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Employer and Individual Responsibility Requirements

The Affordable Care Act (ACA) includes employer and individual responsibility requirements for health coverage. Under ACA, a large employer will face penalties if it does not offer health coverage to substantially all full-time employees and their dependents (or if it offers health coverage that does not meet certain standards for affordability and minimum value) and one or more of its full-time employees receives a premium tax credit or cost-sharing reduction through an insurance Exchange (Exchange). ACA also requires individuals to obtain coverage for themselves and their family members to avoid paying a penalty.

> The employer mandate provisions were set to take effect on Jan. 1, 2014. However, on July 2, 2013, the Treasury announced **the delay of the employer mandate penalties and related reporting requirements for one year, until 2015**. Therefore, these payments will not apply for 2014. On July 9, 2013, the IRS issued Notice 2013-45 to provide more formal guidance on the delay. No other provisions of the ACA are affected by the delay.

The individual responsibility requirement took effect on **Jan. 1, 2014**. Individuals who are not exempt and who do not obtain health insurance coverage in 2014 will owe a penalty on their 2014 tax return, filed in 2015.

On Feb. 12, 2014, the IRS published long-awaited **final regulations** on the ACA's employer shared responsibility rules. **Under the final regulations, applicable large employers that have fewer than 100 full-time employees generally will have an additional year, until 2016, to comply with the pay or play rules.** Large employers with 100 or more full-time employees must comply with the pay or play rules starting in 2015.

EMPLOYER RESPONSIBILITY REQUIREMENTS

Individuals who are not offered employer-sponsored coverage and who are not eligible for Medicaid or other programs may be eligible for premium tax credits for coverage through an Exchange. Generally, these individuals will have income between 138 percent and 400 percent of the federal poverty level (FPL). Individuals who satisfy the requirements for receiving the premium tax credit may also qualify for cost-sharing reductions under Exchange plans.

Beginning in 2015, applicable large employers that do not offer health coverage to substantially all full-time employees and their dependents will be subject to a penalty if any of their full-time employees receives a premium tax credit or cost-sharing reduction toward an Exchange plan. An "applicable large employer" (ALE) is an employer with, on average, **at least 50 full-time employees, including full-time equivalents**, during the preceding calendar year. However, the employer mandate has been delayed for one year, until 2016, for ALEs that have fewer than 100 full-time employees (including full-time equivalent employees).

Penalty for Large Employers Not Offering Coverage—The 4980H(a) Penalty

Under the ACA, the monthly penalty assessed on employers that do not offer coverage to substantially all full-time employees and their dependents will be equal to the number of full-time employees (minus 30) multiplied by 1/12 of $2,000 for any applicable month.

The final regulations include **transition relief for 2015** that allows employers with 100 or more full-time employees (including FTE employees) to reduce their full-time employee count by 80 when calculating the penalty. This relief applies for 2015 plus any calendar months of 2016 that fall within the employer's 2015 plan year. However, under the

final regulations, **employers that change their plan years after Feb. 9, 2014, to begin on a later calendar date are not eligible for the delay**.

In subsequent years, the penalty amount is expected to be indexed by the premium adjustment percentage for the calendar year.

Penalty for Large Employers Offering Coverage—The 4980H(b) Penalty

Employers that do offer coverage to substantially all full-time employees and dependents may still be subject to penalties if at least one full-time employee obtains a subsidy for an Exchange plan because:

- The employer did not offer coverage to all full-time employees;
- The coverage offered by the employer is "unaffordable"; or
- The coverage offered by the employer does not provide "minimum value".

The employer's health coverage will be unaffordable if the individual's required contribution toward the plan premium for self-only coverage exceeds 9.5 percent of his or her household income. The employer's health coverage will not provide minimum value if the plan pays for less than 60 percent, on average, of covered health expenses.

The monthly penalty assessed on an employer for each full-time employee who receives a premium credit will be 1/12 of $3,000 for any applicable month. However, the total penalty for an employer would be limited to the 4980(a) penalty amount. After the first year, the penalty amounts are expected to be indexed by the premium adjustment percentage for the calendar year.

Guidance on Employer Responsibility Requirements

On Jan. 2, 2013, the IRS issued proposed regulations on ACA's employer responsibility requirements. These regulations included guidance on:

- The method for determining if an employer is a large employer subject to ACA's employer penalty provisions;
- Ways to ascertain an individual's full-time status for purposes of determining and calculating an employer's liability for an ACA penalty;
- Safe harbor approaches for assessing whether an employer's coverage is affordable;
- Transition relief for non-calendar year plans; and
- The application of the common ownership (that is, controlled group and affiliated service group) aggregation rules to ACA's employer penalty provisions.

Also, on Nov. 26, 2012, the Department of Health and Human Services (HHS) issued proposed regulations that outline possible approaches for determining whether an employer's health coverage provides minimum value.

On May 3, 2013, the IRS issued more proposed regulations on ACA's affordability and minimum value requirements for employer-sponsored health coverage. These proposed regulations outline special rules for determining how health reimbursement arrangements (HRAs), health savings accounts (HSAs) and wellness program incentives are counted in determining minimum value and affordability.

Finally, on Feb. 12, 2014, the IRS published long-awaited final regulations on the ACA's employer shared responsibility rules. Under the final regulations, applicable large employers that have fewer than 100 full-time employees generally will have an additional year, until 2016, to comply with the pay or play rules. Large employers with 100 or more full-time employees must comply with the pay or play rules starting in 2015.

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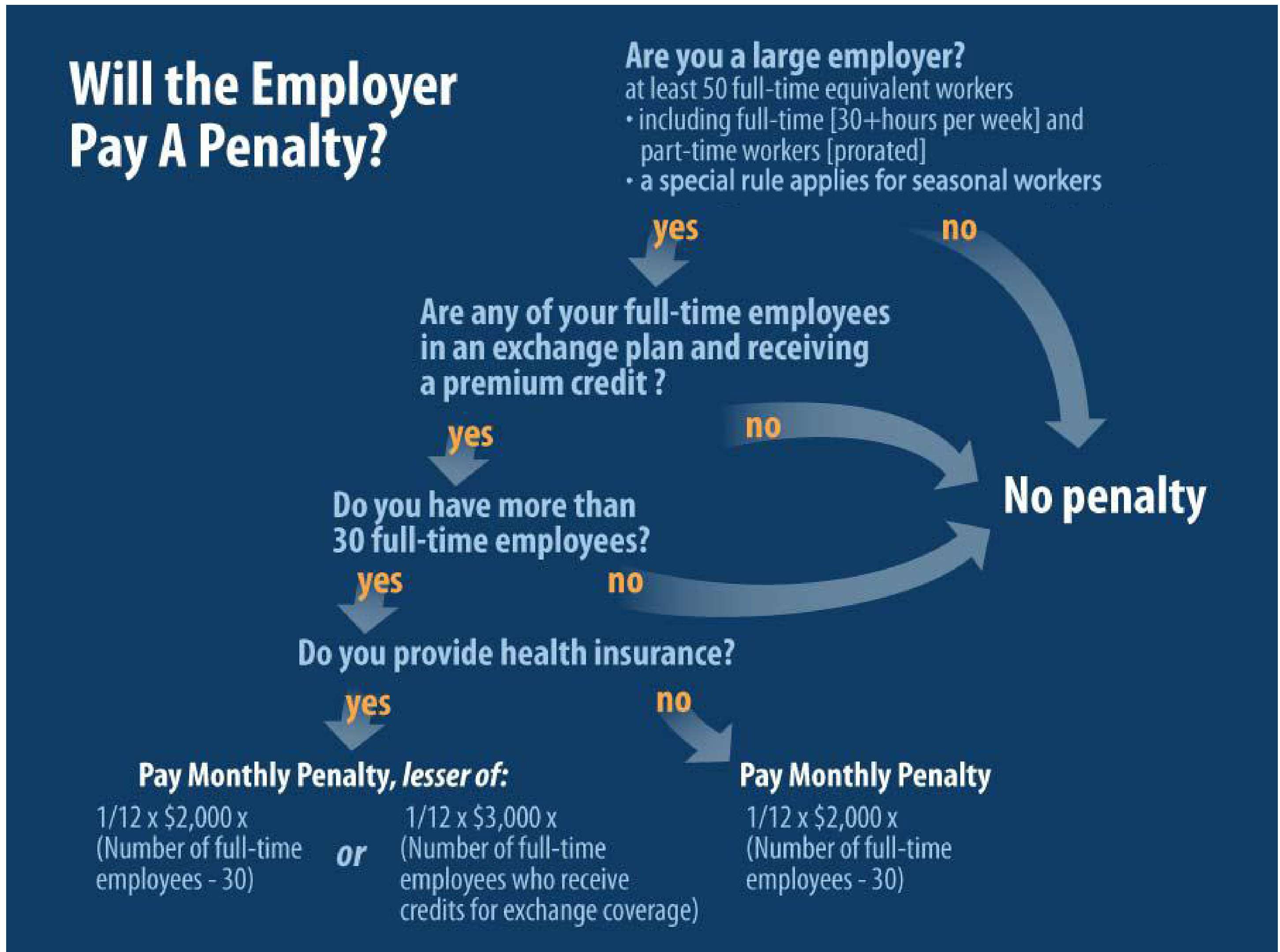
Employer and Individual Responsibility Requirements

Flow Chart

The following flow chart summarizes the employer shared responsibility rules in broad terms. It gives a general overview of how the various provisions under the shared responsibility rules fit together to determine possible penalties. **It does not include all the rules that may apply to a specific employer to determine its potential liability for a penalty.**



Source: Congressional Research Service

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INDIVIDUAL REQUIREMENT AND PENALTIES

Beginning in 2014, the ACA requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. This rule is often referred to as the "individual mandate." Individuals may be eligible for an exemption from the penalty in certain circumstances.

Employees may satisfy the individual mandate by purchasing acceptable coverage through their workplace, an insurance Exchange or the private individual market. If coverage is not purchased and the individual is not exempt, the individual penalty will be imposed.

Penalty Amount

The penalty for not obtaining acceptable health insurance coverage will be phased in over a three-year period, and is the *greater of two amounts*—the "flat dollar amount" and "percentage of income amount."

The penalty will start at the greater of $95 per person or 1 percent of income for 2014. Income for this purpose is the taxpayer's household income minus the taxpayer's exemption (or exemptions for a married couple) and standard deductions. The penalty amount increases to $325 or up to 2 percent of income in 2015. In 2016 and thereafter, the penalty increases to $695 or up to 2.5 percent of income.

2014	$95 per person/1 percent of income
2015	$325 per person/2 percent of income
2016 and later years	$695 per person/2.5 percent of income

The penalty is capped at the national average of the annual bronze plan premium. Families will pay half the penalty amount for children, up to a family cap of three times the annual flat dollar amount per year.

Exemptions

Exemptions to mandatory coverage requirement apply if the premium for an employee's employer-provided health coverage is more than eight percent of the employee's modified household income. Exceptions also apply for financial hardship, individuals exempt from filing an income tax return, members of Indian tribes and those with short coverage gaps.

On Oct. 28, 2013, CMS issued a frequently asked question (FAQ) to create a hardship exemption for individuals who purchase Exchange coverage during the initial enrollment period. The initial open enrollment period runs from Oct. 1, 2013, through March 31, 2014. Without the exemption, individuals who purchase insurance towards the end of the initial enrollment period could be required to pay a penalty based on a gap in coverage that lasts for three months or longer.

Under the new hardship exemption, if an individual enrolls in an Exchange plan during the initial open enrollment period, he or she will be able to claim a hardship exemption from the penalty for the months prior to the effective date of the individual's coverage, without the need to request an exemption from the Exchange. The hardship exemption is claimed when the individual files his or her federal income tax return in 2015.

Transition Relief for Coverage under Non-Calendar Year Plans

On June 26, 2013, the IRS issued Notice 2013-42 to provide transition relief for individuals who are eligible to enroll in employer-sponsored health plans with a plan year other than a calendar year (non-calendar year plans). In general, most employer-sponsored plans do not permit employees to enroll after the beginning of a plan year unless certain

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triggering events occur, such as a change in employment status. According to the IRS, without transition relief, many individuals eligible to enroll in non-calendar year plans would need to enroll in 2013 (before the individual mandate becomes effective) in order to maintain MEC for months in 2014.

Under the IRS' transition relief, an employee (or an individual having a relationship to the employee) who is eligible to enroll in a non-calendar year eligible employer-sponsored plan with a plan year beginning in 2013 and ending in 2014 (the 2013-2014 plan year) will not be liable for the individual mandate penalty for certain months in 2014. The transition relief begins in January 2014 and continues through the month in which the 2013-2014 plan year ends.

Also, any month in 2014 for which an individual is eligible for this transition relief will not be counted in determining a continuous period of less than three months for purposes of the short coverage gap exemption.

How is the Penalty Enforced?

Starting in 2015, individuals filing a tax return for the previous tax year will indicate which members of their family (including themselves) are exempt from the individual mandate. For family members who are not exempt, the taxpayer will indicate whether they had insurance coverage. For each non-exempt family member who doesn't have coverage, the taxpayer will owe a payment. Spouses who file a joint return are jointly liable for the penalties that apply to either or both of them. Any individual who is eligible to claim a dependent will be responsible for reporting and paying the penalty applicable to that dependent.

The IRS will generally assess and collect penalties in the same manner as taxes. However, the ACA imposes certain limitations on the IRS' ability to collect the penalty. As a result, it is widely believed that any assessable penalty will be subtracted from the tax refund that the individual is owed, if any.

PREMIUM TAX CREDITS FOR LOW-INCOME INDIVIDUALS

The ACA created a premium tax credit to help eligible individuals and families purchase health insurance through an Affordable Insurance Exchange (Exchange). By reducing a taxpayer's out-of-pocket premium costs, the credit is designed to make coverage through an Exchange more affordable. The Exchanges are scheduled to become operational in 2014, with enrollment beginning Oct. 1, 2013.

To be eligible for the premium tax credit, a taxpayer:

- Must have household income for the year between 100 percent and 400 percent of the federal poverty line (FPL) for the taxpayer's family size;
- May not be claimed as a tax dependent of another taxpayer; and
- Must file a joint return, if married.

In addition, to receive the premium assistance, a taxpayer must enroll in one or more qualified health plans through an Exchange. The taxpayer **cannot be eligible for** MEC (such as coverage under a government-sponsored program or an eligible employer-sponsored plan).

To determine an individual's eligibility for a tax credit, ACA provides that employer-sponsored coverage is not considered affordable if the employee's cost for self-only coverage exceeds **9.5 percent** of the employee's household income for the tax year. On Jan. 30, 2013, the IRS released additional final regulations to confirm that an employer-sponsored plan is affordable for related individuals (that is, family members) if the portion of the annual premium the employee must pay for self-only coverage does not exceed 9.5 percent of the taxpayer's household income. Thus, the affordability determination for families is based on the cost of self-only coverage, not family coverage.

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