

**DESCRIPTION OF H.R. 3080,
THE “TRIBAL EMPLOYMENT AND JOBS PROTECTION ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on June 15, 2016

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3080, the “Tribal Employment and Jobs Protection Act,” on June 15, 2016. 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. 3080, the Tribal Employment and Jobs Protection Act* (JCX-56-16), June 14, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

A. Exception to Employer Health Insurance Mandate for Indian Tribal Governments and Tribally Owned Businesses

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 (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 As discussed below, whether an applicable large employer owes an assessable payment and the amount of any assessable payment depend 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.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 (“Secretary”), in consultation with the Secretary of Labor, including rules for employees who are not compensated on an hourly basis.

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

² Pub. L. No. 111-148.

³ Pub. L. No. 111-152.

⁴ Sec. 4980H. This is sometimes referred to as the employer shared responsibility requirement or employer mandate. 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.

⁵ Under the ACA, these rules are effective for months beginning after December 31, 2013. However, in Notice 2013-45, 2013-31 I.R.B. 116, Part III, Q&A-2, the Internal Revenue Service (“IRS”) announced that no assessable payments will be assessed for 2014. In addition, in 2014, the IRS announced that no assessable payments for 2015 will apply to applicable large employers that have fewer than 100 full-time employees and full-time equivalent employees and meet certain other requirements. Section XV.D.6 of the preamble to the final regulations, T.D. 9655, 79 Fed. Reg. 8544, 8574-8575, February 12, 2014.

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 for that month (up to a maximum of 120 for any employee) 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

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 \$2,160 (for 2016)⁸ (divided by 12 and applied on a monthly basis) multiplied by the number of its full-time employees in excess of 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 \$2,160 for each employee over the 30-employee threshold, for a total of \$151,200 (\$2,160 multiplied by 70, that is, 100 minus 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.⁹ However, if an 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

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. If the group is an applicable large employer under this test, each member of the group is an applicable large employer and subject to the employer shared responsibility requirement even if the member by itself would not be an applicable large employer. 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.

⁸ For calendar years after 2014, the dollar amounts (which were initially \$2,000 and \$3,000) 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 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 next lowest multiple of \$10.

⁹ 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 9.66 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. Treas. Reg. sec. 1.36B-2(c)(3)(vi) provides guidance on the determination of whether coverage provides minimum value.

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 \$3,240 (for 2016) (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 B 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 \$3,240 for each full-time employee receiving a credit, for a total of \$64,800. The cap on the assessable payment is the amount that would have applied if the employer failed to offer coverage, or \$151,200 (\$2,160 multiplied by 70, that is, 100 minus 30). In this example, the cap therefore does not affect the amount of the assessable payment, which remains at \$64,800.

Description of Proposal

Under the proposal, for purposes of the employer shared responsibility requirement, the definition of applicable large employer does not include any tribal employer. For this purpose, the term tribal employer includes (1) any Indian tribal government¹⁰ or subdivision thereof, or any agency or instrumentality of either, or (2) any tribal organization.¹¹ Tribal employer also includes any corporation if more than 50 percent (determined by vote and value) of the outstanding stock of such corporation is owned (directly or indirectly), and any partnership if more than 50 percent of the value of the capital and profits interests are owned (directly or indirectly), by any tribal entity described in (1) or (2) above.

Effective Date

The proposal applies to months beginning after December 31, 2014.

¹⁰ Indian tribal government is defined in section 7701(a)(40).

¹¹ Tribal organization for this purpose is defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).

B. Estimated Revenue Effect of the Proposal [1] [2] [3]

Fiscal Years											
[Millions of Dollars]											
<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2017-21</u>	<u>2017-26</u>
-8	-13	-15	-11	-11	-12	-12	-13	-14	-15	-58	-124

[1] Estimate includes the outlay effects:

<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2017-21</u>	<u>2017-26</u>
3	6	9	12	12	12	13	14	14	15	41	110

[2] Estimate includes the following off-budget effects:

<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2017-21</u>	<u>2017-26</u>
1	3	4	4	5	5	5	5	6	6	17	44

[3] It is estimated that this provision would result in approximately 5,600 employees losing employer coverage, of which approximately 2,000 would become uninsured.