

## IMPACT OF IRS FINAL PPACA REGULATIONS ON INDIANA MUNICIPALITIES

The IRS published final regulations on the shared responsibility penalties under the Patient Protection and Affordable Care Act (“PPACA”) on February 10, 2014. The final regulations contain several modifications to earlier guidance. This memorandum provides a summary of the significant issues relevant to Indiana cities and towns.

1. 50-99 Full-Time Equivalent Employee Exemption: If your city or town employs an average of at least 50 but less than 100 full-time equivalent employees during 2014, your municipality will not be subject to shared responsibility penalties in 2015. To be eligible for this exemption, the following three criteria must be satisfied: (a) your municipality must not reduce its workforce during the period of February 9, 2014 to December 31, 2014 solely to qualify for transition relief (reductions in workforce for “bona fide” business reasons are permissible); (b) your municipality must not eliminate or materially reduce any health coverage it offered as of February 9, 2014; and (c) your municipality must certify that it satisfies these conditions on a form to be provided by the IRS.
2. Sledgehammer Test: In 2015, a municipality with at least 100 full-time equivalent employees must offer minimum value coverage to at least **70%** of its full-time employees (average 30 hours of service per week during the measurement period). The 70% test provides some flexibility and relief to large municipalities; however, large cities and towns will still be subject to \$3,000 Mallet penalties for each full-time employee who enrolls in the new health insurance marketplace and receives a subsidy. Failure to comply with the 70% test in 2015 will result in a \$2,000 penalty imposed on the municipality for every full-time employee, minus 80 (the Sledgehammer). In 2016, the test will be 95%.

Municipalities will be required to report compliance to the IRS in early 2016 (regarding health coverage provided in 2015). The IRS has published draft reporting forms and instructions.

3. Transition Relief for Non-Calendar Year Plans: If a large municipality maintained a non-calendar year plan as of December 27, 2012, the municipality may be entitled to limited transition relief. This rule provides that the employer penalties will not be applicable until the first day of the plan year that begins in 2015 provided that the municipality provides affordable, minimum value coverage to all full-time employees as of the first day of the plan year that begins in 2015.

4. Transitional Measurement Period: Municipalities are permitted to utilize a 6 month transitional measurement period in 2014, even if the city or town intends to utilize a 12 month stability period in 2015.
5. Bona Fide Volunteers: The final regulations do not count hours of bona fide volunteers for government and nonprofit entities. Bona fide volunteers include any volunteer who is an employee of a government entity or an organization described in section 501(c) that is exempt from taxation under section 501(a) whose only compensation from that entity or organization is in the form of (i) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

NOTE: The IRS published guidance on January 10, 2014 that indicated that the final regulations would provide a specific exception for bona fide volunteer firefighters and volunteer emergency medical personnel. This provision is welcome relief to many Indiana municipalities. Special thanks to Sue Essman of the City of Angola and Michael Griffin from the Town of Highland who contacted the IRS on this issue.

6. Seasonal Employees: The term seasonal employees is limited to employees in positions for which customary annual employment is six months or less.

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