Setting ACA Affordability for Applicable Large Employers (ALEs)

WITH PLAN YEARS BEGINNING IN 2022

A COMPREHENSIVE GUIDE

Calculating the “affordability” of employees’ health plans under the Affordable Care Act (ACA) is arguably one of the most challenging components of compliance for Applicable Large Employers (ALEs). We can help.

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ACA for Applicable Large Employers

Applicable Large Employers (ALEs) are employers that average 50 or more Full Time (FT) + Full Time Equivalent (FTE) employees, as of January 1st annually, according to all 12 months of the preceding tax year. ALEs must comply with the ACA's employer mandate and must report on compliance (or non-compliance) with the ACA employer mandate at the conclusion of each corresponding tax year.

Under the employer mandate, ALEs must offer ***affordable*** health insurance coverage — that provides Minimum Value (MV) [Bronze tier or better health plan coverage], and is at least Minimum Essential Coverage (MEC) — to all FT employees. ALEs must also offer at least MEC to FT employees' dependent children up to age 26. For additional guidance on the ACA's mandate and reporting responsibilities, refer to Word & Brown's exclusive ***ACA Quick Reference Guide***.

Setting "Affordability"

It is imperative for ALEs to evaluate and set the costs of employees' health insurance plans before employees are offered their plans, in order to ensure compliance with the ACA's employer mandate. An ALE that does not offer *affordable* coverage in accordance with the mandate can be penalized as much as $4,120 per FT employee for noncompliance during the 2022 tax year.

Penalties are imposed upon ALEs whenever any of their eligible FT employees receives a valid Premium Tax Credit (PTC) on a state exchange (Covered California, Nevada Health Link, etc.) to pay for an Individual and Family Plan (IFP) plan's monthly premium.

Note: PTCs are generally only available to an exchange applicant whose Modified Adjusted Gross Income (MAGI) falls between a certain threshold (138% - 400% of FPL), and whose employer did not offer qualifying coverage that satisfies the employer mandate. In states that expanded Medicaid under the ACA, which include California and Nevada, PTC eligibility effectively ranges from 138% to 400% of the Federal Poverty Level (because almost all people with incomes below 138% of poverty are eligible for Medicaid and are therefore not eligible for subsidized Marketplace coverage).

ALEs can only be penalized if they do not offer ACA-compliant coverage to "substantially all" (all but the greater of 5% or 5 FT employees) FT employees in accordance with the ACA's employer mandate, ***and*** at least one of those FT employees receives a qualified PTC to help pay for individual coverage purchased on a state exchange.

Affordability for individuals purchasing coverage on the ACA state exchanges is based on the individual's MAGI.

Employers, however, cannot base affordability on employees' MAGI. Firstly, a person's MAGI varies according to his or her actual household income earned. Secondly, employers typically do not know employees' MAGI amounts, nor are employers entitled to employees' private MAGI information. Because of this, the ACA allows ALEs to set premiums according to information an ALE does have. These are called the ACA's affordability "**safe harbors**" for employers.

Affordability Requirements

Affordability is based on the lowest-cost MEC/MV plan offered to the employee – at the "employee only" rate. It is not based on the plan the employee actually enrolls in; it is based on the lowest-cost

MEC/MV plan *offered* to the employee by the ALE.

Additional rates for spouse or dependents are not considered in this calculation. As long as this plan rate does not exceed a certain percentage threshold per year, based on any of the three safe harbors, the plan is considered affordable.

- **Affordability threshold for *plan years* beginning in 2022 is 9.61%.**
- **Affordability threshold for *plan years* beginning in 2021 is 9.83%.**

Affordability is based on plan year, not calendar year. For example, a plan with a 12/1/2021 effective date will use the 9.83% ratio for 12/1/2021 to 11/30/2022. Then on 12/1/2022, the 9.61% ratio will be used through 11/30/2023.

ACA Affordability Safe Harbors for ALEs

The ACA allows employers to base affordability — according to the lowest-cost (after-employer contribution) MEC/MV plan *offered* to employees — based on any of the following safe harbors:

- The employee's Rate of Pay (as of the first day of the plan year)
- The employee's W-2 Box 1 income for the corresponding tax/reporting year
- Federal Poverty Level (FPL) (Employers may use the FPL that was in effect 6 months prior to the first day of the plan year)

An ALE may choose to use any one or more of these safe harbors for employees; however, the same safe harbor must be used for "any reasonable category of employees." The ACA's final regulations clarify that reasonable categories generally include specified job categories, nature of compensation (hourly or salary), geographic location, and similar bona fide business criteria. The regulations further specify that an enumeration of employees by name, for example, is not considered a reasonable category.

When the ALE reports offers of coverage to the IRS, it must tell the IRS which safe harbor it used to determine affordability. The employer should seek to ensure affordability when setting contributions ahead of the sale or renewal of a group health insurance policy. However, the ALE can use whichever safe harbor it prefers at reporting time. For example, the ALE may initially set contributions for affordability on employees' rates of pay. However, when the ALE completes its ACA IRS reporting, it can use the W-2 Box 1 Income safe harbor, or the Federal Poverty Level safe harbor. The important caveat, again, is that **employers must use the same safe harbor for all employees within an employee category**, consistent with the law.

Word & Brown General Agency has an exclusive **ACA Affordability Calculator** to assist ALEs when calculating affordability based on employees' rates of pay and/or W-2 Box 1 income. Consult your Word & Brown representative, or refer to the Word & Brown website, for access to this calculator.

Safe Harbor Option 1 – Employees' Rates of Pay

A plan is affordable under the ACA using this safe harbor, so long as the employee's premium — on the lowest-cost MEC/MV plan offered, at the employee only rate (after employer contribution) — does not exceed the affordability percentage threshold for the corresponding *plan year* according to rate of pay.

RATE OF PAY SAFE HARBOR – FOR *SALARIED* EMPLOYEES

For salaried employees, ALEs can use employees' actual monthly salaries as of the first day of *the coverage period*. Note: this safe harbor is not available to use if the FT employee's monthly salary is reduced, including a reduction of work hours.

Example: Salaried employee makes $60,000/year as of the first day of the plan's coverage period.

- $60,000 ÷ 12 months = $5,000
- $5,000 x 9.61% = $480.50
- As long as the employee contribution for the lowest-cost plan MEC/MV offered does not exceed $480.50 per month for this salaried employee in the 2022 plan year, it is considered affordable for that plan year under this safe harbor.

RATE OF PAY SAFE HARBOR – FOR *HOURLY* EMPLOYEES

ALEs utilizing this safe harbor for hourly employees must calculate affordability using the employee's rate of pay at the *beginning of the plan year*. The only time an employer should make an adjustment to this calculation during the plan year is if an employee experiences a *decrease* in pay.

Furthermore, because the ACA considers a FT employee to have 130 hours of service/month, the calculation must be made at 130 hours/month, even if the hourly employee provides more than 130 hours of service per month — which is very common.

Example: Hourly employee earns $15/hour and normally works 40 hours/week (160-175 hours/month)

- $15 x 130 hours = $1,950
- $1,950 x 9.61% = $187.39
- As long as the lowest cost plan offered does not exceed a monthly cost of $187.39 for this hourly employee in the 2022 plan year, it is considered affordable for that plan year under this safe harbor.
- *Note: The ALE should use the ACA affordability percentage for its corresponding plan year.*
  - *Affordability for plan years beginning in 2022 = 9.61%*
  - *Affordability for plan years beginning in 2021 = 9.83%*

This guide's appendix contains a Rate of Pay Affordability Chart, which lists affordability calculations using the hourly Rate of Pay Safe Harbor for plan years beginning in 2022. These calculations are based on the federal minimum wage, up to $30/hour rate of pay. Minimum wage can, and does, differ for employers according to the size of their businesses and where they are located. It's important for employers to also ensure employees are paid at least minimum wage, according to labor laws in their respective states and/or municipalities.

Safe Harbor Option 2 – Employees' W-2 Box 1 Incomes

<u>This Safe Harbor option is intended to be utilized only at the end of the calendar/tax year, as a way of evaluating affordability on a "lookback" basis when preparing ACA IRS Forms to the IRS</u>. When setting ACA Affordability on a preemptive basis (before offering plans to employees), ALEs must do so utilizing either the "Rate of Pay" or "Federal Poverty Level" (FPL) safe harbors – both of which are based on the information the ALE has in the present timeframe. The W-2 Box 1 income cannot be used at the beginning of a tax year to determine affordability, because employees' future W-2 Box 1 incomes are unknown and are not calculated until after the conclusion of the tax year for which the ALE is attempting to set affordability.

For example: An ALE setting affordability for employees in the 2022 tax year (say, on January 1, 2022) cannot use employees' future W-2 Box 1 incomes for 2022 to <u>set</u> affordability. This is because employees' W-2 Box 1 Incomes for 2022 are unknown and cannot be calculated until January 2023, when all workdays for the 2022 tax year are complete and IRS Forms W-2 are generated for each person employed in 2022. However, when the ALE reports on ACA compliance for the 2022 tax year (usually in January 2023, after the conclusion of that tax year), employees' W-2 Box 1 incomes are *known* and *can be* used when reporting for that tax year. This is why the W-2 Box 1 Income safe harbor can only be used on a "lookback" basis, when preparing forms to IRS after the conclusion of a tax year.

As noted in the previous "Rate of Pay" safe harbor section, IRS places special requirements on calculating affordability using a person's rate of pay. Full time hourly employees, for example, must have affordability set according to 130 hours/week – even if they provide more hours of service, which is very common. As you will read in the next section, the "Federal Poverty Level" is a desirable option for ALEs because it is the least-troublesome to calculate and also simplifies ACA reporting. However, many ALEs find it difficult to offer coverage within the parameters of FPL, because doing so generally requires a very generous employer contribution. Still, however, ALEs set affordability according to either "Rate of Pay" or "Federal Poverty Level" Safe Harbors at the beginning of the year – again, based on the only information an ALE has in the present timeframe.

Many ALEs opt to use W-2 Box 1 incomes after the conclusion of the tax year to *report* ACA compliance to the IRS for a number of reasons. Firstly, employers usually complete IRS Forms W-2 immediately after the turn of a calendar year in early January, ahead of the annual January 31 due date. Instead of calculating additional income amounts at 130 hours/month for hourly employees, for example, ALEs can simply use the numbers it already calculated for IRS Forms W-2 – which often include more than 130 hours/month for Full Time hourly employees. This W-2 Box 1 income is also a viable option for ALEs that have had employees experience a decrease in pay throughout the year. When an hourly FT employee's rate of pay is decreased, that coverage may no longer be affordable at 130 hours/month under the "Rate of Pay" affordability safe harbor as initially calculated. However, when evaluated according to actual hours worked/paid as reported on W-2 Box 1, the likelihood of satisfying "affordability" is often probable and attainable. Though, situations can and do vary among employers. ALEs should always seek CPA or legal counsel to ensure full compliance with the law according to their own circumstances.

An important caveat to remember is that ALEs must use the same affordability safe harbor for all similarly-situated employees of the same class. An ALE cannot use the "Rate of Pay" safe harbor for some hourly employees, and "W-2 Box 1 Income" safe harbor for other similar hourly employees. The same safe harbor must be applied consistently for all similar employees of the same class.

Safe Harbor Option 3 – Federal Poverty Level (FPL)

ALEs utilizing this Safe Harbor can use the Federal Poverty Level (FPL) that is in effect *six months prior to the beginning of their plan year* to set employee contributions in accordance with ACA affordability.

As long as the employee's lowest-cost (after employer contribution) MEC/MV plan, at the employee-only rate, does not exceed the ACA affordability threshold when applied against the FPL, the plan is considered affordable. *Note: If the ALE misses the FPL by a few dollars, it does not necessarily mean the coverage is unaffordable; the coverage may be affordable under the "Rate of Pay" or "W-2 Box 1 Income" safe harbors.*

Poverty guidelines are usually released around the end of January annually by the Department of Health and Human Services (HHS). Because FPL guidelines for a year are normally introduced several weeks into that year, the ACA allows employers to use the FPL in place six months before their plan effective date.

Many ALEs desire to use this safe harbor method if they can afford to do so, because it can greatly simplify ACA reporting. When the ALE uses this safe harbor and the offer applies to all months of a calendar year for which the FT employee is eligible for coverage, and the ALE offers at least MEC to the FT employee's spouse and dependents (in addition to MEC/MV to the employee), it will fall under the ACA's "*Qualifying Offer Method*." When eligible for the Qualifying Offer Method, ALEs are not required to enter employees' premium costs on line #15 of IRS Form 1095-C. They can also bypass entering IRS codes that tell the IRS the safe harbor code used on a month-by-month basis. The ALE will simply put one code on their IRS Forms 1095-C — 1A in line #14 — for each employee whose contribution falls under the Qualifying Offer Method. *Note: In order to use this Qualifying Offer's "Certificate of Eligibility" when reporting, ALEs must check Box A on line 22 of IRS Form 1094-C — in addition to code 1A, as previously mentioned.*

Following is a FPL Safe Harbor chart, which shows affordability for plan years when utilizing this affordability safe harbor method, based on currently available FPL data.

2021 Poverty Guidelines for the Mainland United States For plan years beginning 1/1/2022–6/15/2022				
	Poverty Guideline		**Affordability**	
Persons in family/household	Annual	Monthly	9.61% – Annual	9.61% – Monthly
1	$12,880	$1,073.33	$1,237.77	$103.15

2022 Poverty Guidelines for the Mainland United States For plan years beginning 7/1/2022–12/15/2022				
	Poverty Guideline		**Affordability**	
Persons in family/household	Annual	Monthly	9.61% – Annual	9.61% – Monthly
1	TBD	TBD	TBD	TBD

Further Help

The Word & Brown General Agency has more than 35 years of experience in the employee benefits industry, working alongside health insurance brokers, their employer clients, and individual clients, providing legendary *Service of Unequalled Excellence*. Word & Brown is passionate about compliance, education, and helping health insurance brokers and their clients excel in all facets of the employee benefits industry.

Word & Brown General Agency hosts an annual ACA IRS reporting series, which is aimed to help employers understand the depths of ACA IRS reporting; this series takes place during the annual December and January ACA reporting season.

In addition to your Word & Brown sales representative and field sales managers, Word & Brown has a compliance team on stand-by, ready to help health insurance brokers address any and all situational compliance needs. The team can be reached via email at ComplianceSupport@wordandbrown.com.

Word & Brown is passionate about, and strongly committed to, ensuring that individuals and families have access to quality health care while experiencing the highest level of customer service. Word & Brown's mission is to provide brokers access to better health insurance choices for their clients through service-based, company-focused relationships and education, backed by technology. Word & Brown is here for you, and is proud to partner with you, and lead you through all aspects of the industry and your business.

To keep up with changing, ongoing employee benefits health insurance compliance items including ACA, ERISA, COBRA, and more, check out the WBCompliance blog in the Word & Brown Newsroom.

Appendix

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AFFORDABLE CARE ACT

SETTING ACA AFFORDABILITY USING THE ROP SAFE HARBOR

FOR PLAN YEARS BEGINNING IN 2022

Hourly Rate	Monthly Salary (Hourly Rate x 130 Hours)	Affordability Amount (9.61% of Monthly Salary)
$ 7.25	$ 942.50	$ 90.57
$ 7.50	$ 975.00	$ 93.69
$ 7.75	$ 1,007.50	$ 96.82
$ 8.00	$ 1,040.00	$ 99.94
$ 8.25	$ 1,072.50	$ 103.06
$ 8.50	$ 1,105.00	$ 106.19
$ 8.75	$ 1,137.50	$ 109.31
$ 9.00	$ 1,170.00	$ 112.43
$ 9.25	$ 1,202.50	$ 115.56
$ 9.50	$ 1,235.00	$ 118.68
$ 9.75	$ 1,267.50	$ 121.80
$ 10.00	$ 1,300.00	$ 124.93
$ 10.25	$ 1,332.50	$ 128.05
$ 10.50	$ 1,365.00	$ 131.17
$ 10.75	$ 1,397.50	$ 134.29
$ 11.00	$ 1,430.00	$ 137.42
$ 11.25	$ 1,462.50	$ 140.54
$ 11.50	$ 1,495.00	$ 143.66
$ 11.75	$ 1,527.50	$ 146.79
$ 12.00	$ 1,560.00	$ 149.91
$ 12.25	$ 1,592.50	$ 153.03
$ 12.50	$ 1,625.00	$ 156.16
$ 12.75	$ 1,657.50	$ 159.28
$ 13.00	$ 1,690.00	$ 162.40
$ 13.25	$ 1,722.50	$ 165.53
$ 13.50	$ 1,755.00	$ 168.65
$ 13.75	$ 1,787.50	$ 171.77
$ 14.00	$ 1,820.00	$ 174.90
$ 14.25	$ 1,852.50	$ 178.02
$ 14.50	$ 1,885.00	$ 181.14
$ 14.75	$ 1,917.50	$ 184.27
$ 15.00	$ 1,950.00	$ 187.39
$ 15.25	$ 1,982.50	$ 190.51
$ 15.50	$ 2,015.00	$ 193.64
$ 15.75	$ 2,047.50	$ 196.76
$ 16.00	$ 2,080.00	$ 199.88
$ 16.25	$ 2,112.50	$ 203.01
$ 16.50	$ 2,145.00	$ 206.13
$ 16.75	$ 2,177.50	$ 209.25
$ 17.00	$ 2,210.00	$ 212.38
$ 17.25	$ 2,242.50	$ 215.50
$ 17.50	$ 2,275.00	$ 218.62
$ 17.75	$ 2,307.50	$ 221.75
$ 18.00	$ 2,340.00	$ 224.87
$ 18.25	$ 2,372.50	$ 227.99
$ 18.50	$ 2,405.00	$ 231.12

Hourly Rate	Monthly Salary (Hourly Rate x 130 Hours)	Affordability Amount (9.61% of Monthly Salary)
$ 18.75	$ 2,437.50	$ 234.24
$ 19.00	$ 2,470.00	$ 237.36
$ 19.25	$ 2,502.50	$ 240.49
$ 19.50	$ 2,535.00	$ 243.61
$ 19.75	$ 2,567.50	$ 246.73
$ 20.00	$ 2,600.00	$ 249.86
$ 20.25	$ 2,632.50	$ 252.98
$ 20.50	$ 2,665.00	$ 256.10
$ 20.75	$ 2,697.50	$ 259.22
$ 21.00	$ 2,730.00	$ 262.35
$ 21.25	$ 2,762.50	$ 265.47
$ 21.50	$ 2,795.00	$ 268.59
$ 21.75	$ 2,827.50	$ 271.72
$ 22.00	$ 2,860.00	$ 274.84
$ 22.25	$ 2,892.50	$ 277.96
$ 22.50	$ 2,925.00	$ 281.09
$ 22.75	$ 2,957.50	$ 284.21
$ 23.00	$ 2,990.00	$ 287.33
$ 23.25	$ 3,022.50	$ 290.46
$ 23.50	$ 3,055.00	$ 293.58
$ 23.75	$ 3,087.50	$ 296.70
$ 24.00	$ 3,120.00	$ 299.83
$ 24.25	$ 3,152.50	$ 302.95
$ 24.50	$ 3,185.00	$ 306.07
$ 24.75	$ 3,217.50	$ 309.20
$ 25.00	$ 3,250.00	$ 312.32
$ 25.25	$ 3,282.50	$ 315.44
$ 25.50	$ 3,315.00	$ 318.57
$ 25.75	$ 3,347.50	$ 321.69
$ 26.00	$ 3,380.00	$ 324.81
$ 26.25	$ 3,412.50	$ 327.94
$ 26.50	$ 3,445.00	$ 331.06
$ 26.75	$ 3,477.50	$ 334.18
$ 27.00	$ 3,510.00	$ 337.31
$ 27.25	$ 3,542.50	$ 340.43
$ 27.50	$ 3,575.00	$ 343.55
$ 27.75	$ 3,607.50	$ 346.68
$ 28.00	$ 3,640.00	$ 349.80
$ 28.25	$ 3,672.50	$ 352.92
$ 28.50	$ 3,705.00	$ 356.05
$ 28.75	$ 3,737.50	$ 359.17
$ 29.00	$ 3,770.00	$ 362.29
$ 29.25	$ 3,802.50	$ 365.42
$ 29.50	$ 3,835.00	$ 368.54
$ 29.75	$ 3,867.50	$ 371.66
$ 30.00	$ 3,900.00	$ 374.79

For instructions on how to apply this safe harbor, please refer to the Empoyees' Rates of Pay section this guide. These calculations are based on the federal minimum wage, up to $30/hour rate of pay. Minimum wage can, and does, differ for employers according to the size of their businesses and where they are located. It's important for employers to also ensure employees are paid at least minimum wage, according to labor laws.

Please note: The calculations on this chart for employees making between $7.25 - $8.00 an hour will generally fall under the Federal Poverty Level (FPL) Safe Harbor; however, employers should be aware that they **must use the same safe harbor for all employees within an employee category**, consistent with the law.