

Appendix D

**REG-138006-12-Proposed Regulations on Shared
Responsibility for Employers Regarding Health
Coverage**

AND

Endnotes for the ACA Shared Responsibility Flowchart

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

Jeffrey Mason,
Chairperson

March 18, 2013

Burden Reduction

Sub-Group:

Julia Chang, Chair
Paul Banker
Tony Lam
Mary Kallewaard
Patricia L. Schmick
Paul Scholz
Lonnie Young

Honorable Steven Miller
Acting Commissioner, Internal Revenue Service
CC:PA:LPD:PR (REG-138006-12)
Room 5203
POB 7604

**Emerging Compliance
Issues**

Sub-Group:

Susan Boltacz, Chair
Lynne Gutierrez
Anne Jetmundsen
Kristin Johnson
Victoria Kaner
Michael Lloyd
Arthur Wolk

Ben Franklin Station
Washington, DC 20044

RE: REG-138006-12- Proposed Regulations on Shared Responsibility for
Employers Regarding Health Coverage

**Employee
Benefits/Payroll**

Sub-Group:

Rebecca Harshberger,
Chair
Boyd Brown
Anne Lennan
Julia Shanahan
Holly Sutton

Dear Acting Commissioner Miller:

The Information Reporting Program Advisory Committee (IRPAC)¹ is pleased to submit comments on the Proposed Regulations on shared responsibilities for employers regarding health coverage, published in the Federal Register on January 2, 2013.

**International Reporting
& Withholding**

Sub-Group:

Donald Morris, Chair
Frederic Bousquet
Duncan Brenan
Terence Coppingier
Mark Druckman
Marjorie Penrod
Jonathan Sambur

The Proposed Regulations are complex and affect all employers, both small and large. Although only “applicable large employers” are potentially subject to assessments, each employer must engage in the determination of whether or not its business is an “applicable large employer.” While IRPAC recognizes the work involved in promulgating the Proposed Regulations and applauds the Service’s efforts in releasing these rules at the beginning of the year, IRPAC is keenly aware of the needs of all employers in trying to understand this complicated rule.

¹ IRPAC was established in 1991 as a result of an administrative recommendation contained in the final conference report for the Omnibus Budget Reconciliation Act of 1989. The recommendation suggested that the Internal Revenue Service (IRS) consider “the creation of an advisory group of representatives from the payer community and practitioners interested in the Information Reporting Program (IRP) to discuss improvements to the system.”

Small Employers

The challenges for small employers are especially acute. Many small employers with fewer than 50 employees who participate in a controlled group will mistakenly believe that they do not need to become educated in the employer shared responsibility rules and will not seek assistance from advisors. These small employers currently have no warning -- save the Proposed Regulations themselves and the accompanying Question and Answer document -- that controlled group rules apply under the Proposed Regulations.

Small employers are often alerted to new tax requirements from their CPAs. A number of CPAs who are currently serving on IRPAC have noted that their respective professional organizations have not yet provided explanations of the Proposed Regulations to assist members in their education. The employer shared responsibility rules take effect on January 1, 2014. Planning and preparation for these new rules must start immediately.

Large Employers

Members of IRPAC representing large corporations have noted that their companies would also appreciate having educational materials that would highlight the key components of the Proposal Regulations.

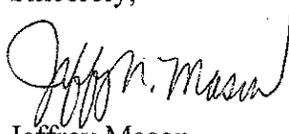
IRPAC Recommendation

IRPAC believes that the employer community as well as their tax and benefit advisors would be well served by educational materials created and published by the Service on the Proposed Regulations. Visuals, such as flowcharts, are warranted. We also request a step-by-step process to assist employers in determining the number of full-time employees against which potential assessments may be issued. The Service has significant experience in creating step-by-step procedures for other tax rules, such as the procedure in the Form 1040 for the child tax credit. IRPAC believes that the Service has the expertise to develop similar tools for the Proposed Regulations.

IRPAC has drafted a sample flowchart with accompanying endnotes (attached) that we believe would provide a wake up call to tax and benefit advisors, as well as employers, small and large. We encourage the Service to consider this for publication.

IRPAC continues to stand ready to assist the Service in developing educational tools on the employer shared responsibility rule. We look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Mason". The signature is written in a cursive style with a large initial "J" and "M".

Jeffrey Mason
IRPAC Chairman

Attachments: Flowchart - ACA Shared Responsibility Beginning in 2014
Endnotes for ACA Shared Responsibility Flowchart

Endnotes for the ACA Shared Responsibility Flowchart

March 15, 2013 Version

Caution: These rules are complex. For a more detailed explanation, see IRS proposed regulations on shared responsibility for employers regarding health coverage (Federal Register, January 2, 2013).

Endnote A – Generally, employers count full-time employees and full-time equivalents for part-time employees on business days during the preceding calendar year. Special rules apply if the employer was not in existence in the preceding calendar year. All employers that are members of a controlled group as defined in Code Section 414(b), (c), (m) or (o) are considered a single employer. Consult with your tax advisor to determine if your company is a member of a controlled group.

The term full-time employee means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer. For this purpose, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week, provided the employer applies this equivalency rule on a reasonable and consistent basis.

The number of full-time equivalents is determined by adding the hours of service for each calendar month for employees who were not full-time (but not more than 120 hours of service for any employee) and dividing that number by 120.

Generally, an employee's hours of service would include each hour for which an employee is paid, or entitled to payment by the employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

Under the transition rule for 2014, employers have the option to use a period of at least six consecutive months in 2013, rather than a 12-month period.

Endnote B – The proposed regulations on shared responsibility for employers define an offer of coverage to full-time employees as an offer to at least 95% of its full-time employees and their dependent children who are under age 26, as defined in Code Section 152(f)(1). The term dependent does not include spouses. An employer is not required to make a contribution to the coverage to satisfy the offer requirement. There is transition relief in 2014 for plans that do not currently offer coverage to children. There is transition relief through 2014 for employers contributing to multiemployer plans.

Endnote C - Two types of subsidies are required to become available in 2014: health premium tax credits and cost-sharing reductions. These subsidies are available to individuals with household income starting at 100% of the federal poverty level up to 400% of the federal poverty level. 400% of the federal poverty level in 2014 for a family of four is estimated to be approximately \$91,000. Household income includes the income of the taxpayer and all individuals for whom the taxpayer can claim a personal exemption.

Health premium tax credits operate on a sliding scale. The tax credit begins at 2% of household income for taxpayers at 100% of the federal poverty level and phases out at 9.5% of household income for those above 400% of the federal poverty level. For example, an individual at 100% of the federal poverty level would be expected to pay 2% of their household income for coverage; the premium tax credit would equal the balance of the cost of coverage for a "benchmark plan" (defined as the second-lowest-cost plan in the Exchange). No one would receive a credit that is larger than the amount they actually pay for their plan. □□

Cost-sharing reductions lower the annual out-of-pocket expenditures for deductibles, coinsurance, copayments and similar charges. Cost-sharing reductions do not include premiums, balance billing amounts for non-network providers or spending for non-covered services. They phase out after household income exceeds 400% of the federal poverty level. □□

Endnote D – This is the §4980H(a) assessment; it is calculated on a monthly basis. No level of employer contribution is required to avoid this assessment. Employers are not subject to this penalty for failing to offer coverage to an employee for the initial three calendar months of employment. Fiscal year plans

have a transition relief rule. If an applicable large employer maintains a fiscal year plan as of December 27, 2012, the relief applies with respect to employees (whenever hired) who would be eligible for coverage, as of the first day of the first fiscal year of that plan that begins in 2014 (the 2014 plan year) under the eligibility terms of the plan as in effect on December 27, 2012.

Endnote E - IRS created an optional safe harbor that is based on an employee's W-2 wages instead of household income. Other safe harbors are also available.

Endnote F: IRS final regulations on the premium tax credit rules clarified that eligibility for the premium tax credit will be based on the affordability of single-only coverage.

Endnote G: This is the §4980H(b) assessment; it is calculated on a monthly basis.

Endnote H: Under the minimum value rule, an employer must pay at least 60% of the cost of a basket of health care expenses. Most employer-sponsored plans, excluding mini-meds, are expected to meet the minimum value requirements, according to a report released by HHS. HHS issued a final rule providing a Minimum Value Calculator for self-funded plans and large fully-insured group plans. The Minimum Value Calculator is posted on the Center for Consumer Information and Insurance Oversight's website, under Plan Management regulations, February 20, 2013. <http://cciio.cms.gov/resources/regulations/index.html>