



Date: October 28, 2013

Subject: Shared Responsibility Provision Question and Answer

Q: Will any individual who enrolls in coverage through the Marketplace by the end of the open enrollment period for 2014 have to make a shared responsibility payment in 2015 for the months prior to the effective date of the individual's coverage?

A: Starting in 2014, the individual shared responsibility provision requires each individual to maintain health coverage (known as [minimum essential coverage](#)), qualify for an exemption from the requirement to maintain minimum essential coverage, or make a shared responsibility payment when filing a federal income tax return. To help make coverage affordable for millions of individuals and families, the Affordable Care Act provides, among other things, a premium tax credit to eligible individuals and families to help pay for the cost of health insurance coverage purchased through Health Insurance Marketplaces.

The shared responsibility payment generally applies to people who have access to affordable coverage during a taxable year but who choose to spend a substantial portion of that year uninsured. The Affordable Care Act gives the Secretary of the U.S. Department of Health and Human Services (HHS) the authority to establish hardship exemptions from the shared responsibility payment for individuals who “have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan [QHP].”¹ Under this authority, HHS has enumerated several situations that constitute such a hardship.²

Furthermore, the Affordable Care Act provides the Secretary of HHS the authority to determine the initial open enrollment period for individuals to enroll in coverage through the Marketplaces for 2014.³ Pursuant to this authority, the final rule entitled “Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers” and published on March 27, 2012, at 45 CFR 155.410(b) (“Exchange Final Rule”) specifies that the initial open enrollment period for individuals begins on October 1, 2013, and extends into 2014. The Exchange Final Rule

¹ 26 USC § 5000A(e)(5).

² “Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions”, published on June 26, 2013, at 45 CFR 155.605(g).

³ § 1311(c)(6)(A) of the Affordable Care Act.

also provides the coverage effective dates for individuals enrolling in coverage through the Marketplaces during the initial open enrollment period.⁴ For plan selections made between the 1st and the 15th of a given month, the coverage effective date is the first day of the immediately following month, and for plan selections made between the 16th and end of a given month, the coverage effective date is the first day of the second following month.

To ensure that the shared responsibility payment generally applies only to the limited group of people who have access to affordable coverage during a year but who nonetheless choose to spend a substantial portion of that year uninsured, the Affordable Care Act provides nine statutory exemptions relating to the [individual shared responsibility provision](#) within the Internal Revenue Code.⁵ The short coverage gap exemption specifies that an individual is exempt for “[any] month the last day of which occurred during a period in which the applicable individual was not covered by minimum essential coverage for a continuous period of less than 3 months.”⁶

The length of the initial open enrollment period and the coverage effective dates, in tandem with the terms of the short coverage gap exemption, created the possibility that an individual who enrolled in coverage through a Marketplace during the initial open enrollment period could nonetheless be liable for a shared responsibility payment for months prior to the effective date of that coverage, if the individual were not otherwise exempt. More specifically, under this structure, an individual who enrolls between February 16, 2014 and the close of the initial open enrollment period will have coverage effective as of April 1 or later. As a result, such an individual would not be eligible for the short coverage gap exemption, which applies only when the coverage gap is less than (but not equal to) 3 months.

HHS recognizes that the duration of the initial open enrollment period implies that individuals have until the end of the initial open enrollment period to enroll in coverage through the new Marketplaces while avoiding liability for the shared responsibility payment. Yet, unless a hardship exemption is established, individuals who purchase insurance through the Marketplaces towards the end of the initial open enrollment period could be required to make a shared responsibility payment when filing their federal income tax returns in 2015. HHS has determined that it would be unfair to require individuals in this situation to make a payment. Accordingly, HHS is exercising its authority to establish an additional hardship exemption in order to provide relief for individuals in this situation.

⁴ 45 CFR 155.410(c).

⁵ 26 USC 5000A(d) and (e). These categories of exemptions are: individuals who do not have access to affordable coverage; individuals with household income below the federal income tax filing threshold; members of federally recognized Indian tribes; individuals who experience a hardship; individuals who experience a short coverage gap; members of certain religious sects; members of a health care sharing ministry; incarcerated individuals; and individuals who are not lawfully present.

⁶ 26 USC 5000A(e)(4)(A). This statutory provision is implemented in final Treasury regulations entitled “Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage” and published on August 30, 2013, at 26 CFR 1.5000A-3(j)(2)(i).

Specifically, if an individual enrolls in a plan through the Marketplace prior to the close of the initial open enrollment period, when filing a federal income tax return in 2015 the individual will be able to claim a hardship exemption from the shared responsibility payment for the months prior to the effective date of the individual's coverage, without the need to request an exemption from the Marketplace. Additional detail will be provided in 2014 on how to claim this exemption.