



MEMORANDUM

September 27, 2012

Subject: What is “Small”?
Definition of Small Business in the Patient Protection and Affordable Care Act

From: Janemarie Mulvey, Specialist in Health Care Financing, x7-6928

This memorandum was prepared to enable distribution to more than one congressional office

The Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended) includes a number of provisions affecting employers, and the application of the provisions to employers is often dependent on the employer’s firm size. For example, some provisions only apply to “small” businesses, while other provisions exempt small businesses from the requirement. In addition, the definition of employee varies across provisions when determining firm size. In some provisions, the number of employees is based on full-time equivalent workers; in others it is based on full-time workers only or all wage earners regardless of hours worked.

This memorandum provides a brief description of the ACA provisions that apply to employers, focusing on how each provision defines “small” and affects employers of different sizes. The memorandum also identifies what definition of employee is used. Three types of provisions are described: employer responsibilities regarding health insurance coverage; employer reporting requirements; and other employer incentives to provide health insurance coverage. **Table 1** summarizes each provision described in this memorandum and its applicability to “small” businesses.

Employer Responsibilities Regarding Health Insurance Coverage

Employer Penalty

ACA does not explicitly mandate that an employer offer employees health insurance. However, the law does include a financial penalty for large employers who do not provide adequate or affordable coverage if at least one of their employees enters the newly formed health insurance exchange and receives a premium credit. Large is defined as having 50 or more full-time equivalent employees (FTEs). Small employers, defined as having less than 50 FTEs will not be subject to these financial penalties, which are effective in 2014.¹

¹ For more information see CRS Report R41159, Summary of Potential Employer Penalties Under the Patient Protection and Affordable Care Act (PPACA), by Janemarie Mulvey.

The calculation for FTE includes both full-time and part-time employees. “Full-time employees” are those working an average of at least 30 hours per week.² The hours worked by part-time employees (i.e., those working less than 30 hours per week) are included in the calculation of an FTE, on a monthly basis, by taking their total number of monthly hours worked divided by 120 to convert them to full-time equivalent.³ However, while the FTE measure including part-time workers is used to determine if the employer has to pay a penalty, the actual penalty amount is only calculated based on full-time workers under the conditions stated above.

Auto Enrollment in Group Health Insurance

Under ACA, firms with more than 200 full-time employees that offer coverage must automatically enroll new full-time employees in a plan (and continue enrollment of current employees). Automatic enrollment programs will be required to include adequate notice and the opportunity for an employee to opt-out.⁴ Although most of the provisions discussed in this report are not effective until 2014, this particular provision could be in effect as soon as the Secretary of Health and Human Services (HHS) promulgates regulations. Firms with 200 or fewer full-time employees are not subject to this provision.

Employer Reporting Requirements

W-2 Reporting Requirements

Starting in tax-year 2011, the ACA required employers to report the value of the health insurance coverage provided to employees on each employee’s annual W-2 forms.⁵ However, to provide employers the time needed to make changes to their payroll systems or procedures, the IRS has deferred the reporting requirement until January 2013 for large employers (those with 250 or more W-2 form employees).⁶ IRS Notice 2011-28 provided further relief for smaller employers (defined as those filing fewer than 250 W-2 forms) by making the reporting requirement optional for them until further guidance is issued.

Under the law, the W-2 will indicate the total dollar value of health insurance coverage sponsored by the employer; that is, it will show contributions made by both the employer and the employee. This provision does not change the tax treatment of an employer’s contribution toward workers’ premiums; it continues to be available on a pre-tax basis.

² The number of full-time employees excludes those full-time seasonal employees who work for up to 120 days during the year.

³ For example, a firm has 35 full-time employees (30+ hours). In addition, the firm has 20 part-time employees who all work 24 hours per week (96 hours per month). These part-time employees’ hours would be treated as equivalent to 16 full-time employees, based on the following calculation: 20 employees x 96 hours / 120 = 1920 / 120 = 16

⁴ Section 1511 of ACA (P.L. 111-148, as amended).

⁵ Section 9002 of ACA (P.L. 111-148, as amended).

⁶ See IRS Notice 2012-9 and 2011-28, which includes information on how to report, what coverage to include, and how to determine the cost of the coverage.

Other Reporting Requirements Relating to Health Insurance Coverage

Beginning in 2014, large employers will have certain reporting requirements with respect to their full-time employees.⁷ A large employer in this provision is defined as having 50 or more full-time equivalent employees. Thus, firms with under 50 FTEs are excluded from this provision. Reporting requirements include: certification as to whether the employer offers its full-time employees (and dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan; the length of any waiting period; months coverage was available; monthly premiums for the lowest-cost option; and the employer's share of covered health care expenses.

Other Employer Incentives to Provide Health Insurance

Small Business Tax Credit

ACA also provides a small business tax credit.⁸ This credit is available to for-profit and nonprofit organizations with fewer than 25 FTEs. Among small businesses, the credit phases out as firm size increases. From 2010 through 2013, employers with 10 or fewer FTEs and average taxable wages of \$25,000 or less receive a maximum credit of 35% of a qualified employer's for-profit contributions to health insurance. The maximum credit for non-profits is 25%. Beginning in 2014, the maximum credit for for-profit employers is 50% of the employer's contribution toward premiums, and 35% of employer contributions for nonprofit organizations. The credit is phased out as the number of FTEs increases from 10 to 25 and as average employee compensation increase from \$25,000 to \$50,000.

Small Business Health Insurance Options Program (SHOP)

There is a provision in ACA to help small businesses utilize the risk-pooling mechanism of the newly established health insurance exchanges. Specifically, ACA establishes Small Business Health Options Program (SHOP) exchanges that will be in operation in every state in 2014. The SHOP exchange is designed to assist qualified small employers and their employees with the purchase of comprehensive coverage ("qualified health plans" or QHPs) offered in the small group market.⁹ Prior to 2016, the size of the employer allowed to participate in a SHOP exchange will be either up to 50 or up to 100 full-time employees (at the state's option). After 2016, all firms with up to 100 full-time employees are eligible.

⁷ PPACA §1502.

⁸ For more information see CRS Report R41158, *Summary of Small Business Health Insurance Tax Credit Under the Patient Protection and Affordable Care Act (ACA)*, by Janemarie Mulvey and Hinda Chaikind.

⁹ CRS Report R42663, *Health Insurance Exchanges Under the Patient Protection and Affordable Care Act (ACA)*, by Bernadette Fernandez and Annie L. Mach.

Table I. Definition of “Small” Firm in ACA

ACA Provision	Effective Date	Application to Small Business
Employer Responsibilities Regarding Health Insurance Coverage		
Employer Penalty	2014	Firms with under 50 full-time equivalent employees are excluded from this provision
Automatic Enrollment in Group Health Plans	TBD ^a awaiting regulations	Firms with 200 or fewer full-time employees are excluded from this provision
Employer Reporting Requirements		
W-2 Reporting Requirements	2013	Firms with under 250 W-2 form employees (i.e., wage-earners) granted delayed implementation until further regulations are developed
Reporting Requirements Regarding Health Insurance Coverage	2014	Firms with under 50 full-time equivalent employees are excluded from this provision
Other Incentives to Provide Health Insurance Coverage		
Full Small Business Tax Credit	2010 to 2016	Firms with 10 or fewer full-time equivalent employees.
Partial Small Business Tax Credit	2010 to 2016	Firms with between 10 and 25 full-time equivalent employees are eligible for a partial credit
Small Business Health Insurance Options Program (SHOP)	2014 and 2015	States have the option of determining small as either up to 50 or up to 100 full-time employees
	2016 and beyond	Firms with up to 100 full-time employees are eligible to participate

Source: CRS tabulation based on P.L. 111-148 as amended.

a. To Be determined