



Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

Indexing Adjustments Related to Certain Affordable Care Act Provisions for 2015 and 2016¹

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This brief seeks to provide guidance to Tribes on indexing adjustments associated with the Patient Protection and Affordable Care Act (ACA) provisions for calculating the amount of premium tax credit (PTCs), determining whether individuals qualify for an income-based exemption from the shared responsibility payment, determining whether employer-sponsored health insurance is considered affordable, and determining the amount of any shared responsibility payment owed by employers.

Applicable Percentage Contribution (for Premium Tax Credit Calculations)

Under ACA, individuals who have an income between 100 percent and 400 percent of the federal poverty level (FPL) and meet other requirements can obtain PTCs to help pay for Marketplace coverage. Section 36B of the Internal Revenue Code (Code) (as added by ACA) set the required household income contribution percentages for 2014 and authorized IRS to adjust these percentages annually to reflect the excess of the rate of premium growth for the preceding calendar year² over the rate of income growth for the preceding calendar year. In 2014, IRS released guidance updating the applicable contribution percentages for CY 2015³ and CY 2016⁴ (see Table 1 below).⁵

Table 1: Applicable Percentage Contribution for CY 2014 Through CY 2016

Household Income (as a Percentage of FPL)	2014		2015		2016	
	Low End of Range	Top End of Range	Low End of Range	Top End of Range	Low End of Range	Top End of Range
Less than 133%	2.0%	2.0%	2.01%	2.01%	2.03%	2.03%
133% to 150%	3.0%	4.0%	3.02%	4.02%	3.05%	4.07%
150% to 200%	4.0%	6.3%	4.02%	6.34%	4.07%	6.41%
200% to 250%	6.3%	8.05%	6.34%	8.10%	6.41%	8.18%
250% to 300%	8.05%	9.5%	8.10%	9.56%	8.18%	9.66%
300% to 400%	9.5%	9.5%	9.56%	9.56%	9.66%	9.66%

Source: IRS, Rev. Proc. 2014-37 and Rev. Proc. 2014-62

¹ This brief is for informational purposes only and is not intended as legal advice. For questions on this brief, please contact Doneg McDonough, TSGAC Technical Advisor, at DonegMcD@Outlook.com.

² “Premium growth for the preceding calendar year” for this and the other measures refers to the quotient determined by dividing the projected per enrollee spending for employer-sponsored private health insurance for the preceding calendar year by the projected per enrollee spending for employer-sponsored private health insurance for the calendar year two years prior. The projections are the National Health Expenditure Projections published by the CMS Office of the Actuary.

³ See Rev. Proc. 2014-37 at <http://www.irs.gov/pub/irs-drop/rp-14-37.pdf>.

⁴ See Rev. Proc. 2014-62 at <http://www.irs.gov/pub/irs-drop/rp-14-62.pdf>.

⁵ IRS (and HHS) may decide to revise these (and other) percentages at a later date.

Affordability Percentage (Required Contribution Percentage for Affordability Determinations)

Starting in 2014, § 5000A of the Code (as added by ACA), requires individuals of all ages to make a shared responsibility payment when filing their federal income tax return if they do not have qualifying health insurance (minimum essential coverage) for each month or do not qualify for an exemption. American Indians and Alaska Natives are able to file for an exemption from this payment on their federal income tax filings. Other individuals and families who cannot afford coverage because their premiums would exceed a certain percentage of household income, *i.e.* the affordability percentage, qualify for an income-based exemption. Section § 5000A of the Code set the affordability percentage at 8 percent for 2014 and authorized HHS to adjust this percentage annually to reflect the excess of the rate of premium growth for the preceding calendar year over the rate of income growth for the preceding calendar year. In 2014 and early 2015, HHS issued regulations updating the affordability percentage for CY 2015⁶ and CY 2016.⁷ In November 2015, HHS issued proposed regulations updating the affordability percentage for CY 2017.⁸

Table 2: Affordability Percentage for CY 2014 Through CY 2017

	2014	2015	2016	2017
Affordability Percentage	8.0%	8.05%	8.13%	8.16%

Source: CMS, CMS-9949-F, CMS-9944-F, and CMS-9937-P

Required Contribution Percentage (for Calculating Affordability of Employer Offer of Coverage)

Under section 4980H of the Code, as added by ACA, applicable large employers (ALEs)--those with at least a certain number of employees (generally 50 full-time employees or a combination of full-time and part-time employees equivalent to 50 full-time employees)--might have to make a shared responsibility payment if they do not offer affordable health insurance to their full-time employees.⁹ The required contribution percentage, *i.e.* the percentage of household income an employee must contribute for self-only coverage, is used to determine whether employer-sponsored insurance is considered affordable. Section § 36B of the Code set the affordability percentage at 9.5 percent for 2014 and authorized IRS to adjust this percentage annually to reflect the excess of the rate of premium growth for the preceding calendar year over the rate of income growth for the preceding calendar year. In 2014, IRS released guidance updating the required contribution percentages for CY 2015¹⁰ and CY 2016¹¹ (see Table 3 below).

Table 3: Required Contribution Percentage for CY 2014 Through CY 2016

	2014	2015	2016
Required Contribution Percentage	9.5%	9.56%	9.66%

Source: IRS, Rev. Proc. 2014-37 and Rev. Proc. 2014-62

⁶ See CMS-9949-F, “Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond,” at <http://www.gpo.gov/fdsys/pkg/FR-2014-05-27/pdf/2014-11657.pdf>.

⁷ See CMS-9944-F, “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016,” at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf>.

⁸ See CMS-9937-P, “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017,” at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2015-29884.pdf>.

⁹ A description of the employer requirements under the Affordable Care Act, and subsequent amendments, may be found at: <https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act#Making>.

¹⁰ See Rev. Proc. 2014-37.

¹¹ See Rev. Proc. 2014-62.

ALEs subject to a shared responsibility payment will have to make one of two types of payment, but not both. The first type of payment applies if, for any month in 2016 and subsequent years, an ALE does not offer minimum essential coverage to at least 95 percent of its full-time employees (and their dependents) and if at least one full-time employee receives a premium tax credit for purchasing health insurance through the Marketplace. In this case, the ALE must make an annual payment of \$2,000 for each full-time employee (without regard to whether each employee received a premium tax credit), after excluding the first 30 full-time employees from the calculation. Beginning in 2015, IRS will index this figure annually.¹² In 2014 and 2015, there are transition rules that lessen the requirements on employers.

Even if an ALE offers minimum essential coverage to a sufficient number of full-time employees (and their dependents) to avoid liability for the first type of shared responsibility payment, it generally still will have to make the second type of payment for each full-time employee (if any) who receives a premium tax credit for purchasing health insurance through the Marketplace. In this case, the ALE must make an annual payment of \$3,000 (calculated at 1/2th per applicable month) for each full-time employee who received a premium tax credit or cost-sharing assistance. Beginning in 2015, IRS will index this figure annually.¹³

Table 4: Applicable Payment Amount (Employer Shared Responsibility) for CY 2014 Through CY 2016

	2014	2015	2016
Applicable Payment Amount (1st Type)	\$2,000	Not yet published	Not yet published
Applicable Payment Amount (2nd Type)	\$3,000	Not yet published	Not yet published

Source: TD 9655, "Shared Responsibility for Employers Regarding Health Coverage"

¹² As required by section 4980H of the Code, IRS will increase this figure by an amount equal to the product of the figure and the premium adjustment percentage for the calendar year.

¹³ Ibid.