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The IRS recently announced in Revenue Procedure 2022-34 that the Affordable Care Act (“ACA”) affordability indexed amount under the Employer Shared Responsibility Payment (“ESRP”) requirements will be **9.12%** for plan years that begin in 2023. This is a notable decrease from the 2022 percentage amount (9.61%), and below the original 9.5% threshold.

## Background

Rev. Proc. 2022-34 establishes the indexed “required contribution percentage” used to determine whether an individual is eligible for “affordable” employer-sponsored health coverage under Section 36B (related to qualification for premium tax credits when buying ACA Marketplace coverage). However, the IRS explained in IRS Notice 2015-87 that a percentage change under Section 36B will correspond to a similar change for affordability under section 4980H ESRP requirements.

## Determining Affordability in 2023

An employer will not be subject to a penalty with respect to an ACA full-time employee (“FTE”) if that employee’s required contribution for 2023 for the employer’s lowest cost self-only coverage complies with one of the following safe harbors.

- 1. The W-2 safe harbor.** The employee’s monthly contribution amount for the self-only premium of the employer’s lowest cost coverage that provides minimum value is affordable if it is equal to or lower than 9.12% of the employee’s W-2 wages (as reported on Box 1 of Form W-2). Application is determined after the end of the calendar year and on

an employee-by-employee basis. Box 1 reflects compensation subject for federal income taxes, which would exclude amounts such as employee contributions to a 401(k) or 403(b) plan, and towards other benefits through a cafeteria plan.

- 2. Rate of pay safe harbor.** The employee's monthly contribution amount for the self-only premium of the employer's lowest cost coverage that provides minimum value is affordable if it is equal to or lower than 9.12% of the employee's computed monthly wages. For hourly employees, monthly wages are equal to 130 hours multiplied by their rate of pay. For salaried employees, monthly wages are equal to their monthly salary.
- 3. Federal Poverty Level ("FPL") safe harbor.** Coverage is affordable if it does not exceed 9.12% of the FPL. For a 2023 calendar year plan, coverage is affordable under the FPL safe harbor if the employee monthly cost for self-only coverage in the lowest cost plan that provides minimum value is not more than **\$103.28** (48 contiguous states), \$129.12 (Alaska), or \$118.78 (Hawaii).

## Employer Action

Employers budgeting and preparing for the 2023 plan year should review these affordability safe harbors when analyzing employee contribution amounts for the coming year.