**8778. How does an employer determine whether it is an applicable large employer and subject to the ACA employer shared responsibility provision?**

Only employers who are “applicable large employers” are subject to the ACA employer shared responsibility provisions. An applicable large employer is one with at least fifty full-time equivalent employees (FTEs). These employers must offer health insurance coverage meeting specified requirements or pay a $2,000 per full-time worker penalty (after its first thirty employees) if any of its FTEs receive a federal premium subsidy through a state health insurance exchange (which would occur because the employee was not being offered sufficient coverage through the employer) (see Q 8763).

Whether or not the employer is an applicable large employer that is subject to the shared responsibility provisions is based upon the number of FTEs employed by the employer in the preceding tax year (so that the employer’s status as a large employer for 2016 is based on its FTEs during 2015).[[1]](#footnote-1)

FTEs are determined based on each employee’s hours of service. An employee is a full-time employee if averaging at least 30 hours of work per week.[[2]](#footnote-2) However, an employee who averages 130 hours of work per month is treated as an employee who works at least 30 hours per week and, as such, is a full-time employee.[[3]](#footnote-3)

An employer must also count as FTEs certain employees who do not work an average of 30 hours per week. This number is determined by dividing the total number of hours of service worked by employees who are *not* full-time employees in any month by 120. The resulting number must be added to the number of full-time employees as determined in the preceding paragraph.[[4]](#footnote-4)

Seasonal employees are taken into consideration, but if any employer exceeds 50 FTEs for 120 days or fewer during the year and the employees in excess of 50 employed during the 120-day period are seasonal workers, the employer will not be treated as an applicable large employer.[[5]](#footnote-5) The preamble to the regulations and IRS Q&A addressing the issue define seasonal worker as one who performs services on a seasonal basis as defined by the Secretary of Labor, and retail workers employed

exclusively during holiday seasons, but also note that the employer is entitled to apply a reasonable, good faith interpretation of the term seasonal worker.

Employers should note that an optional “look-back” measurement period is available, but only for purposes of calculating the employer mandate penalty assessments. The look-back measurement cannot be used for purposes of determining whether the employer is an applicable large employer that is subject to the shared responsibility provisions.[[6]](#footnote-6)

**8779. How does an employer that has been in existence for less than one year determine whether it is subject to the ACA shared responsibility provisions?**

In general, an employer’s status as an applicable large employer is determined based on the number of full-time equivalent employees it employs in the previous year (see Q 8778). For an employer that was not in existence during the previous year, determination of whether it is an applicable large employer and thus subject to the ACA shared responsibility provisions is based upon the number of employees that it reasonably expects that it will employ during the current year. The penalty provisions will apply only if the employer *actually does* employ an average of 50 or more full-time employees (and equivalents) during its first year of existence.[[7]](#footnote-7) An employer was not in existence during the previous calendar year only if it was not in existence on any business day during that year.[[8]](#footnote-8)

An employer who was not in existence for the previous year is also entitled to exclude seasonal workers (see Q 8778) from its calculation if it reasonably expects to employ workers meeting the definition of seasonal worker during its first year of existence.[[9]](#footnote-9)

**8780. How does an employer that has a common owner with another employer determine whether it is subject to the ACA shared responsibility provisions?**

Two or more employers who are controlled by the same owner or are otherwise related are considered to be a single employer if those employers are treated as a

single employer under IRC Section 414.[[10]](#footnote-10) IRC Section 414 treats two or more employers as one if they are: (1) part of a controlled group of corporations, (2) trades or businesses that are under common control, (3) affiliated service groups or (4) related through other arrangements generally having the same effect as in groups (1)-(3).[[11]](#footnote-11)

These employers are combined in determining whether they collectively employ 50 or more full-time employees for purposes of applicable large employer status. If the combined total exceeds 50 full-time employees (including equivalents), each employer is subject to the shared responsibility provisions even if no single employer crosses the threshold.

**8781. Will an employer be subject to the ACA shared responsibility provisions if it offers employees and their dependents coverage that is both affordable and provides minimum value, but some of its employees, their spouses and/or dependents obtain coverage through the health insurance marketplace, Medicaid or Medicare?**

No. If an applicable large employer offers coverage that is affordable and provides minimum value, the employer will not be subject to the shared responsibility provisions if some of its employees, or their spouses or dependents, obtain coverage from another source, such as through the insurance marketplace or through Medicare or Medicaid.

The employer will not be subject to the shared responsibility payment unless one of its employees receives a premium tax credit.[[12]](#footnote-12) If the employer offers coverage that is both affordable and provides minimum value to employees and their dependents, neither the employees nor their dependents will be eligible for the premium tax credit if they elect to purchase insurance through the exchanges. Employees (or dependents) who are eligible for Medicare or Medicaid are not eligible for a premium tax credit.[[13]](#footnote-13)

**8782. If an employer offers health coverage to fewer than 95 percent of its full-time employees, how is the employer shared responsibility payment amount calculated?**

If the employer offers health coverage to fewer than 95 percent of its full-time employees, it may be subject to the shared responsibility provisions and owe a payment if any full-time employee purchased insurance through the exchanges and received a premium tax credit.[[14]](#footnote-14)

To calculate this payment, the employer multiplies the number of full-time employees it employed for the year (minus up to 30, and the number of full-time employees who were offered coverage) by $2,000.[[15]](#footnote-15) For purposes of this calculation, a full-time employee does *not* include a full-time equivalent employee.

If the employee offers coverage for some months, but not for others, it must calculate its shared responsibility payment separately for the months in which coverage was not offered. The payment is equal to the number of full-time employees employed for the month (minus up to 30, and the number of full-time employees who were offered coverage) multiplied by 1/12 of $2,000. If the employer does not offer coverage to a full-time employee on any day of a calendar month, that employee is treated as not having been offered coverage for the entire month.[[16]](#footnote-16)

**8783. If an employer offers health coverage to 95 percent or more of its full-time employees, but owes a shared responsibility penalty regardless, how is the amount of the payment owed calculated?**

An employer who offers health coverage to at least 95 percent of its full-time employees, but owes a shared responsibility payment because one or more of its full-time employees received a premium tax credit, the employer must calculate its liability separately for each month. This situation can arise, for example, if the employer offered coverage but that coverage was unaffordable or failed to provide minimum value for one or more full-time employees.

The payment amount is calculated by multiplying the number of full-time employees who receive a premium tax credit for the month by 1/12 of $3,000. There is, however, a payment cap equal to the number of full-time employees for the month (minus up to 30) multiplied by 1/12 or $2,000, which ensures that the penalty for employees that offer coverage never exceeds the penalty for employers who fail to offer coverage.[[17]](#footnote-17)

**8784. When will employer-provided “wraparound” coverage constitute excepted benefits that are not subject to the ACA market reform provisions?**

The departments of Treasury, Health and Human Services and Labor have released final rules that outline the requirements that certain limited health benefits, which are “wrapped around” employer-sponsored health coverage, must meet in order to qualify as excepted benefits that would not preclude the employee from claiming a premium tax credit.

This rules establish five requirements that employer-sponsored wraparound coverage offered in conjunction with an individually purchased health plan must satisfy in order to constitute an excepted benefit that would not jeopardize an employee’s eligibility to claim a premium tax credit. The limited wraparound coverage must:

(1) Be specifically designed to supplement eligible individual health coverage by providing additional meaningful benefits;

(2) Be limited in amount. The final regulations set the limit as the greater of the maximum permitted annual salary reduction toward a health FSA or 15 percent of the cost of coverage under the primary plan;

(3) Satisfy certain nondiscrimination requirements by *not* (a) imposing preexisting condition exclusions, (b) discriminating based on any individual health factors or (c) being excludable from the employee’s income under IRC Section 105;

(4) Provide that individuals who are eligible for the wraparound coverage cannot also be enrolled in excepted benefit coverage that is a health FSA, and meet certain standards with respect to eligibility designed to prevent employers from failing to offer minimum essential health coverage to full-time employees as otherwise required by the ACA; and

(5) Satisfy certain reporting requirements by submitting certain information to the Office of Personnel Management that is sufficient to allow it to determine whether the coverage meets these requirements.

These rules apply as a pilot program with a sunset date, so that the wraparound coverage must be first offered no earlier than January 1, 2016 and no later than December 31, 2018, and end on the later of (1) the date that is three years after the date the wraparound coverage is first offered or (2) the date on which the last collective bargaining agreement relating to the plan terminates after the date the wraparound coverage is first offered.[[18]](#footnote-18)

**8785. How does an employer measure an employee's hours in determining whether that employee is a full-time employee for purposes of the ACA shared responsibility provisions?**

The employer shared responsibility provisions imposed by the ACA only apply to employers with 50 or more full-time employees (or the equivalent of 50 or more full-time employees). Determining full-time status hinges on an employee’s average hours of service (employees averaging at least 30 hours of service per week are considered full-time and regulations provide that 130 hours in a month is treated as the equivalent of 30 hours per week).[[19]](#footnote-19)

An employer has the option of choosing one of two options to measure an employee’s hours in order to determine full-time status. The first is a monthly measurement period under which the employer counts the employee’s hours of service each month.[[20]](#footnote-20) The second is called the “look-back” measurement period. The look-back measurement period, however, cannot be used to determine whether the employer is subject to the shared responsibility provisions in general (i.e, to determine whether the employer is an applicable large employer). The look-back measurement period is used instead (1) to determine whether an employer who is already offering health coverage has failed to satisfy the ACA standards so as to be liable for a penalty and (2) to calculate that penalty.[[21]](#footnote-21)

The look-back measurement period allows an employer to determine the employee’s status during a later period (the “stability period”) based on the employee’s hours of service during an earlier period (the “measurement period”).[[22]](#footnote-22) The measurement period must be a period of no more than 12 months and no less than 3 months, as determined by the employer. The employer can determine when the measurement period starts and ends, so long as that determination is made on a uniform and consistent basis for all employees in the same employment category (the regulations provide examples of permissible employment categories, including, among others, salaried and hourly employees, and collectively bargained and non-collectively bargained employees).[[23]](#footnote-23)

If the employee is a full-time employee during the measurement period, he or she must be treated as a full-time employee during the stability period regardless of whether he or she would be a full-time employee based on hours of service during the stability period. The stability period must be at least six calendar months, but can in no event be shorter than the measurement period.[[24]](#footnote-24) The final regulations note that an employer is entitled to treat additional employees as full-time employees even if their hours of service would not otherwise cause them to obtain full-time status under either of the measurement options.

**8786. What constitutes an hour of service for purposes of determining whether an employee is a full-time employee in light of the ACA shared responsibility provisions?**

An hour of service is generally each hour for which an employee is paid, or is entitled to receive payment, for the performance of services for the employer. An hour of service also includes any hours for which an employee is paid, or is entitled to receive payment, during a time period where no services are actually performed (for example, because the employee is entitled to paid vacation, paid sick leave, holiday pay, jury duty pay, etc.).[[25]](#footnote-25)

Hours of service do not include hours spent performing services for an employer as a volunteer or pursuant to a federal work-study program (or substantially similar program). To the extent payment for an employee’s services comes from a non-U.S. source, the hours spent performing those services are also excluded.[[26]](#footnote-26)

**8787. How does a small employer who hires additional employees throughout the year determine whether it is subject to the ACA shared responsibility provisions if some of those employees are part-time employees?**

An employer determines whether it employs 50 or more full-time employees (or full-time equivalents) during a year by calculating how many full-time employees it employed in the prior year. The employer first counts employees working at least 30 hours per week on a monthly basis as full-time employees. If the employer has part-time employees, it must also add full-time equivalent employees (which is determined by adding up the hours worked by all part-time employees and dividing by 120). The employer adds the totals for each month and divides by 12 to determine whether it employs 50 or more full-time employees for the year.[[27]](#footnote-27)

Therefore, if an employer hires additional employees throughout the year, it may cause it to become subject to the ACA shared responsibility provisions in the following year if the additional employees’ hours of service cause the employer to cross the 50 full-time employee threshold as calculated above.

**8788. How does a small employer that purchases another business during the year determine whether it is subject to the ACA shared responsibility provisions if the new business is a separate business entity?**

Even if the businesses are separate legal entities, the employer must generally combine the number of full-time employees working for each business during the year in order to determine whether it is subject to the shared responsibility provisions.[[28]](#footnote-28) This is the case if the businesses are separate legal entities, but are controlled by the same business owner. The criteria for determining whether a group of businesses is a controlled group under IRC Section 1563 apply in determining whether two or more businesses must be aggregated for purposes of the shared responsibility provisions.

Therefore, a parent-subsidiary group must be aggregated if, within the group, stock representing 80 percent of the voting power of all stock in each corporation is owned by one or more of the other corporations in the group and the parent corporation owns at least 80 percent of voting power, or 80 percent of the total shares, of at least one other corporation in the group.

A “brother-sister” controlled group exists if five or fewer people who are individuals, estates or trusts own at least 50 percent of the combined voting power, or 50 percent or more of the stock value, of each corporation.[[29]](#footnote-29) Similar ownership arrangements may also require aggregation in calculating whether the overall group employs 50 or more full-time employees and is thus subject to the shared responsibility provisions.

**8789. If an employer with fewer than 50 full-time employees offers health coverage that is generally affordable and provides minimum value to employees, but for certain employees the coverage is not affordable and so those employees purchase health insurance through the market and receive premium tax credits, is that employer subject to the ACA shared responsibility provisions?**

No. An employer with fewer than an average of 50 full-time employees on business days during the preceding calendar year is not subject to the shared responsibility provisions even if it offers health coverage that is not affordable to certain of its employees who, as a result, receive the premium tax credit.[[30]](#footnote-30)

Further, for 2015, transition relief is available for employers with fewer than 100 full-time employees who offer coverage that is not affordable or does not provide minimum value. An employer will not be subject to the shared responsibility provisions in 2015 (or, for non-calendar year plans, that portion of the plan year that falls within 2016) if the following conditions are satisfied:

1. The employer employs, on average, at least 50 full-time employees but fewer than 100 full-time employees in 2014;
2. The employer did not reduce its workforce or overall hours of employees’ service between February 9, 2014 and December 31, 2014, unless such reduction was made for bona fide business purposes;
3. The employer did not eliminate or materially reduce any health coverage that it offered as of February 9, 2014, before December 31, 2015;
4. The employer certifies that it meets the eligibility requirements described above.[[31]](#footnote-31)

**8790. If an employer is subject to the shared responsibility provisions, but all of its employees obtain other health coverage, is that employer still required to offer health coverage?**

Yes, an applicable large employer remains subject to the shared responsibility provisions even if all of its employees obtain coverage from other sources. However, the employer will only be required to pay the shared responsibility penalty if one or more of its employees receives a premium tax credit for purchasing individual health coverage. The shared responsibility penalty is calculated based on the number of full-time employees for the month in which an employee receives the premium tax credit. [[32]](#footnote-32)

**8791. If an employer offers health coverage to all full-time employees, but not to their dependents, is that employer subject to the ACA shared responsibility provisions?**

Yes, if the employer is otherwise required to offer health coverage and fails to offer health coverage to the dependents of its employees, the employer will be subject to the shared responsibility penalty if one of those employees receives the premium tax credit for insurance purchased through the marketplace.

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Despite this, the IRS has provided transition relief for the 2014 and 2015 plan years for employers who offer coverage to employees but fail to offer dependent coverage so that the shared responsibility penalty will not be assessed if the following are true:

1. The employer fails to offer dependent coverage;
2. The employer offers dependent coverage, but that coverage fails to constitute minimum essential coverage; or
3. The employer offers dependent coverage to some, but not all, of its employees’ dependents.

Further, the transition relief is only available to employers who did not offer dependent coverage in 2013 or 2014. The employer is required to take steps toward offering dependent coverage in 2014 or 2015 in order to take advantage of the transition relief. [[34]](#footnote-34)

**8792. If a taxpayer owns a business and the only employees are that taxpayer and his or her spouse, is that taxpayer still eligible for the self-employment health insurance tax deduction with respect to health coverage purchased through the health insurance marketplace?**

Yes, a self-employed owner of a small business is entitled to claim the self-employment health insurance tax deduction for health coverage purchased on the health insurance marketplace for the taxpayer and his or her family. This is the case if the taxpayer purchases the health insurance through the individual marketplace or through the small business (SHOP) marketplace. However, if the taxpayer claims the premium tax credit, the amount of the premium tax credit received cannot be deducted.[[35]](#footnote-35)

**8793. Does a retiree-only health reimbursement arrangement (HRA) provide minimum essential coverage under the ACA market reform provisions?**

Yes. A retiree-only health reimbursement arrangement (HRA) is not subject to the annual dollar limit prohibitions because it is a plan with fewer than two current employees.[[36]](#footnote-36) This is the case even if the retiree-only HRA is designed to reimburse the retiree for the cost of health coverage purchased through the individual health insurance exchanges.[[37]](#footnote-37) Because a retiree-only HRA has fewer than two current employees, it provides minimum essential coverage for purposes of IRC Sections 5000A and 36B.

**8794. Can an employer offer high-risk employees a choice between enrollment in a group health plan or cash without violating the Affordable Care Act market reform provisions?**

No. The Department of Labor has released guidance providing that an employer who offers high-risk employees a choice between enrollment in a group health plan or cash violates the nondiscrimination requirements of the Affordable Care Act.[[38]](#footnote-38) This is the case regardless of whether the cash payment is pre-tax or after-tax and regardless of whether the employee obtains individual health coverage from another source.[[39]](#footnote-39)

**8795. Will an employer receive a notification if it owes a shared responsibility penalty under the ACA?**

According to IRS guidance, an employer will receive a certification if one or more of its employees has received the premium tax credit that can generate employer liability for a shared responsibility penalty. The IRS will then contact the employer with a determination of whether it owes a shared responsibility payment, giving the employer an opportunity to respond before a notice and demand for payment is made. Such contact will not be made, however, until after the due date for the individual employees’ tax returns for the year, as this is how the individual employees will claim premium tax credits. The date of contact will also be delayed until after the filing deadline for the returns of applicable large employers that outline the number of full-time employees and any coverage offered.[[40]](#footnote-40)

**8796. How does an employer who owes a shared responsibility penalty make a payment?**

IRS guidance indicates that an employer who owes a shared responsibility penalty will not be required to include payment when it files its tax return for the year. Instead, the IRS will send a notice and demand for payment that includes payment instructions for the employer to follow.[[41]](#footnote-41)

**8797. Are non-profit employers subject to the ACA shared responsibility provisions?**

Yes. The shared responsibility provisions apply to all applicable large employers (those employers who employ an average of at least 50 full-time employees or full-time equivalents).[[42]](#footnote-42) This includes both for-profit and non-profit entities.[[43]](#footnote-43)

**8798. How are employees who work for two separate employers that are under common control treated in determining whether an employer is subject to the ACA shared responsibility provisions?**

The Affordable Care Act shared responsibility rules treat two or more employers that are under common control as a single employer for purposes of determining whether that employer is an applicable large employer so that the shared responsibility penalties may apply.[[44]](#footnote-44) As a result, all of an employee’s hours of service with each member of a group of employers that are under common control are added together in determining whether that employee is a full-time employee for purposes of applicable large employer status.

Conversely, if the employee works for two employers who are not under common control, the employee’s hours of service with the first employer are not counted as hours of service with the second employer. [[45]](#footnote-45)

**8799. When is an employer considered to be part of a controlled group for purposes of the ACA shared responsibility provisions?**

Companies that have a common owner will generally be combined for purposes of determining whether an employer is subject to the ACA shared responsibility provisions.[[46]](#footnote-46) Whether or not a group of employers is treated as a single employer for ACA purposes is determined based upon the IRC Section 414 provisions that apply to aggregate certain employers for employment benefit purposes.

An employer is part of a controlled group if it is a parent-subsidiary controlled group of corporations and:

1. stock possessing at least 80 percent of the voting power or value of all classes of stock in each of the corporations (except the parent) is owned by one or more of the other corporations, and
2. the common parent corporation owns at least 80 percent of the total voting power or value of at least one of the other corporations.[[47]](#footnote-47)

An employer is part of a brother-sister controlled group if 5 or fewer persons who are individuals, estates or trusts own stock possessing more than 50 percent of the combined voting power or value of all classes of stock of each corporation.[[48]](#footnote-48)

Rules similar to the rules discussed above are applied in determining whether an employer that is not a corporation is treated as a member of a controlled group for purposes of the ACA shared responsibility provisions.[[49]](#footnote-49) All employees of members of an affiliated service group are also treated as though employed by a single employer.[[50]](#footnote-50)

**8800. What types of employer-provided health coverage will be counted in determining whether the employer is liable for the Affordable Care Act Cadillac tax?**

The IRS has issued preliminary guidance indicating that many types of employer-provided health benefits (in addition to traditional health insurance premiums) will be counted in determining whether the employer will be subject to the ACA “Cadillac tax” on high cost health coverage. An employer can become liable if it offers employer or salary reduction contributions to a health savings account (HSA) or health flexible spending account (FSA) that it administers.

Pre-tax contributions to HSAs are likely to be included in determining whether an employee’s health coverage is subject to the Cadillac tax, but an employee’s after-tax contributions are not included in the calculation. As a result, many employers will learn that the popular combination of high deductible health plans (HDHPs) and pre-tax HSA dollars may no longer be the most cost effective way to provide comprehensive coverage.

The cost of health FSAs, Archer MSAs, HRAs, retiree coverage and multi-employer plan coverage are also expected to be included when calculating whether the threshold that triggers the Cadillac tax has been crossed.[[51]](#footnote-51)

**8801. Can employment of summer interns cause an employer to become subject to the shared responsibility provisions?**

Yes. However, in order to be counted as a full-time employee, an employee must be paid for his or her services. As a result, unpaid interns will *not* be counted as employees in determining whether an employer is subject to the shared responsibility provisions. An intern who is paid, however, will be counted in the same manner as any other employee.[[52]](#footnote-52) Therefore, a paid intern who works an average of 30 hours per week must be offered health coverage within the period of time that it would be offered to any other full-time employee.

If the intern can legitimately be categorized as a seasonal employee (i.e, his or her duties are commonly only accomplished during a particular season), the employer may avoid offering health coverage to that intern. The employer can also avoid responsibility for offering health coverage to interns if the hours of those interns are capped at below 30 hours a week so that they are not treated as full-time employees under the ACA.

1. IRC Sec. 4980H(c). [↑](#footnote-ref-1)
2. IRC Sec. 4980H(c)(4). [↑](#footnote-ref-2)
3. Treas. Reg. § 54.4980H–1(a)(21)(ii). [↑](#footnote-ref-3)
4. IRC Sec. 4980H(c)(2)(E). [↑](#footnote-ref-4)
5. IRC Sec. 4980H(c)(2)(B). [↑](#footnote-ref-5)
6. See IRS Q&A on the Employer Shared Responsibility Provisions Under the Affordable Care Act, available at: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act> ) [↑](#footnote-ref-6)
7. IRC Sec. 4980H(c)(2)(C)(ii). [↑](#footnote-ref-7)
8. Treas. Reg. § 54.4980H–2(b)(3). [↑](#footnote-ref-8)
9. Treas. Reg. § 54.4980H–2(b)(2). [↑](#footnote-ref-9)
10. IRC Sec. 4980H(c)(2)(C)(i). [↑](#footnote-ref-10)
11. IRC Secs. 414(b), (c), (m), (o). [↑](#footnote-ref-11)
12. IRC Sec. 4980H(a). [↑](#footnote-ref-12)
13. See Preamble to the Final Regulations, TD 9655. [↑](#footnote-ref-13)
14. IRC Sec. 4980H(a). [↑](#footnote-ref-14)
15. Treas. Reg. 54.4980H-5(a). [↑](#footnote-ref-15)
16. Treas. Reg. 54.4980H-5(c). [↑](#footnote-ref-16)
17. IRC Sec. 4980H(b). [↑](#footnote-ref-17)
18. TD 9714. [↑](#footnote-ref-18)
19. IRC Sec. 4980H(c)(4). [↑](#footnote-ref-19)
20. Treas. Reg. §54.4980H-3(c). [↑](#footnote-ref-20)
21. See Preamble to the Final Regulations, TD 9655. [↑](#footnote-ref-21)
22. Treas. Reg. §54.4980H-3(d)(1)(i). [↑](#footnote-ref-22)
23. Treas. Reg. §54.4980H-3(d)(1)(i). [↑](#footnote-ref-23)
24. Treas. Reg. §54.4980H-3(d)(1)(iii). [↑](#footnote-ref-24)
25. Treas. Reg. §54.4980H-1(a)(24). [↑](#footnote-ref-25)
26. Treas. Reg. §54.4980H-1(a)(24)(ii). [↑](#footnote-ref-26)
27. See IRS Questions and Answers on the Employer Shared Responsibility Provisions, available at <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>. [↑](#footnote-ref-27)
28. IRC 4980H(c)(2)(C). [↑](#footnote-ref-28)
29. IRC Secs. 4980H(c)(2)(C), 414(b), 1563. [↑](#footnote-ref-29)
30. IRC 4980H(b). See also IRS Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, available at: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>. [↑](#footnote-ref-30)
31. See Preamble to the Final Regulations, TD 9655, Section XV.D.6. [↑](#footnote-ref-31)
32. IRC 4980H(a)(2). [↑](#footnote-ref-32)
33. See IRS Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, available at: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>. [↑](#footnote-ref-33)
34. Preamble to the final regulations, TD 9655. [↑](#footnote-ref-34)
35. See IRS Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, available at: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>. [↑](#footnote-ref-35)
36. See DOL Technical Release No. 2013-03. [↑](#footnote-ref-36)
37. Preamble to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34538, 34539. [↑](#footnote-ref-37)
38. IRC Sec. 9815. [↑](#footnote-ref-38)
39. See DOL FAQ About the Affordable Care Act Implementation (Part XXII), available at: http://www.dol.gov/ebsa/faqs/faq-aca22.html#footnote6 [↑](#footnote-ref-39)
40. See IRS Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, available at: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>. [↑](#footnote-ref-40)
41. See IRS Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, available at: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>. [↑](#footnote-ref-41)
42. IRC Sec. 4980H(c)(2)(A). [↑](#footnote-ref-42)
43. See IRS Questions & Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, available at: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>. [↑](#footnote-ref-43)
44. IRC Sec. 4980(c)(2)(C)(i). [↑](#footnote-ref-44)
45. See IRS Questions & Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, available at: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>. [↑](#footnote-ref-45)
46. IRC Sec. 4980H(c)(2)(C). [↑](#footnote-ref-46)
47. IRC Secs. 414(b), 1563(a)(1). [↑](#footnote-ref-47)
48. IRC Secs. 414(b), 1563(a)(2). [↑](#footnote-ref-48)
49. IRC Sec. 414(c). [↑](#footnote-ref-49)
50. IRC Sec. 414(m). [↑](#footnote-ref-50)
51. Notice 2015-16. [↑](#footnote-ref-51)
52. See Preamble to the Final Regulations, TD 9655. [↑](#footnote-ref-52)