



National Compliance Update

USI EMPLOYEE BENEFITS

January 19, 2023

2023 Federal Poverty Guidelines Announced

The Department of Health & Human Services (“HHS”) recently announced the 2023 Federal Poverty Level (“FPL”) guidelines which, among other things, establish the FPL affordability safe harbor for purposes of the Affordable Care Act (“ACA”) employer mandate.

For plan years beginning February 1, 2023 or later, the 2023 FPL safe harbor is **\$110.80/month** in the lower 48 states and DC, **\$138.39/month** for Alaska, and **\$127.45/month** for Hawaii.

As a reminder, a plan can use poverty guidelines in effect *within 6 months before the first day of the plan year* for purposes of using an affordability safe harbor. Because the 2023 FPL guidelines were announced after the start of the calendar year, plans with plan years beginning on January 1, 2023 use **\$103.28/month** for the lower 48 states and DC (\$129.12/month for Alaska and \$118.78/month for Hawaii), which is 9.12% of the applicable 2022 FPL.¹ The increased threshold of **\$110.80/month** for the lower 48 states and DC based on the 2023 FPL applies to plan years beginning on or after February 1, 2023.

BACKGROUND AND FPL SAFE HARBOR

Large employers may be subject to the employer mandate penalty under the ACA if they do not offer affordable, minimum value coverage to all full-time employees, and at least one full-time employee receives a subsidy in the Marketplace.²

¹ See USI’s Compliance Update, [IRS Announces 2023 ACA Affordability Indexed Amount](#) (August 4, 2022).

² [Employer Mandate Penalties](#) under Internal Revenue Code §§4980H(a) or (b):

- “A” (or “No Coverage”) Penalty
 - Applies if the large employer does not offer at least 95% of all full-time employees (“FTEs”) and their dependents minimum essential coverage and one FTE receives a subsidy in the Marketplace.
 - \$2,000 (as indexed) X the total number of FTEs in excess of 30. For 2023, the indexed penalty is **\$2,880** (\$240/month).
- “B” (or “Offer Coverage”) Penalty
 - Applies if the large employer offers coverage to at least 95% of all FTEs (and their dependents), but that coverage is *unaffordable* or does not provide a minimum value (or as to any excluded FTEs of 5% or less of all FTEs) and one FTE receives a subsidy in the Marketplace.
 - \$3,000 (as indexed) X the total number of FTEs who receive the government subsidy in the Marketplace (maximum penalty is the “A” penalty). For 2023, the indexed penalty is **\$4,320** (\$360/month).

A large employer's offer of coverage will be considered "affordable" under the FPL safe harbor³ if the employee's required monthly contribution for the lowest cost self-only coverage that provides minimum value does not exceed 9.5% (as indexed⁴) of a monthly amount determined as the FPL for a single individual for the applicable calendar year, divided by 12.

2023 FPL Affordability Safe Harbor

For FPL affordability safe harbor purposes, the applicable FPL is the FPL for the state in which the employee is employed. The 2023 FPL is \$14,580 for a single individual in every state (and Washington D.C.) except Alaska or Hawaii. Thus, if the employee's required monthly contribution for the lowest cost self-only coverage that provides minimum value is **\$110.80** (9.12% of \$14,580/12, rounded down) or less, the employer's offer of coverage meets the FPL affordability safe harbor for a plan year beginning February 1, 2023 or later in the lower 48 states and DC.⁵

FPL GUIDELINES

The following are the 2023 HHS poverty guidelines:

2023 Poverty Guidelines for the 48 Contiguous States and DC		2023 Poverty Guidelines for Alaska		2023 Poverty Guidelines for Hawaii	
Persons in family/household	Poverty guideline	Persons in family/household	Poverty guideline	Persons in family/household	Poverty guideline
1	\$14,580	1	\$18,210	1	\$16,770
2	\$19,720	2	\$24,640	2	\$22,680
3	\$24,860	3	\$31,070	3	\$28,590
4	\$30,000	4	\$37,500	4	\$34,500
5	\$35,140	5	\$43,930	5	\$40,410
6	\$40,280	6	\$50,360	6	\$46,320
7	\$45,420	7	\$56,790	7	\$52,230
8	\$50,560	8	\$63,220	8	\$58,140
For families/households with more than 8 persons, add \$5,140 for each additional person.		For families/households with more than 8 persons, add \$6,430 for each additional person.		For families/households with more than 8 persons, add \$5,910 for each additional person.	

For the new poverty guidelines, visit: <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

³ Affordability safe harbors based on Form W-2 and rate of pay are also available.

⁴ Indexed at 9.56% for 2015; 9.66% for 2016; 9.69% for 2017; 9.56% for 2018; 9.86% for 2019; 9.78% for 2020; 9.83% for 2021; 9.61% for 2022; **9.12% for 2023**.

⁵ 9.12% of \$18,210/12 is **\$138.39** for Alaska; 9.12% of \$16,770/12 is **\$127.45** for Hawaii.

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