



COMPLIANCE ALERT



EMPLOYEE BENEFITS | SEPTEMBER 20, 2021

IRS Issues Affordability Percentage Adjustment for 2022

The Internal Revenue Service (IRS) has released **Rev. Proc. 2021-36**, which contains the inflation adjusted amounts for 2022 used to determine whether employer-sponsored coverage is “affordable” for purposes of the Affordable Care Act’s (ACA) employer shared responsibility provisions and premium tax credit program. As shown in the table below, for plan years beginning in 2022, the affordability percentage for employer mandate purposes is indexed to **9.61%**. Employer shared responsibility payments are also indexed.

Code Section	4980H(a)	4980H(b)	36B(b)(3)(A)(i)
Description	Coverage not offered to 95% (or all but 5) of full-time employees.	Coverage offered, but unaffordable or is not minimum value.	Premium credits and affordability safe harbors.
2022*	\$2,750	\$4,120	9.61%
2021	\$2,700	\$4,060	9.83%
2020	\$2,570	\$3,860	9.78%
2019	\$2,500	\$3,750	9.86%
2018	\$2,320	\$3,480	9.56%
2017	\$2,260	\$3,390	9.69%
2016	\$2,160	\$3,240	9.66%
2015	\$2,080	\$3,120	9.56%
2014**	\$2,000	\$3,000	9.50%

* Section 4980H(a) and (b) penalties 2022 are projected.

** No employer shared responsibility penalties were assessed for 2014.

Under the ACA, applicable large employers (ALEs) must offer affordable health insurance coverage to full-time employees. If the ALE does not offer affordable coverage, it may be subject to an employer shared responsibility payment. An ALE is an employer that employed 50 or more full-time equivalent employees on average in the prior calendar year. Coverage is considered affordable if the employee’s required contribution for self-only coverage on the employer’s lowest-cost, minimum value plan does not exceed 9.61% of the employee’s household income in 2022 (prior years shown above). An ALE may rely on one or more safe harbors in determining if coverage is affordable: W-2, Rate of Pay, and Federal Poverty Level. If the employer’s coverage is not affordable under one of the safe harbors and a full-time employee is approved for a premium tax credit for Marketplace coverage, the employer may be subject to an employer shared responsibility payment.

Note that as of January 1, 2019, the individual mandate penalty imposed on individual taxpayers for failure to have qualifying health coverage was reduced to \$0 under the Tax Cuts and Jobs Act, effectively repealing the federal individual mandate. A previous lawsuit challenging the constitutionality of the ACA due to this change to the individual mandate penalty was unsuccessful. The employer mandate has not been repealed and the IRS continues to enforce it through Letter 226J. The IRS is currently enforcing employer shared responsibility payments for tax year 2018, with enforcement of 2019 expected to begin this fall.

Next Steps for Employers

Applicable large employers should be aware of the updated, reduced affordability percentage for plan years beginning in 2022, and should consider it along with all other relevant factors when setting contributions.

This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on the Affordable Care Act. Contact Stacy Barrow or Nicole Quinn-Gato at sbarrow@marbarlaw.com or nquinnгато@marbarlaw.com.

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