



Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

Applicable Percentages and Thresholds: Indexing Adjustments Related to Certain Affordable Care Act Provisions for 2015, 2016, and 2017¹

Revised June 21, 2016

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, determining the amount of any shared responsibility payment owed by employers, and establishing the maximum out-of-pocket amounts for individuals and families.

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

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

⁴ See IRS, 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.

Table 1: Applicable Percentage Contribution for CY 2014 Through CY 2017

Household Income (as a % of FPL)	2014		2015		2016		2017	
	Low End of Range	Top End of Range	Low End of Range	Top End of Range	Low End of Range	Top End of Range	Low End of Range	Top End of Range
< 133%	2.0	2.0	2.01 (+0.5)	2.01 (+0.5)	2.03 (+1.0)	2.03 (+1.0)	2.04 (+0.5)	2.04 (+0.5)
133% to 150%	3.0	4.0	3.02 (+0.7)	4.02 (+0.5)	3.05 (+1.0)	4.07 (+1.2)	3.06 (+0.3)	4.08 (+0.2)
150% to 200%	4.0	6.3	4.02 (+0.5)	6.34 (+0.6)	4.07 (+1.2)	6.41 (+1.1)	4.08 (+0.2)	6.43 (+0.3)
200% to 250%	6.3	8.05	6.34 (+0.6)	8.10 (+0.6)	6.41 (+1.1)	8.18 (+1.0)	6.43 (+0.3)	8.21 (+0.4)
250% to 300%	8.05	9.5	8.10 (+0.6)	9.56 (+0.6)	8.18 (+1.0)	9.66 (+1.0)	8.21 (+0.4)	9.69 (+0.3)
300% to 400%	9.5	9.5	9.56 (+0.6)	9.56 (+0.6)	9.66 (+1.0)	9.66 (+1.0)	9.69 (+0.3)	9.69 (+0.3)

Source: IRS, Rev. Proc. 2014-37, Rev. Proc. 2014-62, and Rev. Proc. 2016-24. Percentage change from previous year appears in parenthesis.

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 March 2017, HHS issued 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-F.

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-F, “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017,” at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-04439.pdf>.

In addition to the income-based exemption discussed above, individuals who do not have gross income that meets the minimum threshold for having to file a federal income tax return qualify for an exemption from the shared responsibility payment, provided that no one can claim these individuals as a dependent.⁹ IRS determines the tax filing threshold annually.

Table 3: Federal Income Tax Filing Threshold for 2014 Through 2016 (Ages 0-64)

Tax Filing Status	2014 (2013 tax year)	2015 (2014 tax year)	2016 (2015 tax year)
Single	10,000	\$10,150	\$10,300
Head of Household	\$11,500	\$13,050	\$13,250
Married Filing Jointly	\$20,000	\$20,300	\$20,600
Married Filing Separately	\$3,900	\$3,950	\$4,000
Qualifying Widower with Child Dependent	\$16,100	\$16,350	\$16,600

Source: IRS, Publication 501, 2013-2015.

Annual Limitations on Cost-Sharing

ACA established maximum annual limitations on cost-sharing for individual (self-only) and family (non-self-only) health insurance coverage. In May 2013, IRS set these limitations at \$6,350 and \$12,700, respectively, for plan year (PY) 2014.¹⁰ For plan years after 2014, 45 CFR 156.130(a)(2) granted HHS the authority to adjust the limitation on cost-sharing for individual coverage 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 and set the limitation for family coverage at twice that amount. HHS issued regulations updating the limitations on cost-sharing for PY 2015 in 2014,¹¹ for PY 2016 in 2015,¹² and PY 2017 in 2016 (see Table 4 below).¹³

Table 4: Annual Limitations on Cost-Sharing for PY 2014 Through PY 2017

2014		2015		2016		2017	
Individual	Family	Individual	Family	Individual	Family	Individual	Family
\$6,350	\$12,700	\$6,600	\$13,200	\$6,850	\$13,700	\$7,150	\$14,300

Source: IRS, Rev. Proc. 2013-25; CMS, CMS-9949-F, CMS-9944-F, and CMS-9937-F.

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.¹⁴ The required contribution

⁹ See CCIIO, “Shared Responsibility Guidance—Filing Threshold Hardship Exemption,” at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Filing-Threshold-Exemption-Guidance-9-18-14.pdf> and IRS, Notice 2014-76, at <https://www.irs.gov/pub/irs-drop/n-14-76.pdf>.

¹⁰ See IRS, Rev. Proc. 2013-25, at <https://www.irs.gov/pub/irs-drop/rp-13-25.pdf>.

¹¹ See CMS-9949-F.

¹² See CMS-9944-F.

¹³ See CMS-9937-F.

¹⁴ A description of the employer requirements under the Affordable Care Act, and subsequent amendments, is available at <https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act#Making>.

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 2015¹⁵ and CY 2016¹⁶ (see Table 3 below).

Table 5: Required Contribution Percentage for CY 2014 Through CY 2017

	2014	2015	2016	2017
Required Contribution %	9.5	9.56	9.66	9.69

Source: IRS, Rev. Proc. 2014-37, Rev. Proc. 2014-62, and Rev. Proc. 2016-24.

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.¹⁷ 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 1/12th 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.¹⁸

Table 5: Applicable Payment Amount (Employer Shared Responsibility) for CY 2014 Through CY 2016

	2014	2015	2016
Applicable Payment Amount (1st Type)	\$2,000	2,076*	\$2,160*
Applicable Payment Amount (2nd Type)	\$3,000	3,120*	\$3,240*

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

*Figure calculated based on section 4980H of the Code.

¹⁵ See IRS, Rev. Proc. 2014-37.

¹⁶ See IRS, Rev. Proc. 2014-62.

¹⁷ 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.

¹⁸ *Ibid.*