

Patient Protection and Affordable Care Act (PPACA)

Participating Agency and Participating Employer Frequently Asked Questions

NOTE: This document is intended as guidance for Participating Agencies (PAs) and Participating Employers (PEs) in the New York State Health Insurance Program (NYSHIP). It should not be construed as legal advice. Participating Agencies and Participating Employers should consult with their legal counsel and benefits experts to ensure compliance with all aspects of the Patient Protection and Affordable Care Act (PPACA).

This Frequently Asked Questions (FAQ) document discusses certain employer requirements of the PPACA. **Please note that the State of New York cannot and will not accept these responsibilities for NYSHIP participating agencies and participating employers. IRS publications make it clear that these are employer responsibilities. Employers should begin to act immediately to comply with these requirements if they have not already done so.**

1. Q: What provisions of PPACA does this document address?

A: This document provides information related to two main provisions:

1. The employer shared responsibility provisions, commonly known as the “employer mandate,” found in Section 4980(h) of the Internal Revenue Code and
2. Reporting requirements found in Sections 6055 and 6056 of the Internal Revenue Code.

Employer Mandate

2. Q: What is the employer mandate?

A: In 2015, employers designated as “large employers” risk a financial penalty if they do not offer health coverage to at least 70% of full-time employees. For 2016 and beyond, the penalty threshold increases to 95% of full-time employees.

This penalty could be incurred if:

1. A full-time employee who is not offered affordable, comprehensive coverage enrolls in a health insurance plan through NY State of Health or another state or federal marketplace; and
2. That employee qualifies for a premium credit or subsidy, based on their household income as a percentage of the federal poverty level.

3. Q: What is the definition of “large employer” for these purposes?

A: A large employer is an employer who employed an average of at least 50 “full-time employees” (including full-time equivalent employees) during the preceding calendar year.

Note that for 2015, there are special rules for large employers with an average of less than 100 full-time employees or full-time equivalents during 2014. For those large employers, the employer mandate does not apply until 2016. However, they are still subject to the reporting requirements discussed later in this document for 2015.

4. Q: What are the PPACA criteria to qualify as a full-time employee?

A: Generally speaking, employees who work at least 30 hours per week or 130 hours per month will qualify as full-time employees. The formal federal regulations, however, are quite complex. The Department of Civil Service recommends that Participating Agencies and Participating Employers consult with benefits experts and counsel to ensure compliance with these regulations.

5. Q: What are the penalties for non-compliance?

A: The penalties for non-compliance are severe. Failure to comply with the aforementioned 70% and 95% thresholds may result in an annual penalty of \$2,000 (assessed monthly) for **ALL** full-time employees (not just those employees not offered coverage). The first 80 employees in 2015 and first 30 employees in 2016 are not counted towards this penalty. Participating Agency and Participating Employer compliance efforts should begin immediately if they have not already begun. Health insurance coverage offered by employers must meet federal standards for comprehensiveness and affordability.

6. Q: Does The Empire Plan meet the federal comprehensiveness threshold?

A: Yes. The federal government measures health insurance plans on a measure known as minimum value. The Empire Plan well exceeds the minimum requirements for this measure.

7. Q: What are the affordability requirements?

A: If an employee’s share of the lowest-cost available option of individual premium for employer-provided coverage would cost the employee more than 9.5% of that employee’s annual household income, the coverage is not considered affordable. Note that affordability is based on the contribution for individual coverage, even if the employee is enrolled in family coverage.

Because employers generally will not know their employees' household incomes, employers can take advantage of one or more of the three affordability safe harbors set forth in the final regulations that are based on information the employer will have available. The primary advantage of using an affordability safe harbor is that the employer will not be liable for a shared responsibility penalty tax even if the employee qualifies for a premium tax credit based on household income. The three affordability safe harbors are:

1. The Form W-2 wages safe harbor – employers meet this if their coverage offered is less than 9.5% of employees' wages as reported in Box 1 of their annual W-2 statement;
2. The rate of pay safe harbor – employers meet this if their coverage offered costs less than 9.5% of employees' annual rate of pay (based on 130 hours times hourly rate for hourly employees, and monthly rate of pay for salaried employees). Please note that special rules apply in situations such as increases or decreases in employees' rate of pay; and
3. The federal poverty line safe harbor – employers meet this if their coverage offered costs less than 9.5% of the federal poverty line. For 2015, employers meet this safe harbor if they charge employees \$92.42 or less for monthly individual Empire Plan prime coverage. This amount (\$92.42) is approximately 11.48% of the full cost of monthly individual Empire Plan prime coverage (\$805.05).

8. Q: Are there other penalties associated with the employer mandate?

A: Yes. Even if employers offer qualifying coverage to 70% (in 2015) and 95% (in 2016 and beyond) of full-time employees, employers may still be at risk for a smaller penalty. This penalty could be incurred if:

1. Employers fail to offer qualifying coverage (defined as coverage meeting affordability and minimum value standards) to a full-time employee; and
2. That employee enrolls in a health insurance plan through NY State of Health or another state or federal marketplace; and
3. That employee qualifies for a premium credit or subsidy.

Employers may be penalized \$3,000 annually (penalty is assessed monthly) for each employee that meets these criteria.

Reporting Requirements

9. Q: Who is subject to these PPACA reporting requirements?

A: All NYSHIP Participating Agencies and Participating Employers are subject to the PPACA reporting requirements discussed below. This includes those large employers who had an average of 50 – 99 employees during 2014. This also includes employers with an average of less than 50 employees during 2014.

10.Q: What are the PPACA reporting requirements?

A: Employers must provide a form, known as Form 1095-C, to all full-time employees by **January 31, 2016**. Forms must also be sent to early retirees, vestees, dependent survivors, and COBRA enrollees. Employers do not have to provide this form to Medicare-primary enrollees (unless such enrollees have family coverage with a Plan-primary dependent). Employers must also request missing dependent Social Security numbers from plan enrollees for the purposes of completing the 1095-C (note that there is a special process employers must follow to solicit this information).

Employers must also provide a Form 1095-C to non-full-time employees who are enrolled in The Empire Plan.

11.Q: Are there special rules in place for employers that do not qualify as a large employer?

A: Yes. Employers that do not qualify as a large employer should provide Form 1095-B to their enrollees instead of Form 1095-C. Form 1095-B is a similar, less complicated form than Form 1095-C. The same deadline applies for providing Form 1095-B to enrollees.

12.Q: Do these forms have to be submitted to the Internal Revenue Service (IRS) as well?

A: Yes. Employers must submit copies of each distributed Form 1095-B and Form 1095-C to the IRS. Employers with fewer than 100 employees may transmit their forms to the IRS electronically or via hard copy. If they file via hard copy, they must complete transmission to the IRS by February 29, 2016. If they file electronically, they must do so by March 31, 2016. All other employers must electronically transmit their forms to the IRS by March 31, 2016.

13.Q: What is Form 1095-C?

A: Form 1095-C is used for two purposes. It is used to verify employers' compliance with the employer mandate. For Empire Plan enrollees, it also serves as verification that they enrolled in coverage to satisfy PPACA's "individual mandate." This provision requires that individuals provide coverage for themselves and their dependents to avoid an IRS penalty. Form 1095-C contains three parts:

1. Part I contains identifying employee and employer information (note that this includes listing an employer phone number for employees to call with questions about the form);
2. Part II contains information related to employers' offer of health insurance coverage; and
3. Part III contains information related to individuals and their dependents enrolled in self-insured coverage.

Form 1095-B contains similar enrollment information for individuals and their dependents, but does not contain any material related to the employer offer of health insurance coverage.

The 1095-B and 1095-C must be distributed to employees in paper form unless consent to electronic distribution is re-solicited. Employers cannot rely on previous electronic opt-out options (such as for W-2s).

14.Q: Will the State of New York complete and distribute these forms on behalf of my employer?

A: No. IRS publications make it clear that these are employer responsibilities. The State of New York cannot and will not accept this responsibility for employers. Each employer is responsible for their own reporting. The State of New York does not have all of the information necessary to complete these forms on behalf of the Participating Agencies and Employers. Employers should begin to act immediately if they have not already done so.

15.Q: My employer is a large employer and offers fully insured HMO coverage to our employees. Do we have to provide Form 1095-C to employees enrolled in an HMO?

A: Yes. Large employers must send Form 1095-C to all full-time employees. For HMO enrollees, Part III should be left blank. In addition to their Form 1095-C from their employer, HMO enrollees employed by a large employer will receive Form 1095-B from their HMO to verify their health insurance coverage for themselves and their dependents.

16.Q: My employer does not qualify as a large employer and offers fully insured HMO coverage to our employees. Do we have to provide Form 1095-B or Form 1095-C to employees enrolled in an HMO?

A: No. Employers that do not qualify as a large employer are not required to provide Form 1095-B or Form 1095-C to full-time employees if they are enrolled in an HMO. These employees will receive Form 1095-B from their HMO to verify their health insurance coverage for themselves and their dependents.

17.Q: My employer also offers fully insured HMO coverage to part-time employees and retirees. Do we have to provide Form 1095-B or Form 1095-C to non-full-time employees, retirees and other non-employee groups enrolled in an HMO?

A: No. Employers do not need to provide Form 1095-B or Form 1095-C to non-full-time employees, retirees, and other non-employee groups if they are enrolled in an HMO. This applies to both employers that qualify as a large employer and those that do not.

18.Q: Is there an additional form that must be transmitted to the IRS?

A: Yes. A transmission form must be included with each employer's IRS filing. For large employers providing Form 1095-C to their employees and enrollees, the appropriate form is Form 1094-C. For employers that do not qualify as a large employer, the appropriate form is 1094-B. Note that there is a specific process each employer must follow (such as registering to provide data electronically with the IRS, following specific file formats, etc.).

19.Q: What do individuals need to do when they receive Form 1095-B or Form 1095-C in the mail?

A: After receiving Form 1095-B or Form 1095-C, individuals do not need to send it back to their employer or to the IRS. They should keep it with their tax records for reference.

20.Q: My employer is not self-insured. Why is it subject to these reporting requirements?

A: Since January 1, 2014, The Empire Plan has been fully self-insured. Although NYSHIP Participating Agencies and Participating Employers are not technically "self-insured," they are providers of employer-sponsored self-insured coverage through The Empire Plan, and, thus, are subject to the reporting requirements.

21. Q: Will the Employee Benefits Division provide Participating Agencies and Participating Employers with information to populate Part III of Form 1095-C and analogous sections of Form 1095-B?

A: Yes. Information will be forthcoming from the Employee Benefits Division on how to download this information from NYBEAS.

22. Q: Why are Participating Agencies and Participating Employers required to request dependent Social Security numbers?

A: As stated above, Participating Agencies and Participating Employers are required to request missing or invalid Social Security numbers of dependents of Empire Plan enrollees. These Social Security numbers should then be included on the Form 1095-B or Form 1095-C sent to The Empire Plan enrollee. This information will allow the IRS to confirm these dependents' compliance with PPACA individual mandate provisions.

23. Q: When must employers complete this Social Security number solicitation?

A: Employers must request these missing or invalid Social Security numbers by the end of the calendar year. Again, note that there is a special process employers must follow to solicit this information.

24. Q: Are there penalties for not adhering to these reporting requirements?

A: Yes. Employers failing to adhere to the PPACA reporting requirements may face penalties that are based on the penalties for failing to provide annual W-2 statements in a timely fashion. These penalties include:

Description	Penalty Amount
Penalty for filing incorrect returns (per return)	\$250
Penalty for incorrect returns if corrected within 30 days (per return)	\$50
Penalty for incorrect returns if corrected by August 1 (per return)	\$100
Penalty for intentionally disregarding to file timely and correct returns	\$500
Maximum penalty per calendar year	\$3,000,000
Maximum penalty per calendar year if corrected within 30 days	\$500,000
Maximum penalty per calendar year if corrected by August 1	\$1,500,000

25.Q: Are employers offering the Excelsior Plan subject to the same requirements?

A: Yes. The requirements for employers offering the Excelsior Plan are the same as for those employers offering The Empire Plan.

26.Q: Is there more information available on these PPACA requirements?

A: Yes. Employers can refer to the following documents:

Forms and Instructions

- [IRS Form 1094-B](#)
- [IRS Form 1095-B](#)
- [IRS Form 1094-B and 1095-B Instructions](#)
- [IRS Form 1094-C](#)
- [IRS Form 1095-C](#)
- [IRS Form 1094-C and 1095-C Instructions](#)

Regulations

- **Shared Responsibility for Employers Regarding Health Coverage; Final Rule**
<http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf>
- **6055 Final Regulations**
<http://www.gpo.gov/fdsys/pkg/FR-2014-03-10/pdf/2014-05051.pdf>
- **6056 Final Regulations**
<http://www.gpo.gov/fdsys/pkg/FR-2014-03-10/pdf/2014-05050.pdf>

FAQs

- **Affordable Care Act Tax Provisions Questions and Answers**
<http://www.irs.gov/Affordable-Care-Act/Affordable-Care-Act-Tax-Provisions-Questions-and-Answers>
- **Information Reporting by Applicable Large Employers**
<http://www.irs.gov/Affordable-Care-Act/Employers/Information-Reporting-by-Applicable-Large-Employers>
- **Questions and Answers on Information Reporting by Health Coverage Providers (Section 6055)**
<http://www.irs.gov/Affordable-Care-Act/Questions-and-Answers-on-Information-Reporting-by-Health-Coverage-Providers-Section-6055>
- **Questions and Answers on Reporting of Offers of Health Insurance Coverage by Employers (Section 6056)**
<http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056>
- **Questions and Answers about Information Reporting by Employers on Form 1094-C and Form 1095-C**
<http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-about-Information-Reporting-by-Employers-on-Form-1094-C-and-Form-1095-C>

Affordable Care Act Information Returns (AIR) Program

Note: AIR is the technical interface used to transmit the forms to the IRS.

- **Affordable Care Act Information Returns (AIR) Program Overview**
<http://www.irs.gov/for-Tax-Pros/Software-Developers/Information>Returns/Affordable-Care-Act-Information>Returns-AIR-Program-Overview>
- **December 16, 2014 Working Group Meeting: Transmitting ACA Information Returns to the IRS in Processing Year 2015**
http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/Transmitting%20ACA%20IRs%20to%20the%20IRS%20in%202015.pdf
- **January 27, 2015 Working Group Meeting: ACA Form Data File Schema**
http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/ACA_FormDataFile_XML_Schema_presentation.pdf
- **February 24, 2015 Working Group Meeting: Forms 1094-B and 1095-B Schema to Form Crosswalk**
http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/AIR_Working_Group_Meeting_02192015v2.pdf
- **April 30, 2015 Working Group Meeting: Draft Publication 5165 & Additional Topics for Review**
http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/April_AIR_Webinar_Presentation.pdf
- **May 12, 2015 Working Group Meeting: Non-Technical Question Focus**
http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/May_AIR_Webinar_Presentation5_12_2015_final.pdf
- **May 28, 2015 Working Group Meeting: Overview of the Draft Publication 5164**
http://www.irs.gov/PUP/for_taxpros/software_developers/May_AIR_Webinar_Presentation_5_28%202015_aa.pdf
- **June 23, 2015 Working Group Meeting: Overview of the Early Look AIR Submission Composition and Reference Guide**
http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/June%20AIR%20Webinar%20Presentation%206%2023%202015_v5.pdf
- **July 28, 2015 Working Group Meeting: Employer Information Reporting Scenario Review Forms 1094/5-C**
http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/July_AIR_Webinar_Presentation_7_28_2015_for_posting.pdf
- **August 25, 2015 Working Group Meeting: Voluntary Year Commonly Asked Technical Questions**
http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/August_AIR_Webinar_Presentation_8_25_2015.pdf