



# Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

## Applicable Percentages, Thresholds, and Payments: Indexing Adjustments Related to Certain Affordable Care Act Provisions for 2015-2019<sup>1</sup>

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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, determining the amount of any shared responsibility payment owed by individuals or 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

Table 1: Applicable Percentage Contribution for CY 2014 Through CY 2019

HH Income (% FPL)	2014		2015		2016		2017		2018		2019	
	Low End	Top End	Low End	Top End	Low End	Top End	Low End	Top End	Low End	Top End	Low End	Top End
< 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)	2.01 (-1.5)	2.01 (-1.5)	2.08 (3.5)	2.08 (3.5)
133%-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)	3.02 (-1.3)	4.03 (-1.2)	3.11 (3.0)	4.15 (3.0)
150%-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)	4.03 (-1.2)	6.34 (-1.4)	4.15 (3.0)	6.54 (3.2)
200%-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)	6.34 (-1.4)	8.10 (-1.3)	6.54 (3.2)	8.36 (3.2)
250%-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)	8.10 (-1.3)	9.56 (-1.3)	8.36 (3.2)	9.86 (3.1)
300%-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)	9.56 (-1.3)	9.56 (-1.3)	9.86 (3.1)	9.86 (3.1)

Source: IRS, Rev. Proc. 2014-37, Rev. Proc. 2014-62, Rev. Proc. 2016-24, Rev. Proc. 2017-36, and Rev. Proc. 2018-34. Percentage change from previous year appears in parenthesis.

excess of the rate of premium growth for the preceding calendar year<sup>2</sup> over the rate of income growth for the preceding calendar year.<sup>3</sup> The applicable percentage contribution amounts for each calendar year/coverage year are shown in Table 1 above.

Repayment of Overpayments

The Marketplace determines eligibility for PTC, and the amount of any PTC, based on the information that individuals applying for coverage provide about their expected household income and family size for the year. Individuals who receive advance PTC payments over the coverage year must reconcile these payments with the amount of PTC for which they qualify based on their actual income for the year reported on their federal tax return.<sup>4</sup> If individuals receive advance PTC payments that are less than the amount of PTC for which they qualify based on their actual income, they will receive the difference as a reduction in their tax bill or an increase in their refund. However, if individuals receive advance PTC payments that exceed the PTC for which they ultimately qualify based on their actual income, they will have to repay the excess amount, subject to certain limits (see Table 2 below).

Table 2: Premium Tax Credit Repayment Limits for 2014 Through 2018

Household Income (% FPL)	2014 (2013 tax year)		2015 (2014 tax year)		2016 (2015 tax year)		2017 (2016 tax year)		2018 (2017 tax year)	
	Single	Other	Single	Other	Single	Other	Single	Other	Single	Other
0%-200%	\$300	\$600	\$300	\$600	\$300	\$600	\$300	\$600	\$300	\$600
201%-300%	\$750	\$1,500	\$750	\$1,500	\$750	\$1,500	\$750	\$1,500	\$750	\$1,500
301%-400%	\$1,250	\$2,500	\$1,250	\$2,500	\$1,275	\$2,550	\$1,275	\$2,550	\$1,275	\$2,550
401%+	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap

Source: IRS, Instructions for Form 8962, 2014-2018.

Income-Based Exemption from Shared Responsibility Payment Penalty for No Coverage

*A. 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 forms. 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 between the preceding calendar year and 2013 (premium adjustment percentage) over the rate of income growth for that period.<sup>5</sup> The affordability percentages are shown, by calendar year (CY), in Table 3 below.

Table 3: Affordability Percentage for CY 2014 Through CY 2019

	2014	2015	2016	2017	2018	2019
Affordability Percentage	8.0	8.05	8.13	8.16	8.05	8.30

Source: CMS, CMS-9949-F, CMS-9944-F, CMS-9937-F, CMS-9934-F, and CMS-9930-F.

**B. Federal Income Tax Filing Threshold**

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.<sup>6</sup> IRS determines the tax filing threshold annually.

Table 4: Federal Income Tax Filing Threshold for 2014 Through 2018 (Ages 0-64)

Tax Filing Status	2014 (2013 tax year)	2015 (2014 tax year)	2016 (2015 tax year)	2017 (2016 tax year)	2018 (2017 tax year)
Single	\$10,000	\$10,150	\$10,300	\$10,350	\$10,400
Head of Household	\$11,500	\$13,050	\$13,250	\$13,350	\$13,400
Married Filing Jointly	\$20,000	\$20,300	\$20,600	\$20,700	\$20,800
Married Filing Separately	\$3,900	\$3,950	\$4,000	\$4,050	\$4,050
Qualifying Widower w/Dependent	\$16,100	\$16,350	\$16,600	\$16,650	\$16,750

Source: IRS, Publication 501, 2013-2017.

Shared Responsibility Payment Penalty for No Coverage

Individuals who neither have qualifying health insurance (minimum essential coverage) for each month nor qualify for an exemption must make a “shared responsibility payment.” In general, the amount of the annual payment equals *the greater of*: (1) a percentage of household income, with a cap at the national average premium for the bronze plan available through the Marketplace that provides coverage for the

Table 5: Individual Shared Responsibility Annual Payment Amounts for 2014 Through 2018

<i>Household (HH) pays greater of:</i>	Formula	2014	2015	2016	2017	2018
% Amount	Specified % of HH income above tax filing threshold	1%	2%	2.5%	2.5%	2.5%
	<i>With amount not exceeding:</i>	\$2,448/person \$12,240/HH of 5+	\$2,484/person \$12,420/HH of 5+	\$2,676/person \$13,380/HH of 5+	\$3,264/person \$16,320/HH of 5+	Not yet released
Flat Amount	Specified per person \$ figure	\$95/adult \$47.50/child	\$325/adult \$162.50/child	\$695/adult \$347.50/child	\$695/adult \$347.50/child	\$695/adult \$347.50/child
	<i>With amount not exceeding:</i>	\$285/HH	\$975/HH	\$2,085/HH	\$2,085/HH	\$2,085/HH

Sources: Healthcare.gov (<https://www.healthcare.gov/fees/fee-for-not-being-covered/>); IRS, “Individual Shared Responsibility Provision--Reporting and Calculating the Payment,” Rev. Proc. 2015-15, Rev. Proc. 2016-43, and Rev. Proc. 2016-55. See Table 4 above for tax filing thresholds for determining the percentage amount. For the flat amount, IRS after 2016 will base the dollar figures on the 2016 figures plus a cost-of-living adjustment. Note: Actual payment amounts are 1/12th the amounts shown for each month individuals do not have minimum essential coverage or an exemption during the tax year.

applicable family size involved, or (2) a flat dollar amount, with a maximum flat amount per family of three times the adult amount (see Table 5 above). Federal regulations set the percentages of household income used to determine the percentage amount at 1.0% in 2014, 2.0% in 2015, and 2.5% in 2016 and subsequent years. For 2014, 2015, and 2016, federal regulations set the flat amount per adult at \$95, \$325, and \$695, respectively, and for 2017 and subsequent years \$695 plus cost-of living adjustments. Federal regulations set the flat amount per child at half the amount per adult.

#### 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.<sup>7</sup> For plan years after 2014, 45 CFR 156.130(a)(2) granted HHS the authority to adjust the limitation on cost-sharing; cost sharing for self-only coverage cannot exceed the dollar limit for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage,<sup>8</sup> and for family coverage, the limit is twice the dollar limit for individual coverage.<sup>9</sup> HHS issued regulations updating the limitations on cost-sharing for PY 2015 in 2014,<sup>10</sup> PY 2016 in 2015,<sup>11</sup> PY 2017 in 2016,<sup>12</sup> PY 2018 in 2016,<sup>13</sup> and PY 2019 in 2017<sup>14</sup> (see Table 6 below).

Table 6: Annual Limitations on Cost-Sharing for PY 2014 Through PY 2019

2014		2015		2016		2017		2018		2019	
Ind.	Family	Ind.	Family	Ind.	Family	Ind.	Family	Ind.	Family	Ind.	Family
\$6,350	\$12,700	\$6,600	\$13,200	\$6,850	\$13,700	\$7,150	\$14,300	\$7,350	\$14,700	\$7,900	\$15,800

Source: IRS, Rev. Proc. 2013-25; CMS, CMS-9949-F, CMS-9944-F, CMS-9937-F, and CMS-9930-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.<sup>15</sup> 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.<sup>16</sup> 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 2015<sup>17</sup> and CY 2016<sup>18</sup> (see Table 7 below).

Table 7: Required Contribution Percentage for CY 2014 Through CY 2019

	2014	2015	2016	2017	2018	2019
Required Contribution %	9.5	9.56	9.66	9.69	9.56	9.86

Source: IRS, Rev. Proc. 2014-37, Rev. Proc. 2014-62, Rev. Proc. 2016-24, Rev. Proc. 2017-36, and Rev. Proc. 2018-34.

Employer Shared Responsibility Payments

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 \$2,160 (for 2016; calculated at 1/12th per applicable month) 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. Since 2015, IRS has indexed this figure annually.<sup>19</sup> In 2014 and 2015, there were transition rules that lessened 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, the ALE 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 \$3,240 (for 2016; calculated at 1/12th per applicable month) for each full-time employee who received a premium tax credit or cost-sharing assistance. Since 2015, IRS has indexed this figure annually.<sup>20</sup>

Table 8: Applicable Payment Amount (Employer Shared Responsibility) for CY 2014 Through CY 2018

	2014	2015	2016	2017	2018
Payment Amount (1st Type)	\$2,000	2,080	\$2,160	\$2,260	\$2,320
Payment Amount (2nd Type)	\$3,000	3,120	\$3,240	\$3,390	\$3,480

Source: IRS, Notice 2015-87 and IRS, “Employer Shared Responsibility Provisions.”

<sup>1</sup> 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.

<sup>2</sup> “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.

<sup>3</sup> In years after 2018, an additional adjustment will be made, which is to reflect the excess (if any) of the rate of premium growth for the preceding calendar year over the rate of growth in the consumer price index for the preceding calendar years.

<sup>4</sup> For example, an individual might enroll in Marketplace coverage effective January 1, 2016. PTCs might be paid to the enrollee’s health plan each month during the 2016 coverage year (advance payments), reducing the premium amount the enrollee pays to the health plan each month. The individual by April 15, 2017, files a federal income tax return that calculates the amount of PTCs “earned” for the 2016 coverage year.

<sup>5</sup> CMS substituted personal income (PI) for per capita gross domestic product (GDP) as the measure of income growth in CMS-9937-F, “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017.” See <https://www.gpo.gov/fdsys/pkg/FR-2016-03-08/pdf/2016-04439.pdf>.

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<sup>6</sup> 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>.

<sup>7</sup> See IRS, Rev. Proc. 2013-25, at <https://www.irs.gov/pub/irs-drop/rp-13-25.pdf>.

<sup>8</sup> “Premium adjustment percentage” for this and other measures refers to the percentage (if any) by which the average per capita premium for health insurance for the preceding calendar year exceeds the average per capita premium for health insurance for 2013. See 45 CFR 156.130(e).

<sup>9</sup> See 45 CFR 156.130(a)(2).

<sup>10</sup> See CMS-9949-F.

<sup>11</sup> See CMS-9944-F.

<sup>12</sup> See CMS-9937-F.

<sup>13</sup> See CMS-9934-F.

<sup>14</sup> See CMS-9930-P.

<sup>15</sup> 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>.

<sup>16</sup> The determination of “affordability” of the employer offer of coverage applies to the full-time employee, as well as to any family member who also is offered coverage by the employer, whether or not the employer makes a contribution for the premiums of the employee’s family member(s).

<sup>17</sup> See IRS, Rev. Proc. 2014-37.

<sup>18</sup> See IRS, Rev. Proc. 2014-62.

<sup>19</sup> 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.

<sup>20</sup> Ibid.