Oregon Educators Benefit Board
Affordable Care Act (ACA) Bulletin #4

Revised April 2014

Spotlight on Health Care Reform
Prepared for Educational Entities Participating in the OEBB Benefits Program

In this fourth ACA Bulletin for OEBB-participating entities, we will review the affordability provision that is used to determine the ACA's Employer Shared Responsibility penalties. This bulletin has been revised from the original version to reflect changes and/or clarifications resulting from the final regulations that were published by the IRS on February 10, 2014. Changes from the original OEBB Bulletin are noted in red text.

There are two different possible penalties for employers under the ACA's Shared Responsibility Provision- otherwise known as the "pay" or "play" penalties. Bulletin 1 contains a more detailed description of the "pay" or "play" penalties. The bulletins can be found on the OEBB website: www.oregon.gov/oha/oebb for your reference.

Two requirements:

- **What is the "pay" penalty?** An employer will be subject to the "pay" penalty in 2015 if the employer fails to offer minimum essential coverage ("MEC") to at least 70% of its full-time employees and at least one full-time employee receives a federal premium tax credit to help pay for coverage through the public insurance marketplace . The "pay" penalty results in a $2,000 penalty for each full-time employee (minus the first 80 full-time employees). The "pay" penalty is pro-rated and paid monthly and is non-deductible. Beginning in 2016, the "pay" penalty works substantially the same way, but the 70% threshold is increased to 95% and the exclusion is reduced to the first 30 full-time employees.

- **What is the "play" penalty?** If the employer opts to "play" by offering coverage, the employer may still face a penalty if at least one full-time employee receives a federal premium tax credit to help pay for coverage through the public insurance marketplace. The "play" penalty is triggered if coverage offered by the employer is "unaffordable" or has an actuarial value below 60%, and the employee has a household income between 100% and 400% of the federal poverty level. The non-deductible "play" penalty is pro-rated and assessed monthly only for affected full-time employees (the coverage is unaffordable and the employee is awarded a tax credit to purchase insurance through the public insurance exchange).

As noted in Bulletin #2, OEBB has determined that all OEBB medical plan offerings qualify as Minimum Essential Coverage and provide minimum value for ACA purposes. However, each entity will need to review the premium amounts that employees pay for benefit coverage and salary/pay levels to determine whether the affordability requirement is satisfied. In this bulletin, we will review the guidelines and safe harbor requirements for employers in offering coverage that is affordable under the ACA.

The rule:

An employer's offer of coverage will be considered "affordable" if the employee's required contribution for employee-only coverage in the employer's lowest-cost plan they are eligible for does not exceed 9.5% of the employee's household income.

The rule can be satisfied by offering a plan that is considered "affordable," even if the employee does not elect that plan option. This means that an entity that enables employees to select from the full array of OEBB plans will be able to use the plan with the lowest employee only premium contributions for purposes of determining if the plan is "affordable." Also, the affordability test looks at the premium contribution requirement for employee-only coverage, even if the entity has a tiered rate structure and the employee selects family coverage.

Entities will need to determine the premium amount a full-time employee would pay for employee-only coverage in the lowest cost plan offered and compare this with the employee's income. Generally, if the required premium contribution exceeds 9.5% of the employee's income, then the coverage will be deemed "unaffordable" under the ACA and may trigger the "play" penalty of $3,000.

How can employers/entities ensure that they "pass" the affordability test?

Recognizing that an employer would not be able to calculate an employee's household income, the IRS issued three safe harbor methods the entities may use to demonstrate affordability for purposes of the "pay or play" rules. An entity may choose to use one or more of the following safe harbors for all its employees or for any "reasonable category of employees," provided the entity does so on a uniform and consistent basis for all employees within a particular category. Such categories generally include specific job categories, nature of compensation (hourly/salaried), geographic location, and similar bona fide business criteria.

1. **Form W-2 Safe Harbor**
   An employer satisfies the W-2 safe harbor if the employee is offered a plan for which the required annual premium contribution for employee-only coverage is less than 9.5% of that employee's wages for the calendar year, as reported in Box 1 of Form W-2.

   For example: Jane Smith is offered 5 different plan options. The lowest cost plan choice available to Jane has a monthly premium contribution of $135 for employee-only coverage. Assuming the employer does not increase the premium rates mid-calendar year, the annual premium for this plan is $1,620. Jane earns $35,000 per year. Assuming that Jane doesn't have any other payroll deductions that will reduce her reported earnings on a W-2 form, an employer would compare 9.5% of $35,000 ($3,325) to the annual premium contribution for the low-cost plan. Since $1,620 is lower than $3,325, the entity satisfies the W-2 safe harbor.

   Note that Box 1 of the Form W–2 excludes elective deferrals that an employee makes into an IRC § 401(k) plan or § 403(b) plan, and also excludes amounts that an employee elects to contribute on a pre-tax basis for qualified benefits under a cafeteria plan.

2. **Rate of Pay Safe Harbor**
   An employer satisfies the rate-of-pay safe harbor if the employee is offered a plan for which the monthly premium contribution for employee-only coverage is less than 9.5% of his or her monthly pay. For *hourly* employees, the monthly pay amount is calculated by multiplying the employee's hourly rate of pay by 130 hours. For *salaried* employees, monthly salary is used instead of 130 multiplied by the hourly rate of pay. Solely for this purpose, an employer may use any reasonable method for converting payroll periods to monthly salary. The final regulations confirmed that an employer can use the rate of pay safe harbor even if an hourly employee's rate of pay is reduced during the year. In this instance, the rate of pay is applied separately to each calendar month, rather than to the entire year, and the employee's required contribution may be treated as affordable if it is affordable based on the lowest rate of pay for the calendar month multiplied by 130 hours. By contrast, a reduced rate of pay during the year cannot be applied to salaried employees under this method.

   In contrast to the W-2 safe harbor, the rate of pay safe harbor doesn't exclude elective deferrals.

   For example: Joe is an hourly employee earning $15.00 per hour. The lowest cost plan option available to Joe has a premium contribution of $160 for employee-only coverage. According to the rate of pay safe harbor calculation, the monthly pay for Joe is $1,950 ($15 X 130 hours). Because the $160 premium contribution is less than 9.5% of Joe's rate of pay ($185), the employer in this example also passes the rate of pay safe harbor for this employee.

3. **Federal Poverty Level (FPL) Safe Harbor**
   An employer satisfies the FPL safe harbor if the employee is offered a plan for which the monthly premium for employee-only coverage is less than 9.5% of the Federal Poverty Level for a single individual, divided by 12. The final regulations clarified that with the FPL safe harbor, employers can use the guidelines in effect 6 months prior

to the beginning of the plan year in order to give employers enough time to establish premium amounts in advance of the plan's open enrollment period.

For example, in 2014 the FPL is $11,670 for a single individual in Oregon. Therefore, to satisfy this safe harbor, the employee's monthly premium contribution for the entity's lowest-cost available OEBB plan offering cannot exceed $92.38 for employee only coverage (that is, $11,670/12, multiplied by 9.5%).
For this purpose, if coverage is offered during at least one day during the calendar month, the entire calendar month is counted both for purposes of determining the assumed income for the calendar month and for determining the employee's required contribution for the calendar month. Employers are permitted to use the most recently published poverty guidelines as of the first day of the plan year of the applicable large employer's health plan.

Additional Considerations

1. Composite vs. tiered rating: Entities that use composite rating need to pay special attention to this provision. Composite premium rates are higher for employee-only coverage than are tiered premium rates for the same plan. This means that single employees at the lower end of the pay scale are more likely to have an unaffordable premium contribution if the entity uses a composite premium rate structure.

Next Steps

1. Perform the affordability tests based on the lowest premium cost plan you offer using each of the safe harbor tests:
    a) Form W-2 safe harbor
    b) Rate of Pay safe harbor
    c) Federal Poverty Level safe harbor

2. If you determine that you cannot pass the affordability test under any of the safe harbors, determine if you are offering the lowest cost OEBB plan. If not, retest using the lowest cost OEBB plan. If you pass using the lowest cost plan as your test, consider offering that plan at the next Annual Plan Election Period.

3. If you still don't pass and utilize composite premium rates, retest using the employee-only rate of the tiered rate structure for the lowest cost OEBB plan. If you pass using the tiered rates, consider using the tiered rate structure for all employee groups for the next plan year.