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# Employer Penalty Guidance

Late Friday afternoon, the IRS released proposed regulations on the calculation and determination of the employer penalty provisions of the Affordable Care Act. In general, these provisions impose a monetary penalty on certain employers who do not provide a minimum level of health coverage to their full-time employees. The proposed regulations are lengthy, but include a number of interesting surprises, including the following:

- The employer penalty provisions require coverage for both full-time employees and their dependents (children up to age 26, but not spouses).
- All employers in a controlled group are aggregated together to determine whether an employer is subject to the penalty. But, once an employer is subject to the penalty, the calculation of the penalty is applied separately to each member of the controlled group. Therefore, one member's failure will not affect other members of the group.
- Penalties do not apply if an employer is in substantial compliance with the requirements. For this purpose, the IRS proposes to adopt an exception for up to 5% of an employer's full-time employees.

The employer penalty proposed regulations and the determination of a full-time employee will be a watershed event for many employers. To discuss these issues, the team will have a special one-hour teleconference on Thursday, January 31, 2013 at 2:00 p.m. ET. Please save the date for this special event. We will be sending a formal invite next week.