



Affordable Care Act
and
Employer Requirements

AGENDA

Employer Mandate (Pay-or-Play)



- Do you offer “Affordable” “Minimum Value” coverage to your “Full-Time” Employees?
- Penalties

Financing the Affordable Care Act: Employer Relevant Fees



- Fully-Insured Fees & Taxes
- Self-Funded Fees & Taxes

Essential Health Benefits & Market Transition Rules



- EHB: Implications by Group Size and Funding Arrangement
- Market Transition Impact on Insured Markets

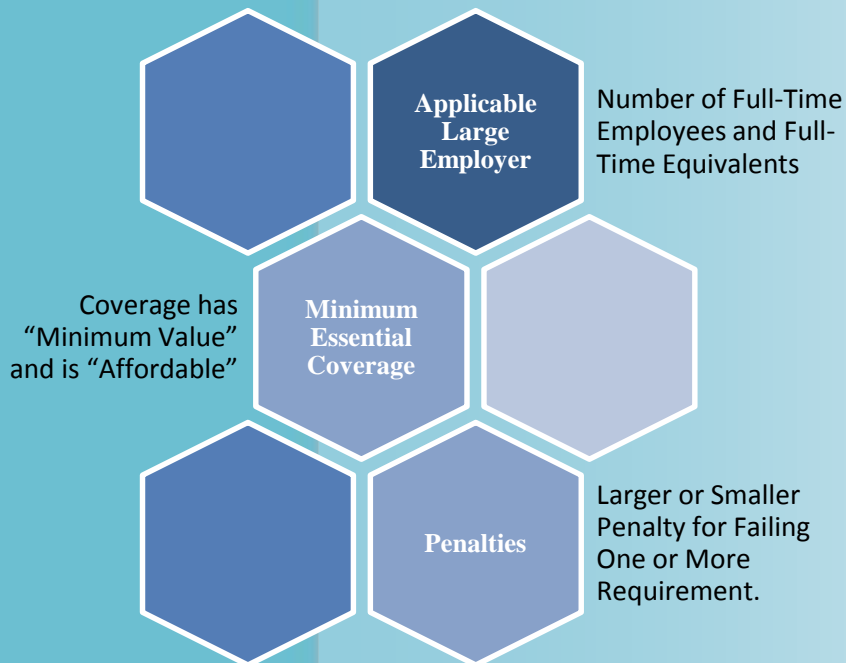
Employer Pay or Play

On January 2, 2013, IRS released a proposed rule to implement the employer mandate and associated penalties (i.e. Employer Pay or Play Rule) under the ACA.

The proposed rule requires “Applicable Large Employers” to:

1. Offer Minimum Essential Coverage to Full-Time Employees; and
2. Coverage to be Affordable to the Full-Time Employees.

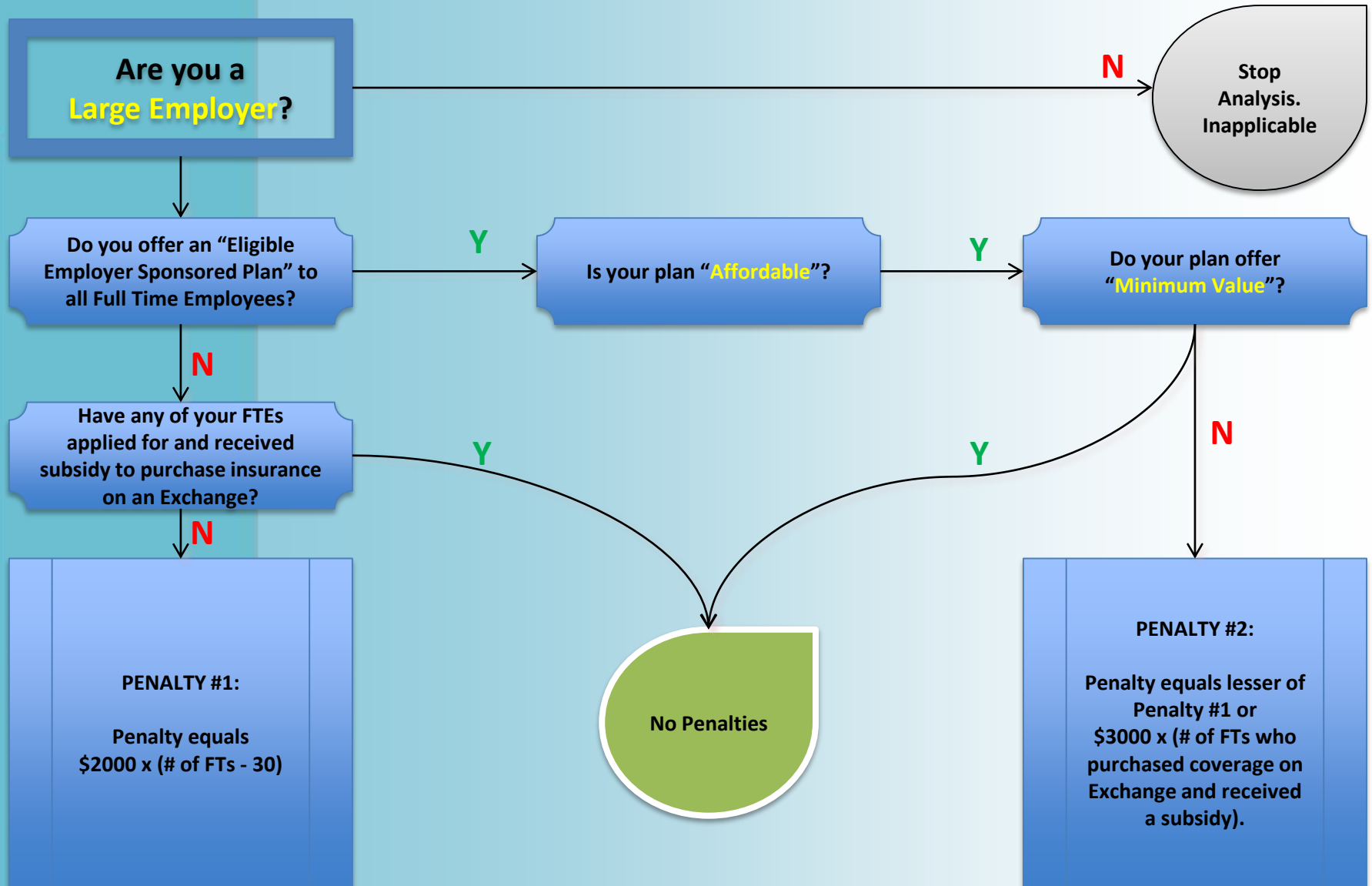
Either the “Large Penalty” or “Small Penalty” may apply for failure to meet this requirement.



The proposed rule addresses the following topics:

- Determination of large employer status, including methodology for calculating full-time equivalent employees
- Identification of full-time employees, with exceptions for certain employee types
- Methodology for calculating penalty amounts
- Applicability of penalty, including expansion of safe harbor provisions intended to provide an adequate transition period for certain employers
- IRS process for administering and collecting penalty amounts

Employer Pay or Play – An Overview



Employer Pay or Play

Effective Date Varies by Calendar Year Plans and Non-Calendar Year Plans:

1. Calendar Year Plans

- January 1, 2014

2. Non-Calendar Year Plans

- 1st Day of 2014 Plan Year upon satisfying two criteria:
 - Criteria 1: During the most recent open enrollment period prior to 12-27-2012, employer offered health coverage to at least a third of all employees; and
 - Criteria 2: Employer provided health coverage to at least one-fourth of its employees on any given day during 10-31-2012 and 12-27-2012.
- Otherwise January 1, 2014

If a non-calendar year plan is subject to the Pay or Play Mandate beginning 1-1-2014, changes in eligibility rules may be required off-cycle to comply with the rules.

Employer Pay or Play:

Determining Large Employer Status

Who is a Large Employer?

- Pay or Play rule applies to an “Applicable Large Employer” (ALE)
- ALE is an employer who employs the average of 50 or more full-time (FT) and full-time equivalent (FTE) employees during the prior calendar year.*
 - Seasonal Worker Exception: If the employer exceed the threshold count of 50 for less than 120 days during the prior calendar year and the employees in excess of 50 during the 120 day period were “seasonal workers”, the employer is not an ALE.

Employee Categories:

- FT Employee
 - Employee that works on average a minimum of 30 hours *or* an employee that average 130 hours a month.
- FTE Employee
 - Part Time employees
- Seasonal Workers
 - Works for employer less than 120 days in any given year

Employer Pay or Play:

Determining Your Employee Count to test for “Applicable Large Employer”

How Many Employees Do You Have for Purpose of ALE?

The number of employees is determined by the prior year’s monthly average.

$$FT + \frac{\text{Total FTE Hours}}{120} = \text{Employee Count for a Given Month}$$

$$\frac{\text{Sum of Employee Count for All 12 Months}}{12} = \text{Employee Count for Year}$$

Example:

As of January 1, 2014, ABC Company has 33 FTs. During Jan-July, FT remains stable and its FTEs have worked a total of 2300 hours. On August, 8 FTs left the company and ABC Company used FTEs for a total of 2040 hours. On September 1, 12 FTs were hired. As a result, between September 1 and December 31, ABC Company had a total of 37 FTs and used 1440 hours of FTEs.

- Employee Count for Each Month in January through July: $33 + \frac{2300}{120} = 52.166$
- Employee Count for August: $25 + \frac{2040}{120} = 42$
- Employee Count for Each Month of September through December: $37 + \frac{1440}{120} = 49$
- Employee Count for 2014: $\frac{(52.166 \times 7) + 42 + (49 \times 4)}{12} = 50.2635 \approx \mathbf{50 \text{ Employees}}$

Employer Pay or Play:

Determining Employee's Status

- It is necessary to identify full-time employee status only if do not offer minimum essential coverage that is affordable. Employee status for this purpose applies only with respect to determining the applicable penalties under the Employer Pay or Play rule.
- ACA requires a monthly determination of an employee's full time status. Because of the administrative burden of prospectively deciding the employee's work status (i.e. whether an employee works on average more than 30 hours per week), a Safe Harbor has been made available.
- Safe Harbor incorporates the use of a Look-Back/Stability Period:
 1. Classify Employees in one of the following categories:
 - Ongoing employee: *An employee employed for at least one standard measurement period*
 - New employee – reasonably expected to work full-time: *An employee expected to work on average more than 30 hrs/week or 130 hrs/month*
 - New employee – variable hour: *Part time employees whose work hours are uncertain*
 - New employee – seasonal: *Employee expected to work less than 3 months, regardless of hours worked.*
 2. Apply the safe harbor's measurement periods based on employee classification (cont.)
 - Standard Measurement Period (i.e. Look-Back Period): 3 to 12 month period permitted.
 - Administrative Period: Up to 3 months to notify coverage availability and enroll FT employees.
 - Stability Period: Greater of 6 months or length of standard measurement period.

Employer Pay or Play:

Applying the Safe Harbor – Use of Measurement Periods

The proposed rule contains a safe harbor that uses a “**look-back/stability period**” process. Under this process, the employer calculates the average hours worked per week during the past “measurement period” and must offer coverage during a subsequent “stability period”. An “administrative period” is permitted to notify and enroll the full-time employees eligible for coverage.

- Employees who qualified for full-time status remains eligible for coverage during the entire stability period no matter his or her actual work hours
- Employers may have measurement periods and stability periods that differ either in length or in their starting and ending dates for the following categories of employees:
 - Union vs. Non-Union
 - Salaries vs. Hourly
 - Employees of different legal entities
 - Employees located in different states

Employer Pay or Play:

Applying the Safe Harbor

- Establish a “Standard Measurement Period” with a set duration and a set start/end date.
 - Must be between 3 – 12 months that applies to all full-time employees within the same category.
- Establish any “Administrative Period” not to exceed 3 months.
 - Potentially shorter limit: the Admin Period combined with the Measurement Period cannot extend beyond the last day of the first month beginning on the new hire’s one year anniversary.
- Establish a “Stability Period” that is greater of 6 months or duration to the measurement period.
 - The employer must consider the employee either FT or PT for the entire stability period regardless of the hours worked during the stability period.
 - The stability period rules differ slightly between new variable FT and PT employees.
 - FT: Stability period must be 6 months or the duration of measurement period
 - PT: Stability period cannot be longer than a month plus the duration of the measurement period.

Ongoing Employees	Stnd Msr Prd	Admin	Stblty Prd	
		Stnd Msr Prd	Admin	Stblty Prd
			Stnd Msr Prd	Admin
New Full-Time Employees	<i>Coverage must be offered within 3 months of date of hire consistent with ACA's prohibition against waiting periods longer than 90 days.</i>			
New Variable Employees	Stnd Msr Prd	Admin	Stblty Prd	
		Stnd Msr Prd	Admin	Stblty Prd
			Stnd Msr Prd	Admin
Seasonal Employees	<i>Effectively treated like new variable employees. However, the employer may make a reasonable determination that the employee will work less than 30 hours per week during the limited duration of employment and forego measurement/coverage offering. Penalties do not apply if the employer decision is reasonable.</i>			

Employer Pay or Play:

Minimum Value and Affordability of Coverage

“Minimum Essential Coverage” must have “Minimum Value” and must be “Affordable”

- **Minimum Value:**

- Plan must pay at least 60% of the total cost of allowed benefits under the plan.
 - HRA/HSA employer contributions are factored in.
- May be established by one of three listed methods
 - Use of the “MV Calculator” provided by HHS
 - Design-based safe harbor checklists
 - Actuarial Certification

- **Affordability:**

- Coverage is deemed “affordable” if the cost to the employee does not exceed 9.5% of his or her household income for self-only coverage under the lowest cost option.
- A Safe Harbor is available to determine affordability:
 1. Use of W-2, Box 1, to ensure employee contribution for lowest cost self-only coverage is below 9.5%.
 2. Use the “Rate of Pay”, in which the hourly wage is multiplied by 130 hours to determine if monthly contribution required for lowest-cost self-only coverage is below or equal to 9.5%.
 3. Cost of self-only coverage does not exceed 9.5% of FPL 100%.

Employer Pay or Play:

Calculation of Penalties

ACA establishes penalties based on two differing conditions:

1. Employer does not offer an eligible employer sponsored plan to all full-time employees and at least 1 full-time employee obtains coverage on the Exchange and obtains a premium or cost-sharing subsidy

$$Penalty = (FT\ Employees - 30) \times \$2,000$$

2. Employer offers an eligible employer sponsored plan to all full-time employees but at least one full-time employee obtains coverage on the Exchange with a premium or cost-sharing subsidy.

Lesser of penalty from #1 or from the below formula (#2):

$$Penalty = (\#of\ FT\ obtaining\ coverage\ and\ recieved\ subsidies\ on\ Exchange) \times \$3,000$$

- Penalties may not be triggered regardless of employee obtaining coverage through the Exchange and receiving a subsidy as long as the employer plan has satisfied the test or safe harbor pertaining to minimum value and affordability with respect to the offered coverage.

Additional Considerations & Transitional Safe-Harbor:

- Applicable large employer determination for 2014 based on any 6-month period in 2013.
- Dependent coverage not required for 2014 plan year.
- For 2014 only, variable employee's status may be based on objective facts/circumstances.

Financing the Affordable Care Act

Health Issuers and Employers may be subject to added taxes and fees.

1. Fees relating to 3Rs (Risk Adjustment, Reinsurance, Risk Corridors):

	Reinsurance	Risk Adjustment	Risk Corridor
Description	Provides funding to plans that incur high claims cost (60K attachment point with 250K cap for 2014 benefit year).	Transfers funds from low risk plans to high risk plans	Limit issuer loss in a fashion similar to stop-loss coverage (also limits gains). ± 3% and ± 8% thresholds
Purpose	Off-set high-cost outlier claims	Protect against adverse selection	Protect against inaccurate rate setting due to lack of data.
Contributors	All health insurance issuers and group health plans (through TPA)	Non-grandfathered individual and small group (in and out of Exchange)	QHPs
Eligible for Payments	Non-grandfathered individual (in and out of Exchange)	Non-grandfathered individual and small group (in and out of Exchange)	QHPs
Cost	\$63 per enrollee per annum for 2014 <i>Estimated \$5.25 pmpm for 2014</i>	\$1 per enrollee per annum for 2014	N/A
Duration	2014-2016	Permanent	2014-2016

Financing the Affordable Care Act

2. Health Insurance Provider Fee

- \$8 billion dollar tax on health insurance issuers for years 2015 and 2016. Set to increase annually with tax totaling \$14.3 billion in 2018. Thereafter rising with premium growth rate.
- Fee is based on issuer market share (on the basis of net premiums written).
- Third party studies suggest 2-4% premium impact in insured market.

3. Medical Device Tax:

- 2.3% excise tax on DME.

4. Exchange User Fee:

- 3.5% fee on QHP issuers participating on the Exchange. Due to premium uniformity rules, the same or equivalent off-exchange product is expected to contain the fee.

2. PCORI Fee:

- \$1 for October 2013, \$2 after October 2014. Issuer is responsible for payment in insured market. Plan sponsor responsibility in self-funded segment.

3. Cadillac Tax: *Beginning 2018.*

- 40% non-deductible excise tax paid by Plan for benefits where plan cost exceeds \$10,200 for self-only and \$27,500 for family coverage.

Essential Health Benefits

The Essential Health Benefits, Actuarial Value, and Accreditation Final Rule implements many of the ACA provisions pertaining to coverage of EHBs with added consumer protection. The following requirements broadly apply:

- Requirement that all non-grandfathered individual and small group health insurance coverage – whether purchased insider or outside of an Exchange – offer the Essential Health Benefits Package
 - EHB Package for this purpose means a plan with the following elements:
 - Coverage of the ten categories of benefits making up the EHBs;
 - Specified cost-sharing limits on annual out-of-pocket expenses for all non-grandfathered individual and small group health insurance coverage;
 - Deductible limits *only* for small group health insurance coverage;
 - Actuarial value that fits within the specified “metal levels” with the exception of catastrophic plans;
- **Requirement that all non-grandfathered group health plans comply with the annual out-of-pocket maximum provisions.**
 - MOOP is set at HSA level of \$6400 for Self-Only and \$12800 for Family for 2014. Safe Harbor is applicable for first plan year on or after January 1, 2014 wherein carve-out benefits that fit within the categories of EHBs need not be cross accumulated.
- Requirement that all health insurance issuers offering non-grandfathered coverage at any specified metal levels also offer a child-only plan
- Requirements pertaining to accreditation of QHPs.