# Item 3: Committee Education

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Finance & Audit Committee Meeting
ERCOT Public
November 18, 2013

# Affordable Care Act– *Where We Are Now*

**ERCOT**

**Finance & Audit Committee Meeting**

**November 18, 2013**

Building a better working world

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# Agenda

- Why do the Companies care about the ACA
- Current state of the ACA
  - Overview
  - Enforcement delay
- Employer mandate excise tax
  - Proposed excise tax guidance
  - Proposed information reporting guidance
- Other taxes, fees, and considerations
- Outlook

# Why do Companies Care

- The Affordable Care Act (ACA) a health care law, but it's also a tax law
- What companies should be know:
  1. The core health care coverage provisions are all tax provisions
  2. The company could become subject to an unexpected, nondeductible excise tax if implementation is not done properly
  3. Additional taxes and fees apply and some are deductible, others not
  4. New significant information reporting requirements apply
  5. How to prepare for an IRS excise tax assessment



EY

# Health-related tax changes enacted in health care reform law, in prior years

| Provision<br>Source: Joint Committee on Taxation, JCX-17-10 | Effective in taxable years beginning | Revenues, FY2010-2019 (billions) |
|---|---|---|
| Plan years ending after September 30, 2012, per capita fee that funds the Patient-Centered Research Outcome Institute (PCORI) | PY ending after 12/30/2012 | $2.6 |
| 3.8% tax on certain investment income for families with income in excess of $250,000 ($200,000 for individuals) | 2013 | $123.4 |
| Increase in the Medicare HI payroll tax of 0.9% on wages of $200,000 or more for individuals or $250,000 for couples | 2013 | $86.8 |
| Excise tax on manufacturers and importers of certain medical devices | 2013 | $20.0 |
| Raise 7.5% floor for itemized medical expenses to 10% for those under 65 | 2013 | $15.2 |
| Limit Flexible Spending Accounts (FSAs) to $2,500 | 2013 | $13.0 |

# Health-related tax changes enacted in health care reform law, 2013 and beyond

| Provision<br>Source: Joint Committee on Taxation, JCX-17-10 | Effective in taxable years beginning | Revenues, FY2010-2019 (billions) |
|---|---|---|
| Eliminate deductions for expenses allocable to Medicare Part D subsidy | 2013 | $4.5 |
| Limit deduction for compensation to $500,000 for executives of health insurance companies | 2013 | $0.6 |
| Annual fee on health insurance providers | 2014 | $60.1 |
| 40% excise tax on high-cost plans (“Cadillac tax”) | 2018 | $32.0 |

# Core Requirements

- The ACA aims to expand health coverage through a series of provisions that generally go into effect on 1 January 2014:
  - **Individual mandate:** Mandates all Americans, with some exceptions, to maintain a minimum level of health coverage or face a tax.
  - **Insurance Exchanges**: Creates health insurance Exchanges and provides premium tax credits to assist eligible individuals with the purchase of coverage.
  - **Medicaid expansion:** Allows states to expand Medicaid up to 138% of federal poverty level.
  - **Employer mandate:** Mandates employers with 50 or more full-time equivalents to offer coverage to full-time employees and their dependents or pay taxes if an employee obtains Exchange coverage and a premium tax credit (PTC). **DELAYED until 2015**

# Enforcement Delay

## Delayed until 2015

- Reporting requirements
  - Information reporting is voluntary in 2014
  - Recent proposed regulations
- Employer mandate excise tax
  - IRS will not assess excise taxes for 2014

## Not Delayed

- Individual mandate
- Exchanges
- Premium tax credits
- Notices of Exchanges
- Health insurance market reform requirements, for example
  - No preexisting condition
  - 90-day waiting period limit
  - Nondiscrimination rules
- Taxes and fees

# Beneath the headlines

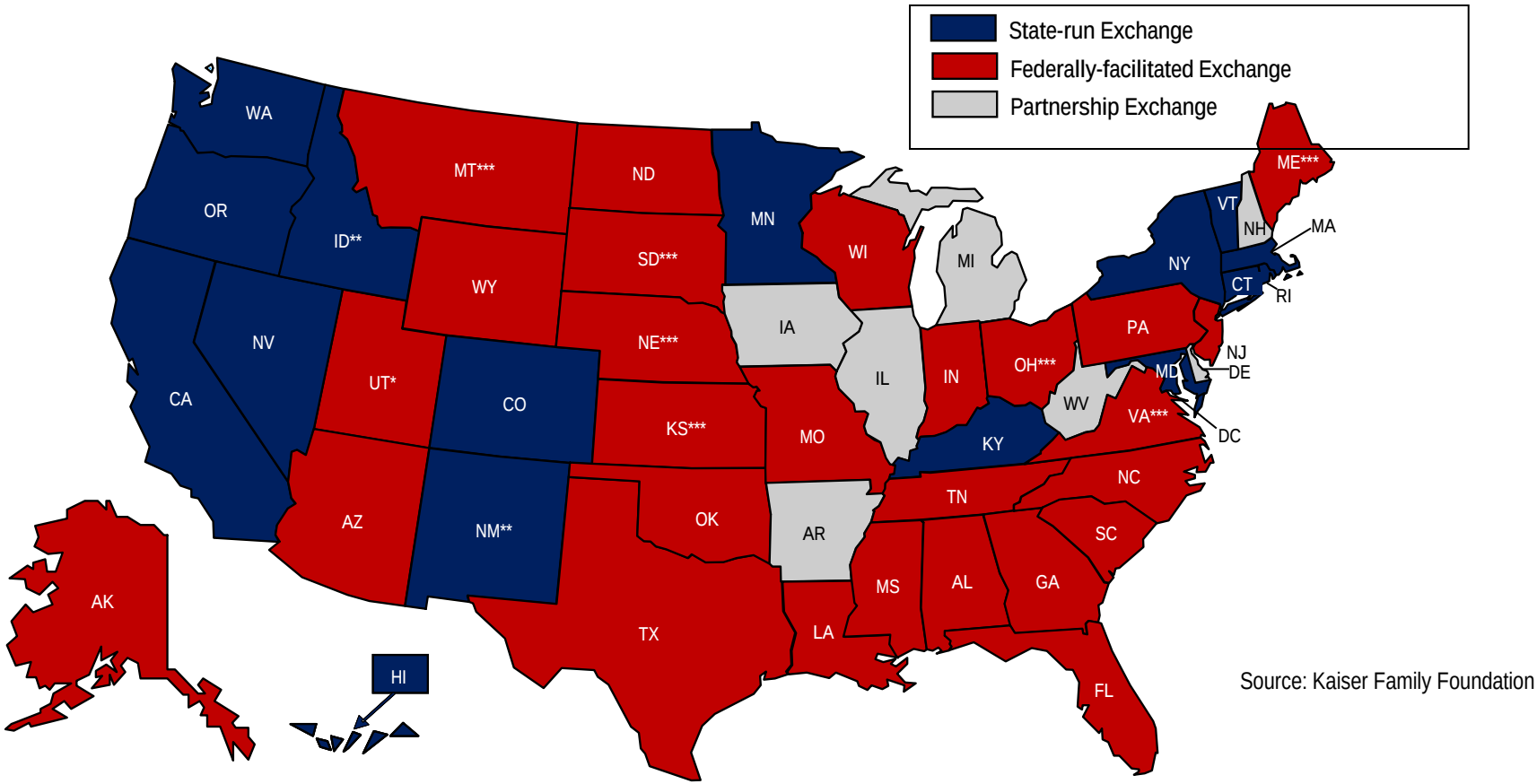
- Technology glitches
- Enrollment delays
- Variation in state and federally-facilitated Exchanges
- Trends in employer-sponsored benefits
- Role of private exchanges

# Individuals, Employees and Employers

# Play or Pay: Individual mandate (2014)

| | |
|---|---|
| Description | ▸ Requires individuals to maintain minimum coverage beginning in 2014.<br>▸ Imposes a penalty for failure to maintain coverage.<br>▸ Certain exceptions: hardships, religious objections, non-US citizens or incarcerated individuals<br>▸ There will be federally defined benefit levels (young, catastrophic, bronze, silver, gold, platinum) Bronze is the level mandate for persons over age 29 |
| Implications | ▸ Individuals may choose to pay penalty rather than obtain coverage<br>▸ Failure to obtain minimum essential coverage will result in a tax as follows<br>•$95 in 2014<br>•$325 in 2015<br>•$695 in 2016 and beyond (indexed for cost of living)<br>▸ Penalty also applies to any dependents that do not have the minimum essential coverage |
| Actions | ▸ Evaluate the costs of obtaining coverage versus the penalty exposure, while also considering compliance aspects |

# Operation of Exchanges in 2014



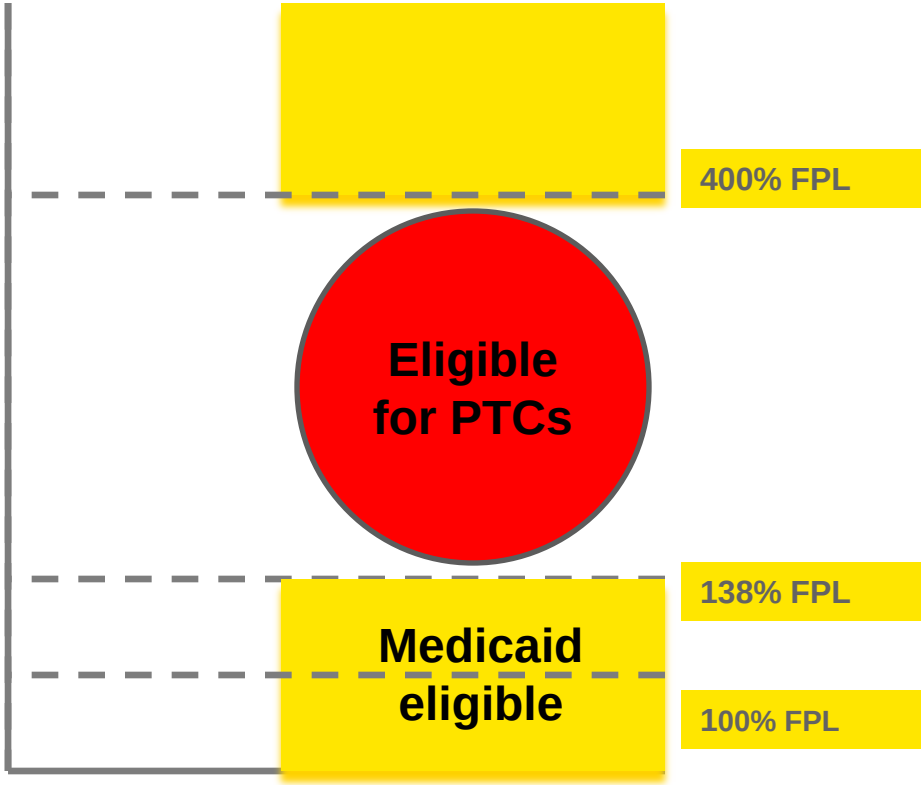

Source: Kaiser Family Foundation

*HHS will operate a federally-facilitated individual Exchange in Utah, and the state will operate a SHOP Exchange.
**Idaho and New Mexico have received conditional approval to run state-based Exchanges, but will work with the federal government to run aspects of the Exchanges that time constraints left them unprepared to administer.
***HHS has approved Kansas, Maine, Montana, Nebraska, Ohio, South Dakota and Virginia to conduct plan management activities to support certification of qualified health plans in federally-facilitated Exchanges.

# Premium Tax Credits Available to Individuals

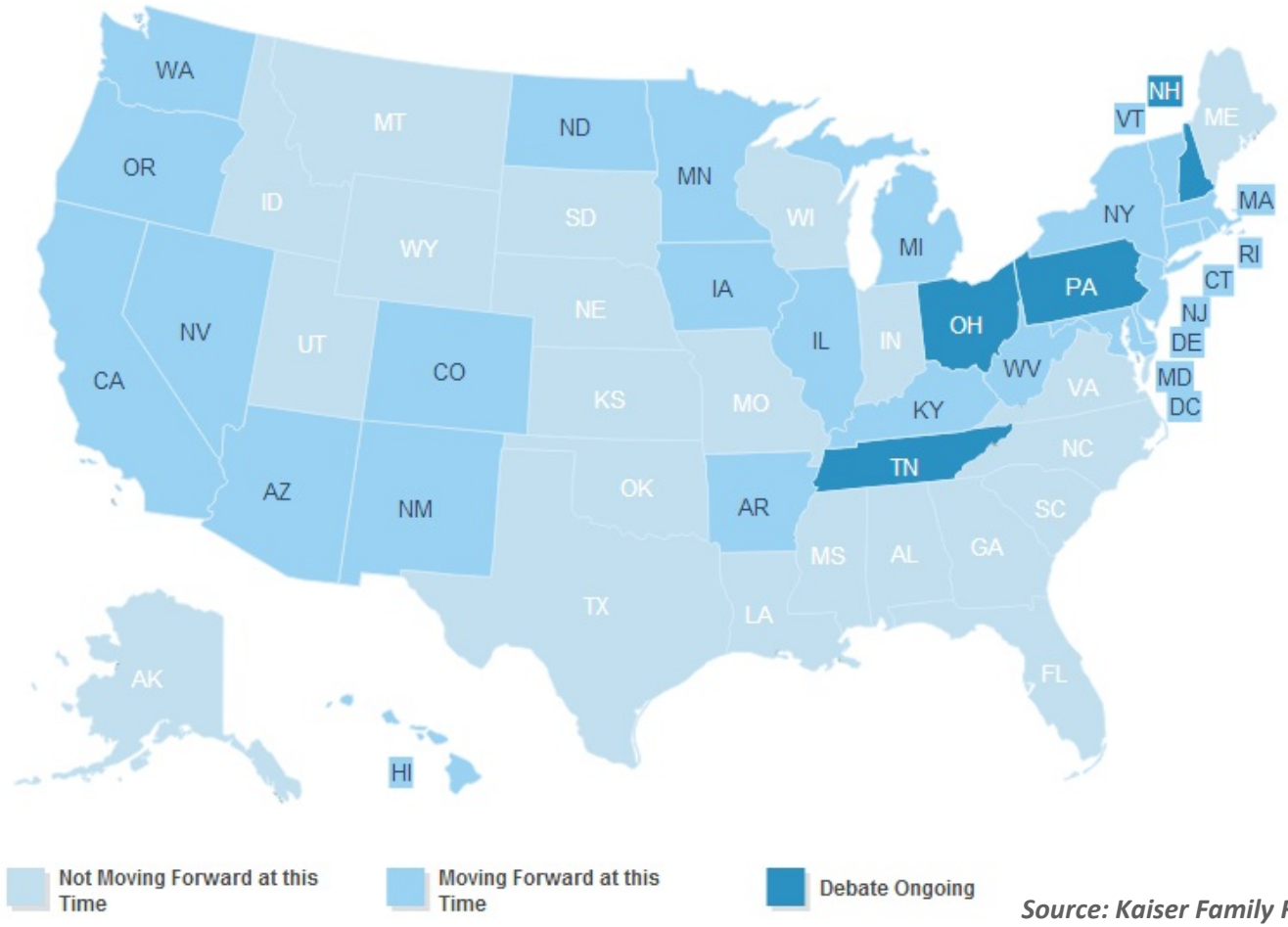
- Section 36B: Eligible individuals entitled to a premium tax credit to purchase health care coverage on an Exchange
  - Taxpayer pays no more than the "applicable percentage" of household income as a premium; tax credit equals remaining premium based on second lowest cost "silver" plan on the Exchange (paid by Treasury directly to the insurer)
- Who is eligible?
  - Household incomes must be between 100% and 400% of FPL
  - Not eligible for other coverage
    - Medicaid, Medicare, or other governmental coverage
    - Offer of affordable employer coverage that provides minimum value

# Premium Tax Credits




| 2013 Federal Poverty Level | | | |
|---|---|---|---|
| Family or Household | 100% | 138% | 400% |
| 1 | $11,490 | $15,852 | $45,960 |
| 2 | 15,510 | 21,404 | 62,040 |
| 3 | 19,530 | 26,951 | 78,120 |
| 4 | 23,550 | 32,499 | 94,200 |
| 5 | 27,570 | 38,047 | 110,280 |
| 6 | 31,590 | 43,594 | 126,360 |
| 7 | 35,610 | 49,142 | 142,440 |
| 8 | 39,630 | 54.689 | 158,520 |

# Medicaid Expansion

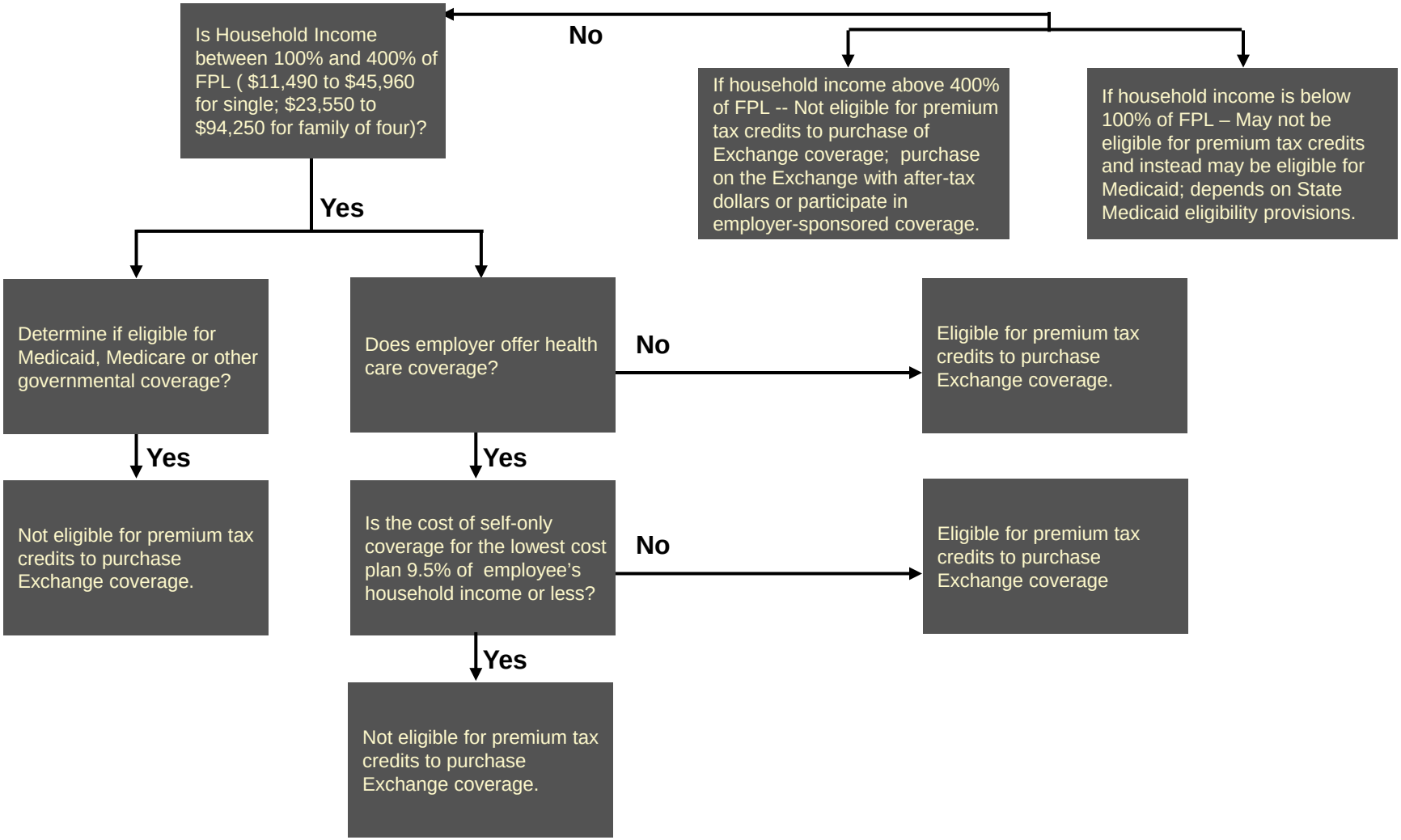



*Source: Kaiser Family Foundation*

# Premium Tax Credit – Employer Coverage

- To be eligible for a premium tax credit, an individual may not have been offered affordable, minimum value, minimum essential coverage by an employer
- Affordable: Employee portion of the premium or contribution for employee-only coverage under the lowest cost plan cannot exceed 9.5% of household income
- Minimum value: A plan fails to provide minimum value if plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs (on an actuarial basis)
- Eligibility for premium tax credit is relevant to employer penalties

# Determining individual's eligibility for the premium tax credit



# Employer Mandate Excise Tax

# Section 4980H – General Rule

- "Large employers" (employer with ≥50 full-time equivalent employees) may be subject to an excise tax if at least one full-time employee whose household income is between 100% and 400% of the federal poverty level receives a premium tax credit for exchange coverage and an employer either:

Fails to offer coverage to full-time employees and their dependents

OR

Offers coverage to full-time employees that does not meet the law's affordability or minimum value standards

# Section 4980H: Amount of Tax

**Tax for no coverage**
***Section 4980H(a)***

- A large employer member that does not offer coverage to its full-time employees and their dependents may face a annual tax (calculated monthly) of:
  - $2,000 x the total number of full-time employees if at least one FTE is receiving a premium assistance tax credit

**Tax for unaffordable coverage**
***Section 4980H(b)***

- A large employer member that offers coverage to their full-time employees and their dependents, but the coverage is unaffordable to certain full-time employees or does not provide minimum value may face a annual tax (calculated monthly) of:
  - The lesser of $3,000 x the number of FTEs receiving a premium assistance tax credit or $2,000 x the total number of FTEs

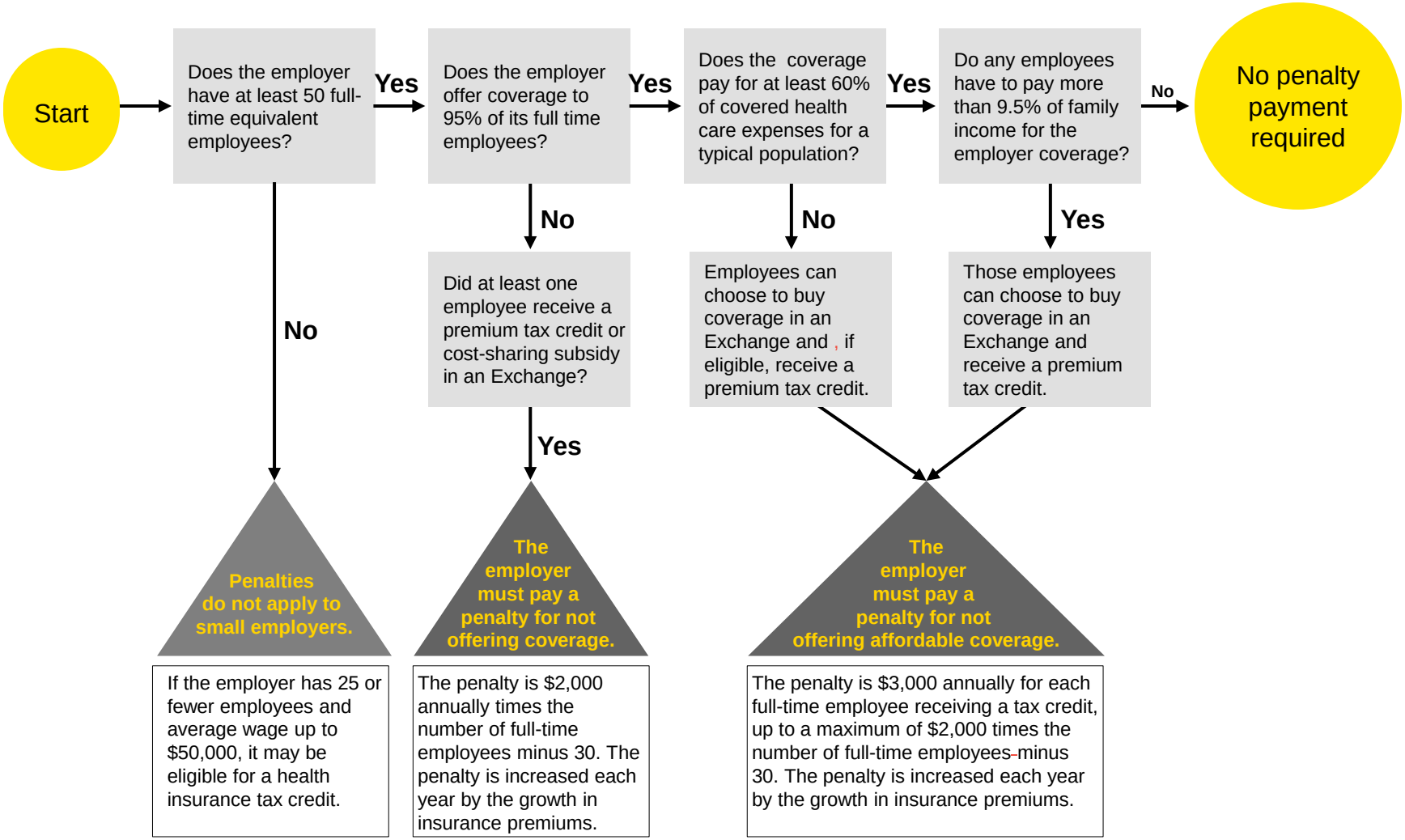
Employers who do not offer coverage may subtract the first 30 workers when calculating their liability for taxes under IRC §4980H(a). Taxes under IRC §4980H(b) are capped at an amount not to exceed an employer's potential tax under IRC §4980H(a).

# Critical elements to the coverage excise tax determination

"Large employers" — those with 50 or more full-time equivalents — must assess whether they will be subject to a coverage excise tax by addressing:

| Who is a **full-time** employee? (Defined as 30 hours per week per month) | Is the employer-provided health care plan **affordable?** | Does the employer-provided health care plan meet the **minimum value** requirement? | What portion of the employee population is eligible for the **premium tax credit?** |
|---|---|---|---|
| ► Is the employee reasonably expected to work full time or part time?<br>► Is the employee a "variable-hour" or "seasonal" employee?<br>► Determination of full-time status may be based on a look-back measurement period of up to 12 months. | ► A plan is "affordable" if the employee's cost for self-only coverage is less than 9.5% of the employee's "household income."<br>► IRS guidance provides employers with a safe harbor to test affordability based on W-2 wages. | ► Plan must have a 60% actuarial value. | ► An employee with household income between 100% and 400% of federal poverty level is eligible.<br>► An employee who is not eligible for other minimum essential coverage (e.g., Medicaid, Medicare, other employer-sponsored coverage) is eligible. |

# Determining the employer excise tax



# Section 4980H: Key Facts

- Excise taxes are pro-rated and calculated separately for each month; inflation-adjusted after 2014.
- Excise tax payments are not deductible by the employer.
- Excise taxes are calculated separately for each controlled group member, and CG members are not liable for taxes incurred by other CG members.
- Excise tax under section 4980H(a) applies if the CG member fails to offer minimum value coverage to at least 95% of full-time employees (and their dependents).
- Raises the stakes for worker classification – failure to treat workers as employees could trigger the subsection (b) penalty, or worse, trigger the subsection (a) penalty for failing to satisfy the 95% safe harbor.
- Employers may rely on proposed regulations issued in January until final regulations are issued, but status of transition rules is unclear in light of the one-year delay.

# Section 4980H: Assessment Procedures

- The exchange will notify the employer that an employee is eligible for subsidized exchange coverage.
  - The exchange cannot assess the tax, but the employer may appeal the exchange's determination.
- The IRS will notify employers that they owe a penalty.
  - The IRS will provide this notification after employees have filed their tax returns, and the employer has filed its information returns.
  - The initial taxes for 2015 will not be payable until 2016.
- Employers may respond to the initial IRS notice before the IRS sends a formal notice and demand for payment.
- Penalty payments will not be part of the employer's tax return.
- More detailed procedural guidance is expected in 2014.

# Sample Premium Tax Credit Employer Notice

Attn: Important Legal Information Enclosed
<Company Name>
<Company Address Line 1>
<Company Address Line 2>
<Company City>, <Company State> <Company Zip Code>

**Notice of Individual Eligibility for Premium Assistance**

This letter is to inform you that one of your employees, <Individual First Name> <Individual Last Name> applied and enrolled for health insurance coverage through <Marketplace> and will receive Advance Payment of Premium Tax Credit (APTC) or Cost Sharing Reductions (CSR).

If the person named above is your full-time employee, and if you have 50 or more full-time employees, you may be liable for the payment assessed by the Internal Revenue Service under Section 4980H of the Internal Revenue Code. An employee is considered a full-time employee if he or she works more than 30 hours per week in any month.

The IRS, not <Marketplace>, assesses penalties under Section 4980H. This letter does not necessarily mean that you will be required to pay a penalty.

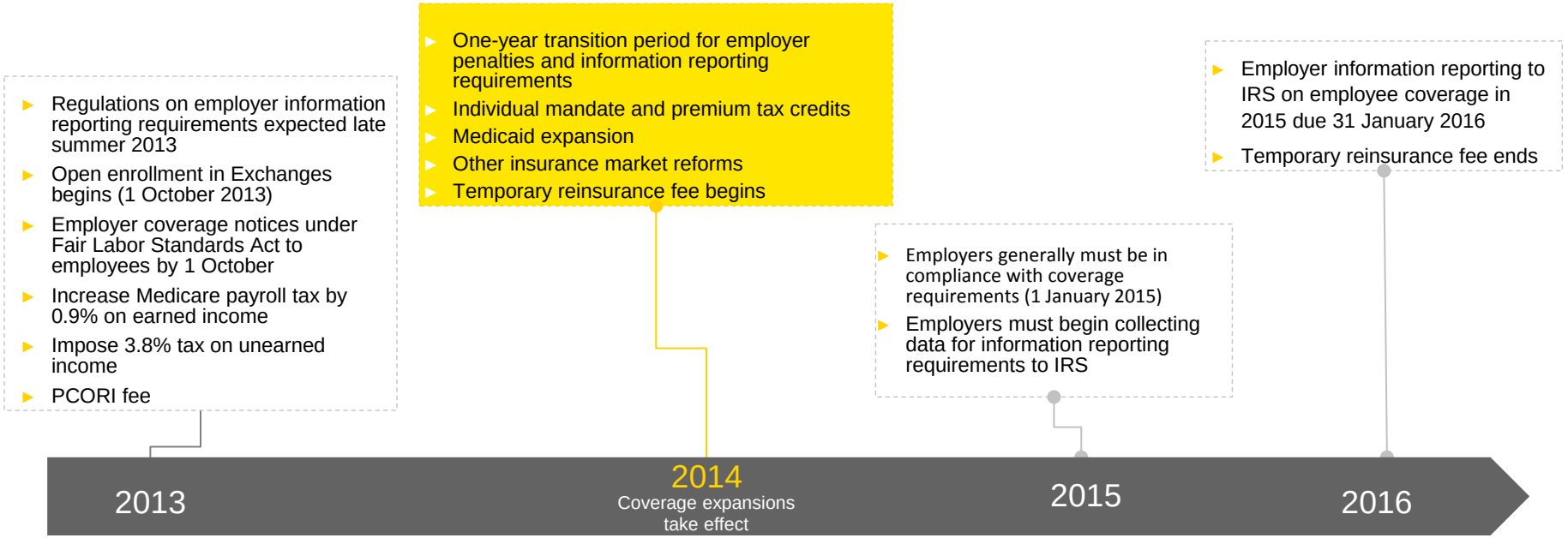
This decision was based on a determination that:

1. As an employer you did not offer this employee the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan; or
2. As an employer you did not offer your full-time employees the opportunity to enroll in minimum essential coverage that is both affordable and provides minimum value.

**What if I disagree?**

If you disagree with this decision, please call us at <Exchange Contact Center Phone Number>. You also have the right to appeal. See the attached information about your appeal rights. There are deadlines to appeal so you should act quickly.

# Key effective dates for employers through 2016



# Accounting considerations of excise tax

- NOT an income tax
  - US GAAP
    - ASC 740 *Income Taxes* (FIN 48 pre-codification) does not apply
    - ASC 450 *Contingencies* (FAS 5 pre-codification) applies
      - Use probable and estimable concepts
  - IFRS
    - IAS 12 *Income Taxes* does not apply
    - IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* applies
      - Similar to US GAAP but probable defined as more likely than not
  - Income statement classification
    - Included in pre-tax income
    - Classify consistently with similar costs
- Disclosure
  - ASC 450 loss contingency disclosure
    - Reasonably possible

# Information Reporting

# Overview: Employee communication, Exchanges, Information reporting, and IRS tax assessment

**Step 1**

- Employer under Fair Labor Standards Act (FLSA) provides employees with information about coverage and availability of Exchanges by October 1, 2013

**Step 2**

- Employee provides Exchange with information to determine eligibility for the premium tax credit
- Individual application includes information about employer coverage form

**Step 3**

- Exchange makes preliminary eligibility determination regarding the premium tax credit
- Exchanges may contact some employers in 2014 as part of sample review verification process

**Step 4**

- Exchange notifies employer that employee may receive a premium tax credit
- Employer may appeal Exchange's determination of employee's eligibility within 90 days

**Step 5**

- Employer has option of filing information with IRS and employee for 2014 (mandatory for 2015)
- Employee files personal return

**Step 6**

- Employee's receipt of premium tax credit subject to reconciliation
- Delayed one-year under transition period:
  - Assessment of employer tax penalties, employer appeals process to IRS

# FLSA Notice to employees

- The FLSA Notice must be provided to all current employees by 1 October
- Notice *must* provide information regarding decision:
  - Exchange health care coverage offerings
  - Opportunity for premium tax credits if employer coverage does not satisfy minimum value requirement
  - Employees loss of employer pre-tax contribution
- Notice *may* provide employees with information that tracks the Exchange application “employer coverage” form

# FLSA Notice Part B *(optional)*

## PART B: Information About Health Coverage Offered by Your Employer

This section contains information about any health coverage offered by your employer. If you decide to complete an application for coverage in the Marketplace, you will be asked to provide this information. This information is numbered to correspond to the Marketplace application.

| | | |
|---|---|---|
| 3. Employer name | | 4. Employer Identification Number (EIN) |
| 5. Employer address | | 6. Employer phone number |
| 7. City | 8. State | 9. ZIP code |
| 10. Who can we contact about employee health coverage at this job? | | |
| 11. Phone number (if different from above) | 12. Email address | |

Here is some basic information about health coverage offered by this employer:

- As your employer, we offer a health plan to:
  - ☐ All employees.
  - ☐ Some employees. Eligible employees are:
- With respect to dependents:
  - ☐ We do offer coverage. Eligible dependents are:
  - ☐ We do not offer coverage.

☐ If checked, this coverage meets the minimum value standard, and the cost of this coverage to you is intended to be affordable, based on employee wages.

** Even if your employer intends your coverage to be affordable, you may still be eligible for a premium discount through the Marketplace. The Marketplace will use your household income, along with other factors, to determine whether you may be eligible for a premium discount. If, for example, your wages vary from week to week (perhaps you are an hourly employee or you work on a commission basis), if you are newly employed mid-year, or if you have other income losses, you may still qualify for a premium discount.

If you decide to shop for coverage in the Marketplace, HealthCare.gov will guide you through the process. Here's the employer information you'll enter when you visit HealthCare.gov to find out if you can get a tax credit to lower your monthly premiums.

# Summary of employer reporting provisions

**Still due 31 January 2014**

## § 6051

- **Purpose:** Provide employees with information on cost of employer-provided coverage
- **Reporting by:** Employers filing 250 Forms W-2 or more
- **Information reported:** Aggregate cost of employer-provided group health plan for each covered employee

**New due date: 31 January 2016**

## § 6055

- **Purpose:** Provide individuals and IRS with information to administer individual mandate
- **Reporting by:** Insurance providers, government agencies, multiemployer plans or employers that sponsor self-insured plans
- **Information reported:**
  - Employer- and employee-specific data
  - Months during which individual is covered

**New due date: 31 January 2016**

## § 6056

- **Purpose:** Provide IRS with information to administer employer mandate and IRS and individuals information to administer premium tax credit
- **Reporting by:** Large employers subject to ACA
- **Information reported:**
  - Employer identifying info; info for all full- time employees
  - Plan data e.g., employee cost, month-by-month

# Reporting Requirements: Key Facts

- Required in addition to W-2 reporting of healthcare coverage.
  - Same filing schedule as W-2: To employees by January 31, and to the IRS by March 31 (February 28 if not filed electronically)
- Requirements apply separately to each CG member.
  - Although a third party (e.g. the parent) may file the return, liability for failing to file applies to the employer.
- Failure to file may trigger penalties under Code sections 6721 and 6722.
  - Generally, up to $100 per return, to a maximum of $1.5 million per year for each violation.
  - May be waived if due to reasonable cause and not willful neglect.
- The first mandatory filing will be due in early 2016, for the 2015 calendar year.
  - “Strongly encouraged” for 2014, but there is no penalty for declining to do so.
- Comments on the proposed regulations are due November 8, and hearings are scheduled for mid-November.

# Section 6056: Proposed Alternatives

- Combined Form W-2 and 6056 employee statement
  - Report on Form W-2 monthly employee contribution for lowest cost plan
  - Employee must be employed for entire calendar year and employee contribution for the lowest-cost, self-only option must have remained the same
- Offer of minimum value coverage to substantially all full-time employees
  - Must certify that nearly all employees who did not receive offer of minimum value coverage were not full-time
- Form W-2 code indicating mandatory coverage
  - Must be self-insured; offer mandatory no-cost minimum value coverage

# Possible Streamlined Reporting Rules

- Employers who offer insured plans may enter into an agreement with the insurer to include the Section 6056 information with the Section 6055 statement.
- Employers who offer no cost or very low-cost self-insured plans may report only on the Section 6055 return and the W-2.
- Employers who sponsor self-insured group health plans may use a single statement for both Section 6055 and 6056.
- IRS and Treasury have requested additional suggestions.

# Additional taxes, fees and considerations

# Section 4980D: Failure to meet group health plan requirements

- Preexisting section 4980D imposes an excise tax for any failure to meet the Code's group health plan requirements
- Section 9815 incorporates certain ACA provisions into the Code's group health plan requirements
- Requirements subject to 4980D tax include the insurance market reforms, including the prohibition on waiting periods that exceed 90 days
- Tax: $100 per day of noncompliance
- Taxpayers are to voluntarily report 4980D violations on Form 8928
- Many of the insurance reform mandates are effective for the first plan year beginning 6 months after date of enactment (September 23, 2010 and thereafter)
- Insurance reforms apply to group health plan offered by an employer

# Market Reform Rules for Group Health Plans

- No waiting periods in excess of 90 days
- No lifetime or annual limits on “essential health benefits”
- Reduced out of pocket maximums
- No pre-existing condition exclusions
- Dependent coverage for adult children through age 26
- Coverage of preventive services with no cost sharing
- Non-discrimination rules for insured plans?
- Penalties for non-compliance include excise taxes ($100 per affected individual per day, up to $500,000), DOL penalties, and participant lawsuits

# New Medicare Taxes

- Effective January 1, 2013
- New 0.9% Medicare tax on high-wage employees
  - Threshold is $200K for single filers, $250K for married filers
  - Withholding is required for wages from a single employer in excess of $200K, regardless of other employment or filing status
  - Employees may adjust their withholding allowances
- New 3.8% Medicare tax on unearned income
  - Tax applies to net investment income, but only to the extent modified AGI exceeds the same $200K/$250K thresholds
  - Does not apply to wages
  - No employer withholding required

# PCORI Tax/Transitional Reinsurance Program

- PCORI fee for comparative effectiveness research
  - Fee per “covered life” ($1 in 2012, $2 in 2013, indexed thereafter); first payment was due July 31, 2013
  - Tax paid by insurer for insured coverage, and by plan administrator for self-insured coverage
  - May not be paid from plan assets, with certain exceptions
  - Deductible as an ordinary and necessary business expense
- Transitional Reinsurance Assessment Program
  - Fee per “covered life” estimated at $63 for 2014; should be smaller for 2015, 2016; first payment due in late 2014
  - Self-insured plans must pay the fee but are not entitled to any proceeds from the program
  - May be paid from plan assets
  - Deductible as an ordinary and necessary business expense

# High-cost health plan (“Cadillac plan”) excise tax

- Beginning in 2018, the ACA will impose a new 40% excise tax to the extent that the value of health plan coverage exceeds certain dollar thresholds under IRC §4980I.
- As of 2018, the dollar thresholds are $10,200 for individual coverage and $27,500 for family coverage, subject to certain increased thresholds for inflation

- If the annual aggregate value of coverage exceeds the dollar thresholds, the amount of the excess must be reported by the employer to the insurer or, if the plan is self-insured, the plan administrator; to the extent that the benefits are provided by multiple entities, the pro rata share in the excess coverage must be reported to each entity.

# Medical Loss Ratio (MLR) Rebates

- Insurers that fail to meet minimum MLRs must issue rebates
  - For employer-sponsored plans, the rebate is paid to the employer sponsor.
- Allocation of rebate between employer and employees depends on governing documents, sources of premium payments
- Rebates that are ERISA plan assets must be used for the exclusive benefit of participants and beneficiaries
  - Failure to follow ERISA rules could trigger liability for plan fiduciaries
- Several permissible uses for rebates allocated to participants:
  - Reduction of future premiums
  - Benefit enhancements
  - Premium rebates – will be taxable to participants if the original premium payments were pre-tax

# Code Section 162(m)(6)

- Reduces deductible limit from $1M to $500K
- Applies to “covered health insurance providers,” subject to controlled group aggregation rules
  - Exception for self-insured plans
  - 2% de minimis exception may cover captive insurers
  - Generally does not apply to reinsurers
- Applies to all service providers; no performance pay exception
- Different timing rules for taking amounts into account
- “Revenue raiser” that could be applied more broadly as part of tax reform legislation

# Limitations on HRAs

- Stand-alone HRAs cannot comply with certain market reform rules – prohibition on annual limits, no cost-sharing for preventive care
- HRA designs that work – Notice 2013-54
  - Retiree plans – some employers are offering HRAs in conjunction with private exchange coverage
  - HRAs integrated with group health plan coverage
    - Definition of “group health plan” in this context is not clear
  - HRAs that limit coverage to excepted benefits

# Potential Delays/Modifications

- Defunding or outright repeal
- One-year delay of individual mandate
- Modification of hours thresholds for FTEs
- Streamlined reporting requirements
- Elimination of “Cadillac plan” excise tax, or adjustment to thresholds that trigger the tax
- Tax professionals and their attorneys take to the streets, screaming “we can’t take it anymore!”