ACA COMPLIANCE BULLETIN

ACA's Affordability Contribution Percentage Increased for 2017

HIGHLIGHTS

For plan years beginning in 2017, the ACA's affordability contribution percentages are adjusted to:

- **9.69 percent** under the pay or play rules
- **9.69 percent** under the premium tax credit eligibility rules
- **8.16 percent** under an exemption from the individual mandate

IMPORTANT DATES

April 12, 2016
Rev. Proc. 2016-24 increased the ACA's affordability contribution percentages for 2017.

December 31, 2016
The updated percentages are effective for taxable and plan years beginning after Dec. 31, 2016.

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OVERVIEW

On April 12, 2016, the Internal Revenue Service (IRS) issued Revenue Procedure 2016-24 to index the contribution percentages in 2017 for purposes of determining the affordability of an employer's plan under the Affordable Care Act (ACA).

For plan years beginning in 2017, employer-sponsored coverage will be considered affordable if the employee's required contribution for self-only coverage does not exceed:

- **9.69 percent** of the employee's household income for the year, for purposes of both the pay or play rules and premium tax credit eligibility; and
- **8.16 percent** of the employee's household income for the year, for purposes of an exemption from the individual mandate.

These updated affordability percentages are effective for taxable years and plan years beginning after Dec. 31, 2016.

Overview of the Affordability Requirement

Under the ACA, the affordability of an employer's plan may be assessed for the employer shared responsibility penalty, the individual mandate and the premium tax credit. The affordability test varies for each provision.

Under the ACA, the affordability of an employer's plan may be assessed in the following three contexts:

- ✓ The **employer shared responsibility penalty** for applicable large employers (also known as the pay or play rules or employer mandate);
- ✓ An exemption from the **individual mandate** tax penalty for individuals who fail to obtain health coverage; 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 IRS previously adjusted the affordability contribution percentage for 2015 in Rev. Proc. 2014-37, and for 2016 in Rev. Proc. 2014-62.

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 (ALEs) 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.

Employer Shared Responsibility Rules

Starting in 2015, the ACA's employer shared responsibility or "pay or play" rules require 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 were first subject to these rules starting in 2015. However, ALEs with fewer than 100 full-time (and full-time equivalent) employees may have had 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 employer shared responsibility 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 was considered affordable under the employer shared responsibility rules if the employee's required contribution for self-only coverage did not exceed **9.5 percent** of the employee's household income for the tax year (**9.56 percent** for 2015, and **9.66 percent** for 2016).

For 2017, Rev. Proc. 2016-24 increases the affordability contribution percentage to **9.69 percent**. This means that employer-sponsored coverage will be considered affordable under the employer shared responsibility rules if the employee's required contribution for self-only coverage does not exceed **9.69 percent** of the employee's household income for the tax year.

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.

These 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.

As written in the employer shared responsibility final rules, the affordability safe harbors do not reference the premium tax credit eligibility rules. Instead, the safe harbors specifically use 9.5 percent as the required contribution. However, on Dec. 16, 2015, IRS Notice 2015-87 confirmed that ALEs using an affordability safe harbor **may rely on the adjusted affordability contribution percentages for 2015 and future years**.

Individual Mandate Exemption

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, this affordability contribution percentage was adjusted to **8.05 percent**. For plan years beginning in 2016, the percentage was adjusted to **8.13 percent**. For 2017, Rev. Proc. 2016-24 increases this affordability contribution percentage to **8.16 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, and is indexed each year after 2014, as follows:

Income Level	Contribution Percentage			
	2014	2015	2016	2017
Up to 133% FPL	2%	2.01%	2.03%	2.04%
133 – 150% FPL	3 – 4%	3.02 – 4.02%	3.05 – 4.07%	3.06 – 4.08%
150 – 200% FPL	4 – 6.3%	4.02 – 6.34%	4.07 – 6.41%	4.08 – 6.43%
200 – 250% FPL	6.3 – 8.05%	6.34 – 8.10%	6.41 – 8.18%	6.3 – 8.21%
250 – 300% FPL	8.05 – 9.5%	8.10 – 9.56%	8.18 – 9.66%	8.21 – 9.69%
300 – 400% FPL	9.5%	9.56%	9.66%	9.69%