September 9, 2021

IRS Announces 2022 ACA Affordability Indexed Amount

The IRS recently announced in Revenue Procedure 2021-36 that the Affordable Care Act ("ACA") affordability indexed amount under the Employer Shared Responsibility Payment ("ESRP") requirements will be **9.61%** for plan years that begin in 2022. This is a decrease from the 2021 percentage amount (9.83%).[1]

BACKGROUND

Rev. Proc. 2021-36 establishes the indexed "required contribution percentage" used to determine whether an individual is eligible for "affordable" employer-sponsored health coverage under Section 36B (related to qualification for premium tax credits when buying ACA Marketplace coverage). However, the IRS explained in IRS Notice 2015-87[2] that a percentage change under Section 36B will correspond to a similar change for affordability under section 4980H ESRP requirements.

DETERMINING AFFORDABILITY IN 2022

An employer will not be subject to a penalty[3] with respect to an ACA full-time employee ("FTE") if that employee's required contribution for 2022 for the employer's lowest cost self-only coverage complies with one of the following safe harbors.

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[1] Indexed at 9.56% in 2015; 9.66%, 2016; 9.69%, 2017; 9.56%, 2018; 9.86%, 2019; 9.78%, 2020; 9.83%, 2021; 9.61%, 2022.
[2] https://www.irs.gov/pub/irs-drop/n-15-87.pdf (Q&A 12)
[3] Employer Penalties (generally effective the first day of the 2015 plan year)

- "A" (or "No Coverage") Penalty
  - Applies if the large employer does not offer at least 95% of all FTEs and their dependents minimum essential coverage and one FTE receives a subsidy in the Marketplace.
  - $2,000 (as indexed) X total number of FTEs in excess of 30.
  - Indexed at $2,700 for 2021 ($225 per month); 2022 penalty amounts not yet available.
- "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 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).
  - Indexed at $4,060 for 2021 ($338.33 per month); 2022 penalty amounts not yet available.

1. **The W-2 safe harbor.**

   The employee's monthly contribution amount for the self-only premium of the employer's lowest cost coverage that provides minimum value is affordable if it is equal to or lower than 9.61% of the employee's W-2 wages (as reported on Box 1 of Form W-2). Application is determined after the end of the calendar year and on an employee-by-employee basis. Box 1 reflects compensation subject for federal income taxes, which would exclude amounts such as employee contributions to a 401(k) or 403(b) plan, and towards other benefits through a cafeteria plan.

2. **Rate of pay safe harbor.**

   The employee's monthly contribution amount for the self-only premium of the employer's lowest cost coverage that provides minimum value is affordable if it is equal to or lower than 9.61% of the employee's computed monthly wages. For hourly employees, monthly wages are equal to 130 hours multiplied by their rate of pay. For salaried employees, monthly wages are equal to their monthly salary.

3. **Federal Poverty Level (FPL) safe harbor.**

   Coverage is affordable if it does not exceed 9.61% of the FPL.

   For a 2022 calendar year plan, coverage is affordable under the FPL safe harbor if the employee monthly cost for self-only coverage in the lowest cost plan that provides minimum value is not more than **$103.14** (48 contiguous states), $128.85 (Alaska), or $118.68 (Hawaii).[4]

EMPLOYER NEXT STEPS

Employers budgeting and preparing for the 2022 plan year should review these affordability safe harbors when analyzing employee contribution amounts for the coming year.

For Revenue Procedure 2021-36, please visit: https://www.irs.gov/irb/2021-35_IRB#REV-PROC-2021-36.

[4] The Department of Health and Human Services generally issues the FPL guidelines for a calendar year in January of the applicable year (e.g., issued in January 2022 for calendar year 2022). For planning purposes, an employer should use the FPL guidelines in effect 6 months prior to the start of the plan year (for a plan year beginning January 1, 2022, this equates to 9.61% times $12,880 for the 48 contiguous states and the District of Columbia, $16,090 for Alaska, or $14,820 for Hawaii). Assuming the guidelines are issued and in effect in January 2022, plan years that begin on February 1, 2022 but before July 1, 2022 may use either the 2021 or 2022 FPL guidelines to determine affordability under the FPL safe harbor.