PAY OR PLAY AFFORDABILITY PERCENTAGE DECREASED FOR 2023

On Aug. 1, 2022, the IRS issued Revenue Procedure (Rev. Proc.) 2022-34 to index the contribution percentages in 2023 for determining the affordability of an employer's plan under the Affordable Care Act (ACA).

For plan years beginning in 2023, employer-sponsored coverage will be considered affordable if the employee's required contribution for self-only coverage does not exceed:

- 9.12% of the employee's household income for the year for purposes of both the pay or play rules and premium tax credit eligibility. **This is the most substantial decrease in this percentage since these rules were implemented** (down from 9.61% in 2022). It is the lowest that this percentage has ever been set, at 0.38% below the statutory affordability percentage of 9.5%.
- 8.17% of the employee's household income for the year for purposes of an individual mandate exemption (adjusted under separate guidance). This is a slight increase from 2022, which was set at 8.09%. Although this penalty was reduced to zero in 2019, some individuals may need to claim an exemption for other purposes.

Important Dates

Aug. 1, 2022
IRS Rev. Proc. 22-34 substantially decreased the ACA's affordability contribution percentage for 2023 for purposes of the pay or play rules and premium tax credit.

Jan. 1, 2023
The updated percentages are effective for plan years beginning Jan. 1, 2023.

Action Steps

The updated affordability percentages are effective for taxable years and plan years beginning Jan. 1, 2023. **The updated affordability percentage for the pay or play rules and premium tax credit is the most significant decrease since these rules were implemented.** As a result, many employers may have to substantially lower their employee contributions for 2023 to meet the adjusted percentage. The affordability percentage for the individual mandate exemption increased slightly from 2022.

Overview of the Affordability Requirement

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 (ALEs) (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 determining a plan's affordability varies for each provision.

The IRS previously adjusted the affordability contribution percentage for 2015 in Rev. Proc. 14-37; for 2016 in Rev. Proc. 14-62; for 2017 in Rev. Proc. 16-24; for 2018 in Rev. Proc. 17-36; for 2019 in Rev. Proc. 18-34; for 2020 in Rev. Proc. 19-29; for 2021 in Rev. Proc. 20-36; and for 2022 in Rev. Proc. 21-36. The adjusted affordability contribution percentage for purposes of the individual mandate exemption is announced separately in the Notice of Benefit and Payment Parameters final rule for each year.

Affordability Adjustments

This chart illustrates the adjusted affordability percentages for each purpose since 2014. Each provision is described in more detail following the chart.

Affordability Percentage										
Purpose	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Employer Shared Responsibility Rules	9.5%	9.56%	9.66%	9.69%	9.56%	9.86%	9.78%	9.83%	9.61%	9.12%
Individual Mandate Exemption	8%	8.05%	8.13%	8.16%	8,05%	8.3%	8.24%	8.27%	8.09%	8.17%
Premium Tax Credit Availability	9.5%	9.56%	9.66%	9.69%	9.56%	9.86%	9.78%	9.83%	9.71%	9.12%

Employer Shared Responsibility Rules

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 employer share responsibility penalty for ALEs is triggered when a full-time employee receives a premium tax credit for coverage under an Exchanged.

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% of the employee's household income for the tax year. After 2014, this required contribution percentage is adjusted annually toreflect the excess of the rate of premium growth.

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. The affordability of health coverage is a key point in determining whether an ALE will be subject to a penalty.

These rules generally determine the 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% of the employee's household income for the tax year. **This affordability percentage was adjusted to:**

- 9.56% for 2015 plan years;
- 9.66% for 2016 plan years;
- 9.69% for 2017 plan years;
- 9.56% for 2018 plan years;
- 9.86% for 2019 plan years;
- 9.78% for 2020 plan years;
- 9.83% for 2021 plan years; and
- 9.61% for 2022 plan years.

For 2023, Rev. Proc. 22-34 **significantly decreases the affordability contribution percentage to 9.12%**. This means that employer-sponsored coverage for the 2023 plan year will be considered affordable under the employer shared responsibility rules if the employee's required contribution for self-only coverage does not exceed **9.12%** of the employee's household income for the tax year.

This is the most substantial decrease in this percentage since these rules were implemented and is the lowest this percentage has ever been set, at 0.38% below the statutory affordability percentage of 9.5%. **As a result, many employers may have to significantly lower their employee contributions for 2023 to meet the adjusted percentage.**

Employers may use an affordability safe harbor to measure the affordability of their coverage. The three safe harbors that measure affordability are 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. 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.

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.

Overview of Affordability Safe Harbors

Because an ALE generally will not know an employee's household income, the IRS has provided three optional safe harbors that may be used to determine affordability based on information that is available to them. The three safe harbors that measure affordability are 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. 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.

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.

An employer may use one or more of the affordability safe harbors if it offers its full-time employees (and dependents) the opportunity to enroll in minimum essential coverage under a health plan that provides minimum value with respect to the self-only coverage offered to the employees. Note that the affordability safe harbors are only used to determine whether an employer's coverage satisfies the affordability test for purposes of the employer mandate. These safe harbors do not affect an employee's eligibility for a subsidy in the Marketplace, which is based on the affordability of employer-sponsored coverage relative to an employee's household income.

Form W-2 Safe Harbor

Under the Form W-2 safe harbor, an ALE may determine the affordability of its health coverage by reference only to an employee's wages from that ALE, instead of by reference to the employee's household income. For this purpose, "wages" is the amount that is required to be reported in Box 1 of the employee's Form W-2.

An ALE satisfies the Form W-2 safe harbor with respect to an employee if the employee's required contribution for the calendar year for the ALE's lowest cost self-only coverage that provides minimum value during the entire calendar year does not exceed 9.5% (as adjusted) of that employee's Form W-2 wages from the employer for the calendar year.

To be eligible for the Form W-2 safe harbor, the employee's required contribution must remain a consistent amount or percentage of all Form W-2 wages during the calendar year (or during the plan year for plans with non-calendar year plan years). Thus, an ALE may not make discretionary adjustments to the required employee contribution for a pay period. A periodic contribution that is based on a consistent percentage of all Form W-2 wages may be subject to a dollar limit specified by the employer.

ALEs determine whether the Form W-2 safe harbor applies after the end of the calendar year and on an employee-by-employee basis, taking into account W-2 wages and employee contributions.

Rate of Pay Safe Harbor

The rate of pay safe harbor was designed to allow ALEs to prospectively satisfy affordability without the need to analyze every employee's wages and hours. **For hourly employees, the rate of pay safe harbor allows an ALE to:**

- Take the lower of the hourly employee's rate of pay as of the first day of the coverage period (generally, the first day of the plan year) or the employee's lowest hourly rate of pay during the calendar month;
- Multiply that rate by 130 hours per month (the benchmark for full-time status for a month); and
- Determine affordability for the calendar month based on the resulting monthly wage amount.

Specifically, the employee's monthly contribution amount (for the self-only premium of the employer's lowest cost coverage that provides minimum value) is affordable for a calendar month if it is equal to or lower than 9.5% (as adjusted) of the employee's applicable hourly rate of pay multiplied by 130 hours. The final regulations allow an ALE to use the rate of pay safe harbor even if an hourly employee's rate of pay is reduced during the year.

For salaried employees, their monthly salary as of the first day of the coverage period would be used, instead of hourly salary multiplied by 130 hours. However, if the monthly salary is reduced during the coverage period, including due to a reduction in work hours, the rate of pay safe harbor may not be used.

Federal Poverty Line Safe Harbor

An ALE may also rely on a design-based safe harbor using the federal poverty line (FPL) for a single individual. Employer-provided coverage is considered affordable under the FPL safe harbor if the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides minimum value does not exceed 9.5% (as adjusted) of the FPL for a single individual for the applicable calendar year, divided by 12. The final regulations allow ALEs to use any of the poverty guidelines in effect within six months before the first day of the plan year for purposes of this safe harbor. The 2022 FPL for the 48 contiguous states and the District of Columbia in effect since January 12, 2022 is $13,590 (one-person household).

The FPL safe harbor allows ALEs to disregard certain employees in determining the affordability of health coverage (that is, employees who cannot receive a Marketplace subsidy because of their income level or eligibility for Medicare, and therefore cannot trigger an ALE's liability for an employer mandate penalty). The FPL safe harbor also provides ALEs with a predetermined maximum amount of employee contribution that in all cases will result in the coverage being deemed affordable.

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%** of household income (as adjusted).
- Coverage is affordable for family members if the required contribution for the lowest-cost family coverage does not exceed **8%** of household income (as adjusted).

This affordability contribution percentage was adjusted to **8.05%** for plan years beginning in 2015; **8.13%** for plan years beginning in 2016; **8.16%** for plan years beginning in 2017; **8.05%** for plan years beginning in 2018; **8.3%** for plan years beginning in 2019; **8.24%** for plan years beginning in 2020; **8.27%** for plan years beginning in 2021; and **8.09%** for plan years beginning in 2022.

The 2023 Notice of Benefit and Payment Parameters final rule slightly **increases the required contribution percentage in 2023**. For 2023, an individual qualifies for this affordability exemption if he or she must pay more than **8.17%** of his or her household income for minimum essential coverage.

The tax reform bill, called the Tax Cuts and Jobs Act, reduced the ACA's individual mandate penalty to zero, effective beginning in 2019. As a result, individuals are no longer penalized for failing to obtain acceptable health insurance coverage. However, the 2019 Notice of Benefit and Payment Parameters final rule notes that individuals may still need to seek this exemption for 2019 and future years (for example, in order to be eligible for catastrophic coverage).

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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 FPL. This percentage increases as the taxpayer's household income increases and is indexed each year after 2014, as follows:

Contribution Percentage									
Income Level	2014	2015	2016	2017	2018	2019	2020	2021 - 2022*	2023
Up to 133% FPL	2%	2.01%	2.03%	2.01%	2.01%	2.08%	2.06%	0%	1.92%
133-150% FPL	3-4%	3.02-4.02%	3.05-4.07%	3.06-4.08%	3.02-4.03%	3.11-4.15%	3.09-4.12%	0-2%	2.88-3.84%
150-200% FPL	4-6.3%	4.02-6.34%	4.07-6.41%	4.08-6.43%	4.03-6.34%	4.15-6.54%	4.12-6.49%	2-4%	3.84-6.05%
200-250% FPL	6.3-8.05%	6.34-8.10%	6.41-8.18%	6.43-8.21%	6.34-8.10%	6.54-8.36%	6.49-8.29%	4-6%	6.05-7.73%
250-300% FPL	8.05-9.5%	8.10-9.56%	8.18-9.66%	8.21-9.69%	8.10-9.56%	8.36-9.86%	8.29-9.78%	6-8.5%	7.73-9.12%
300-400%	9.5%	9.56%	9.66%	9.69%	9.56%	9.86%	9.78%	8.5%	9.12%

**The American Rescue Plan Act temporarily lowered the applicable percentages in this table for 2021 and 2022 only.*