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IRS releases ACA shared responsibility affordability percentage for 2020

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The IRS has released the 2020 contribution percentage used to determine whether employer-sponsored coverage is affordable for purposes of ACA premium tax credit eligibility and for employer shared responsibility assessments. Employers should consider this affordability percentage in developing their 2020 contribution strategies.

Background

Section 36B of the Internal Revenue Code, added by the ACA, created a premium tax credit to help middle- and lower-income individuals pay for health coverage in the public marketplaces. An individual offered employer-sponsored minimum essential coverage (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 for plan years beginning in 2015. Subsequent adjustments increased the affordability limit to 9.56% of household income for 2015, 9.66% for 2016, and 9.69% for 2017. The limit was reduced to 9.56% of household income for 2018 and increased to 9.86% for 2019.

ACA also added section 4980H to the Code. Section 4980H sets out the two nondeductible "shared responsibility assessments" to which an applicable large employer (ALE) may be subject if it has at least one full-time employee who obtains coverage through the public marketplace and receives a premium tax credit (see sidebar).

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 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 if the required employee contribution for the lowest-cost option offered does not exceed 9.5% of one of the following:

- The employee's wages for the calendar year reported on Form W-2 (W-2 safe harbor)
- The amount obtained by multiplying 130 hours 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)
- 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 IRS previously 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 the affordability safe harbors. It also stated that employers could rely on those adjustments pending such amendment. To date, no amendment has been made.

Assessment refresher

A "play or pay" assessment may be imposed when an ALE fails to offer MEC to substantially all full-time employees and their dependent children during a month and at least one full-time employee 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%.

A "play and pay" assessment may be imposed when an ALE offers MEC to substantially all full-time employees, but a full-time employee receives a premium tax credit because: (1) the MEC is unaffordable or fails to provide minimum value, or (2) the employee was not offered MEC.

For more information about shared responsibility requirements, see our **April 17, 2014** *FYI In-Depth,* and for more about IRS assessment activity, see our *FYI* from **March 21, 2018**.

2020 premium tax credit affordability percentage

In Revenue Procedure 2019-29, the IRS announced that the premium tax credit affordability percentage for 2020 will be 9.78% of household income — a decrease from the 9.86% limit for 2019. This percentage also applies to the employer shared responsibility affordability safe harbors. Thus, for 2020, employer coverage will be deemed affordable for purposes of the employer shared responsibility assessment only if the required employee contribution for the lowest cost self-only option offered by the employer does not exceed 9.78% of the applicable safe harbor amount. (The table at the end of this article includes the applicable affordability percentages for prior years, as well as other ACA indexed dollar amounts.)

FPL safe harbor for 2020

Many employers use the FPL safe harbor to develop employee contributions for self-only coverage to avoid ACA assessments under 4980H. Using the FPL safe harbor also simplifies ACA reporting and coding of Form 1095-C.

In determining the maximum self-only contribution amount that a calendar year plan can charge in 2020 under the FPL safe harbor, the 2019 FPL of $12,490 for a one-person household is used. The maximum monthly contribution will be 9.78% of $12,490, divided by 12, or $101.79. The amounts for prior years are also included in the following table.

Calendar year	Prior year FPL	Affordability percentage	Maximum monthly contribution
2020	$12,490	9.78%	$101.79
2019	$12,140	9.86%	$99.75
2018	$12,060	9.56%	$96.08
2017	$11,880	9.69%	$95.93
2016	$11,770	9.66%	$94.75
2015	$11,670	9.56%	$92.97

In closing

Employers should consider the adjustments to the affordability contribution percentage in developing a contribution strategy for 2020 — 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.

ACA indexed dollar amounts								
	Out-of-pocket maximums (1,9)					Employer shared responsibility annual assessments (1,4,6,7,8)		
	Self-only	Other than self-only	PCORI fee (2,5)	Transitional reinsurance fee (6)	Health FSA salary reduction cap (3,9)	4980H(a) – Failure to offer coverage	4980H(b) – Failure to offer affordable, minimum value coverage	Affordability threshold under 4980H(b)
2020	$8,150	$16,300	N/A	N/A	Not available	$2,570 (est.)	$3,860 (est.)	9.78%
2019	$7,900	$15,800	N/A	N/A	$2,700	$2,500 (est.)	$3,750 (est.)	9.86%
2018	$7,350	$14,700	$2.45	N/A	$2,650	$2,320	$3,480	9.56%
2017	$7,150	$14,300	$2.39	N/A	$2,600	$2,260	$3,390	9.69%
2016	$6,850	$13,700	$2.26	$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; no assessment for plan years ending on and after October 1, 2019

(6) Applies on a calendar year basis

(7) 2019 and 2020 assessment 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 Code section 36B(b)(3)(A)(i)

(9) Applies on a plan year basis

N/A Not applicable

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