

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-148500-12]

RIN 1545-BL36

Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the requirement to maintain minimum essential coverage enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 111-173. These proposed regulations provide guidance on the liability for the shared responsibility payment for not maintaining minimum essential coverage. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Outlines of topics to be discussed at the public hearing scheduled for May 29, 2013, at 10 a.m., must be received by May 3, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-148500-12), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8

a.m. and 4 p.m. to CC:PA:LPD:PR (REG-148500-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-148500-12). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sue-Jean Kim or John B. Lovelace, (202) 622-4960; concerning the submission of comments, the public hearing, and to be placed on the building access list to attend the public hearing, Oluwafunmilayo Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

Comments on the collection of information should be received by **INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §1.5000A-3 and §1.5000A-4. The collection of information is necessary to determine whether the shared responsibility payment provision applies to a taxpayer and compute any shared responsibility payment imposed on a taxpayer. The likely respondents are individuals required to file Federal income tax returns under section 6012(a)(1) of the Internal Revenue Code (Code).

The burden for the collection of information contained in proposed regulation §1.5000A-3 and §1.5000A-4 will be reflected in the burden on a form that the IRS will create to request the information in the proposed regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

## **Background**

Under the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)) and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act), the Federal government, State governments, insurers, employers, and individuals are entrusted with shared responsibility to reform and improve the availability, quality, and affordability of health insurance coverage in the United States. The Affordable Care Act expands Medicaid eligibility for residents of electing States and increases Federal funding for the expansion. The Affordable Care Act also provides individuals and small businesses the ability to purchase private health insurance through State-based, State Partnership, or Federally facilitated competitive market places called Affordable Insurance Exchanges (Exchanges). Through Exchanges, insurance companies will compete for business on a level playing field and qualified consumers will have a choice of health plans to fit their needs.

In addition, the Affordable Care Act includes various insurance market reforms to increase the ability of individuals to enroll in health insurance coverage regardless of preexisting conditions and to eliminate the ability of insurers to charge higher premium prices based on factors other than age, tobacco use, rating area, or family size. Moreover, the Affordable Care Act builds upon the existing private employer-based

health insurance system to ensure continued access to high quality health insurance coverage at low cost.

Finally, to ensure effective and efficient implementation of the insurance market reforms, the Affordable Care Act requires a nonexempt individual to maintain minimum essential coverage or make a shared responsibility payment. Section 1501(b) of the Affordable Care Act added section 5000A to a new chapter 48 of subtitle D (Miscellaneous Excise Taxes) of the Code effective for months beginning after December 31, 2013. Section 5000A was subsequently amended by the TRICARE Affirmation Act of 2010, Public Law 111-159 (124 Stat. 1123) and Public Law 111-173 (124 Stat. 1215).

#### Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage

Section 5000A provides nonexempt individuals with a choice: maintain minimum essential coverage for themselves and any nonexempt family members or include an additional payment with their Federal income tax return. Section 5000A(a) and section 5000A(b) provide that nonexempt individuals must have minimum essential coverage for each month beginning after December 31, 2013, or make an additional payment (the shared responsibility payment) with their Federal income tax return for the taxable year that includes such month. Under section 5000A(b)(3)(A), a taxpayer is liable for the shared responsibility payment if any nonexempt individual who may be claimed by the taxpayer as a dependent for a taxable year does not have minimum essential coverage in a month included in that taxable year. Married taxpayers filing a joint return for any taxable year are jointly liable for any shared responsibility payment imposed for the year.

## Exempt Individuals

Many individuals are exempt from the shared responsibility payment, including some whose religious beliefs conflict with acceptance of the benefits of private or public insurance and those who do not have an affordable health insurance coverage option available. Section 1311(d)(4)(H) of the Affordable Care Act (42 U.S.C. 18031(d)(4)(H)) directs Exchanges to issue to qualified individuals certificates of exemption from the requirement to maintain minimum essential coverage or the shared responsibility payment under section 5000A. Section 1411 of the Affordable Care Act (42 U.S.C. 18081) generally provides procedures for determining an individual's eligibility for various benefits relating to health coverage, including exemptions from the application of section 5000A. The Department of Health and Human Services and the Department of the Treasury are working in close coordination to release regulations and other guidance related to Exchanges.

On March 27, 2012, the Department of Health and Human Services released final regulations related to the establishment of, and the standards applicable to, Exchanges (45 CFR 155.10 and following sections (Exchange regulations)). Section 155.200(b) of the Exchange regulations directs an Exchange to issue exemption certificates in accordance with sections 1311(d)(4)(H) and 1411 of the Affordable Care Act (42 USC 18031(d)(4)(H), 18081). The Department of Health and Human Services is publishing proposed regulations detailing the standards by which Exchanges will issue certificates of exemption under section 5000A. Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Minimum Essential Coverage Provisions (to be codified at 45 CFR 155.600 and following sections).

Section 5000A(d) and (e) describe individuals who are exempt from making the shared responsibility payment even if they do not have minimum essential coverage for a given month. Under section 5000A(d)(2)(A), an individual is exempt for a month for which an Exchange certifies that the individual is a member of a recognized religious sect or a division thereof described in section 1402(g)(1) and is an adherent of established tenets or teachings of that sect or division. Section 1402(g)(1) provides an exemption from self-employment tax for members of a qualified religious sect or division thereof. A qualified religious sect or division thereof described in section 1402(g)(1) is a sect or division thereof that the Commissioner of Social Security finds: (1) has established tenets or teachings by reason of which its members and adherents are conscientiously opposed to acceptance of the benefits of any private or public insurance that makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act); (2) maintains, and has maintained for a substantial period of time, a practice whereby its members make provision for its dependent members that is reasonable in view of their general level of living; and (3) has been in existence at all times since December 31, 1950.

Section 5000A(d)(2)(B) provides that an individual is exempt for a month that the individual is a member of a health care sharing ministry. A health care sharing ministry is an organization: (1) which is described in section 501(c)(3) and exempt from tax under section 501(a); (2) members of which share a common set of ethical or religious beliefs and share medical expenses among themselves in accordance with those beliefs, and regardless of the State in which a member resides or is employed; (3)

members of which retain membership even after they develop a medical condition; (4) which has itself (or a predecessor of which has) been in existence at all times since December 31, 1999; (5) members of which have continuously and without interruption shared medical expenses since at least December 31, 1999; and (6) which conducts an annual audit performed by an independent certified public accounting firm in accordance with generally accepted accounting principles the report of which is made available to members of the public upon request.

Section 5000A(d)(3) provides that an individual is exempt for a month that the individual is neither a citizen or national of the United States nor an alien lawfully present in the United States.

Section 5000A(d)(4) provides that an individual is exempt for a month that the individual is incarcerated, except for incarceration pending the disposition of charges.

Section 5000A(e)(1) provides that an individual is exempt for a month for which the individual lacks access to affordable minimum essential coverage. For this purpose, an individual lacks access to affordable coverage if the individual's required contribution (determined on an annual basis) for minimum essential coverage exceeds a percentage (8 percent for 2014) of the individual's household income for the most recent taxable year for which the Secretary of Health and Human Services, in consultation with the Secretary, determines information is available.

In general, section 5000A(c)(4)(B) defines a taxpayer's household income as the sum of the taxpayer's modified adjusted gross income and the modified adjusted gross income of any other member of a taxpayer's family (that is, individuals for whom the taxpayer properly claims a deduction under section 151 (relating to the personal



exemption deduction)) who are required to file a Federal income tax return. Under section 5000A(c)(4)(C), modified adjusted gross income means adjusted gross income (within the meaning of section 62) increased by amounts excluded from gross income under section 911 and tax-exempt interest a taxpayer receives or accrues in the taxable year. Unlike section 36B(d)(2)(B), modified adjusted gross income for purposes of section 5000A does not include Social Security benefits that are not includable in gross income. For purposes of determining the affordability of minimum essential coverage under section 5000A(e)(1), the taxpayer's household income is increased by the portion of the required contribution made through a salary reduction arrangement and excluded from gross income.

For purposes of determining household income, a taxpayer's family includes all individuals for whom the taxpayer properly claims a personal exemption deduction under section 151 for the taxable year. See also §1.36B-1(d). Taxpayers may claim a personal exemption deduction for themselves, a spouse, and each of their dependents. Section 152 provides that a taxpayer's dependent may be a qualifying child or qualifying relative, including an unrelated individual who lives with the taxpayer.

For an employee eligible to purchase coverage under an eligible employer-sponsored plan, the required contribution for purposes of the exemption under section 5000A(e)(1) is the employee's share of the annual premium for self-only coverage. For an individual eligible to purchase coverage under an eligible employer-sponsored plan because the individual is related to an employee, the determination of whether the individual's coverage is affordable is made by reference to the employee's required contribution. For all individuals who are ineligible to purchase coverage under an

eligible employer-sponsored plan, the required contribution is the annual premium for the lowest cost bronze plan available on the Exchange where the individual lives reduced by the credit allowable under section 36B for the taxable year (determined as if the individual enrolled in a plan through such Exchange for the entire taxable year).

Section 5000A(e)(2) provides that an individual is exempt for a month included in a calendar year if the individual's household income for the most recent taxable year for which information is available is less than the amount of gross income specified in section 6012(a)(1) for the taxpayer. Section 6012(a)(1) provides, for each filing status, gross income thresholds above which individuals are required to file Federal income tax returns.

As described in this preamble, income-based exemptions under section 5000A(e)(1) and section 5000A(e)(2) rely upon household income for the most recent taxable year that the Secretary of Health and Human Services, after consultation with the Secretary of Treasury, determines information is available. The Secretary of Health and Human Services, after consultation with the Secretary of the Treasury, determined that the household income for these exemptions that is available and relevant is the household income for the year for which an exemption is being claimed. See section III.A.3.b. of the preamble to Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Minimum Essential Coverage Provisions (to be codified at 45 CFR 155.600 and following sections, and 45 CFR 156.600 and following sections). The determination by the Secretary of Health and Human Services is reflected in the proposed regulations.

Section 5000A(e)(3) provides that an individual is exempt for a month that the individual is a member of an Indian tribe as defined in section 45A(c)(6). Section 45A(c)(6) describes certain Federally recognized Indian tribes (including any qualified Alaska Native village or regional or village corporation). The Federally recognized Indian tribes are listed in Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 75 Fed. Reg. 60810 (Oct. 1, 2010), as supplemented by 75 Fed. Reg. 661124 (Oct. 27, 2010), or its successor.

Under section 5000A(e)(4), an individual is exempt for a month the last day of which occurs in a period when the individual does not have minimum essential coverage for a continuous period of less than three months (a short coverage gap). The length of a gap in coverage is determined without regard to the calendar years in which months in the gap occur. If an individual has more than one short coverage gap in a calendar year, the exemption applies only to the earliest short coverage gap. Section 5000A(e)(4) authorizes the Secretary to issue regulations that provide for collecting the shared responsibility payment in cases where gaps in coverage straddle more than one taxable year.

Section 5000A(e)(5) provides that an individual is exempt for a month that the Exchange determines, in accordance with guidance promulgated by the Secretary of Health and Human Services, the individual suffered a hardship that prevented the individual from obtaining coverage under a qualified health plan. The Department of Health and Human Services is proposing rules on the criteria for application of the hardship exemption. Patient Protection and Affordable Care Act; Exchange Functions:

Eligibility for Exemptions; Minimum Essential Coverage (to be codified at 45 CFR 155.605(g)).

#### Computation of Shared Responsibility Payment

Under section 5000A(c), the amount of the shared responsibility payment for any taxable year is generally the sum of monthly penalty amounts for all months in the taxable year in which any nonexempt individual for whom the taxpayer is liable under section 5000A(b) did not have minimum essential coverage. The shared responsibility payment amount for any taxable year may not exceed an amount equal to the national average premium for bronze-level qualified health plans offered through Exchanges for the applicable family size involved.

The monthly penalty amount for a month is equal to 1/12 of the greater of the following amounts: (1) the flat dollar amount or (2) the percentage of income. The flat dollar amount is the lesser of the following amounts: (a) the sum of the applicable dollar amounts for all nonexempt individuals without minimum essential coverage for whom the taxpayer is liable or (b) 300 percent of the applicable dollar amount. The applicable dollar amount is \$95 for 2014, \$325 for 2015, and \$695 for 2016, and will be increased for calendar years beginning after 2016 by a cost-of-living adjustment. If a nonexempt individual has not attained the age of 18 as of the beginning of a month, the applicable dollar amount for that individual is one-half of the regular applicable dollar amount.

The percentage of income is calculated as the excess of the taxpayer's household income over the taxpayer's Federal income tax return filing threshold under section 6012(a)(1), multiplied by a percentage figure. The percentage figure is 1

percent for taxable years beginning in 2014, 2 percent for taxable years beginning in 2015, and 2.5 percent for taxable years beginning after 2015.

#### Minimum Essential Coverage

Section 5000A(f) defines minimum essential coverage as one of the following: (1) coverage under a specified government sponsored program, (2) coverage under an eligible employer-sponsored plan, (3) coverage under a health plan offered in the individual market within a State, (4) coverage under a grandfathered health plan, and (5) other health benefits coverage that the Secretary of Health and Human Services, in coordination with the Secretary, recognizes for purposes of section 5000A(f).

Under section 5000A(f)(1)(A), specified government sponsored programs include the following: (1) the Medicare program under part A of title XVIII of the Social Security Act, (2) the Medicaid program under title XIX of the Social Security Act, (3) the Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act, (4) medical coverage under chapter 55 of title 10, United States Code, including the TRICARE program, (5) veterans health care programs under chapter 17 or 18 of title 38, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary of Treasury, (6) a health plan under section 2504(e) of title 22 relating to Peace Corps volunteers, and (7) the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337 (10 U.S.C. 1587 note).

Under section 5000A(f)(2), an eligible employer-sponsored plan is, with respect to an employee, a group health plan or group health insurance coverage offered by an

employer to the employee that is: (1) a governmental plan, within the meaning of section 2791(d)(8) of the Public Health Service Act, or (2) any other plan or coverage offered in the small or large group market within a State. An eligible employer-sponsored plan also includes a grandfathered health plan offered in a group market.

Under section 1251 of the Affordable Care Act (42 U.S.C. 18011), a grandfathered health plan is a group health plan or health insurance coverage that provided coverage as of the enactment date of the Affordable Care Act (March 23, 2010) or in which an individual was enrolled as of that date. See also §54.9815-1251T(a) (providing guidance regarding grandfathered health plans).

As described in this preamble, the Department of Health and Human Services, in coordination with the Treasury Department, may designate other health benefits coverage as minimum essential coverage. The Department of Health and Human Services is proposing a regulation that provides criteria and a process by which other types of coverage may be designated as minimum essential coverage. Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Minimum Essential Coverage Provisions (to be codified at 45 CFR 156.600 and following sections).

Under section 5000A(f)(3), health coverage that consists of coverage of certain excepted benefits specified in section 2791(c) of the Public Health Service Act (42 U.S.C. 300gg-91(c)) is not minimum essential coverage. There are four categories of excepted benefits. The first category includes accidental death and dismemberment coverage, disability insurance, general liability insurance, automobile liability insurance, workers' compensation, credit-only insurance (for example, mortgage insurance), and

coverage for employer-provided on-site medical clinics. See 42 U.S.C. 300gg-91(c)(1). The second category of excepted benefits includes limited-scope dental or vision benefits, long-term care benefits, and benefits provided under certain health flexible spending arrangements. See 42 U.S.C. 300gg-91(c)(2). The third category of excepted benefits includes, but only if offered under a policy, certificate, or contract of insurance separate from, and not coordinated with, any group or individual health plan maintained by the same plan sponsor, coverage only for a specified disease or illness (for example, cancer-only policies) or fixed indemnity insurance (for example, a policy that pays a fixed dollar amount, such as \$100, per day of hospitalization or illness regardless of the amount of medical expense incurred). See 42 U.S.C. 300gg-91(c)(3). The last category of excepted benefits includes, but only if offered under a policy, certificate, or contract of insurance separate from the primary health coverage, Medicare supplemental policies (also known as Medigap or MedSupp insurance), TRICARE supplemental policies, and similar supplemental coverage to coverage under a group health plan. See 42 U.S.C. 300gg-91(c)(4).

Under section 5000A(f)(4), an individual is treated as having minimum essential coverage for a month: (1) if the individual is a bona fide resident of a United States possession for the month or (2) if the month occurs during any period described in section 911(d)(1)(A) or section 911(d)(1)(B) that is applicable to the individual. Section 911(d)(1)(A) is applicable to a citizen of the United States who has a tax home outside the United States and is a bona fide resident of a foreign country or countries during an uninterrupted period that includes an entire taxable year. For example, an individual who resides abroad for an entire calendar year is treated as having minimum essential

coverage for each month of that calendar year regardless of whether the individual has health coverage of any type. Section 911(d)(1)(B) is applicable to a U.S. citizen or U.S. resident (within the meaning of section 7701(b)) who has a tax home outside the United States and is present in a foreign country or countries for at least 330 full days during a period of 12 consecutive months. In general, an individual who meets either of the foregoing residency requirements under section 911(d)(1) is treated as a qualified individual for purposes of section 911 and may elect to exclude certain foreign earned income and housing costs from gross income.

#### Administration and Procedure

Under section 5000A(b)(2), an individual liable for the shared responsibility payment under section 5000A must report the payment with the individual's Federal income tax return for the taxable year including the month or months for which the payment is owed.

Under section 5000A(g)(1), the shared responsibility payment is payable upon notice and demand by the Secretary. The shared responsibility payment is generally assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68 (sections 6671 through 6725). Unlike the assessable penalties, however, the Secretary may not file notice of lien or levy on the taxpayer's property for failing to pay the assessed shared responsibility payment. Further, a taxpayer may not be subject to criminal prosecution or penalty for failing to pay the assessed shared responsibility payment in a timely manner.



## **Explanation of Provisions**

### 1. Maintenance of Minimum Essential Coverage and Liability for Shared Responsibility Payment

The proposed regulations provide that, for a month, a nonexempt individual must either have minimum essential coverage or pay the shared responsibility payment.

#### a. Coverage for a month

The proposed regulations provide that, for any calendar month, an individual is treated as having minimum essential coverage if the individual is enrolled in and entitled to receive benefits under a program or plan that is minimum essential coverage for at least one day during the month.

#### b. Liability for shared responsibility payment

##### i. Liability for dependents

Under section 5000A(b)(3)(A), if an individual with respect to whom the shared responsibility payment is imposed for a month is another individual's dependent (as defined in section 152) for the taxable year including that month, the other individual is liable for the shared responsibility payment for the dependent. The proposed regulations clarify that a taxpayer is liable for the shared responsibility payment imposed with respect to any individual for a month in a taxable year for which the taxpayer may claim a personal exemption deduction for the individual (that is, the dependent) for that taxable year. Whether the taxpayer actually claims the individual as a dependent for the taxable year does not affect the taxpayer's liability for the shared responsibility payment for the individual.

The proposed regulations provide special rules for determining liability for the shared responsibility payment attributable to individuals who are adopted or placed in foster care during a taxable year. If a taxpayer legally adopts a child and is entitled to claim the child as a dependent under section 151 for the taxable year when the adoption occurs, the taxpayer is not liable for a shared responsibility payment attributable to the child for the months before the adoption. Conversely, if a taxpayer who is entitled to claim a child as a dependent under section 151 for the taxable year places the child for adoption during the year, the taxpayer is not liable for a shared responsibility payment attributable to the child for the months after the adoption.

The proposed regulations define shared responsibility family to include all individuals for whom a taxpayer (including a spouse, if married filing jointly) is liable for the shared responsibility payment. The proposed regulations clarify that a taxpayer who is an exempt individual remains liable for a shared responsibility payment imposed for a nonexempt dependent who does not have minimum essential coverage.

#### ii. Joint liability

Section 5000A(b)(3)(B) provides that, if an individual for whom the shared responsibility payment is imposed for a month files a joint return for the taxable year including that month, the individual and the individual's spouse are jointly liable for the shared responsibility payment. The proposed regulations clarify that whether one spouse is an exempt individual does not affect the joint liability of the two spouses for the shared responsibility payment.

## 2. Minimum Essential Coverage

### a. Government sponsored programs

Section 5000A(f)(1)(A) specifies several government sponsored programs as providing minimum essential coverage by referring to the Federal law authorizing a particular program. In most cases, the relevant law describes a single program or a discrete portion of a larger program. For example, section 5000A(f)(1)(A)(i) lists Part A of the Medicare program under title XVIII of the Social Security Act. However, in some cases, the relevant law establishes programs with limited coverage. For instance, some of the programs under title XIX of the Social Security Act do not provide a scope of benefits comparable to the primary Medicaid program under the same title. In addition, the Secretary of Veterans Affairs, in coordination with the Secretaries of Health and Human Services and Treasury, determined that only certain health care programs under chapter 17 or 18 of title 38, United States Code provide comprehensive benefits. The programs with limited coverage are similar to coverage consisting of excepted benefits that is not minimum essential coverage under section 5000A(f)(3). Accordingly, the proposed regulations identify limited benefit programs under title XIX of the Social Security Act that are not minimum essential coverage and specify comprehensive health care programs under chapter 17 or 18 of title 38, United States Code, that are minimum essential coverage.

### b. Eligible employer-sponsored plans

#### i. In general

Section 5000A(f)(2) defines eligible employer-sponsored plan, for an employee, as a group health plan or group health insurance coverage offered by an employer to

the employee that is either of the following: (1) a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act (PHSA) (42 U.S.C. 300gg-91(d)(8)) or (2) any other plan or coverage offered in the small or large group market within a State. The terms group health plan and group health insurance coverage are not defined in section 5000A. However, section 5000A(f)(5) provides that any term used in section 5000A that is also used in title I of the Affordable Care Act has the same meaning as when used in that title.

Section 1301(b)(3) of the Affordable Care Act (42 U.S.C. 18021(b)(3)) provides that group health plan has the same meaning as in section 2791(a) of the PHSA (42 U.S.C. 301gg-91(a)(1)). Section 2791(a) of the PHSA provides that group health plan means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1002(1)) to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the PHSA and including items and services paid for as medical care) to employees and their dependents directly or through insurance, reimbursement, or otherwise. Section 3(1) of ERISA defines employee welfare benefit plan as any plan, fund, or program established or maintained by an employer or by an employee organization, or by both, to the extent that the plan, fund, or program is established or maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, various benefits, which may include medical, surgical, or hospital care or benefits.

Group health plans within the meaning of section 1301(b)(3) of the Affordable Care Act (42 U.S.C. 18021(b)(3)) include both insured health plans and self-insured

health plans. Accordingly, a self-insured group health plan is an eligible employer-sponsored plan.

ii. Continuation and retiree coverage

Employers are required to offer certain former employees continuation coverage under Federal or State law. Many employers offer health benefits coverage to retired employees. Under the PHSA and ERISA, group health plans and employee welfare benefit plans, respectively, include plans offered to former employees. Accordingly, the proposed regulations clarify that coverage provided by an employer to a former employee, including coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272 (100 Stat. 82), and retiree health coverage, qualifies as coverage under an eligible employer-sponsored plan.

c. Other health benefits coverage

Under section 5000A(f)(1)(E), the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, may designate other health benefits coverage as minimum essential coverage. The Department of Health and Human Services is proposing rules providing standards for determining whether certain other types of health insurance coverage constitute minimum essential coverage and procedures for plan sponsors to follow for a plan to be identified as minimum essential coverage under section 5000A. Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Minimum Essential Coverage Provisions (to be codified at 45 CFR 156.600 and following sections).

### 3. Exempt Individuals

#### a. In general

The term applicable individual is used in section 5000A to describe an individual who is subject to the minimum essential coverage provision under section 5000A(a).

Section 5000A(d)(2) through section 5000A(d)(4) describe one category of individuals who are not applicable individuals for purposes of section 5000A. Section 5000A(e)(1) through 5000A(e)(5) describe another category of individuals who are exempt from liability for the shared responsibility payment imposed under section 5000A(b).

Although the two categories are distinct in the statute, the consequence for individuals described in either category is the same: individuals in both categories are not subject to the shared responsibility payment for not maintaining minimum essential coverage.

Accordingly, the proposed regulations refer to all individuals described in section 5000A(d)(2), (d)(3), or (d)(4), or section 5000A(e)(1), (e)(2), (e)(3), (e)(4), or (e)(5), as exempt individuals. For a month, a nonexempt individual is any individual who is alive for the entire month and is not an exempt individual for the month.

The proposed regulations provide that, in general, an individual is treated as an exempt individual for a month if the individual is an exempt individual for at least one day in the month. In the case of certain individuals who are nonresident aliens (as defined in section 7701(b)(1)(B)), individuals whose household income falls below the return filing threshold, and individuals who experience short coverage gaps, the proposed regulations provide rules on how to determine whether an individual is exempt for a particular month. An individual is exempt for all months included in a taxable year when the individual is a nonresident alien. In the case of an individual whose household

income falls below the return filing threshold for a taxable year, the individual is exempt for all months in the taxable year. In the case of an individual experiencing a coverage gap, the individual is exempt for a month included in the first short coverage gap in a calendar year.

b. Members of recognized religious sects or divisions

Under section 5000A(d)(2)(A), an individual is exempt for a month that the individual has in effect a religious conscience exemption certification. Only an Exchange may grant a religious conscience exemption certification. Individuals who are members of a recognized religious sect or division thereof described in section 1402(g)(1) and who are adherents of the established tenets or teachings of the sect or division are eligible to receive a religious conscience exemption certification.

c. Exempt noncitizens

The proposed regulations clarify that an individual who is not a citizen or national of the United States is exempt for a month if the individual is not lawfully present in the United States in that month within the meaning of 45 CFR 155.20 (referring to lawful immigration status within the United States). In addition, an individual who is not a citizen or national of the United States is treated as not lawfully present in the United States for a month in a taxable year if the individual is a nonresident alien as defined in section 7701(b)(1)(B) for that taxable year.

d. Incarcerated individuals

Section 5000A(d)(4) provides that an individual is exempt for a month for which the individual is incarcerated (other than incarceration pending the disposition of charges). The proposed regulations clarify that an individual confined for at least one

day in a jail, prison, or similar penal institution or correctional facility after the disposition of charges is exempt for the month that includes the day.

e. Individuals who cannot afford coverage

Section 5000A(e)(1)(A) provides that an individual is exempt for a month for which the individual does not have access to affordable minimum essential coverage. For this purpose, an individual does not have access to affordable coverage for a month if the individual's required contribution (determined on an annual basis) for coverage for the month exceeds 8 percent of the taxpayer's household income for the taxable year. Under section 5000A(e)(1)(D), for any plan year beginning after 2014, the 8 percent figure is replaced by the percentage figure that the Secretary of Health and Human Services determines reflects the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for the same period.

For purposes of determining affordability of coverage, in accordance with section 5000A(e)(1)(A), the proposed regulations require that the taxpayer's household income be increased by the portion of the required contribution made through a salary reduction arrangement and excluded from gross income. In many cases, information on the excluded amount may not be available to the IRS or to the employee. Comments are requested on practicable ways, if any, in which the required adjustment to household income may be made with the information available under sections 6051, 6055, 6056, or other provisions of the Code.



i. Individuals eligible for minimum essential coverage under an eligible employer-sponsored plan

A. Eligibility for coverage under an eligible employer-sponsored plan

If an individual is eligible for coverage under an eligible employer-sponsored plan, whether as an employee or as an individual related to an employee, the individual's qualification for the lack of affordable coverage exemption is determined solely by reference to the cost of coverage under the eligible employer-sponsored plan. The proposed regulations clarify that an employee or related individual is treated as eligible for coverage under an eligible employer-sponsored plan for each month included in the plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period.

The proposed regulations also clarify that an employed individual who is eligible for coverage under an eligible employer-sponsored plan offered by the individual's employer is not treated as eligible as a related individual for coverage under a plan offered by the employer of another employed individual. Thus, if two or more members of a family are employed and their respective employers offer self-only and family coverage under eligible employer-sponsored plans, each employed individual determines the affordability of coverage using the premium for the self-only coverage offered by the individual's employer. Neither individual may determine the affordability of coverage using the premium for family coverage offered by the other individual's employer. In these cases, each employed individual's self-only coverage may be treated as affordable, even though the aggregate cost of covering all employed individuals may exceed 8 percent of the family's household income. The Department of

Health and Human Services is proposing rules that would permit families in these circumstances to qualify for the hardship exemption described in section 5000A(e)(5). Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Minimum Essential Coverage Provisions (to be codified at 45 CFR 155.605(g)).

The proposed regulations provide that employee includes a former employee. Thus, an individual eligible to enroll in retiree coverage under a group health plan that is an eligible employer-sponsored plan as defined in section 5000A(f)(2) is treated as eligible to purchase minimum essential coverage under an eligible employer-sponsored plan under the same rules applicable to current employees. The treatment of former employees is consistent with other provisions of the Code, the PHSA, and ERISA that apply to group health plans of employers.

In addition, the proposed regulations provide that an individual eligible to enroll in continuation coverage required under Federal law, such as COBRA, or a comparable State law is eligible to purchase minimum essential coverage under an eligible employer-sponsored plan only if the individual enrolls in the coverage. This treatment of former employees eligible for continuation coverage is consistent with the rules provided in §1.36B-2(c)(3)(iv).

B. Required contribution for employees eligible for coverage under an employer-sponsored plan

Section 5000A(e)(1)(B)(i) provides that, in the case of an employee eligible to purchase minimum essential coverage through an eligible employer-sponsored plan, the required contribution is the portion of the annualized premium that the individual

would pay (without regard to whether paid through salary reduction or otherwise) for self-only coverage. The proposed regulations clarify that, for an employee eligible for coverage under an eligible employer-sponsored plan, the required contribution is the portion of the annual premium that the employee would pay for the lowest cost self-only coverage.

C. Required contribution for a related individual eligible for coverage under an eligible employer-sponsored plan

Section 5000A(e)(1)(C) provides that, in the case of a related individual eligible to purchase minimum essential coverage under an eligible employer-sponsored plan because of the individual's relationship with an employee, the related individual's affordability determination is made by reference to the employee's required contribution. The proposed regulations provide that a related individual is an individual who is eligible for coverage under an eligible employer-sponsored plan because of a relationship to an employee and for whom a personal exemption deduction under section 151 is properly claimed on the employee's Federal income tax return. For example, an employee's spouse is treated as a related individual if the spouse files a joint return with the employee and is eligible for employer-sponsored coverage only under the plan offered to the employee. An individual who is eligible to enroll in an eligible employer-sponsored plan by reason of a relationship to an employee, but who is not claimed as a dependent by the employee, is not treated as a related individual. For purposes of section 5000A, the unclaimed dependent's household income is independently determined.

The proposed regulations clarify that if an employee or related individual is eligible to enroll in an eligible employer-sponsored plan, any eligibility for other coverage (for example, government sponsored minimum essential coverage) is disregarded for purposes of the exemption for lack of affordable coverage.

The proposed regulations further clarify that the required contribution for a related individual's coverage is determined by reference to the premium for the lowest cost coverage under the eligible employer-sponsored plan in which the employee and all related individuals who are included in the employee's family and not otherwise exempt are eligible to enroll. Thus, the required contribution for a spouse and claimed dependents (who are not otherwise exempt) is the premium that the employee would pay for the lowest cost coverage covering the employee, the spouse, and the claimed dependents. The required contribution for self-only coverage under an eligible employer-sponsored plan may cost less than 8 percent of household income, while the required contribution for family coverage under the same employer plan may cost more than 8 percent of household income. In such a case, the employee is not exempt under section 5000A(e)(1), while the employee's spouse and claimed dependents are exempt.

Finally, some individuals who are claimed as dependents by a taxpayer may not be eligible for coverage under the taxpayer's eligible employer-sponsored plan. The affordability of coverage for these individuals is determined in the manner that applies to them individually. Thus, if a taxpayer is not allowed to enroll a niece who is the taxpayer's dependent in the taxpayer's eligible employer-sponsored plan, the required contribution for the niece is not determined by reference to the cost of coverage under the plan. Instead, unless the niece is eligible for coverage under another eligible

employer-sponsored plan, her required contribution is determined under the rules applicable to individuals eligible only to purchase coverage in the individual market.

ii. Individuals eligible only to purchase coverage in the individual market

Section 5000A(e)(1)(B)(ii) defines the term required contribution for an individual eligible only to purchase coverage in the individual market. The proposed regulations clarify that, for any individual who is not an employee or related individual eligible for minimum essential coverage under an eligible employer-sponsored plan, the required contribution is the premium for the lowest cost bronze plan available in the individual market through the Exchange serving the rating area where the individual resides, reduced by the maximum amount of any premium tax credit that would be allowable if the individual were enrolled in the plan offered through the Exchange.

As explained in this preamble, under the proposed regulations, both the annual premium for the applicable lowest cost bronze plan and the credit allowable under section 36B are determined by reference to coverage for those members of the individual's family who are not otherwise exempt (nonexempt family). Consequently, the required contribution is the same for all members of a nonexempt family who are ineligible for coverage under an eligible employer-sponsored plan.

A. Premium for the lowest cost bronze plan

The proposed regulations provide that the lowest cost bronze plan is the lowest cost bronze-level qualified health plan available in the Exchange serving the rating area that would cover all members of the nonexempt family who are ineligible for coverage under an eligible employer-sponsored plan. Accordingly, the premium for the lowest cost bronze plan is the same for all individuals in a nonexempt family.

The proposed regulations provide special rules for determining the premium for the lowest cost bronze plan if the Exchange does not offer a bronze-level plan that would cover the taxpayer's entire nonexempt family. The proposed regulations provide that, in general, the premium for the lowest cost bronze plan is the sum of the premiums for the lowest cost bronze plans that would, taken together, cover the taxpayer's nonexempt family (for example, for an uncle and two adult dependent nieces, a self-only plan for the uncle and a two-adult or family plan for the nieces). Alternatively, the proposed regulations provide that a taxpayer may elect to use the premium for the lowest cost bronze plan that would apply to a set of individuals that have the same characteristics as the taxpayer's nonexempt family (such as one adult plus children) as if one plan covered all members of the taxpayer's shared responsibility family.

#### B. Credit allowable under section 36B

In general, a premium tax credit is allowable under section 36B for any coverage month (within the meaning of §1.36B-3(c)) that occurs in a taxable year in which a taxpayer is an applicable taxpayer (within the meaning of §1.36B-2(b)). A month is not a coverage month for an individual, and thus no premium tax credit is allowable for the individual's coverage, if the individual is eligible for minimum essential coverage other than coverage offered in the individual market for that month. In general, an applicable taxpayer is a taxpayer whose household income for the taxable year is between 100 percent and 400 percent of the Federal poverty line for the taxpayer's family size.

Section 36B(b)(1) provides that the premium tax credit for any taxable year is the sum of the premium assistance amounts with respect to all coverage months occurring in the taxable year. Under section 36B(b)(2), for any coverage month, the premium

assistance amount is the lesser of the following: (1) the monthly premiums for the month for one or more qualified health plans in which the taxpayer or a member of the taxpayer's family (coverage family) is enrolled through the Exchange serving the rating area where they reside or (2) any excess of the adjusted monthly premium for the month for the applicable second lowest cost silver plan for the taxpayer over an amount equal to 1/12 of the product of the applicable percentage and the taxpayer's household income for the taxpayer. Section 36B, therefore, calculates the allowable credit by treating the family as a single, aggregated unit.

The proposed regulations take a similar family-unit approach to determine the affordability of Exchange coverage. The proposed regulations provide that, for purposes of section 5000A, each individual in the taxpayer's nonexempt family is treated as having enrolled in a qualified health plan through the appropriate Exchange for purposes of determining the credit allowable under section 36B. Therefore, for each individual, a month is treated as a coverage month if the individual is ineligible for minimum essential coverage other than coverage in the individual market for the month. The proposed regulations further provide that the premium assistance amount for the month is the amount that would be allowable under the rules of section 36B if each member of the individual's nonexempt family enrolled in a qualified health plan through an Exchange. Accordingly, for a month that an individual included in a nonexempt family is eligible for minimum essential coverage other than coverage in the individual market, the month is not a coverage month for that individual, the individual is not included in the coverage family for purposes of section 36B, and no premium assistance amount is allowable for the coverage attributable to such individual.

f. Household income below return filing threshold

Section 5000A(e)(2) provides that an individual is exempt for a month in a calendar year if the individual's household income for the taxable year is less than the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer. The proposed regulations refer to “the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer” (that is, the minimum amount of gross income that triggers the individual's requirement to file a Federal income tax return under that section) as the applicable filing threshold.

The proposed regulations further clarify that, for any individual who is properly claimed as a dependent, the applicable filing threshold is that of the taxpayer who claims the individual as a dependent. Therefore, if a taxpayer is exempt under section 5000A(e)(2), any individual the taxpayer properly claims as a dependent also is exempt as well. The Treasury Department and the IRS recognize that some taxpayers who do not have sufficient gross income to trigger a return filing requirement nevertheless may have household income that exceeds the return filing threshold. For example, if a taxpayer whose gross income is below the applicable filing threshold files a Federal income tax return in order to claim certain tax benefits (such as the earned income credit or additional child tax credit) and claims a dependent whose gross income triggers a return filing requirement, the household income (which combines the taxpayer's and the dependent's income) may exceed the filing threshold. The Department of Health and Human Services is proposing rules providing that individuals in this circumstance may qualify for a hardship exemption. Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Minimum Essential



Coverage Provisions (to be codified at 45 CFR 155.605(g)). The Treasury Department and the IRS are considering additional methods of accommodating individuals in these circumstances.

g. Short coverage gap

The proposed regulations clarify that a continuous period without minimum essential coverage is determined by reference to calendar months (for example, January or February) in conjunction with the coverage rule in §1.5000A-1(b). Therefore, if an individual is enrolled in and entitled to receive benefits under a plan identified as minimum essential coverage for one day in a calendar month, the month is not included in the continuous period when determining the application of the short coverage gap exemption. As a result, the proposed regulations provide that an individual qualifies for the short coverage gap exemption if the continuous period without minimum essential coverage is less than three full calendar months and is the first short coverage gap in the individual's taxable year.

i. Coverage gap straddling multiple taxable years

In general, section 5000A(e)(4)(B)(i) provides that the length of a continuous period is determined without regard to the calendar years in which months in the period occur. However, whether an individual had coverage during the last month, or the last two months, of a taxable year affects the determination of whether any gap in coverage that the individual experiences in the first month, or the first and second months, of the following taxable year qualifies as a short coverage gap. Accordingly, if a calendar year taxpayer has a continuous period of 3 months or longer that starts in November or December of one taxable year and ends in the next taxable year, then January and any

ensuing months of the second taxable year that are included in the period are ineligible for the short coverage gap exemption.

Section 5000A(e)(4) expressly authorizes the Secretary to prescribe rules for the collection of the shared responsibility payment in cases in which continuous periods include months in more than one taxable year. Each Federal income tax return covers a single taxable year and requires the taxpayer to account for coverage of the taxpayer's shared responsibility family during the months included in that taxable year. To require a taxpayer to take into account months in the following taxable year may delay or impede the taxpayer's ability to file a timely Federal income tax return. Accordingly, to provide taxpayers with certainty when filing their Federal income tax returns, the proposed regulations provide that an individual who lacks minimum essential coverage for a period no longer than the last two months of a taxable year will be deemed to have a short coverage gap exemption for those months if the short coverage gap is the first to occur in that taxable year, without regard to whether the individual is covered during the first months of the following taxable year.

ii. Coordination with other exemptions

The proposed regulations clarify that, for purposes of determining whether a short coverage gap applies, an individual is treated as covered under minimum essential coverage for a month in which the individual qualifies for a section 5000A exemption (other than the short coverage gap exemption). Therefore, the short coverage exemption applies to a month in which no other section 5000A exemption applies, and a month in which an individual is otherwise exempt is not taken into account in determining the length of the continuous period without coverage.

#### h. Claiming section 5000A exemptions

The exemptions for members of recognized religious sects or divisions and for individuals who have suffered a hardship are available only to individuals who have been certified as meeting the relevant criteria by the Exchange serving the rating area where the individuals seeking the exemption reside.

In addition, Exchanges will provide, upon request, exemption certifications for members of health care sharing ministries, incarcerated individuals, and members of Indian tribes. If an individual receives an exemption certification from an Exchange, the taxpayer who is responsible for accounting for that individual's coverage must provide information about the certification on the taxpayer's Federal income tax return.

Alternatively, a taxpayer may claim any of these exemptions on the taxpayer's Federal income tax return for the taxable year.

Finally, the income-based exemptions for individuals who lack affordable coverage or have household income below the applicable income tax return filing threshold and the exemption for short coverage gaps may be claimed only on the individual's Federal income tax return for the applicable year. Thus, an individual claiming the affordability exemption under section 5000A(e)(1) for part or all of a taxable year will do so on the Federal income tax return that reports the individual's income establishing qualification for the exemption. An individual who has household income below the applicable Federal income tax return filing threshold and files a Federal income tax return may claim the exemption under section 5000A(e)(2) on the return. However, an individual who has household income below the applicable Federal income

tax return filing threshold is not required to file a Federal income tax return to claim the exemption under section 5000A(e)(2).

Pursuant to section 6001, taxpayers are required to maintain all records and information substantiating any claim for exemption on the taxpayer's Federal income tax return, regardless of whether the individual was certified by an Exchange as qualifying for an exemption or first claimed the exemption on a Federal income tax return.

#### 4. Computation of Shared Responsibility Payment

Under section 5000A(b)(1) and 5000A(b)(3)(A), a taxpayer is liable for the shared responsibility payment with respect to any nonexempt individual who is included in the taxpayer's shared responsibility family. The maximum annual amount of the shared responsibility payment for a taxpayer is the national average premium for the bronze level plan available through Exchanges that provides coverage for the applicable family size involved. The proposed regulations clarify that the applicable family size involved for purposes of identifying the appropriate bronze level plan includes only the nonexempt members of the taxpayer's shared responsibility family who do not have minimum essential coverage.

Under section 5000A(c), the annual amount of the shared responsibility payment is the lesser of the applicable national average bronze plan premium or the sum of the monthly penalty amounts. The monthly penalty amount may vary month to month because of changes in the composition of the taxpayer's shared responsibility family. To provide a meaningful value with which the sum of the monthly penalty amounts are compared, the proposed regulations provide that the applicable national average bronze plan premium must similarly be determined for each month and then aggregated for

comparison with the sum of the monthly penalty amounts. Consequently, the applicable national average bronze plan premium may vary from month to month during the year to account for changes in the taxpayer's shared responsibility family.

## 5. Procedure and Administration

### a. Inclusion with Federal income tax return

Section 5000A(b)(2) provides that the shared responsibility payment for a month must be included with a taxpayer's Federal income tax return for the taxable year that includes the month. The proposed regulations clarify that the time for assessing the shared responsibility payment is the same time as that prescribed by section 6501 for the taxable year including the month for which the taxpayer is liable for the payment.

### b. Assessment and collection

Section 5000A(g)(1) provides that the shared responsibility payment is payable upon notice and demand by the Secretary and, except as provided in section 5000A(g)(2), is assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68 of the Code (sections 6671 through 6725). The proposed regulations clarify that the shared responsibility payment is not subject to deficiency procedures of subchapter B of chapter 63 of the Code. In addition, the proposed regulations clarify that interest on the shared responsibility payment accrues in accordance with the rules in section 6601. The proposed regulations further provide that the Secretary may offset any liability for the shared responsibility payment against any overpayment due the taxpayer, in accordance with section 6402(a).

**Applicability Date**

These regulations are proposed to apply for months beginning after December 31, 2013.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the proposed regulations. Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The applicability of the proposed regulations is limited to individuals, who are not small entities as defined by the RFA (5 U.S.C. 601). Accordingly, the RFA does not apply. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing has been scheduled for May 29, 2013, beginning at 10:00 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of §601.601(a)(3) of this chapter apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 3, 2013. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### **Drafting Information**

The principal authors of the proposed regulations are William L. Candler and Sue-Jean Kim, Office of the Associate Chief Counsel (Income Tax & Accounting). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended to read as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805\* \* \*

Section 1.5000A-4 also issued under 26 U.S.C. 5000A(e)(4).

Par 2. Sections 1.5000A-0 through 1.5000A-5 are added to read as follows:

#### §1.5000A-0 Table of contents.

This section lists the captions contained in §§1.5000A-1 through 1.5000A-5.

#### §1.5000A-1 Maintenance of minimum essential coverage and liability for the shared responsibility payment.

- (a) In general.
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  - (1) In general.
  - (2) Special rule for United States citizens or residents residing outside the United States or residents of territories.
- (c) Liability for shared responsibility payment.
  - (1) In general.
  - (2) Liability for dependents.
    - (i) In general.
    - (ii) Special rules for dependents adopted or placed in foster care during the taxable year.
      - (A) Taxpayers adopting an individual.
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      - (C) Examples.
  - (3) Liability of individuals filing a joint return.
- (d) Definitions.
  - (1) Affordable Care Act.
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  - (4) Rating area.
  - (5) Shared responsibility family.
  - (6) Family.
  - (7) Household income.



- (i) In general.
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- (8) Self-only coverage.
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§1.5000A-2 Minimum essential coverage.

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- (ii) Required contribution for individuals eligible for coverage under an eligible employer-sponsored plan.
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§1.5000A-1 Maintenance of minimum essential coverage and liability for the shared responsibility payment.

(a) In general. For each month during the taxable year, a nonexempt individual must have minimum essential coverage or pay the shared responsibility payment. For a month, a nonexempt individual is an individual in existence for the entire month who is not an exempt individual described in §1.5000A-3.

(b) Coverage under minimum essential coverage--(1) In general. An individual has minimum essential coverage for a month in which the individual is enrolled in and

entitled to receive benefits under a program or plan identified as minimum essential coverage in §1.5000A-2 for at least one day in the month.

(2) Special rule for United States citizens or residents residing outside the United States or residents of territories. An individual is treated as having minimum essential coverage for a month--

(i) If the month occurs during any period described in section 911(d)(1)(A) or section 911(d)(1)(B) that is applicable to the individual; or

(ii) If, for the month, the individual is a bona fide resident of a possession of the United States (as determined under section 937(a)).

(c) Liability for shared responsibility payment--(1) In general. A taxpayer is liable for the shared responsibility payment for a month for which--

(i) The taxpayer is a nonexempt individual without minimum essential coverage; or

(ii) A nonexempt individual for whom the taxpayer is liable under paragraph (c)(2) or (c)(3) of this section does not have minimum essential coverage.

(2) Liability for dependents--(i) In general. For a month when a nonexempt individual does not have minimum essential coverage, if the nonexempt individual is a dependent (as defined in section 152) of another individual for the other individual's taxable year including that month, the other individual is liable for the shared responsibility payment attributable to the dependent's lack of coverage. An individual is a dependent of a taxpayer for a taxable year if the individual satisfies the definition of dependent under section 152, regardless of whether the taxpayer claims the individual as a dependent on a Federal income tax return for the taxable year. If an individual

may be claimed as a dependent by more than one taxpayer in the same calendar year, the taxpayer who properly claims the individual as a dependent for the taxable year is liable for the shared responsibility payment attributable to the individual. If more than one taxpayer may claim an individual as a dependent in the same calendar year but no one claims the individual as a dependent, the taxpayer with priority under the rules of section 152 to claim the individual as a dependent is liable for the shared responsibility payment for the individual.

(ii) Special rules for dependents adopted or placed in foster care during the taxable year--(A) Taxpayers adopting an individual. If a taxpayer adopts a nonexempt dependent (or accepts a nonexempt dependent who is an eligible foster child as defined in section 152(f)(1)(C)) during the taxable year and is otherwise liable for a nonexempt dependent under paragraph (c)(2)(i) of this section, the taxpayer is liable under paragraph (c)(2)(i) of this section for the nonexempt dependent only for the full months in the taxable year that follow the month in which the adoption or acceptance occurs.

(B) Taxpayers placing an individual for adoption. If a taxpayer who is otherwise liable for a nonexempt dependent under paragraph (c)(2)(i) of this section places (or, by operation of law, must place) the nonexempt dependent for adoption or foster care during the taxable year, the taxpayer is liable under paragraph (c)(2)(i) of this section for the nonexempt dependent only for the full months in the taxable year that precede the month in which the adoption or foster care placement occurs.

(C) Examples. The following examples illustrate the provisions of this paragraph (c)(2)(ii). In each example the taxpayer's taxable year is a calendar year.

Example 1. Taxpayers adopting a child. (i) E and F, married individuals filing a joint return, initiate proceedings for the legal adoption of a 2-year old child, G, in

January 2016. On May 15, 2016, G becomes the adopted child (within the meaning of section 152(f)(1)(B)) of E and F, and resides with them for the remainder of 2016. G meets all requirements under section 152 to be E and F's dependent for 2016. Prior to the adoption, G resides with H, an unmarried individual, with H providing all of G's support.

(ii) Under paragraph (c)(2) of this section, E and F are not liable for a shared responsibility payment attributable to G for January through May of 2016, but are liable for a shared responsibility payment attributable to G, if any, for June through December of 2016. H is not liable for a shared responsibility payment attributable to G for any month in 2016, because G is not H's dependent for 2016 under section 152.

Example 2. Taxpayers placing a child for adoption. (i) The facts are the same as Example 1, except the legal adoption occurs on August 15, 2016. G meets all requirements under section 152 to be H's dependent for 2016.

(ii) Under paragraph (c)(2) of this section, H is liable for a shared responsibility payment attributable to G, if any, for January through July of 2016, but is not liable for a shared responsibility payment attributable to G for August through December of 2016. E and F are not liable for a shared responsibility payment attributable to G for any month in 2016, because G is not E and F's dependent for 2016 under section 152.

(3) Liability of individuals filing a joint return. Married individuals (within the meaning of section 7703) who file a joint return for a taxable year are jointly liable for any shared responsibility payment for a month included in the taxable year.

(d) Definitions. The definitions in this paragraph (d) apply to this section and §§1.5000A-2 through 1.5000A-5.

(1) Affordable Care Act. Affordable Care Act refers to the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)), as amended.

(2) Qualified health plan. Qualified health plan has the same meaning as in section 1301(a) of the Affordable Care Act (42 U.S.C. 18021(a)).

(3) Exchange. Exchange has the same meaning as in 45 CFR 155.20.

(4) Rating area. Rating area has the same meaning as in §1.38B-1(n).

(5) Shared responsibility family. Shared responsibility family means, for a month, all nonexempt individuals for whom the taxpayer (and the taxpayer's spouse, if the taxpayer is married and files a joint return with the spouse) is liable for the shared responsibility payment under paragraph (c) of this section.

(6) Family. A taxpayer's family means the individuals for whom the taxpayer properly claims a deduction for a personal exemption under section 151 for the taxable year.

(7) Household income--(i) In general. Household income means the sum of--

(A) A taxpayer's modified adjusted gross income; and

(B) The aggregate modified adjusted gross income of all other individuals who--

(1) Are included in the taxpayer's family under paragraph (d)(6) of this section;

and

(2) Are required to file a Federal income tax return for the taxable year

(determined without regard to the exception under section 1(g)(7) to the requirement to file a Federal income tax return).

(ii) Modified adjusted gross income. Modified adjusted gross income means adjusted gross income (within the meaning of section 62) increased by--

(A) Amounts excluded from gross income under section 911; and

(B) Tax-exempt interest the taxpayer receives or accrues during the taxable year.

(8) Self-only coverage. Self-only coverage means health insurance that covers one individual.

(9) Family coverage. Family coverage means health insurance that covers more than one individual.

(10) Employee. Employee includes former employees.

(11) Month. Month means calendar month.

§1.5000A-2 Minimum essential coverage.

(a) In general. Minimum essential coverage means coverage under a government sponsored program (described in paragraph (b) of this section), an eligible employer-sponsored plan (described in paragraph (c) of this section), a plan in the individual market (described in paragraph (d) of this section), a grandfathered health plan (described in paragraph (e) of this section), or other health benefits coverage (described in paragraph (f) of this section). Minimum essential coverage does not include coverage described in paragraph (g) of this section. All terms defined in this section apply for purposes of this section and §1.5000A-1 and §§1.5000A-3 through 1.5000A-5.

(b) Government sponsored program. Government sponsored program means any of the following:

(1) The Medicare program under part A of title XVIII of the Social Security Act (42 U.S.C.1395c and following sections);

(2) The Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 and following sections) other than--

(i) Optional coverage of family planning services under section 1902(a)(10)(A)(ii)(XXI) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XXI));



(ii) Optional coverage of tuberculosis-related services under section 1902(a)(10)(A)(ii)(XII) (42 U.S.C. 1396a(a)(10)(A)(ii)(XII));

(iii) Coverage of pregnancy-related services under section 1902(a)(10)(A)(i)(IV) and (a)(10)(A)(ii)(IX) (42 U.S.C. 1396a(a)(10)(A)(i)(IV), (a)(10)(A)(ii)(IX)); or

(iv) Coverage of medical emergency services under 8 U.S.C. 1611(b)(1)(A), as authorized by section 1903(v) of the Social Security Act (42 U.S.C. 1396b(v)).

(3) The Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act (42 U.S.C. 1397aa and following sections);

(4) Medical coverage under chapter 55 of title 10, U.S.C., including coverage under the TRICARE program;

(5) The following health care programs under chapter 17 or 18 of title 38, U.S.C.:

(i) The medical benefits package authorized for eligible veterans under 38 U.S.C. 1710 and 38 U.S.C. 1705;

(ii) The Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) authorized under 38 U.S.C. 1781; and

(iii) The comprehensive health care program authorized under 38 U.S.C. 1803 and 38 U.S.C. 1821 for certain children of Vietnam Veterans and Veterans of covered service in Korea who are suffering from spina bifida.

(6) A health plan under section 2504(e) of title 22, U.S.C. (relating to Peace Corps volunteers); and

(7) The Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense authorization Act for Fiscal Year 1995 (Public Law No. 103-337; 10 U.S.C. 1587 note).

(c) Eligible employer-sponsored plan--(1) In general. Eligible employer-sponsored plan means, with respect to any employee, a group health plan (whether an insured group health plan or a self-insured group health plan) or group health insurance coverage offered by an employer to the employee, which is--

(i) A governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C.300gg-91(d)(8)));

(ii) Any other plan or coverage offered in the small or large group market within a State;

(iii) A grandfathered health plan (within the meaning of paragraph (e) of this section) offered in a group market.

(2) Group health plan. Group health plan has the same meaning as in section 2791(a) of the Public Health Service Act (42 U.S.C.300gg-91(a)(1)).

(3) Group health insurance coverage. Group health insurance coverage has the same meaning as in section 2791(b) of the Public Health Service Act (42 U.S.C.300gg-91(b)).

(4) Large and small group market. Large group market and small group market have the same meanings as in section 1304(a)(3) of the Affordable Care Act (42 U.S.C. 18024(a)(3)).

(5) Government sponsored program not treated as eligible employer-sponsored plan. A government sponsored program described in paragraph (b) of this section is not an eligible employer-sponsored plan.

(d) Plan in the individual market. Plan in the individual market means health insurance coverage offered to individuals not in connection with a group health plan, including a qualified health plan offered by an Exchange.

(e) Grandfathered health plan. Grandfathered health plan means any group health plan or group health insurance coverage to which section 1251 of the Affordable Care Act (42 U.S.C.18011) applies.

(f) Other health benefits coverage. Minimum essential coverage includes any plan or arrangement recognized by the Secretary of Health and Human Services as minimum essential coverage for purposes of section 5000A under 45 CFR 156.600 and following sections.

(g) Excepted benefits. Minimum essential coverage does not include any health insurance coverage that consists of excepted benefits that are described in section 2791(c)(1), (c)(2), (c)(3), or (c)(4) of the Public Health Service Act (42 U.S.C. 300gg-91(c)).

#### §1.5000A-3 Exempt individuals.

(a) Members of recognized religious sects--(1) In general. An individual is an exempt individual for a month that includes a day on which the individual has in effect a religious conscience exemption certification described in paragraph (a)(2) of this section.

(2) Exemption certification. A religious conscience exemption certification is issued by an Exchange in accordance with the requirements of section 1311(d)(4)(H) of the Affordable Care Act (42 U.S.C. 18031(d)(4)(H)) and 45 CFR 155.605(c), 45 CFR 155.615(b) and certifies that an individual is--

(i) A member of a recognized religious sect or division thereof that is described in section 1402(g)(1); and

(ii) An adherent of established tenets or teachings of the sect or division as described in that section.

(b) Member of health care sharing ministries--(1) In general. An individual is an exempt individual for a month that includes a day on which the individual is a member of a health care sharing ministry.

(2) Health care sharing ministry. For purposes of this section, health care sharing ministry means an organization--

(i) That is described in section 501(c)(3) and is exempt from tax under section 501(a);

(ii) Members of which share a common set of ethical or religious beliefs and share medical expenses among themselves in accordance with those beliefs and without regard to the State in which a member resides or is employed;

(iii) Members of which retain membership even after they develop a medical condition;

(iv) That (or a predecessor of which) has been in existence at all times since December 31, 1999;

(v) Members of which have shared medical expenses continuously and without interruption since at least December 31, 1999; and

(vi) That conducts an annual audit performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and makes the annual audit report available to the public upon request.

(c) Exempt noncitizens--(1) In general. An individual is an exempt individual for a month that the individual is an exempt noncitizen.

(2) Exempt noncitizens. For purposes of this section, an individual is an exempt noncitizen for a month if the individual--

(i) Is not a U.S. citizen or U.S. national for any day during the month; and

(ii) Is either--

(A) A nonresident alien (within the meaning of section 7701(b)(1)(B)) for the taxable year that includes the month; or

(B) An individual who is not lawfully present (within the meaning of 45 CFR 155.20) in the United States on any day in the month.

(d) Incarcerated individuals--(1) In general. An individual is an exempt individual for a month that includes a day on which the individual is incarcerated.

(2) Incarcerated. For purposes of this section, the term incarcerated means confined, after the disposition of charges, in a jail, prison, or similar penal institution or correctional facility.

(e) Individuals with no affordable coverage--(1) In general. An individual is an exempt individual for a month in which the individual lacks affordable coverage. For purposes of this paragraph (e), an individual lacks affordable coverage in a month if the individual's required contribution (determined on an annual basis) for minimum essential coverage for the month exceeds the required contribution percentage (as defined in paragraph (e)(2) of this section) of the individual's household income. For purposes of this paragraph (e), an individual's household income is increased by any amount of the

required contribution made through a salary reduction arrangement that is excluded from gross income.

(2) Required contribution percentage--(i) In general. Except as provided in paragraph (e)(2)(ii) of this section, the required contribution percentage is 8 percent.

(ii) Indexing. For plan years beginning in any calendar year after 2014, the required contribution percentage is the percentage determined by the Department of Health and Human Services that reflects the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for the period.

(iii) Plan year. For purposes of this paragraph (e), plan year means the eligible employer-sponsored plan's regular 12-month coverage period (or the remainder of a 12-month coverage period for a new employee or an individual who enrolls during a special enrollment period).

(3) Individuals eligible for coverage under eligible employer-sponsored plans--(i) Eligibility--(A) In general. Except as provided in paragraph (e)(3)(i)(B) of this section, an employee or related individual (as defined in paragraph (e)(3)(ii)(B) of this section) is treated as eligible for coverage under an eligible employer-sponsored plan for a month during a plan year if the employee or related individual could have enrolled in the plan for any day in that month during an open or special enrollment period, regardless of whether the employee or related individual is eligible for any other type of minimum essential coverage. For purposes of this paragraph (e)(3), an employee eligible for coverage under an eligible employer-sponsored plan offered by the employee's employer is not treated as eligible as a related individual for coverage under an eligible

employer-sponsored plan (for example, an eligible employer-sponsored plan offered by the employer of the employee's spouse) for any month included in the plan year of the eligible employer-sponsored plan offered by the employee's employer.

(B) Special rule for continuation coverage. An individual who may enroll in continuation coverage required under Federal law or a State law that provides comparable continuation coverage is eligible for coverage under an eligible employer-sponsored plan only if the individual enrolls in the coverage.

(ii) Required contribution for individuals eligible for coverage under an eligible employer-sponsored plan--(A) Employees. In the case of an employee who is eligible to purchase coverage under an eligible employer-sponsored plan sponsored by the employee's employer, the required contribution is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest cost self-only coverage.

(B) Individuals related to employees. In the case of an individual who is eligible for coverage under an eligible employer-sponsored plan because of a relationship to an employee and for whom a personal exemption deduction under section 151 is claimed on the employee's Federal income tax return (related individual), the required contribution is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest cost family coverage that would cover the employee and all related individuals who are included in the employee's family and are not otherwise exempt under §1.5000A-3.

(C) Required contribution for part-year period. For each individual described in paragraph (e)(3)(ii)(A) or (e)(3)(ii)(B) of this section, affordability under paragraph (e)(3)

of this section is determined separately for each employment period that is less than a full calendar year or for the portions of an employer's plan year that fall in different taxable years of the individual. Coverage under an eligible employer-sponsored plan is affordable for a part-year period if the annualized required contribution for self-only coverage (in the case of the employee) or family coverage (in the case of a related individual) under the plan for the part-year period does not exceed the required contribution percentage of the individual's household income for the taxable year. The annualized required contribution is the required contribution determined under paragraph (e)(3)(ii)(A) or (e)(3)(ii)(B) of this section for the part-year period times a fraction, the numerator of which is 12 and the denominator of which is the number of months in the part-year period during the individual's taxable year. Only full calendar months are included in the computation under this paragraph (e)(3)(ii)(C).

(D) Examples. The following examples illustrate the application of this paragraph (e)(3). Unless stated otherwise, in each example, each individual's taxable year is a calendar year, the individual is ineligible for any other exemptions described in this section for a month, the rate of premium growth has not exceeded the rate of income growth since 2013, and the individual's employer offers a single plan that uses a calendar plan year and is an eligible employer-sponsored plan as described in §1.5000A-2(c).

Example 1. Unmarried employee with no dependents. Taxpayer A is an unmarried individual with no dependents. In November 2015, A is eligible to enroll in self-only coverage under a plan offered by A's employer for calendar year 2016. If A enrolls in the coverage, A is required to pay \$5,000 of the total annual premium. In 2016, A's household income is \$60,000. Under paragraph (e)(3)(ii)(A) of this section, A's required contribution is \$5,000, the portion of the annual premium A pays for self-only coverage. Under paragraph (e)(1) of this section, A lacks affordable coverage for



2016 because A's required contribution (\$5,000) is greater than 8 percent of A's household income (\$4,800).

Example 2. Married employee with dependents. Taxpayers B and C are married and file a joint return for 2016. B and C have two children, D and E. In November 2015, B is eligible to enroll in self-only coverage under a plan offered by B's employer for calendar year 2016 at a cost of \$5,000 to B. C, D, and E are eligible to enroll in family coverage under the same plan for 2016 at a cost of \$20,000 to B. B, C, D, and E's household income is \$90,000. Under paragraph (e)(3)(ii)(A) of this section, B's required contribution is B's share of the cost for self-only coverage, \$5,000. Under paragraph (e)(1) of this section, B has affordable coverage for 2016 because B's required contribution (\$5,000) does not exceed 8 percent of B's household income (\$7,200). Under paragraph (e)(3)(ii)(B) of this section, the required contribution for C, D, and E is B's share of the cost for family coverage, \$20,000. Under paragraph (e)(1) of this section, C, D, and E lack affordable coverage for 2016 because their required contribution (\$20,000) exceeds 8 percent of their household income (\$7,200).

Example 3. Plan year is a fiscal year. (i) Taxpayer F is an unmarried individual with no dependents. In June 2015, F is eligible to enroll in self-only coverage under a plan offered by F's employer for the period July 2015 through June 2016 at a cost to F of \$4,750. In June 2016, F is eligible to enroll in self-only coverage under a plan offered by F's employer for the period July 2016 through June 2017 at a cost to F of \$5,000. In 2016, F's household income is \$60,000.

(ii) Under paragraph (e)(3)(ii)(C) of this section, F's annualized required contribution for the period January 2016 through June 2016 is \$4,750 (\$2,375 paid for premiums in 2016 x 12/6). Under paragraph (e)(1) of this section, F has affordable coverage for January 2016 through June 2016 because F's annualized required contribution (\$4,750) does not exceed 8 percent of F's household income (\$4,800).

(iii) Under paragraph (e)(3)(ii)(C) of this section, F's annualized required contribution for the period July 2016 to December 2016 is \$5,000 (\$2,500 paid for premiums in 2016 x 12/6). Under paragraph (e)(1) of this section, F lacks affordable coverage for July 2016 through December 2016 because F's annualized required contribution (\$5,000) exceeds 8 percent of F's household income (\$4,800).

Example 4. Eligibility for coverage under an eligible employer-sponsored plan and under government sponsored coverage. Taxpayer G is unmarried and has one child, H. In November 2015, H is eligible to enroll in family coverage under a plan offered by G's employer for 2016. H is also eligible to enroll in the CHIP program for 2016. Under paragraph (e)(3)(i) of this section, H is treated as eligible for coverage under an eligible employer-sponsored plan for each month in 2016, notwithstanding that H is eligible to enroll in government sponsored coverage for the same period.

(4) Individuals ineligible for coverage under eligible employer-sponsored plans--

(i) Eligibility for coverage other than an eligible employer-sponsored plan. An individual is treated as ineligible for coverage under an eligible employer-sponsored plan for a month that is not described in paragraph (e)(3)(i) of this section.

(ii) Required contribution for individuals ineligible for coverage under eligible employer-sponsored plans--(A) In general. In the case of an individual who is ineligible for coverage under an eligible employer-sponsored plan, the required contribution is the premium for the applicable plan, reduced by the maximum amount of any credit allowable under section 36B for the taxable year (determined as if the individual was covered for the entire taxable year by a qualified health plan offered through the Exchange serving the rating area where the individual resides).

(B) Applicable plan--(1) In general. Except as provided in paragraph (e)(4)(ii)(B)(2) of this section, applicable plan means the single lowest cost bronze plan available in the individual market through the Exchange serving the rating area in which the individual resides (without regard to whether the individual purchased a qualified health plan through the Exchange) that would cover all individuals in the individual's nonexempt family. For purposes of this paragraph (e)(4), an individual's nonexempt family means the family (as defined in §1.5000A-1(d)(6)) that includes the individual, excluding any family members who are otherwise exempt under section 1.5000A-3 or are treated as eligible for coverage under an eligible employer-sponsored plan under paragraph (e)(3)(i) of this section. The premium for the applicable plan takes into account rating factors (for example, an individual's age) that an Exchange would use to determine the cost of coverage.

(2) Lowest cost bronze plan does not cover all individuals included in the taxpayer's nonexempt family--(i) In general. If the Exchange serving the rating area where the individual resides does not offer a single bronze plan that would cover all individuals included in the individual's nonexempt family, the premium for the applicable plan is the sum of the premiums for the lowest cost bronze plans that are offered through the Exchanges serving the rating areas where one or more of the individuals reside and that would, in the aggregate, cover all the individuals in the individual's nonexempt family.

(ii) Simplified method for applicable plan identification. In lieu of the premium for the applicable plan determined under paragraph (e)(4)(ii)(B)(2)(i) of this section, a taxpayer may irrevocably elect to use the premium for the lowest cost bronze plan offered by the Exchange serving the rating area where the individual resides that would cover individuals with the characteristics (for example, the individuals' ages) of the individuals in the taxpayer's nonexempt family. For example, if a taxpayer's nonexempt family includes one adult and two children, the taxpayer may elect to use the premium for the lowest cost bronze plan that would cover individuals having the same characteristics as the adult and the two children in the taxpayer's nonexempt family. A taxpayer makes the election by using the simplified method described in this paragraph (e)(4)(ii)(B)(2)(ii).

(C) Credit allowable under section 36B. For purposes of paragraph (e)(4)(ii)(A) of this section, credit allowable under section 36B means the maximum amount of the credit that would be allowable to the individual (or to the taxpayer who can properly claim the individual as a dependent) under section 36B if all members of the individual's

nonexempt family enrolled in a qualified health plan through the Exchange serving the rating area where the individual resides.

(D) Required contribution for part-year period. For each individual described in paragraph (e)(4)(ii)(A) of this section, affordability under paragraph (e)(4) of this section is determined separately for each period described in paragraph (e)(4)(ii)(E) of this section that is less than a 12-month period. Coverage under a plan is affordable for a part-year period if the annualized required contribution for coverage under the plan for the part-year period does not exceed the required contribution percentage of the individual's household income for the taxable year. The annualized required contribution is the required contribution determined under paragraph (e)(4)(ii)(A) of this section for the part-year period times a fraction, the numerator of which is 12 and the denominator of which is the number of months in the part-year period during the individual's taxable year. Only full calendar months are included in the computation under this paragraph (e)(4)(ii)(D).

(iii) Examples. The following examples illustrate the provisions of this paragraph (e)(4). Unless stated otherwise, in each example the taxpayer's taxable year is a calendar year, the rate of premium growth has not exceeded the rate of income growth since 2013, and the taxpayer is ineligible for any of the exemptions described in paragraphs (b) through (i) of this section for a month.

Example 1. Unmarried employee with no dependents. (i) Taxpayer G is an unmarried individual with no dependents. G is ineligible to enroll in any minimum essential coverage other than coverage in the individual market for all months in 2016. The annual premium for the lowest cost bronze self-only plan in G's rating area (G's applicable plan) is \$5,000. The adjusted annual premium for the second lowest cost silver self-only plan in G's rating area (G's applicable benchmark plan within the meaning of §1.36B-3(f)) is \$5,500. In 2016 G's household income is \$40,000, which is 358 percent of the Federal poverty line for G's family size for the taxable year.

(ii) Under paragraph (e)(4)(ii)(C) of this section, the credit allowable under section 36B is determined pursuant to section 36B. With household income at 358 percent of the Federal poverty line, G's applicable percentage is 9.5. Because each month in 2016 is a coverage month (within the meaning of §1.36B-3(c)), G's maximum credit allowable under section 36B is the excess of G's premium for the applicable benchmark plan over the product of G's household income and G's applicable percentage (\$1,700). Therefore, under paragraph (e)(4)(ii)(A) of this section, G's required contribution is \$3,300. Under paragraph (e)(1) of this section, G lacks affordable coverage for 2016 because G's required contribution (\$3,300) exceeds 8 percent of G's household income (\$3,200).

Example 2. Family. (i) In 2016 Taxpayers M and N are married and file a joint return. M and N have two children, P and Q. M, N, P, and Q are ineligible to enroll in minimum essential coverage other than coverage in the individual market for a month in 2016. The annual premium for M, N, P, and Q's applicable plan is \$20,000. The adjusted annual premium for M, N, P, and Q's applicable benchmark plan (within the meaning of §1.36B-3(f)) is \$25,000. M and N's household income is \$80,000, which is 347 percent of the Federal poverty line for a family size of 4 for the taxable year.

(ii) Under paragraph (e)(4)(ii)(C) of this section, the credit allowable under section 36B is determined pursuant to section 36B. With household income at 347 percent of the Federal poverty line, the applicable percentage is 9.5. Because each month in 2016 is a coverage month (within the meaning of §1.36B-3(c)), the maximum credit allowable under section 36B is the excess of the premium for the applicable benchmark plan over the product of the household income and the applicable percentage (\$17,400). Therefore, under paragraph (e)(4)(ii)(A) of this section, the required contribution for M, N, P, and Q is \$2,600. Under paragraph (f)(2) of this section, M, N, P, and Q have affordable coverage for 2016 because their required contribution (\$2,600) does not exceed 8 percent of their household income (\$6,400).

Example 3. Family with some members eligible for government sponsored coverage. (i) In 2016 Taxpayers U and V are married and file a joint return. U and V have two children, W and X. U and V are ineligible to enroll in minimum essential coverage other than coverage in the individual market for all months in 2016; however, W and X are eligible for coverage under CHIP for 2016 at an annual cost of \$1,000 per child. The annual premium for U, V, W, and X's applicable plan is \$20,000. The adjusted annual premium for the second lowest cost silver plan that would cover U and V (the applicable benchmark plan (within the meaning of §1.36B-3(f)) is \$12,500. U and V's household income is \$50,000, which is 217 percent of the Federal poverty line for a family size of 4 for the taxable year. W and X do not enroll in CHIP coverage.

(ii) Under paragraph (e)(4)(ii)(C) of this section, the credit allowable under section 36B is determined pursuant to section 36B. With household income at 217 percent of the Federal poverty line, the applicable percentage is 6.89. Each month in 2016 is a coverage month (within the meaning of §1.36B-3(c)) for U and V, but no months in 2016

are coverage months for W and X because they are eligible for CHIP coverage. The maximum credit allowable under section 36B is the excess of the premium for the applicable benchmark plan over the product of the household income and the applicable percentage (\$9,055). Therefore, under paragraph (e)(4)(ii)(A) of this section, the required contribution is \$10,945. Under paragraph (e)(1) of this section, U, V, W, and X lack affordable coverage for 2016 because their required contribution (\$10,945) exceeds 8 percent of their household income (\$4,000).

Example 4. Family with some members enrolled in government sponsored minimum essential coverage. The facts are the same as Example 3, except W and X enroll in CHIP coverage on January 1, 2016. Under paragraph (e)(4)(ii)(B), U, V, W, and X are members of U and V's nonexempt family for 2016. Therefore, the annual premium for the applicable plan is the same as in Example 3 (\$20,000). The maximum credit allowable under section 36B is also the same as in Example 3 (\$9,055). Under paragraph (e)(4)(ii)(A) of this section, the required contribution is \$10,945. Under paragraph (e)(1) of this section, U and V lack affordable coverage for 2016 because their required contribution (\$10,945) exceeds 8 percent of their household income (\$4,000).

Example 5. Simplified method for applicable plan identification. (i) In 2016 Taxpayer Y, a 42-year old unmarried individual, lives with her 17-year old nephew, Z. Y properly claims Z as a dependent for 2016. Neither Y nor Z is eligible for minimum essential coverage other than coverage in the individual market in 2016. The Exchange serving the rating area where Y and Z reside does not offer any plan that would cover them both. For 2016, the annual premium for the lowest cost bronze plan covering Y is \$5,000, and the annual premium for the lowest cost bronze plan covering Z is \$4,500. The premium for the lowest cost bronze plan that would cover individuals with the characteristics of Y and Z that is offered in the Exchange serving the rating area where Y and Z reside is \$10,000.

(ii) Under paragraph (e)(4)(ii)(B), Z is included in Y's nonexempt family. Under paragraph (e)(4)(ii)(B)(2)(i) of this section, the premium for the applicable plan is the sum of the premiums for the lowest cost bronze plans that would cover Y and Z, or \$9,500 (\$5,000 + \$4,500). Alternatively, under paragraph (e)(4)(ii)(B)(2)(ii) of this section, Y may irrevocably elect to use the premium for the lowest cost bronze plan that would cover individuals with the characteristics of Y and Z that is offered in the Exchange (\$10,000) as the premium for the applicable plan in determining qualification for the exemption described in paragraph (e)(1) of this section.

(f) Household income below filing threshold--(1) In general. An individual is an exempt individual for any taxable year for which the individual's household income is less than the applicable filing threshold.

(2) Applicable filing threshold--(i) In general. For purposes of this section, applicable filing threshold means the amount of gross income that would trigger an individual's requirement to file a Federal income tax return under section 6012(a)(1).

(ii) Certain dependents. The applicable filing threshold for an individual who is properly claimed as a dependent by another taxpayer is equal to the other taxpayer's applicable filing threshold.

(g) Members of Indian tribes. An individual is an exempt individual for a month that includes a day on which the individual is a member of an Indian tribe. For purposes of this section, Indian tribe means a group or community described in section 45A(c)(6).

(h) Individuals with hardship exemption certification--(1) In general. An individual is an exempt individual for a month that includes a day on which the individual has in effect a hardship exemption certification described in paragraph (h)(2) of this section.

(2) Hardship exemption certification. A hardship exemption certification is issued by an Exchange under section 1311(d)(4)(H) of the Affordable Care Act (42 U.S.C. 18031(d)(4)(H)) and 45 CFR 155.605(g) and 45 CFR 155.615(f) and certifies that an individual has suffered a hardship (as that term is defined in 45 CFR 166.605(g)) with respect to the capability to obtain minimum essential coverage.

(i) [Reserved]

(j) Individuals with certain short coverage gaps--(1) In general. An individual is an exempt individual for a month the last day of which is included in a short coverage gap.

(2) Short coverage gap--(i) In general. Short coverage gap means a continuous period of less than three months in which the individual is not covered under minimum

essential coverage. If the individual does not have minimum essential coverage for a continuous period of three or more months, none of the months included in the continuous period is treated as included in a short coverage gap.

(ii) Coordination with other exemptions. For purposes of this paragraph (j), an individual is treated as having minimum essential coverage for a month in which an individual is exempt under any of paragraphs (a) through (h) of this section.

(iii) More than one short coverage gap during calendar year. If a calendar year includes more than one short coverage gap, the exemption provided by this paragraph (j) only applies to the earliest short coverage gap.

(3) Continuous period--(i) In general. Except as provided in paragraph (j)(3)(ii) of this section, the number of months included in a continuous period is determined without regard to the calendar years in which months included in that period occur.

(ii) Continuous period straddling more than one taxable year. If an individual does not have minimum essential coverage for a continuous period that begins in one taxable year and ends in the next, for purposes of applying this paragraph (j) to the first taxable year, the months in the second taxable year included in the continuous period are disregarded. For purposes of applying this paragraph (j) to the second taxable year, the months in the first taxable year included in the continuous period are taken into account.

(4) Examples. The following examples illustrate the provisions of this paragraph (j). Unless stated otherwise, in each example the taxpayer's taxable year is a calendar year and the taxpayer is ineligible for any of the exemptions described in paragraphs (a) through (h) of this section for a month.



Example 1. Short coverage gap. Taxpayer D has minimum essential coverage in 2016 from January 1 through March 2. After March 2, D does not have minimum essential coverage until D enrolls in an eligible employer-sponsored plan effective June 15. Under §1.5000A-1(b), for purposes of section 5000A, D has minimum essential coverage for January, February, March, and June through December. D's continuous period without coverage is 2 months, April and May. April and May constitute a short coverage gap under paragraph (j)(2)(i) of this section.

Example 2. Continuous period of 3 months or more. The facts are the same as in Example 1, except D's coverage is not effective until July 1. D's continuous period without coverage is 3 months, April, May, and June. Under paragraph (j)(2)(i) of this section, April, May, and June are not included in a short coverage gap.

Example 3. Short coverage gap following exempt period. Taxpayer E is incarcerated from January 1 through June 2. E enrolls in an eligible employer-sponsored plan effective September 15. Under paragraph (d) of this section, E is exempt for the period January through June. Under paragraph (j)(2)(ii) of this section, E is treated as having minimum essential coverage for this period, and E's continuous period without minimum essential coverage is 2 months, July and August. July and August constitute a short coverage gap under paragraph (j)(2)(i) of this section.

Example 4. Continuous period covering more than one taxable year. Taxpayer F, an unmarried individual with no dependents, has minimum essential coverage for the period January 1 through October 15, 2016. F is without coverage until enrolling in an eligible employer-sponsored plan effective February 15, 2017. F files his Federal income tax return for 2016 on March 10, 2017. Under paragraph (j)(3)(ii) of this section, November and December of 2016 are treated as a short coverage gap. However, November and December of 2016 are included in the continuous period that includes January 2017. The continuous period for 2017 is over 3 months and, therefore, is not a short coverage gap.

Example 5. Enrollment following loss of coverage. The facts are the same as in Example 4 except F loses coverage on June 15, 2017. F enrolls in a new eligible employer-sponsored plan effective September 15, 2017. The continuous period without minimum essential coverage in July and August of 2017 is two months and, therefore, is a short coverage gap. Because January 2017 was not part of a short coverage gap, the earliest short coverage gap occurring in 2017 is the gap that includes July and August.

Example 6. Multiple coverage gaps. (i) The facts are the same as in Example 5 except F has minimum essential coverage for November 2016. Under paragraph (j)(3)(ii) of this section, December 2016 is treated as a short coverage gap.

(ii) December 2016 is included in the continuous period that includes January 2017. This continuous period is two months and, therefore, January 2017 is the earliest month in 2017 that is included in a short coverage gap. Under paragraph (j)(2)(iii) of this section, the exemption under this paragraph (j) applies only to January 2017. Thus,

the continuous period without minimum essential coverage in July and August of 2017 is not a short coverage gap.

(k) Claiming exemptions from the shared responsibility payment--(1) Exemptions requiring certification by an Exchange. An individual obtains a religious conscience exemption certification (described in paragraph (a) of this section) or a hardship exemption certification (described in paragraph (h) of this section) from the Exchange serving the rating area where the individual resides. To claim the exemption, the individual includes the information specified in published guidance of general applicability, see §601.601(d)(2) of this chapter, with the Federal income tax return for the taxable year that includes the months for which the exemption is sought.

(2) Exemptions that may be certified by an Exchange or claimed on a Federal income tax return--(i) Exemption certified by an Exchange. The exemptions for members of health care sharing ministries (described in paragraph (b) of this section), incarcerated individuals (described in paragraph (d) of this section), and members of Indian tribes (described in paragraph (g) of this section) may be certified in the manner and within the time specified in 45 CFR 155.610. To claim the exemption, an individual includes the information specified in published guidance of general applicability, see §601.601(d)(2) of this chapter, with the Federal income tax return for the taxable year that includes the months for which the exemption is sought.

(ii) Exemption claimed on a Federal income tax return. Alternatively, an individual, or a taxpayer who may claim the individual as a dependent for the taxable year, may claim the exemptions for members of health care sharing ministries (described in paragraph (b) of this section), incarcerated individuals (described in paragraph (d) of this section), and members of Indian tribes (described in paragraph (g)

of this section) without certification by an Exchange by including the information specified in published guidance of general applicability, see §601.601(d)(2) of this chapter, with the Federal income tax return for the taxable year that includes the months for which the exemption is sought.

(3) Exemptions that are claimed on Federal income tax returns. The exemptions for individuals who lack affordable coverage (described in paragraph (e) of this section), individuals with household income below the applicable return filing threshold (described in paragraph (f) of this section), and individuals with short coverage gaps (described in paragraph (j) of this section) may be claimed only by including the information specified in published guidance of general applicability, see §601.601(d)(2) of this chapter, with the Federal income tax return for the taxable year that includes the months for which the exemption is sought. Taxpayers are not required to file Federal income tax returns solely to claim the exemption for individuals with household income below the applicable return filing threshold (described in paragraph (f) of this section).

§1.5000A-4 Computation of shared responsibility payment.

(a) In general. For each taxable year the shared responsibility payment is the lesser of--

(1) The sum of the monthly penalty amounts for each individual in the shared responsibility family; or

(2) The sum of the monthly national average bronze plan premiums for the shared responsibility family.

(b) Monthly penalty amount--(1) In general. Monthly penalty amount means, for a month that a nonexempt individual is not covered under minimum essential coverage, 1/12 multiplied by the greater of--

- (i) The flat dollar amount; or
- (ii) The excess income amount.

(2) Flat dollar amount--(i) In general. Flat dollar amount means the lesser of--

(A) The sum of the applicable dollar amounts for all individuals included in the taxpayer's shared responsibility family; or

(B) 300 percent of the applicable dollar amount (determined without regard to paragraph (b)(2)(iii) of this section) for the calendar year with or within which the taxable year ends.

(ii) Applicable dollar amount. Except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section, the applicable dollar amount is--

- (A) \$95 in 2014;
- (B) \$325 in 2015; or
- (C) \$695 in 2016.

(iii) Special applicable dollar amount for individuals under age 18. If an individual has not attained the age of 18 on the first day of a month, the applicable dollar amount for the individual is equal to one-half of the applicable dollar amount (as expressed in paragraph (b)(2)(ii) of this section) for the calendar year in which the month occurs. For purposes of this paragraph (b)(2)(iii), an individual attains the age of 18 on the anniversary of the date when the individual was born. For example, an individual born on March 1, 1999, attains the age of 18 on March 1, 2017.

(iv) Indexing of applicable dollar amount. In any calendar year after 2016, the applicable dollar amount is \$695 as increased by the product of \$695 and the cost-of-living adjustment determined under section 1(f)(3) for the calendar year. For purposes of this paragraph (b)(2)(iv) of this section, the cost-of-living adjustment is determined by substituting “calendar year 2015” for “calendar year 1992” in section 1(f)(3)(B). If any increase under this paragraph (b)(2)(iv) is not a multiple of \$50, the increase is rounded to the next lowest multiple of \$50.

(3) Excess income amount--(i) In general. Excess income amount means the product of--

(A) The excess of the taxpayer’s household income over the taxpayer’s applicable filing threshold (as defined in §1.5000A-3(f)(2)); and

(B) The income percentage.

(ii) Income percentage. For purposes of this section, income percentage means--

(A) 1.0 percent for taxable years beginning in 2013;

(B) 1.0 percent for taxable years beginning in 2014;

(C) 2.0 percent for taxable years beginning in 2015; or

(D) 2.5 percent for taxable years beginning after 2015.

(c) Monthly national average bronze plan premium. Monthly national average bronze plan premium means, for a month for which a shared responsibility payment is imposed, 1/12 of the annual national average premium for qualified health plans that have a bronze level of coverage, would provide coverage for the taxpayer’s shared responsibility family members who do not have minimum essential coverage for the

month, and are offered through Exchanges for plan years beginning in the calendar year with or within which the taxable year ends.

(d) Examples. The following examples illustrate the provisions of this section. In each example the taxpayer's taxable year is a calendar year and all members of the taxpayer's shared responsibility family are ineligible for any of the exemptions described in §1.5000A-3 for a month.

Example 1. Unmarried taxpayer without minimum essential coverage. (i) In 2016 Taxpayer G is an unmarried individual with no dependents. G does not have minimum essential coverage for any month in 2016. G's household income is \$120,000. G's applicable filing threshold is \$12,000. The annual national average bronze plan premium for G is \$5,000.

(ii) For each month in 2016, under paragraph (b)(2)(ii) of this section, G's applicable dollar amount is \$695. Under paragraph (b)(2) of this section, G's flat dollar amount is \$695 (the lesser of \$695 and \$2,085 ( $\$695 \times 3$ )). Under paragraph (b)(3) of this section, G's excess income amount is \$2,700 ( $(\$120,000 - \$12,000) \times 0.025$ ). Therefore, under paragraph (b)(1) of this section, the monthly penalty amount is \$225 (the greater of  $\$58 (\$695/12)$  or  $\$225 (\$2,700/12)$ ).

(iii) The sum of the monthly penalty amounts is \$2,700 ( $\$225 \times 12$ ). The sum of the monthly national average bronze plan premiums is \$5,000 ( $\$5,000/12 \times 12$ ). Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on G for 2016 is \$2,700 (the lesser of \$2,700 or \$5,000).

Example 2. Part-year coverage. The facts are the same as in Example 1, except G has minimum essential coverage for January through June. The sum of the monthly penalty amounts is \$1,350 ( $\$225 \times 6$ ). The sum of the monthly national average bronze plan premiums is \$2,500 ( $\$5,000/12 \times 6$ ). Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on G for 2016 is \$1,350 (the lesser of \$1,350 or \$2,500).

Example 3. Family without minimum essential coverage. (i) In 2016, Taxpayers H and J are married and file a joint return. H and J have three children: K, age 21, L, age 15, and M, age 10. No member of the family has minimum essential coverage for any month in 2016. H and J's household income is \$120,000. H and J's applicable filing threshold is \$24,000. The annual national average bronze plan premium for a family of 5 (2 adults, 3 children) is \$20,000.

(ii) For each month in 2016, under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, the applicable dollar amount is \$2,780 ( $(\$695 \times 3 \text{ adults}) + ((\$695/2) \times 2$

children)). Under paragraph (b)(2)(i) of this section, the flat dollar amount is \$2,085 (the lesser of \$2,780 and \$2,085 ( $\$695 \times 3$ )). Under paragraph (b)(3) of this section, the excess income amount is \$2,400 ( $(\$120,000 - \$24,000) \times 0.025$ ). Therefore, under paragraph (b)(1) of this section, the monthly penalty amount is \$200 (the greater of \$173.75 ( $\$2,085/12$ ) or \$200 ( $\$2,400/12$ )).

(iii) The sum of the monthly penalty amounts is \$2,400 ( $\$200 \times 12$ ). The sum of the monthly national average bronze plan premiums is \$20,000 ( $\$20,000/12 \times 12$ ). Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on H and J for 2016 is \$2,400 (the lesser of \$2,400 or \$20,000).

**Example 4. Change in shared responsibility family during the year.** (i) The facts are the same as in **Example 3**, except J has minimum essential coverage for January through June. The annual national average bronze plan premium for a family of 4 (1 adult, 3 children) is \$18,000.

(ii) For the period January through June 2016, under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section the applicable dollar amount is \$2,085 ( $(\$695 \times 2 \text{ adults}) + ((\$695/2) \times 2 \text{ children})$ ). Under paragraph (b)(2)(i) of this section, the flat dollar amount is \$2,085 (the lesser of \$2,085 or \$2,085 ( $\$695 \times 3$ )).

(iii) For the period July through December 2016, the applicable dollar amount is \$2,780 ( $(\$695 \times 3 \text{ adults}) + ((\$695/2) \times 2 \text{ children})$ ). Under paragraph (b)(2) of this section, the flat dollar amount is \$2,085 (the lesser of \$2,780 or \$2,085 ( $\$695 \times 3$ )). Under paragraph (b)(3) of this section, the excess income amount is \$2,400 ( $(\$120,000 - \$24,000) \times 0.025$ ). Therefore, under paragraph (b)(1) of this section, for January through June the monthly penalty amount is \$200 (the greater of \$173.75 ( $\$2,085/12$ ) or \$200 ( $\$2,400/12$ )). The monthly penalty amount for July through December is \$200 (the greater of \$173.75 ( $\$2,085/12$ ) or \$200 ( $\$2,400/12$ )).

(iv) The sum of the monthly penalty amounts is \$2,400 ( $\$200 \times 12$ ). The sum of the monthly national average bronze plan premiums is \$19,000 ( $(\$18,000/12 \times 6) + ((\$20,000/12) \times 6)$ ). Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on H and J for 2016 is \$2,400 (the lesser of \$2,400 or \$19,000).

**Example 5. Eighteenth birthday during the year.** (i) In 2016 Taxpayers S and T are married and file a joint return. S and T have one child, U, who turns 18 years old on June 28. No member of the family has minimum essential coverage for any month in 2016. S and T's household income is \$60,000. S and T's applicable filing threshold is \$24,000. The annual national average bronze plan premium for a family of 3 (2 adults, 1 child) is \$15,000.

(ii) For the period January through June 2016, under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, the applicable dollar amount is \$1,737.50 ( $(\$695 \times 2 \text{ adults}) +$

(\$695/2) x 1 child)). Under paragraph (b)(2) of this section, the flat dollar amount is \$1,737.50 (the lesser of \$1,737.50 or \$2,085 (\$695 x 3)).

(iii) For the period July through December 2016, the applicable dollar amount is \$2,085 (\$695 x 3). Under paragraph (b)(2) of this section, the flat dollar amount is \$2,085 (the lesser of \$2,085 or \$2,085 (\$695 x 3)). Under paragraph (b)(3) of this section, the excess income amount is \$900  $((\$60,000 - \$24,000) \times 0.025)$ . Therefore, under paragraph (b)(1) of this section, for January through June the monthly penalty amount is \$144.79 (the greater of \$144.79  $(\$1,737.50/12)$  or \$75  $(\$900/12)$ ). The monthly penalty amount for July through December is \$173.75 (the greater of \$173.75  $(\$2,085/12)$  or \$75  $(\$900/12)$ ).

(iv) The sum of the monthly penalty amounts is \$1,911.24  $(\$144.79 \times 6) + (\$173.75 \times 6)$ . The sum of the monthly national average bronze plan premiums is \$15,000  $(\$15,000/12 \times 12)$ . Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on H and J for 2016 is \$1,911.24 (the lesser of \$1,911.24 or \$15,000).

#### §1.5000A-5 Administration and procedure.

(a) In general. A taxpayer's liability for the shared responsibility payment for a month must be reported on the taxpayer's Federal income tax return for the taxable year that includes the month. The time for assessing the shared responsibility payment is the same as that prescribed by section 6501 for the taxable year to which the Federal income tax return on which the shared responsibility payment is to be reported relates. The shared responsibility payment is payable upon notice and demand by the Secretary, and except as provided in paragraph (b) of this section, is assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68 of the Internal Revenue Code. Therefore, the shared responsibility payment is not subject to deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code. Interest on this payment accrues in accordance with the rules in section 6601.

(b) Special rules. Notwithstanding any other provision of law--



(1) Waiver of criminal penalties. In the case of a failure by a taxpayer to timely pay the shared responsibility payment, the taxpayer is not subject to criminal prosecution or penalty for the failure.

(2) Limitations on liens and levies. If a taxpayer fails to pay the shared responsibility payment imposed by this section and §§1.5000A-1 through 1.5000A-4, the Secretary will not file notice of lien with respect to any property of the taxpayer, or levy on any such property with respect to such failure.

(3) Authority to offset against overpayment. Nothing in this section prohibits the Secretary from offsetting any liability for the shared responsibility payment against any overpayment due the taxpayer, in accordance with section 6402(a).

(c) Effective/applicability date. This section and §§1.5000A-1 through 1.5000A-4 apply for months beginning after December 31, 2013.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

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