DETERMINING WHETHER YOUR ORGANIZATION IS A LARGE EMPLOYER

IN GENERAL: To determine whether an organization is a large employer, add the number of full-time employees for each calendar month in the previous year to the number of full-time equivalent employees (FTEs) for each such month, then add the monthly totals together and divide by 12. If the result is not a whole number, round to the next lowest whole number. If the result is less than 50, the organization will not be a large employer for the next calendar year. If the result is 50 or more, the organization will be a large employer.[1]

CALCULATING FTES: To calculate the number of FTEs for each calendar month for the previous calendar year, add the total number of hours of service for each month for all employees who are not full-time employees; for any one employee, do not count hours worked over 120 for the month. Then, divide by 120. Take fractions into account.[2]

CALCULATING FTES EXAMPLE: XYZ CAA receives CSBG and Head Start funding. XYZ CAA has 60 employees in calendar year 2013. Of these employees:

- 20 work full-time all year;
- 25 work full-time in the CAA's Head Start program for 10 months of the year, do not work in July or August and are not entitled to paid leave for that time;
- 10 work part-time (an average of 80 hours of service per month) in the Head Start program for 10 months, do not work in July or August, and are not entitled to paid leave during those months; and
- 5 work an average of 125 hours per month in the CAA's CSBG program all year.

To determine whether it will be a large employer for 2014, XYZ first calculates the number of FTEs for each calendar month of 2013. XYZ CAA does not count any hours of service in July or August for the part-time Head Start employees who do not work in those months and are not entitled to paid leave during that time. For each of the five employees who work an average of 125 hours per month, XYZ CAA only counts 120 hours of service per employee per month and disregards the additional 5 hours per employee per month. This chart illustrates the FTE calculation:

FTE Calculation for XYZ CAA for 2013												
	Jan	**Feb**	**Mar**	**Apr**	**May**	**June**	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**
10 EEs who work 80 hours/month for 10 months	800	800	800	800	800	800	---	---	800	800	800	800
5 EEs who work 125/hours month all year *(don't count hours over 120)*	600	600	600	600	600	600	600	600	600	600	600	600
Total hours of service/month	1,400	1,400	1,400	1,400	1,400	1,400	600	600	1,400	1,400	1,400	1,400
Divided by 120 = # of FTEs/month	**11.67**	**11.67**	**11.67**	**11.67**	**11.67**	**11.67**	**5**	**5**	**11.67**	**11.67**	**11.67**	**11.67**

CALCULATING FTES EXAMPLE CONTINUED:

Next, XYZ CAA adds the number of full-time employees for each calendar month in 2013 to the number of FTEs for that month, then adds the totals for all 12 months together and divides by 12 to determine whether it will be a large employer, and thus subject to the "play or pay" rules for 2014.

Determination of Large Employer Status for XYZ CAA for 2014 *(based on # of EEs from 2013)*	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
20 EEs full-time all year	20	20	20	20	20	20	20	20	20	20	20	20
25 EEs full-time 10 months	25	25	25	25	25	25	---	---	25	25	25	25
FTEs	11.67	11.67	11.67	11.67	11.67	11.67	5	5	11.67	11.67	11.67	11.67
Total # of EEs per month	**56.67**	**56.67**	**56.67**	**56.67**	**56.67**	**56.67**	**25**	**25**	**56.67**	**56.67**	**56.67**	**56.67**

Total # of EEs = 616.7
The total number of employees, 616.7, is then divided by 12. The result is 51.39 which is rounded down to the next lowest whole number, 51. Since 51 is more than 50, XYZ CAA is a large employer subject to the "pay or play" mandate for 2014.

TRANSITION RULE FOR 2014:

Because employers who may be subject to the pay or play rules will need time to prepare for compliance, there is a special rule for purposes of determining whether an organization will be a large employer for 2014. Instead of basing its calculation on the full 2013 calendar year, an employer may choose a period of at least six consecutive months in 2013 on which to base its calculation.[3]

TRANSITION RULE EXAMPLE:

To determine whether it will be a large employer in 2014, XYZ CAA decides to use the six-month period March – August 2013 to perform its calculation. Using this method, XYZ CAA will not be a large employer for 2014.

Determination of Large Employer Status for XYZ CAA for 2014 *(based on # of EEs from Mar. – Aug. 2013)*	Mar	Apr	May	June	July	Aug
20 EEs full-time all year	20	20	20	20	20	20
25 EEs full-time 10 months	25	25	25	25	---	---
FTEs	11.67	11.67	11.67	11.67	5	5
Total # of EEs per month	**56.67**	**56.67**	**56.67**	**56.67**	**25**	**25**

Total # of EEs = 276.8
The total number of employees, 276.8, is divided by 6. The result equals 46.11 which, when rounded down to the next lowest whole number, 46, is less than 50. This lower number is due to the closure of XYZ CAA's Head Start program during two months of the six-month period chosen by XYZ CAA to perform its calculation.

SEASONAL EMPLOYEE EXCEPTION:

There is an exception for employers that exceed the 50-employee threshold due to seasonal workers. An employer will not be considered to be a large employer for a particular calendar year if, in the previous calendar year: (1) its workforce exceeded 50 full-time employees and FTEs for a period of no more than 120 days or four calendar months (which need not be consecutive); and (2) the employees in excess of 50 were seasonal workers. An employer may apply a reasonable, good-faith definition of the term "seasonal worker."[4] One example of seasonal workers might be participants in a summer youth employment program.

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if it is part of a controlled group, it will be considered a large employer if all the entities in the controlled group together have 50 or more employees and full-time equivalent employees (FTEs). 78 Fed. Reg. 218, 241 (to be codified at 26 C.F.R. § 54.4980H-1(a)(14)).

5. Note that the term "dependent" is defined to mean an employee's child who has not reached age 26. An employee's spouse is not a dependent. 78 Fed. Reg. 218, 241 (to be codified at 26 C.F.R. § 54.4980H-1(a)(11)).

6. 26 U.S.C. § 5000A(f).

7. 26 U.S.C. § 36B(c)(2)(C)(ii).

8. 45 C.F.R. 156.145(a)(1)-(3).

9. Actuarial Value and Employer-Sponsored Insurance, ASPE Research Brief, U.S. Department of Health and Human Services (November 2011) (visited May 21, 2013) http://aspe.hhs.gov/health/reports/2011/AV-ESI/rb.shtml.

10. 26 U.S.C. § 36B(c)(2)(C)(i).

11. 78 Fed. Reg. 218, 252 (to be codified at 26 C.F.R. § 54.4980H-5(e)(2).

12. 78 Fed. Reg. 218, 236.

13. Id.

14. 26 U.S.C. § 4980H(a) and 78 Fed. Reg. 218, 250 (to be codified at 26 C.F.R. § 54.4980H-4).

15. 26 U.S.C. § 4980H(b) and 78 Fed. Reg. 218, 250 (to be codified at 26 C.F.R. § 54.4980H-5).

16. 78 Fed. Reg. 218, 250 (to be codified at 26 C.F.R. § 54.4980H-1(a)(22), (39) and (40) and -3(c)-(e)).

17. 42 U.S.C. §§ 18031 and 18041. Establishing Health Insurance Marketplaces: An Overview of State Efforts (The Henry J. Kaiser Family Foundation, May 2, 2013) (visited May 21, 2013) http://kff.org/health-reform/issue-brief/establishing-health-insurance-exchanges-an-overview-of/.

18. 26 U.S.C. § 36B(a) and (c); 26 U.S.C. § 5000A(f)(1)(A)(ii); and 42 U.S.C. § 18071(b).

19. Affordable Insurance Exchanges: Choices, Competition and Clout for Small Businesses (Healthcare.gov, visited May 21, 2013) http://www.healthcare.gov/news/factsheets/2011/07/exchanges07112011c.html. 42 U.S.C. §§ 18031 and 18041.

20. See 26 U.S.C. § 4980H(d); 78 Fed. Reg. 218, 231; and Internal Revenue Service, Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, Q&A 16 (Dec. 28, 2012) (visited May 21, 2013) http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act.

21. 26 U.S.C. §§ 6055-6056.

22. See 45 C.F.R. § 155.410(b).

23. 2 C.F.R. Part 230, App. B, ¶8.g. (OMB Circular A-122, which applies to nonprofit grantees); see similar provision in 2 C.F.R. Part 225, App. B, ¶8.d. (OMB Circular A-87, which applies to state and local governmental grantees).

24. 2 CFR Part 230, App. B, ¶16 (OMB Circular A-122, which applies to nonprofit grantees); see similar provision in 2 CFR Part 225, App. B, ¶16 (OMB A-87, which applies to state and local government grantees).

25. 2 CFR Part 230, ¶47a (OMB Circular A-122, applies to nonprofits); see also 2 CFR Part 225, App. B, ¶40 (OMB Circular A-87, applies to state and local governments).

26. 2 C.F.R. Part 230, App. A.3.; 2 C.F.R. Part 225, App. A.3.

Determining Whether Your Organization is a Large Employer

1. 78 Fed. Reg. 218, 242 (to be codified at 26 C.F.R. § 54.4980H-2(b)(1)).

2. 78 Fed. Reg. 218, 243 (to be codified at 26 C.F.R. § 54.4980H-2(c)).

3. 78 Fed. Reg. 218, 238.

4. 78 Fed. Reg. 218, 243 (to be codified at 26 C.F.R. § 54.4980H-1(a)(34) and -2(b)(2)).

Disallowance for Costs Extending Beyond Budget Period Upheld

1. 45 C.F.R. §§ 74.26(a); 74.27(a).

2. 2 C.F.R. Part 230, Appendix A, A.2.a.

3. 2 C.F.R. Part 230, Appendix A, A.4.a.

4. 2 C.F.R. Part 230, Appendix A, A.4.b.

5. 2 C.F.R. Part 230, Appendix A, A.2.g, A.4.a.

6. 45 C.F.R. § 74.28.

7. 45 C.F.R. § 74.21(b)(2), (b)(7).

8. 45 C.F.R. § 74.2