

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### **IRS releases ACA shared responsibility affordability percentage for 2023**

The IRS has released the 2023 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. The percentage will drop from 9.61% for 2022 to 9.12% for 2023. Employers should consider this affordability percentage in developing their 2023 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. The affordability percentage for 2022 is 9.61%.

ACA also added section 4980H to the Code which 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 below).

Recognizing that employers generally would not know an employee's household income (the basis for determining premium tax credit eligibility based on affordability), the 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

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#### **Authors**

Richard Stover, FSA,  
MAAA

Randie Thompson, JD,  
LLM

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](#).

## 2023 premium tax credit affordability percentage

In [Revenue Procedure 2022-34](#), the IRS announced that the premium tax credit affordability percentage for 2023 will be 9.12% of household income — a decrease from the 9.61% limit for 2022. This percentage also applies to the employer shared responsibility affordability safe harbors. Thus, for 2023, 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 9.12% 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 2023

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 2023 under the FPL safe harbor, the 2022 FPL of \$13,590 for a one-person household is used. The maximum monthly contribution will be 9.12% of \$13,590, divided by 12, or \$103.28. The amounts for prior years are also included in the following table.

Calendar year	Prior year FPL	Affordability percentage	Maximum monthly contribution
2023	\$13,590	9.12%	\$103.28
2022	\$12,880	9.61%	\$103.15
2021	\$12,760	9.83%	\$104.53
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

**Buck comment.** Note that in determining whether the self-only contribution amount satisfies affordability, with the exception of wellness programs designed to prevent or reduce tobacco use, affordability will be determined assuming that each employee fails to satisfy the requirements of the wellness program. For wellness programs that are designed to reduce or prevent tobacco use, affordability can be determined assuming that each employee satisfies the requirements of the wellness program. If the plan has an opt-out credit for waiving coverage, generally that credit needs to be added to the self-only contribution amount in determining affordability.

## In closing

Employers should consider the adjustments to the affordability contribution percentage in developing a contribution strategy for 2023 — 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

The table below summarizes the ACA indexed dollar limits for 2022 and prior years.

ACA indexed dollar amounts							
	Out-of-pocket maximums <sup>(1,8)</sup>		PCORI fee <sup>(2,5)</sup>	Health FSA salary reduction cap <sup>(3,8)</sup>	Employer shared responsibility annual assessments <sup>(1,4,6,7)</sup>		
	Self-only	Other than self-only			4980H(a) – Failure to offer coverage	4980H(b) – Failure to offer affordable, minimum value coverage	Affordability threshold under 4980H(b)
2023	\$9,100	\$18,200	Not available	Not available	\$2,880 (est)	\$4,320 (est)	9.12%
2022	\$8,700	\$17,400	Not available	\$2,850	\$2,750	\$4,120	9.61%
2021	\$8,550	\$17,100	\$2.79	\$2,750	\$2,700	\$4,060	9.83%
2020	\$8,150	\$16,300	\$2.66	\$2,750	\$2,570	\$3,860	9.78%
2019	\$7,900	\$15,800	\$2.54	\$2,700	\$2,500	\$3,750	9.86%
2018	\$7,350	\$14,700	\$2.45	\$2,650	\$2,320	\$3,480	9.56%
2017	\$7,150	\$14,300	\$2.39	\$2,600	\$2,260	\$3,390	9.69%
2016	\$6,850	\$13,700	\$2.26	\$2,550	\$2,160	\$3,240	9.66%
2015	\$6,600	\$13,200	\$2.17	\$2,550	\$2,080	\$3,120	9.56%
2014	\$6,350	\$12,700	\$2.08	\$2,500	\$2,000	\$3,000	9.50%
2013	n/a	n/a	\$2.00	\$2,500	n/a	n/a	n/a
2012	n/a	n/a	\$1.00	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, 2029
  - (6) Applies on a calendar year basis
  - (7) Affordability threshold adjusted consistent with Code Section 36B(b)(3)(A)(i)
  - (8) Applies on a plan year basis
- n/a Not applicable

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