceeds 50 full-time employees (or equivalents) for 120 days or fewer during a calendar year solely due to seasonal workers, the employer is exempted from employer shared responsibility.

## For an employer that is subject to the shared responsibility rules, what does offering health coverage in a month mean?

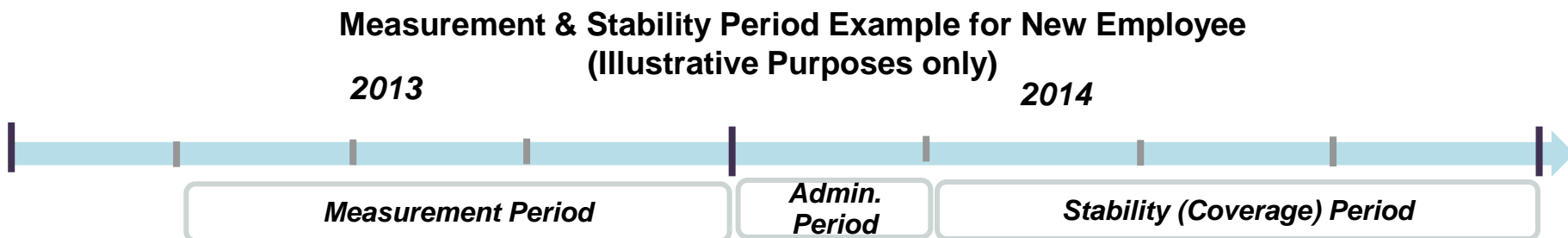
- Must offer to at least 95% of full-time employees to be considered “offering coverage to its full-time employees”. (Employers with fewer than 100 full-time employees are treated as offering to 95% if they offer to all but five of their full-time employees).
- If offer accepted, coverage must be effective by the first day of the relevant calendar month.
- Employees must have a reasonable chance to opt out of an offer of non-affordable or non-minimum value coverage.

# Additional information about offering coverage to full-time employees

## Proposed Regulations provide:

- A maximum 90 day waiting period for offering coverage to newly-hired employees who are expected to work full-time.
- Employers may determine which employees are full-time employees for employer responsibility purposes using month-by-month determinations, or, in the case of “variable hour” employees or seasonal employees, by averaging hours over a period of months under a “look-back” measurement method.
  - The method used to determine who are full-time employees for purposes of the payment calculation is not the same as the method used to determine whether an employer is large enough to be subject to the employer shared responsibility requirement.

# “Look-back” Measurement and Stability Periods



**“Look-back” Measurement Period:** An optional employer-selected period of 3 to 12 months used to determine employee full-time status.

**Stability Period:** The period following the measurement period (and any administrative period) during which an employer must treat an employee as full-time if the employee was determined to be full-time during the measurement period. Must generally be at least as long as the measurement period and, in any event, not less than 6 months.

**Administrative Period:** An optional employer-selected period (up to 90 days) between the measurement period and stability period, used to notify and enroll new employees. (Cannot create a gap in coverage of previously covered employees)

## General Rule – How are hours counted to determine full-time status for employer shared responsibility payment?

- **Hourly Employees** – use actual hours
- **Non-Hourly (such as Salaried) Employees** – employer may choose any of the 3 following methods:
  - Actual Hours
  - Days Worked Equivalency Method (8 hours per day)
  - Weeks Worked Equivalency Method (40 hours per week)

**Note:** Must use actual hours if the Equivalency Methods (Days or Weeks) would substantially understate an employee's hours of service in a manner that would cause that employee not to be treated as a full-time employee.

## What does it mean to offer coverage that provides minimum value?

- Minimum value measures plan generosity based on percentage of costs covered by the plan (as opposed to the individual) through cost-sharing (co-pays, deductibles, coinsurance).
- To meet minimum value, HHS has developed a calculator employers can use to input their plan details and determine if it meets the 60% value threshold.
- Employers can use an [on-line calculator](#) to input their plan's cost-sharing terms and determine whether the plan meets the 60% minimum value threshold.

# What does it mean to offer coverage that is affordable?

- Coverage is considered affordable if the full-time employee's share of self-only coverage costs no more than 9.5% of his/her annual household income.
- **Three Affordability safe harbors:**
  - **Form W-2 safe harbor:** If the cost to the employee of self-only coverage is not more than 9.5% of his/her wages as reported in Box 1 of the employee's Form W-2, the employer is deemed to have offered affordable coverage for purposes of the shared responsibility provision.

**Example:** Employee A is employed by Company Z (which is subject to employer shared responsibility). In 2015 Z offers minimum essential coverage to at least 95% of Z's full-time employees and their dependents, and offers A and his dependents minimum essential coverage that meets the minimum value standard. For 2015, A's contribution for self-only coverage is \$100/month or \$1,200/year, and A's Form W-2 wages from Z are \$24,000. Because A's contribution for 2015 does not exceed 9.5% of his W-2 wages from Z for 2015 (since \$1,200 is 5% of \$24,000), Z does not owe a shared responsibility payment with respect to A for 2015.

## Additional affordability safe harbors

- **Rate of pay safe harbor:** If the cost to the employee of self-only coverage for a month is not more than 9.5% of an amount equal to 130 hours multiplied by the employee's hourly rate of pay (and the employee's hourly rate of pay is not reduced during the year), the employer is deemed to have offered affordable coverage for purposes of employer shared responsibility.
- **Federal poverty line safe harbor:** If the cost to the employee of self-only coverage for a month is not more than 9.5% of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12 (for the state where the employee is employed), the employer is deemed to have offered affordable coverage for purposes of employer shared responsibility.

See Proposed Treasury Regulation 54.4980H-5(e)(2) for the 3 affordability safe harbors (<http://www.irs.gov/pub/newsroom/reg-138006-12.pdf>)



# Which employees could be eligible for premium tax credits to purchase coverage in a Marketplace?

Employees:

- ✓ Whose incomes are between 100% and 400% of federal poverty level [for example, a 3-person family with income between \$19,530 and \$78,120 for 2013] and who enroll in coverage through a Marketplace

**AND**

- ✓ Who are not offered or eligible for employer-sponsored coverage; OR are offered or eligible only for employer-sponsored coverage that is unaffordable or that fails to provide minimum value and they don't actually enroll in it

**AND**

- ✓ Who are not eligible for coverage through a government-sponsored program such as Medicaid or CHIP.

# How are the Employer Shared Responsibility payments calculated?

## Coverage Not Offered to at Least 95% of the Full-Time Employees

- Payment applies if any **full-time employee** receives a premium tax credit in the individual Marketplace.
- **Payment owed:** \$2K/year times number of full-time employees in excess of 30
- Payment calculated separately for each month for which coverage not offered (\$166.67/month).
- Payment based on employer's number of full-time employees for that month (in excess of 30).

## Coverage Offered to at least 95% of Full-Time Employees, But Either Not Affordable or Not Minimum Value

- Payment applies for each **full-time employee who receives a premium tax credit** in the individual Marketplace.
- **Payment owed:** \$3K/year for each full-time employee who receives a premium tax credit in individual Marketplace.
- Payment calculated on monthly basis (\$250/month).
- This payment cannot exceed payment owed if coverage not offered (see column on left).

Note: Transition relief means that no employer responsibility payments will be owed for 2014

# Employer Shared Responsibility Provisions

## Additional Key Points

- Employers will not owe any payment for failure to offer coverage to employees who are not full-time employees (e.g., part-time employees).
- Employers will not owe any payment with respect to a full-time employee who declines the employer's offer of affordable coverage that provides minimum value (for example, because they are covered under their spouse's insurance).
- The cost of providing coverage is ordinarily tax deductible to employers. By contrast, any payments owed under the employer shared responsibility provisions are not tax deductible.

**Note: Transition relief means that no employer responsibility payments will be owed for 2014**

# Small Business Resources

[www.sba.gov/healthcare](http://www.sba.gov/healthcare)

[www.healthcare.gov](http://www.healthcare.gov)

[www.irs.gov/aca](http://www.irs.gov/aca)

[www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform)