The Insurance Mandates of the Affordable Care Act

A. Affordable Care Act Individual Mandate

1. All citizens of the United States are subject to the individual mandate as are all permanent residents and all foreign nationals who are in the United States long enough during a calendar year to qualify as resident aliens for tax purposes. Foreign nationals who live in the United States for a short enough period that they do not become resident aliens for federal income tax purposes are not subject to the individual mandate even though they have to file a US income tax return.

2. Individuals who choose to go without insurance coverage will be required to pay a monthly penalty. [Sec. 5000A]

    a. A taxpayer's monthly penalty is equal to 1/12 of the <u>greater</u> of: [Sec. 5000A(c)(2)]

        1) The flat dollar amount or

        2) The applicable percentage of income.

    b. The flat dollar amount is the sum of the applicable dollar amounts for each of the applicable individuals who lack minimum essential coverage, and whom the taxpayer is required to insure.

        1) The taxpayer, the taxpayer's spouse on a joint return, and the taxpayer's dependents.

    c. The applicable dollar amount:

        1) For 2014, the applicable dollar amount is $95 per year. [Sec. 5000A(c)(3)(B)]

        2) For 2015, the applicable dollar amount is $325 per year. [Sec. 5000A(c)(3)(B)]

        3) For 2016, the applicable dollar amount is $695 per year. [Sec. 5000A(c)(3)(A)]

        4) For calendar years beginning after 2016, the $695 applicable dollar amount is increased for inflation, with each adjustment rounded down to the lower multiple of $50. [Sec. 5000A(c)(3)(D)]

        5) The applicable dollar amount is halved for any month in which the applicable individual is under the age of 18 at the beginning of the month. [Sec. 5000A(c)(3)(c)]

        6) The flat dollar amount cannot exceed 300% of the applicable dollar amount. [Sec. 5000A(c)(2)(A)]

            a) Flat dollar amount maximum of $285 for 2014 ($95 x 300%).

d. The percentage of income is an amount equal to the following percentage of the excess of the taxpayer's household income over the taxpayer's filing threshold for the tax year. [Sec. 5000A(c)(2)(B)]

1) 1.0% for tax years beginning in 2014.

2) 2.0% for tax years beginning in 2015.

3) 2.5% for tax years beginning after 2015.

e. Household income means the modified adjusted gross income of the taxpayer plus the modified adjusted gross income of all members of the taxpayer’s family required to file a tax return. [Sec. 5000A(c)(4)(B)]

1) A taxpayer’s family means the individuals for whom the taxpayer properly claims a deduction for a personal exemption under Sec. 151 for the taxable years. [Sec. 5000A(c)(4)(A)]

2) Modified adjusted gross income for purposes of the penalty is adjusted gross income increased by (1) amounts excluded from gross income under the foreign income and housing exclusion [Sec. 5000A(c)(4)(C)(I)] and (2) tax-exempt interest. [Sec. 5000A(c)(4)(C)(ii)]

f. Example 1 -- Household Income.
John and Mary have three children, Beth, Michael, and Jody.
John and Mary have adjusted gross income of $55,000.
Beth has wages of $8,000.
Michael has wages of $6,000.
Jody has net self-employment income of $1,200.
John and Mary’s household income is $63,000 ($55,000 + $8,000)
Michael is not required to file a return ($6,200 standard deduction)
Jody is required to file a return only because his net self-employment income exceeds $400; otherwise, he would not be required to file.

g. An individual’s filing threshold is determined by taking the taxpayer’s standard deduction, any taxpayer additional standard deductions for being over 65, and any taxpayer personal exemptions. [Sec. 6012(a)(1)]

1) A dependent’s applicable filing threshold is the same as the threshold for the taxpayer. [Reg. 1.5000A-3(f)(2)(ii)]

h. Individuals are required to have “Minimum Essential Coverage” (MEC) for every month in a year. If an individual has coverage for at least one day, they are considered to have coverage for that entire month.

i. The following plans are considered to meet the minimum essential coverage requirement:
   1) Employer-sponsored coverage (including COBRA coverage and retiree coverage)
   2) Coverage purchased in the individual market
   3) Medicare Part A coverage and Medicare Advantage
   4) Most Medicaid coverage
   5) Children's Health Insurance Program (CHIP) coverage
   6) Certain types of veterans health coverage administered by the Veterans Administration
   7) TRICARE
   8) Coverage provided to Peace Corps volunteers
   9) Coverage under the Nonappropriated Fund Health Benefit Program

j. Minimum essential coverage does not include coverage providing only limited benefits, such as coverage only for vision care or dental care, or Medicaid covering only certain benefits such as family planning, workers' compensation, or disability policies.

k. A spouse and dependent children do not have to be covered under the same policy as the taxpayer.

l. The penalty is included with the taxpayer's income tax return for the tax year that includes the month for which the penalty is imposed. [Sec. 5000A(b)(1) and (2)]

m. Example. The Johnson's are married and file a joint return for 2014. Their household income is $55,000. They and their four dependents are all applicable individuals who are not exempt from the penalty. All six of the Johnson's are uninsured for the entire calendar year. One dependent is an adult, and the other three are under the age of 18 for the entire year. The Johnson's shared responsibility (tax) is calculated as follows:

   - For purposes of the flat dollar penalty, the applicable dollar amount for 2014 is $95. This amount is halved for applicable individuals under the age of 18. Thus, the Johnson's initial penalty would be $427.50 ($95 for each of the three adults, and $47.50 for each of the three children). However, the flat dollar amount is limited to 300% of the applicable dollar amount, with no adjustment for individuals under 18. Thus, the Johnson's flat dollar penalty is $285 ($95 x 300%).

   - Assume the Johnson's filing threshold is $20,300 (using 2014 amount). Their $55,000 household income exceeds this threshold by $34,700 ($55,000 - $20,300). Thus, their percentage of income penalty is $347 (1.0% x $34,700).

   - The Johnson'' actual penalty is the lesser of (1) the greater of the sums of their monthly penalty amounts which is $347 (the greater of $285, the flat dollar amount, or $347, the applicable percentage of income); or (2) the average national annual premium for qualified health plans that offer bronze-level of coverage for a family of six through an Exchange. They must pay the penalty with their 2014 income tax return.

3. The IRS has very limited enforcement authority with respect to the individual mandate, with no criminal prosecution, penalty for failure to pay, or lien authority.

    a. There appears to be some room for civil penalties or refund offsets.

    b. Assume a taxpayer has taxable income of $50,000; a tax of $5,000; with withholding of $4,700; and a $500 penalty for lack of insurance. The IRS cannot enforce payment of the $500 penalty except by applying the amount against any future refunds.

4. Premiums will be subsidized for households that make less than four times the federal poverty line – $94,200 for a family of four in 2014.

    a. Their cost of insurance will be capped at 9.5% of income (300% of poverty line), with this percentage decreasing as their income decreases.

5. Dependents are exempt from paying the penalty, because it is imposed instead on the taxpayer who claims the dependency exemption. [Sec. 5000A(b)(3)(A)]

6. For 2014 tax returns, taxpayers will have to attach proof to the tax return that they are enrolled in a “qualified plan.” – Form 1095-A, B, or C

B. Affordable Care Act Employer Mandate

1. Applicable large employers will be required to pay penalties if they do not provide adequate coverage for their employees.

    a. An applicable large employer, with respect to a calendar year, is an employer who employed an average of at least 50 full-time equivalent (FTE) employees on business days during the preceding calendar year. [Sec. 4980H(c)(2)(A)]

        1) Companies that have a common owner, or are otherwise related, will use the combined number of employees to determine whether each separate company is subject to this provision.

2. The Obama administration on July 2, 2013, announced a one-year delay, until 2015, in the health care mandate that large employers provide coverage for their workers or pay penalties. [Notice 2013-45]

    a. This delay is designed to meet two goals:

        1) First, it will allow the government to consider ways to simplify the new reporting requirements consistent with the law.

        2) Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees.

3. Employer Mandate Delay for Employers of 50-99 Employees for 2015

    a. For employers eligible for transition relief, no assessable payment penalty will apply for any calendar month during 2015 or any calendar month during the portion of the 2015 plan year that falls in 2016.

    b. An employer is eligible for the transition relief if it satisfies the following conditions:

        1) Limited Workforce Size. The employer employs on average at least 50 full-time equivalent employees but fewer than 100 full-time equivalent employees on business days during 2014.

        2) Maintenance of Workforce and Aggregate Hours of Service. During the period beginning on February 9, 2014, and ending on December 31, 2014, the employer does not reduce the size of its workforce or the overall hours of service of its employees in order to satisfy the workforce size condition.

            a) A reduction in workforce size or overall hours of service for bona fide business reasons will not be considered to have been made in order to satisfy the workforce size condition.

        3) Maintenance of Previously Offered Health Coverage. During the maintenance period the employer does not eliminate or materially reduce the health coverage, if any, it offered as of February 9, 2014.

            a) In no event will an employer be treated as eliminating or materially reducing health coverage if:

                (1) It continues to offer each employee who is eligible for coverage during the coverage maintenance period an employer contribution toward the cost of employee-only coverage that either (A) is at least 95% of the dollar amount of the contribution toward such coverage that the employer was offering on February 9, 2014, or (B) is the same (or a higher) percentage of the cost of coverage that the employer was offering to contribute toward coverage on February 9, 2014;

                (2) In the event there is a change in benefits under the employee-only coverage offered, that coverage provides minimum value after the change; and

                (3) The employer does not alter the terms of its group health plans to narrow or reduce the class or classes of employees (or the employees' dependents) to whom coverage under those plans was offered on February 9, 2014.

        4) Certification of Eligibility for Transition Relief. The applicable large employer certifies on a prescribed form that it meets the eligibility requirements set forth in 1) through 3).

    c. As further transition relief, for each calendar month during 2015 and any calendar months during the 2015 plan year that fall in 2015, an applicable large employer that offers coverage to at least 70% of its full-time employees will not be subject to an assessable payment penalty under Section 4980H(a) ($2,000 per employee penalty). Applicable large employers qualifying for the transition relief will continue to be subject to a potential assessable payment under Section 4980H(b).

4. A full-time employee with respect to any month is an employee who is employed on average at least 30 hours of service per week. [Sec. 4980H(c)4)(A)]

   a. A combination of employees working 120 hours per month count as one full-time equivalent (FTE) employee.

   b. Regulations provide that an employer's status as a large employer for a calendar year is determined by taking the sum of total number of full-time employees for each calendar month in the preceding calendar year and the total number of full-time equivalent employees for each calendar month in the preceding calendar year, and dividing by 12. Seasonal workers are included in the computation. The result, if not a whole number, is then rounded to the next lowest whole number. [Reg. 54.4980H-2(b)(1)]

      1) The term seasonal worker is not limited to agricultural or retail workers.

      2) Regulations provide than an employer not in existence throughout the preceding calendar year is an applicable large employer for the current calendar year if it is reasonably expected to employ an average of at least 50 full-time equivalent employees on business days during the current calendar year and it actually employs an average of at least 50 full-time equivalent employees on business days during the calendar year. [Reg. 54.4980H-2(b)(3)]

   c. An employer will not be considered to employ 50 or more full-time employees if: [Sec. 4980H(c)(2)(B)]

      1) The employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

      2) The employees in excess of 50 employed during the 120-day period were seasonal workers.

5. An employer owes a penalty only if it meets two requirements: [Sec. 4980H(a)]

   a. If it has 50 or more full-time employees or full-time equivalents and

   b. If one or more of its full-time employees receive premium credits (governments subsidies) to help purchase health insurance in the exchange.

6. An individual may be eligible for a premium credit either because the employer does not offer coverage or the employer offers coverage that is either not "affordable" or does not provide "minimum value."

   a. Not affordable means that the employer’s plan premium for self-only coverage exceeds 9.5% of his or her household income. [Sec. 36B(c)(2)(C)(i)(II)]

   b. Does not provide minimum value means that the employer plan pays for less than 60%, on average, of covered health care expenses. [Sec. 36B(c)(2)(C)(ii)]

   c. According to the Congressional Budget Office, about 1 million individuals per year will enroll in an exchange plan and receive a credit because their employer's plan was unaffordable.

d. There are two different affordability standards:

   1) For the individual mandate, coverage is not affordable if it costs more than 8% of household income.

   2) However, for premium assistance tax credit, employer-sponsored coverage is not affordable if it cost over 9.5% of household income.

7. An employee receives a premium subsidy only if he or she meet two requirements:

   a. The employee's household income must be less than 400% of the Federal Poverty Line (FPL), which varies with family size.

      1) For a family of four, 400% FPL = $94,200 for 2014.

      2) Household income includes the income of the employee's spouse and of other dependent members of the household.

   b. The employee's portion of the insurance premium on the employer's plan must exceed 9.5% of the employee's household income.

      1) The employer can use the employee’s W-2 income for this 9.5% calculation. [Notice 2011-73]

   c. Example. In 2015, John Black has household income of $47,000. Mr. Black is an employee of Apex Corporation, which offers its employees a health insurance plan that requires Mr. Black to contribute $3,450 for self-only coverage for 2015. This amount represents 7.3% of Mr. Black’s’ household income. Because Mr. Black’s required contribution for self-only coverage does not exceed 9.5% of household income, Apex’s plan is affordable for Mr. Black, and Mr. Black is eligible for minimum essential coverage for all months in 2015.

   d. Employees that are offered qualified coverage by an employer are ineligible for the new insurance subsidies provided in the exchanges.

      1) If an employee purchases a health plan through the Marketplace instead of accepting health coverage offered by the employer, then the individual may lose the employer contribution to the employer-offered coverage. Also, this employer contribution – as well as the employee contribution to employer-offered coverage – is often excluded from income for Federal and State income tax purposes. The employee payments for coverage through the marketplace are made on an after-tax basis.

   e. Employees who qualify for Medicaid, the Children’s Health Insurance Program, or any other applicable state or local public program will be enrolled in those programs, rather than given a premium assistance credit. The employer will not be responsible for the shared responsibility penalty for employees who are enrolled in one of those programs.

   f. The employer will not be responsible for the penalty if no full-time employee’s income qualifies him or her for the subsidy

8. Penalty Amounts

   a. If a business does not offer health insurance, the penalty is $2,000 ($166.67 per month) per full-time employee after excluding the first 30 full-time employees. [Sec. 4980H(c)(2)(D)(i)(1)]

   b. If a business does offer insurance, the penalty is the lesser of $2,000 for every full-time employee (after excluding the first 30 full-time employees), or $3,000 for every employee receiving a subsidy.

   c. For calendar years after 2014, the $2,000 amount used in determining the applicable payment amount and the $3,000 amount used in determining the assessable payment imposed on applicable large employers offering coverage will be increased for inflation. [Sec. 4980H(c)(5)].

9. Part-time workers do not have to be offered insurance under the law.

   a. Part-time is defined as below 30 hours per week.

10. The requirement is that the employer offer minimum essential coverage to substantially all full-time employees and their dependents in order to avoid the $2,000 times all full-time employee penalty.

   a. The penalty will require an offer of such coverage to at least 95% of all full-time employees and their dependents.

11. The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made. [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, December 28, 2012, Q/A-16]

   a. Employers will <u>not</u> be required to include the employer shared responsibility payment on any tax return that they file. [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, December 28, 2012, Q/A-17]

   b. An employer may not deduct the assessable payment imposed under the shared responsibility rules. [Sec. 4980H-(c)(7)]

12. Unaffordable coverage, for purposes of the premium assistance credit, is self-only coverage with an employee-paid premium amount that is more than 9.5% of the employee's household income. [Reg. 1.36B-2(c)(3)(v)] Health and Human Services must be provided information regarding an employee's household income and the lowest-cost employer-sponsored health plan option. Health and Human Services will verify the information provided and determine if the employer-sponsored insurance is considered unaffordable coverage. If the insurance is determined to be unaffordable, Health and Human Services informs the state insurance exchange that the individual is eligible for the premium assistance credit and issues an affordability waiver to the employee. Generally, the employer, after being notified, is responsible for the penalty for providing unaffordable coverage to any employee who receives an affordability waiver.

C. Health Care Exchanges (Marketplace)

1. The Health Insurance Exchange is being called the Health Insurance Marketplace by the IRS.

    a. The Marketplace is a new way to find health insurance that fits an individual’s budget and meets their needs. With one application they can see all of their options and enroll.

    b. With the use of the Marketplace they will fill out an application and find out if they can get lower costs on their monthly premiums for private insurance plans. They will find out if they qualify for lower out-of-pocket costs.

    c. The Market place will also tell them if they qualify for free or low-cost coverage available through Medicaid or th Children’s Health Insurance Program (CHIP).

    d. Health Exchanges offer various types of insurance plans which are classified as Bronze, Silver, Gold, or Platinum.

        1) All plans offer the same essential benefits with different co-pays and deductible amounts.

        2) The Health Exchange plans cover 60%, 70%, 80%, and 90%, respectively, of medical costs.

    e. Insurance plans in the Marketplace are offered by private companies, and they cover the same core set of benefits called essential health benefits

        1) No plan can turn anyone away or change more because of an illness or medical condition.

        2) Plans cannot charge women more than men for the same plan.

2. While all insurance plans are offered by private companies, the Marketplace is run by either the state or the Federal government.

    a. The Marketplace simplifies the search for health coverage by gathering the options available in a person’s area in one place. Individual’s can compare plans based on price, benefits, quality, and other features important to them before they make a choice.

    b. Individuals can apply for Marketplace coverage three ways:
        1) Online,
        2) By mail
        3) In-person

    c. A taxpayer who is married at the close of the taxable year qualifies for a premium tax credit only if the taxpayer and the taxpayer’s spouse file a joint return for the taxable year. [Reg. 1.36B-2(b)(2)]

3. Difference Between Marketplace Plans and Other Private Plans

    a. All health plans must offer essential health benefits. But the only way to get lower costs based on income is through the Marketplace.

    b. In 2014, an individual making up to $45,960, or a family of four making up to $94,200, may qualify for these lower costs.

4. Modified adjusted gross income is used for determining the amount of household adjusted gross income. Modified adjusted gross income is household income plus any tax-exempt Social Security, tax-exempt interest, and tax-exempt foreign income.

5. Marketplace Health Insurance Costs

    a. All insurance plans available through the Marketplace will be offered by private insurance companies. They will decide which plans to offer and how much each will cost.

    b. All Marketplace plans must be approved by state insurance departments and certified by the Marketplace. Prices are approved by state insurance departments as required by state law.

    c. The Marketplace will display the prices for all plans available to a person. Prices will show any cost savings that a person may be eligible for based on their income.

    d. Some Marketplace health plans will have lower monthly premiums and may charge more out-of-pocket costs when care is needed. Some will be higher-premium plans that cover more costs when care is needed. Others will fall in between. All plans will cover the same list of essential health benefits.

    e. The amount of the premium tax credit is tied to the amount of the premium, so that older Americans who face higher premiums will receive a greater credit.

    f. An advance payment of the premium tax credit will be made by the Department of Treasury directly to the insurance company.

6. The federal poverty line means the most recently published poverty guidelines in the Federal Register by the Secretary of Health and Human Services as of the first day of the regular enrollment period for coverage by a qualified health plan offered through the Marketplace for a calendar year. [Reg. 1.36E-(h)]

    a. Thus, the federal poverty line for computing the premium tax credit for a taxable year is the federal poverty line in effect on the first day of the initial or annual open enrollment period preceding that taxable year.

2014 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Persons in family/household	Poverty guideline
1	$11,490
2	$15,510
3	$19,530
4	$23,550
5	$27,570
6	$31,590
7	$35,610
8	$39,630

For families/households with more than 8 persons, add $4,020 for each additional person.

Income Percentages, Based on Taxpayer's Household Income as a Percentage of Poverty Level

Household Income Percentage of Federal Poverty Line	Initial Percentage	Final Percentage
Less than 133%	2.0	2.0
At least 133% but less than 150%	3.0	4.0
At least 150% but less than 200%	4.0	6.3
At least 200% but less than 250%	6.3	8.05
At least 250% but less than 300%	8.05	9.5
At least 300% but less than 400%	9.5	9.5

Maximum Monthly Premium for 2nd Lowest Cost Silver Plan by Family Size

FPL Range Limit	1	2	3	4	5	6	7	8	Each Addtl Member	Premium Limit
100%	Medicaid									2.00%
138%	Medicaid									3.00%
150%	$57	$79	$97	$117	$137	$157	$178	$198	$20	4.00%
200%	$120	$166	$205	$247	$289	$331	$373	$416	$42	6.30%
250%	$192	$265	$327	$394	$462	$529	$597	$664	$67	8.05%
300%	$272	$376	$463	$559	$654	$750	$845	$941	$95	9.50%
400%	$363	$502	$618	$745	$873	$1,000	$1,127	$1,254	$127	9.50%

7. Calculating the Credit

Tax Credit = Adjusted Monthly Premium For Benchmark Plan - (Taxpayer's Household Income x Applicable %) / 12

a. The "benchmark plan" is the second-lowest-cost plan that would cover the family at the silver level of coverage.

b. The "adjusted monthly premium" is the premium an issuer would charge for the applicable benchmark plan to cover all members of he taxpayer's coverage family, adjusted only for the age of each member.

1) The adjusted monthly premium is determined without regard to any premium discount or rebate under a wellness program. Thus, participation in such a program would reduce the taxpayer's actual premium without reducing the credit to which the taxpayer is entitled.

2) The adjusted monthly premium does not include any adjustment for tobacco use. Although tobacco use could increase a taxpayer's premium, any increased premium would not increase the taxpayer's credit.

c. The Tax Credit cannot be larger than the Adjusted Monthly Premium for Benchmark Plan.

d. Example. Family of Four with Income of $50,000, Purchases Benchmark Plan
The premium tax credit is generally set based on the benchmark plan. The family's expected contribution is a percentage of the family's household income.
• Income as a Percentage of FPL: 212% ($50,000 / $23,550)
• Monthly Premium for Benchmark Plan: $750
• Excess Over Poverty Line: 12% (212% - 200%)
• Range of Poverty Lines: 50% (250% - 200%)
• Proportion of Poverty Range: 24% (12% / 50%)
• Percentage Difference of Poverty Range: 1.75% (8.05% - 6.3%)
• Addition to Poverty Range: .42% (1.75% x 24%)
• Applicable Percent: 6.72% (6.3% + .42%)
• Premium Tax Credit: $470 ($750 - ($50,000 x .0672) / 12))
• Actual Family Monthly Contribution: $280 ($750 - $470)

e. Example. Family of Four with Income of $50,000, Purchases Less Expensive Plan
If a family chooses a plan that is less expensive than the benchmark plan, the family will generally pay less, thereby creating an incentive to choose a less costly plan and reducing overall health care costs.
• Monthly Premium for Plan $625
• Premium Tax Credit: $470
• Actual Family Monthly Contribution: $155 ($625 - $470)

f. Example. Family of Four with Income of $50,000, Parents are between the ages of 55 and 64
Because premiums are generally higher for older individuals, the premium tax credit also is higher for these individuals.
• Premium for Benchmark Plan: $1,200
• Premium Tax Credit: $920 ($1,200 - ($50,000 x .0672) / 12))
• Actual Family Monthly Contribution: $280 ($1,200 - $920)

8. Tax credits are normally determined at the conclusion of the taxable year, the premium credit may be advanced. Such advance payments are made directly to the insurer on the taxpayer's behalf.

9. Reconciling Advance Payments

a. The advance payments are reconciled against the amount of the family's actual premium tax credit, as calculated on the family's federal income tax return.

b. A taxpayer whose premium credit for the taxable year exceeds the taxpayer's advance credit payments may receive the excess credit as an income tax refund.

c. Any repayment due from the taxpayer is subject to a cap for taxpayers with income under 400% of the Federal poverty line.

Additional Tax Limitation Table

Household income percentage of federal poverty line	Single	Married Filing Jointly Head of Household Surviving Spouse
Less than 200%	$300	$600
At least 200% but less than 300%	$750	$1,500
At least 300% but less than 400%	$1,250	$2,500
400% or more	repay the full premium credit amount	