

**Regarding Link #1, how does the
“Employer Shared Responsibilities”
concept relate to the Town of Woodstock?**

It doesn't. "Employer Shared Responsibility Provisions" are for large group employers, which we are NOT.

**BOF letter to the BOS
02-11-2016**

Date 02-11-2016

Board of Selectmen
Town of Woodstock

As you are aware, the Woodstock board of finance has been investigating concerns that the town of Woodstock healthcare program stipend program for town hall employees who opt-out of healthcare insurance may be in violation of the Affordable Care Act (ACA). Pursuant to suggestions made by the town attorney, the board of finance had requested opinions on the matter from both the town's insurance consultant and from the board of education's (BOE) TPA (third party administrator). Guidance received from the BOE's TPA suggests that while in technical violation of the affordability requirement of the ACA, Woodstock is, at this time, exempt from compliance and from penalties that could otherwise be imposed; however, after further review it appears that the town of Woodstock could fall under guidelines as an aggregated employer and be classified as an ALE (a large employer with > 50 employees) when all town employees are considered; this would include town hall employees, highway department employees and BOE employees as they are all funded through the town.

See for reference:

Link 1: <https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>

Particular reference to sections 6 and 8

Link 2: <https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer>

Particular reference to "Employer Aggregation Rules"

The technical violation: When the value of the opt-out credit someone could have received is considered as part of the "cost" of enrolling in the healthcare coverage, as is suggested in the guidelines, the "cost" to the employee is \$1163 in lost opportunity plus the monthly contribution of either \$216.67 or \$262.17 making the total "cost" to the employee either \$1379.67 for employee +1 per month or \$1425.17 for a family plan per month. Either of these costs is likely to be well in excess of the limits of 9.5% of household income for most employees, in fact several times higher than allowed, and would be in violation of the ACA affordability limits.

For someone with a \$40,000 salary this would be as much as 41% of their income for an employee +1, and 42.8% for a family plan. The limit under the ACA is 9.5%.

In the worst case, an employee with a \$40,000 salary, and no additional family income, with a family plan, any stipend or opt-out cash payment over \$654 per year could cause a violation — allowable cost $\$40,000 \times .095 = \3800 less the employee contribution of $\$3146 = \$654/\text{yr}$.



Link #1, #1 Employer Shared Responsibility

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Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act

On Feb. 10, 2014, the IRS and Treasury issued [final regulations](#) on the Employer Shared Responsibility provisions under section 4980H of the Internal Revenue Code. More information is available on the [employer shared responsibility page](#). The following questions and answers provide helpful information about the guidance:

- [Basics of the Employer Shared Responsibility Provisions](#): Questions 1-3
- [Which Employers are Subject to the Employer Shared Responsibility Provisions](#): Questions 4-14
- [Identification of Full-Time Employees](#): Questions 15-17
- [Liability for the Employer Shared Responsibility Payment](#): Questions 18-23
- [Calculation of the Employer Shared Responsibility Payment](#): Questions 24-26
- [Making an Employer Shared Responsibility Payment](#): Questions 27-29
- [Transition Relief](#): Questions 29-39
- [Basics for Small Employers](#): Questions 40-42
- [Related Provisions](#): Questions 43-47
- [Additional Information](#): Questions 48-56



HealthCare.gov
Get more information about the Affordable Care Act from the Department of Health & Human Services.
[Go to HealthCare.gov](#)

**N/A--references
LARGE GROUP EMPLOYERS,
which we are NOT**

not
us
==

Basics of the Employer Shared Responsibility Provisions

1. What are the Employer Shared Responsibility provisions?

For 2015 and after, employers employing at least a certain number of employees (generally 50 full-time employees or a combination of full-time and part-time employees that is equivalent to 50 full-time employees) will be subject to the Employer Shared Responsibility provisions under section 4980H of the Internal Revenue Code (added to the Code by the Affordable Care Act). As defined by the statute, a full-time employee is an individual employed on average at least 30 hours of service per week. An employer that meets the 50 full-time employee threshold is referred to as an applicable large employer.

Under the Employer Shared Responsibility provisions, if these employers do not offer affordable health coverage that provides a minimum level of coverage to their full-time employees (and their dependents), the employer may be subject to an Employer Shared Responsibility payment if at least one of its full-time employees receives a premium tax credit for purchasing individual coverage on one of the new Affordable Insurance Exchanges, also called a Health Insurance Marketplace (Marketplace).

2. When do the Employer Shared Responsibility provisions go into effect?

The Employer Shared Responsibility provisions generally are not effective until Jan. 1, 2015, meaning that no Employer Shared Responsibility payments will be assessed for 2014. See [Notice 2013-45](#). Employers will use information about the number of employees they employ and their hours of service during 2014 to determine whether they employ enough employees to be an applicable large employer for 2015. See question 4 for more information on determining whether an employer is an applicable large employer and questions 29 through 39 for more information about transition relief for 2015.

3. Is more detailed information available about the Employer Shared Responsibility provisions?

Yes. Treasury and the IRS have issued [final regulations](#) on the Employer Shared Responsibility provisions. Treasury and the IRS also have issued [proposed regulations](#) on the related Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered under Employer-Sponsored Plans.

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Which Employers Are Subject to the Employer Shared Responsibility Provisions?

4. I understand that the Employer Shared Responsibility provisions apply only to employers employing at least a certain number of employees. How many employees must an employer have to be subject to the Employer Shared Responsibility provisions?

To be subject to the Employer Shared Responsibility provisions for a calendar year, an employer must have employed during the previous calendar year at least 50 full-time employees or a combination of full-time and part-time employees that equals at least 50. For example, an employer

Pay particular attention to #6 and #8?

- **Section #6 is not applicable to us since it relates to corporations.**
- **Section #8 would be applicable to us if we were a large group employer, but we are not.**

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The technical violation: When the value of the opt-out credit someone could have received is considered as part of the "cost" of enrolling in the healthcare coverage, as is suggested in the guidelines, the "cost" to the employee is \$1163 in lost opportunity plus the monthly contribution of either \$216.67 or \$262.17 making the total "cost" to the employee either \$1379.67 for employee +1 per month or \$1425.17 for a family plan per month. Either of these costs is likely to be well in excess of the limits of 9.5% of household income for most employees, in fact several times higher than allowed, and would be in violation of the ACA affordability limits.

For someone with a \$40,000 salary this would be as much as 41% of their income for an employee +1, and 42.8% for a family plan. The limit under the ACA is 9.5%.

In the worst case, an employee with a \$40,000 salary, and no additional family income, with a family plan, any stipend or opt-out cash payment over \$654 per year could cause a violation — allowable cost $\$40,000 \times .095 = \3800 less the employee contribution of $\$3146 = \$654/\text{yr}$.

that employs 40 full-time employees (that is, employees employed 30 or more hours per week on average) and 20 employees employed 15 hours per week on average has the equivalent of 50 full-time employees, and would be an applicable large employer.

Seasonal workers are taken into account in determining the number of full-time employees. However, if an employer's workforce exceeds 50 full-time employees (including full-time equivalents) for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, the employer is not considered an applicable large employer. Seasonal workers are workers who perform labor or services on a seasonal basis as defined by the Secretary of Labor, and retail workers employed exclusively during holiday seasons. For this purpose, employers may apply a reasonable, good faith interpretation of the term "seasonal worker."

Employers will determine each year, based on their current number of employees, whether they will be considered an applicable large employer for the next year. For example, if an employer has at least 50 full-time employees (including full-time equivalents) for 2014, it will be considered an applicable large employer for 2015. Note that because employers will be performing this calculation for the first time to determine their status for 2015, there is a transition rule intended to make this first calculation easier. See question 31 for a discussion of this transition rule for 2015 determination of applicable large employer status.

Employers average their number of employees across the months in the year to see whether they will be an applicable large employer for the next year. This averaging can take account of fluctuations that many employers may experience in their work force across the year. The final regulations provide additional information about how to determine the average number of employees for a year, including information about how to take account of salaried employees who may not clock their hours.

5. How does an employer that was not in existence throughout the preceding calendar year determine if it employs enough employees to be subject to the Employer Shared Responsibility provisions?

An employer that was not in existence on any business day in the prior calendar year is considered an applicable large employer in the current year if the employer is reasonably expected to employ an average of at least 50 full-time employees (including full-time equivalents) on business days during the current calendar year and it actually employs an average of at least 50 full-time employees (including full-time equivalents) on business days during the calendar year. In contrast, for the next year (the year after the first year the employer was in existence), the employer will determine its status as an applicable large employer using the rules that generally apply (that is, based on the number of full-time employees and full-time equivalents that the employer employed in the preceding year).

6. If two or more companies have a common owner or are otherwise related, are they combined for purposes of determining whether they employ enough employees to be subject to the Employer Shared Responsibility provisions?

Yes, section 4980H includes a longstanding provision that also applies for other tax and employee benefit purposes, under which companies that have a common owner or are otherwise related generally are combined and treated as a single employer, and so would be combined for purposes of determining whether or not they collectively employ at least 50 full-time employees (including full-time equivalents). If the combined total meets the threshold, then each separate company is subject to the Employer Shared Responsibility provisions, even those companies that individually do not employ enough employees to meet the threshold. (Note that these rules for combining related employers do not apply for purposes of determining whether a particular company owes an Employer Shared Responsibility payment or the amount of any payment. That is determined separately for each related company).

7. Do the Employer Shared Responsibility provisions apply only to large employers that are for-profit businesses or to other large employers as well?

All employers that are applicable large employers are subject to the Employer Shared Responsibility provisions, including for-profit, non-profit, and government entity employers.

8. Do the Employer Shared Responsibility provisions apply to government entities?

Yes. There is no exclusion from the Employer Shared Responsibility provisions for government entities. All employers that are applicable large employers are subject to the Employer Shared Responsibility provisions, including federal, state, local, and Indian tribal government employers.

9. Do the Employer Shared Responsibility provisions apply to employers in states where a Federally-facilitated Exchange (Marketplace) has been established on behalf of the state?

Yes. An applicable large employer is subject to an Employer Shared Responsibility payment if at least one of its full-time employees receives a premium tax credit. A premium tax credit is only available to eligible individuals who obtain coverage through a Marketplace, which includes a State Based Exchange, regional Exchange, subsidiary Exchange, or the Federally-facilitated Exchange established on behalf of a state.

10. Do the Employer Shared Responsibility provisions apply to employers with full-time employees who are eligible for health coverage through another source, such as Medicare, Medicaid, or a spouse's employer?

**Link #1
Sections 6 and 8**

N/A--references companies

N/A--references government entities who are LARGE GROUP EMPLOYERS, which we are NOT

Regarding Link #2, how do “Employer Aggregation Rules” relate to the Town of Woodstock?

They don't. The IRS has very clear language about the aggregation of government entities, and specifies *applying a good faith reasonable interpretation*, which is exactly what is already happening.

**BOF letter to the BOS
02-11-2016**

Date 02-11-2016

Board of Selectmen
Town of Woodstock

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Donna Stefanik

From: David Richardson <daver@snet.net>
Sent: Wednesday, January 20, 2016 10:35 AM
To: Mike Dougherty; Fred Chmura; david fortin; dcab45@yahoo.com; glen lessig; attybradrick@aol.com; woodstockbrass@charter.net
Cc: sonett19@charter.net; Donna Stefanik; daver@snet.net
Subject: Draft Letter/notification to BOS re: Stipend issue
Attachments: Draft2.docx

All,

Attached is a draft of the proposed letter/notification to the Board of Selectmen concerning the stipend issue that was requested at the January 12th meeting of the Board of Finance

After review and discussions with Dave Hosmer, we believe that it is likely that the Town of Woodstock could be classified under the "Aggregate Employer" language as an ALE (large employer >50 employees) by the IRS and would be subject to the limitations under the ACA. As discussed, we are providing notice to the Board of Selectmen as they are responsible for conducting the town business and resolving the issue.

Please send any comments to Dave Hosmer only. He will review and any needed adjustments can be made.

Dave Hosmer
Dave Richardson

**BOF email
01-20-2016**

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Determining if an Employer is an Applicable Large Employer

Basic Information

- Two provisions of the Affordable Care Act apply only to applicable large employers (ALEs):
 - The employer shared responsibility provisions; and
 - The employer information reporting provisions for offers of minimum essential coverage
- Whether an employer is an ALE is determined each calendar year, and generally depends on the average size of an employer's workforce during the prior year. If an employer **has fewer than 50** full-time employees, including full-time equivalent employees, on average during the prior year, the employer is not an ALE for the current calendar year. Therefore, the employer is not subject to the employer shared responsibility provisions or the employer information reporting provisions for the current year. Employers who are not ALEs may be eligible for the [Small Business Health Care Tax Credit](#).
- If an employer **has at least 50** full-time employees, including full-time equivalent employees, on average during the prior year, the employer is an ALE for the current calendar year, and is therefore subject to the employer shared responsibility provisions and the employer information reporting provisions.
- To determine its workforce size for a year an employer adds its total number of full-time employees for each month of the prior calendar year to the total number of full-time equivalent employees for each calendar month of the prior calendar year and divides that total number by 12.

Full-time Employee

A [full-time employee](#) for any calendar month is an employee who has on average at least 30 hours of service per week during the calendar month, or at least 130 hours of service during the calendar month.

Full-Time Equivalent Employees

An employer determines its number of full-time-equivalent employees for a month in the two steps that follow:

1. Combine the number of hours of service of all non-full-time employees for the month but do not include more than 120 hours of service per employee, and
2. Divide the total by 120.

An employer's number of full-time equivalent employees (or part-time employees) is only relevant to determining whether an employer is an ALE. An ALE need not offer minimum essential coverage to its part-time employees to avoid an employer shared responsibility payment. A part-time employee's receipt of the premium tax credit for purchasing coverage through the Marketplace cannot trigger an employer shared responsibility payment.

Basic ALE Determination Examples

Example 1 – Employer is Not an ALE

- Company X has 40 full-time employees for each calendar month during 2016.
- Company X also has 15 part-time employees for each calendar month during 2016 each of whom have 60 hours of service per month.
- When combined, the hours of service of the part-time employees for a month totals 900 [15 x 60 = 900].
- Dividing the combined hours of service of the part-time employees by 120 equals 7.5 [900 / 120 = 7.5]. This number, 7.5, represents the number of Company X's full-time-equivalent employees for each month during 2016.
- Employer X adds up the total number of full-time employees for each calendar month of 2016, which is 480 [40 x 12 = 480].
- Employer X adds up the total number of full-time equivalent employees for each calendar month of 2016, which is 90 [7.5 x 12 = 90].
- Employer X adds those two numbers together and divides the total by 12, which equals 47.5 [(480 + 90) / 12 = 47.5].
- Because the result is not a whole number, it is rounded to the next lowest whole number, so 47 is the result.
- So, although Company X has 55 employees in total [40 full-time and 15 part-time] for each month of 2016, it has 47 full-time employees (including full-time equivalent employees) for purposes of ALE determination.
- Because 47 is less than 50, Company X is not an ALE for 2017.

Example 2 – Employer is an ALE

- Company Y has 40 full-time employees for each calendar month during 2016.
- Company Y also has 20 part-time employees for each calendar month during 2016, each of whom has 60 hours of service per month.
- When combined, the hours of service of the part-time employees for a month totals 1,200 [20 x 60 = 1,200].
- Dividing the combined hours of service of the part-time employees by 120 equals 10 [1,200 / 120 = 10]. This number, 10, represents the number of Company Y's full-time-equivalent employees

for each month during 2016.

- Employer Y adds up the total number of full-time employees for each calendar month of 2016, which is 480 [40 x 12 = 480].
- Employer Y adds up the total number of full-time equivalent employees for each calendar month of 2016, which is 120 [10 x 12 = 120].
- Employer Y adds those two numbers together and divides the total by 12, which equals 50 [(480 + 120 = 600)/12 = 50].
- So, although Company Y only has 40 full-time employees, it is an ALE for 2017 due to the hours of service of its full-time equivalent employees.

Additional examples can be found in section 54-4980H-2 of the [ESRP regulations](#).

Employer Aggregation Rules

Companies with a common owner or that are otherwise related under certain rules of section 414 of the Internal Revenue Code are generally combined and treated as a single employer for determining ALE status. If the combined number of full-time employees and full-time-equivalent employees for the group is large enough to meet the [definition of an ALE](#), then each employer in the group (called an ALE member) is part of an ALE and is subject to the employer shared responsibility provisions, even if separately the employer would not be an ALE.

Example 3 – Employers are Aggregated to Determine ALE Status:

- Corporation X owns 100 percent of all classes of stock of Corporation Y and Corporation Z.
- Corporation X has no employees at any time in 2015. • For every calendar month in 2015, Corporation Y has 40 full-time employees and Corporation Z has 60 full-time employees. Neither Corporation Y nor Corporation Z has any full-time equivalent employees.
- Corporations X, Y, and Z are considered a controlled group of corporations.
- Because Corporations X, Y and Z have a combined total of 100 full-time employees for each month during 2015, Corporations X, Y, and Z together are an ALE for 2016.
- Corporation Y and Z are each an ALE member for 2016.
- Corporation X is not an ALE member for 2016 because it does not have any employees during 2015.

There is an important distinction for employers to keep in mind regarding these aggregation rules. Although employers with a common owner or that are otherwise related generally are combined and treated as a single employer for determining whether an employer is an ALE, potential liability under the employer shared responsibility provisions is determined separately for each ALE member.

Also, a special standard applies to government entity employers in the application of the aggregation rules under section 414. Because section 414 relates to common ownership and ownership isn't a typical arrangement for government entities, and because specific rules under section 414 of the Code for government entities haven't yet been developed, government entities may apply a good faith reasonable interpretation of section 414 to determine if they should be aggregated with any other government entities.

See Q&A #s6 and 42 on our [employer shared responsibility provisions questions and answers page](#) for more information.

Seasonal Workers

When determining if an employer is an ALE, the employer must measure its workforce by counting all its employees. However, there is an [exception for seasonal workers](#).

An employer is not considered to have more than 50 full-time employees (including full-time equivalent employees) if both of the following apply:

1. The employer's workforce exceeds 50 full-time employees (including full-time equivalent employees) for 120 days or fewer during the calendar year, and
2. The employees in excess of 50 employed during such 120-day period are seasonal workers.

A *seasonal worker* is generally defined for this purpose as an employee who performs labor or services on a seasonal basis. For example, retail workers employed exclusively during holiday seasons are seasonal workers. For more information about how seasonal workers affect ALE determinations, see our [Questions and Answers page](#). For information on the difference between a seasonal worker and a seasonal employee under the employer shared responsibility provisions see Q&A #54. And for the full definition of seasonal worker, see section 54.4980H-1(a)(39) of the [ESRP regulations](#).

Application to New Employers

A new employer (that is, an employer that was not in existence on any business day in the prior calendar year) is an ALE for the current calendar year if it reasonably expects to employ, and actually does employ, an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the current calendar year. See Q&A #5 on our [employer shared responsibility questions and answers page](#) for more information.

2015 Transition Rule for Determining Workforce Size

A transition rule for 2015 allows an employer to use any consecutive six-month period during 2014 to measure its workforce size, rather than using the full 12 months of 2014. See Q&A #31 on our [employer shared responsibility questions and answers page for more information](#).

More Information

More information about determining ALE status can be found in our [Questions and Answers](#) and