

**DESCRIPTION OF THE PROVISIONS OF H.R. 3979, THE
“PROTECTING VOLUNTEER FIREFIGHTERS
AND EMERGENCY RESPONDERS ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 4, 2014

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



February 3, 2014
JCX-3-14

CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. Emergency Services Volunteers	2

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3979, the “Protecting Volunteer Firefighters and Emergency Responders Act,” on February 4, 2014. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3979, the “Protecting Volunteer Firefighters and Emergency Responders Act”* (JCX-3-14), February 3, 2014. This document can also be found on our website at www.jct.gov.

A. Emergency Services Volunteers

Present Law

Employer shared responsibility for health coverage

In general

Under the Patient Protection and Affordable Care Act (“PPACA”),² as amended by the Health Care and Education Reconciliation Act of 2010³ (generally referred to collectively as the “Affordable Care Act” or “ACA”), an applicable large employer may be subject to a tax, called an “assessable payment,” for a month if one or more of its full-time employees is certified to the employer as receiving for the month a premium assistance credit for health insurance purchased on an American Health Benefit Exchange or reduced cost-sharing for the employee’s share of expenses covered by such health insurance.⁴ (This is sometimes referred to as the employer shared responsibility requirement.) As discussed below, the amount of the assessable payment depends on whether the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under a group health plan sponsored by the employer and, if it does, whether the coverage offered is affordable and provides minimum value.

Under the ACA, these rules are effective for months beginning after December 31, 2013. However, the Internal Revenue Service (“IRS”) has announced that no assessable payments will be assessed for 2014.⁵

Definitions of full-time employee and applicable large employer

For purposes of applying these rules, full-time employee means, with respect to any month, an employee who is employed on average at least 30 hours of service per week. Hours of service are to be determined under regulations, rules, and guidance prescribed by the Secretary of the Treasury, in consultation with the Secretary of Labor, including rules for employees who are not compensated on an hourly basis.

² Pub. L. No 111-148, enacted March 23, 2010.

³ Pub. L. No. 111-152, enacted March 30, 2010.

⁴ Sec. 4980H, added to the Code by section 1513 of PPACA and amended by 10106 of PPACA and section 1003 of the Health Care and Education Reconciliation Act of 2010. (Unless otherwise stated, all section references herein are to the Internal Revenue Code of 1986, as amended.) An applicable large employer is also subject to annual reporting requirements under section 6056. Premium assistance credits for health insurance purchased on an American Health Benefit Exchange are provided under section 36B. Reduced cost-sharing for an individual’s share of expenses covered by such health insurance is provided under section 1402 of PPACA. For further information on these provisions, see Part III.B-D of Joint Committee on Taxation, *Present Law and Background Relating to the Tax-Related Provisions in the Affordable Care Act* (JCX-6-13), March 4, 2013, available on our website at www.jct.gov.

⁵ Notice 2013-45, 2013-31 I.R.B. 116, Part III, Q&A-2.

Applicable large employer generally means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.⁶ Solely for purposes of determining whether an employer is an applicable large employer (that is, whether the employer has at least 50 full-time employees), besides the number of full-time employees, the employer must include the number of its full-time equivalent employees for a month, determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120. In addition, in determining whether an employer is an applicable large employer, members of the same controlled group, group under common control, and affiliated service group are treated as a single employer.⁷ If the group is an applicable large employer under this test, each member of the group is an applicable large employer even if any member by itself would not be an applicable large employer.⁸

Assessable payments

If an applicable large employer does not offer its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan and at least one full-time employee is so certified to the employer, the employer may be subject to an assessable payment of \$2,000⁹ (divided by 12 and applied on a monthly basis) multiplied by the number of its full-time employees minus 30, regardless of the number of full-time employees so certified. For example, in 2016, Employer A fails to offer minimum essential coverage and has 100 full-time employees, 10 of whom receive premium assistance credits for the entire year. The employer's assessable payment is \$2,000 for each employee over the 30-employee threshold, for a total of \$140,000 (\$2,000 multiplied by 70 (100-30)).

Generally an employee who is offered minimum essential coverage under an employer-sponsored plan is not eligible for a premium assistance credit or reduced cost-sharing unless the coverage is unaffordable or fails to provide minimum value.¹⁰ However, if an

⁶ Additional rules apply, for example, in the case of an employer that was not in existence for the entire preceding calendar year.

⁷ The rules for determining controlled group, group under common control, and affiliated service group under section 414(b), (c), (m) and (o) apply for this purpose.

⁸ In addition, in determining assessable payments (as discussed herein), only one 30-employee reduction in full-time employees applies to the group and is allocated among the members ratably based on the number of full-time employees employed by each member.

⁹ For calendar years after 2014, the \$2,000 dollar amount, and the \$3,000 dollar amount referenced herein, are increased by the percentage (if any) by which the average per capita premium for health insurance coverage in the United States for the preceding calendar year (as estimated by the Secretary of Health and Human Services ("HHS") no later than October 1 of the preceding calendar year) exceeds the average per capita premium for 2013 (as determined by the Secretary of HHS), rounded down to the nearest \$10.

¹⁰ Under section 36B(c)(2)(C), coverage under an employer-sponsored plan is unaffordable if the employee's share of the premium for self-only coverage exceeds 9.5 percent of household income, and the coverage fails to provide minimum value if the plan's share of total allowed cost of provided benefits is less than 60 percent of such costs.

employer offers its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan and at least one full-time employee is certified as receiving a premium assistance credit or reduced cost-sharing (because the coverage is unaffordable or fails to provide minimum value), the employer may be subject to an assessable payment of \$3,000 (divided by 12 and applied on a monthly basis) multiplied by the number of such full-time employees. However, the assessable payment in this case is capped at the amount that would apply if the employer failed to offer its full-time employees and their dependents minimum essential coverage. For example, in 2016, Employer A offers minimum essential coverage and has 100 full-time employees, 20 of whom receive premium assistance credits for the entire year. The employer's assessable payment before consideration of the cap is \$3,000 for each full-time employee receiving a credit, for a total of \$60,000. The cap on the assessable payment is the amount that would have applied if the employer failed to offer coverage, or \$140,000 (\$2,000 multiplied by 70 ((100-30))). In this example, the cap therefore does not affect the amount of the assessable payment, which remains at \$60,000.

Proposed regulations

The IRS issued proposed regulations on the employer shared responsibility requirement on December 28, 2012.¹¹ The preamble to the proposed regulations invited the public to provide comments on issues relating to the application of the employer shared responsibility requirement. Final regulations have not yet been issued.

Emergency services volunteers

In a recent blog posting, the Department of the Treasury addressed the application of the employer shared responsibility requirement to individuals performing emergency services on a volunteer basis.¹² Treasury noted that, in response to the request for public comments on the proposed regulations, numerous comments were received on the treatment of services performed by volunteer firefighters and emergency medical personnel. Treasury indicated that the forthcoming final regulations relating to the employer shared responsibility requirement generally will not require volunteer hours of bona fide volunteer firefighters and volunteer emergency medical personnel at governmental or tax-exempt organizations to be counted when determining full-time employees (or full-time equivalents). Until final regulations providing further detail are issued, uncertainty exists as to how the employer shared responsibility requirement applies in this context.

¹¹ REG-138006-12, 78 Fed. Reg. 218, January 2, 2013. The IRS issued an advance notice of the proposed regulations on December 28, 2012. As noted above, the IRS subsequently announced that no assessable payments will be assessed for 2014.

¹² "Treasury Ensures Fair Treatment for Volunteer Firefighters and Emergency Responders Under the Affordable Care Act," posted by Mark J. Mazur, Assistant Treasury Secretary for Tax Policy, at Treasury Notes (Treasury's official blog), January 10, 2014, available at <http://www.treasury.gov/connect/blog/Pages/Treasury-Ensures-Fair-Treatment-for-Volunteer-Firefighters-and-Emergency-Responders-under-the-Affordable-Care-Act-Under-ACA.aspx>.

The Treasury blog posting refers to existing Code rules relating to volunteers performing emergency services for an employer that is a State or local government or a tax-exempt organization (referred to as an “eligible” employer).¹³ These rules provide special treatment for certain deferred compensation plans providing only length of service awards to bona fide volunteers (or their beneficiaries) on account of qualified services performed by the volunteers. For this purpose, an individual is a bona fide volunteer if the individual’s only compensation for performing qualified services is in the form of (1) reimbursement for (or a reasonable allowance for) reasonable expenses incurred in the performance of such services, or (2) reasonable benefits (including length of service awards), and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers. Qualified services for this purpose are fire fighting and prevention services, emergency medical services, and ambulance services.

Description of Proposal

Under the proposal, for purposes of the employer shared responsibility requirement, any qualified service as a bona fide volunteer for an eligible employer is not taken into account as service provided by an employee. For this purpose, qualified service, bona fide volunteer, and eligible employer have the same meanings as for purposes of the rules relating to deferred compensation plans of eligible employers.

Effective Date

The proposal is effective for months beginning after December 31, 2013.

¹³ Sec. 457(e)(11)(A)(ii),(B) and (C).