FREQUENTLY ASKED QUESTIONS (FAQ) ABOUT THE ACA:

Full implementation of the Patient Protection and Affordable Care Act (ACA) is less than a year away. Regulations impacting school districts have been issued and more are likely. The ACA requires "large employers" to provide "affordable" health coverage of "minimum value" to "full time employees" and their dependents. Effective January 1, 2014, large employers who fail to provide such coverage to all of their full time employees and their dependents may be subject to "shared responsibility" monetary penalties. These penalties will be triggered whenever the full time employee (or his or her dependent) of a large employer qualifies for and uses a tax subsidy or credit to purchase coverage on a health care exchange. What does this mean for school districts? The following FAQ are intended as a guide to help school districts maneuver through the complexities of the ACA. The primary sources used for these FAQ are the December 28, 2012 IRS "Questions and Answers on Employer Shared Responsibility Provisions under the Affordable Care Act" and the May 14, 2010 Congressional Research Service's "Summary of Potential Employer Penalties Under the Patient Protection and Affordable Care Act (PPACA)." These FAQ will be updated as additional issues arise, as further guidance becomes available or as further regulations are issued.

Q1: What is the ACA?

A1: The ACA is new legislation that was signed into law on March 23, 2010 by President Obama. It is set to take effect on January 1, 2014, and will mandate that practically every individual be required to obtain adequate healthcare coverage or pay a penalty. Large employers will be responsible for offering affordable healthcare coverage to their full-time employees or pay a penalty.

Q2: Does the ACA affect my school district?

A2: More than likely, yes. The legislation states that any employer with at least 50 full-time employees in the preceding calendar year will be designated as a "large employer," and will be subject to the employee shared responsibilities.

Q3: How should a school district determine whether it is a "large employer?"

A3: An employee is considered to be full-time if they average at least 30 hours per week during a calendar month. This may require that you offer substitute teachers the same affordable healthcare coverage if they meet the average of 30 hours per week during a calendar month. An easy way for school districts to determine if they are a "large employer" is to determine if the total hours worked by all employees for a year is equal to or greater than the total hours of 50 full time employees. As an example, this number could hypothetically be calculated by taking an average of 180 days in a school year multiplied by 6 hours a day (the equivalent of 30 hours per week) multiplied by 50 employees resulting in the aggregate annual total hours of 54,000 hours. In this example, if the hypothetical school district's aggregate annual hours are 54,000 or greater, that school district would be a "large employer" for purposes of ACA.

Q4: How does a school district determine how many actual "full time employees" are employed?

A4: A "full time employee" is defined as any employee who is working an average of 30 or more hours per week.

Q5: Will the 50 full-time employee threshold be modified to reflect that many school employees only work 9-10 months out of the year?

A5: No. According to the latest regulations issued by the Treasury Department and Internal Revenue Service, nine to ten month employees of school districts are treated as full time employees for purposes of the ACA. The proposed regulations provide educational institutions with an averaging method for employment break periods. This would result in an employee who works full-time during the active portions of the academic year being treated as a full-time employee. The public hearing scheduled for these new regulations is April 23, 2013. These regulations may also be significant for substitute teachers. It means you most likely cannot use the summer months when substitutes don't work to lower a substitute's average below full-time status. Also, you cannot consider a substitute teacher as a temporary or seasonal employee based on short breaks in their substitute assignments. The proposed regulations make it clear that employees who work for an education organization with "employment break periods" do not count as seasonal employees. Therefore, in all likelihood, since most school districts employ more than 50 "full time employees," districts will be subject to ACA's penalties.

Q6: What should a school district do now regarding day-to-day substitute teacher hours?

A6: Although the ACA doesn't go into effect until January 2014, the look-back measurement period makes 2013 important. Come January 2014, a school district will need to look back 3-12 months into 2013 to average out its employees' (including substitutes) hours and determine if they're eligible for benefits. Steps should be taken now to limit day-to-day substitute teachers to less than an average of 30 hours per week.

Q7: What constitutes "minimum essential coverage?"

A7: Once a school district determines that it does have more than 50 "full time employees" and is a "large employer" for purposes of the ACA, the next question is "what constitutes minimum essential coverage." Examples of health insurance coverages which satisfy the "minimal essential coverage" requirements of the ACA include: coverage under government sponsored plans; employer sponsored plans; plans in the individual market; grandfathered health plans; and any other health benefits coverage, such as a state health benefits risk pools, as recognized by the Secretary of Health and Human Services.

Q8: What are Essential Health Benefits?

A8: Under the ACA, all insurance sold on the Exchange as well as in the individual and small group markets outside of the Exchange must cover certain basic services known as Essential Health Benefits.

Essential Health Benefits must include services in ten categories:

1. Ambulatory patient services
2. Emergency services
3. Hospitalization
4. Maternity and newborn care
5. Mental health and substance use disorder services, including behavioral health treatment
6. Prescription drugs
7. Rehabilitative and habilitative services and devices
8. Laboratory services
9. Preventive and wellness services and chronic disease management, and
10. Pediatric services, including oral and vision care.

For the first two years of Exchange operation (2014 and 2015), each state will have its own set of Essential Health Benefits, a specific "benchmark" plan chosen by the state, selected from plans offered in the state during the first quarter of 2012.

Q9: Is a school district required by law to offer health insurance coverage to its employees?

A9: No. However, beginning in 2014, large employers who do not offer "minimum essential coverage" will be subject to penalties if any of their employees receive government subsidies for health insurance coverage through an exchange. Penalties under ACA only accrue with regard to those employees actually working an average of 30 or more hours per week. To make an informed decision, school districts must weigh the cost of providing health coverage against the monetary cost of the potential penalties. Depending upon the circumstances, the cost to provide health coverage may exceed the penalties which might be assessed.

Q10: What are the penalties for school districts that are not considered large employers?

A10: None.

Q11: What are the market choices for small school districts (i.e., those school districts with 50 or less full-time employees in 2014)?

A11: Beginning in 2014, if small school districts buy health insurance from an insurance carrier, they will be able to purchase insurance from the SHOP (Small Business Health Options Program) Exchange or directly from the carrier. Insurance carriers are required to establish a single pool for all small groups and can only rate for family size, age, geography and tobacco.

Q12: How can a school district determine which types of employees could trigger a penalty if the employee receives a premium credit.

A12: The Table below helps determine the potential application of the employer penalty for certain categories of employees. The Table is derived from the *Congressional Research Service, Summary of Potential Employer Penalties Under the Patient Protection and Affordable Care Act (PPACA); CRS Analysis of P.L. 111-148 and P.L. 111-152.*

Employee Category	How is this category of employee used to determine "large employer"?	Once an employer is determined to be a "large employer," could the employer be subject to a penalty if this type of employee received a premium credit?
Full-time	Counted as 1 employee based on a 30-hour or more work week	Yes
Part-time	Prorated (calculated by taking the hours worked by part-time employees in a month divided by 120)	No
Seasonal	Not counted, for those working less than 120 days in a year	Yes, for the month in which a seasonal worker is full-time

Q13: What are the penalties for large employers not offering health insurance coverage to the greater of 5% of its full time employees (and their dependents) or at least 5 of its full-time employees (and their dependents)?

A13: Beginning in 2014, a large employer not offering health insurance in accordance with the 5%/5 standard in this question will be subject to a penalty if any of its full-time employees receives a premium credit toward their exchange plan. In 2014, the monthly penalty assessed to employers who do not offer coverage will be equal to the number of full-time employees minus 30 multiplied by 1/12th of $2,000 for any applicable month. If no full-time employee receives credits for exchange coverage, no penalty is assessed. After 2014, the penalty payment will be increased. Following are examples which help to better understand this criteria:

Example 1: If a school district has 50 full-time employees (those working 30+ hours per week) and does not offer health insurance coverage to its employees under the 5%/5 standard and if 1 or more employees received premium credit from the exchange, the school district's annual penalty in 2014 would be (50-30) x $2,000 or $40,000.

Example 2: If a school district had 100 part-time employees (15 hours per week) and 30 full-time workers (30+ hours per week), constituting 80 full-time equivalent employees, and does not offer health insurance coverage to its employees under the 5%/5 standard, if 1 or more employees received a premium credit from the exchange, the penalty is assessed against the number of full-time employees only, i.e., (30-30) x $2,000 = 0.

Q14: What are the penalties for large employers offering health insurance coverage to their employees?

A14: If your district offers coverage and none of your full-time employees receive a credit for exchange coverage, no penalty is assessed.

If your school district offers health insurance coverage and at least 1 full-time employee obtains a premium credit in an exchange because either or both of the following conditions exist, the school district will be subjected to penalties:

- The plan offered by the school district pays for less than 60% of covered expenses; and/or
- The employee's required contribution for self-only coverage exceeds 9.5% of the employee's household income (note the affordability safe harbor requires reference to the employee's W-2 Box 1).

In 2014, the monthly penalty assessed to the school district for each full-time employee who receives a premium credit will be 1/12th of $3,000 for any applicable month. However, the total penalty for an employer would be limited to the total number of the school district's full-time employees minus 30, multiplied by 1/12th of $2,000 for any applicable month. After 2014, the penalty payment will be increased. The annual penalty for a school district is the lesser of the following:

- The number of full-time employees minus 30 x $2,000; or
- The number of full-time employees who actually receive credits for exchange coverage multiplied by $3,000.

Example 1: If a school district has 50 full-time employees and offers coverage and 10 full-time employees receive a premium credit, the annual penalty would be $30,000. 10 x $3,000 = $30,000 rather than (50-30) x $2,000 = $40,000].

Example 2: If a school district has 50 full-time employees and offers coverage and 30 full-time employees receive a premium credit, the annual penalty would be $40,000 because you would take the lesser of:

(50-30) x $2,000 = $40,000

30 x $3,000 = $90,000

Those school districts with more than 200 full-time equivalent employees that offer coverage must automatically enroll new full-time employees in a plan and continue enrollment of current employees. Automatic enrollment programs will be required to include adequate notice and the opportunity for an employee to opt out.

The following table is derived from the *Congressional Research Service, Summary of Potential Employer Penalties Under the Patient Protection and Affordable Care Act (PPACA)*; *CRS Analysis of P.L. 111-148 and P.L. 111-152* and addresses the potential annual penalties beginning in 2014 for Large Employers.

No Coverage Offered to the greater of 5% or 5 full-time employees and their dependents		**Coverage Offered**	
No full-time employees receive credits for exchange coverage	**1 or more full-time employees receive credits for exchange coverage**	**No full-time employees receive credits for exchange coverage**	**1 or more full-time employees receive credits for exchange coverage**
No penalty	# of full-time employees – 30 x $2000 *Note: Penalty is 0 if employer has 30 or fewer full-time employees.*	No penalty	Lesser of: (1) # of full-time employees -30 x $2,000; (2) # of full-time employees who receive credits for exchange coverage x $3,000 *Note: Penalty is 0 if employer has 30 or fewer full-time employees.*

Q15: What is meant by the Affordability Safe Harbor?

A15: Through at least the end of 2014, for purposes of the employer penalty, affordability is determined based on the employee's Form W-2 wages [i.e., the employer will not owe a penalty if the cost to the employee does not exceed 9.5% of the employee's Form W-2 wages and the plan provides minimum value (i.e., the plan's share of costs of benefits is at least 60%)]. If an employee is part of a two-income family and the employee and his or her spouse earns $20,000 each, the law would consider a plan to be unaffordable if it required an annual contribution in excess of $3,800 for self-only coverage. The problem is, the law does not afford an employer any right to know what the employee's household income is, leaving the employer to rely on the affordability safe harbor to ensure against a penalty. In doing so, however, an employer would have to ensure that the employee's contribution for self-only coverage is no more than $1,900 (9.5% of $20,000). This "safe" harbor has the effect of requiring an employer to substantially increase its contribution to health insurance coverage over what is required by the law if it wants to be certain to avoid a penalty for failing to provide "affordable" coverage. With the Congressional Budget Office estimating the annual cost of coverage under a Plan that is structured to provide for 60% of the benefits cost, to be $5,000 annually, an employer using the affordability safe harbor would have to make an annual contribution for health insurance coverage in the following amounts for full-time employees who are compensated in the amounts listed below:

Hourly Wage of Employee	Annual Salary at 6 hours per day, 5 days per week, 187 days per year	9/5% of employee's salary	Plan providing 60% of benefit cost	Employer's contribution needed to avoid a penalty of $3,000 for each applicable employee
$7.80	$8,751.60	$831.40	$5,000.00	$4,168.60
$10.00	$11,220.00	$1,065.90	$5,000.00	$3,934.10
$12.00	$13,464.00	$1,279.08	$5,000.00	$3,720.92
$15.00	$16,830.00	$1,598.85	$5,000.00	$3,401.15
$18.00	$20,196.00	$1,918.62	$5,000.00	$3,081.38
$18.76	$21,052.63	$2,000.00	$5,000.00	$3,000.00

In the above chart, the "break even" point using the affordability safe harbor, where the employer's contribution would be no more than the penalty, would be for anyone making $21,052.63 per year or less. The bottom line is that the most likely affordable option will be to not provide any contribution and then budget a $3,000 penalty for all employees making $21,052.63 or less per year.

Q16: What is Transition Relief and under what circumstances is it available?

A16: Transition relief is available for a school district that as of December 27, 2012, already offered health insurance coverage through a plan that operates on a fiscal basis. For those districts, the following transitional relief applies:

- Starting in 2014, you will not be subject to potential penalties until the first day of the fiscal year plan;
- If the fiscal year plan was offered to at least 1/3 of the employees (both full-time and part-time) at the most recent open season or the fiscal year plan covered at least ¼ of the employees (using any day between October 31, 2012 and December 27, 2012), the school district will not be subject to penalties with respect to any fulltime employee until the 1st day of the fiscal plan year starting in 2014, provided the full-time employees are offered affordable coverage that provides minimum value no later than that first day.

Example: If, during the most recent open season preceding December 27, 2012, your school district offered coverage under a fiscal year plan with a plan year starting on July 1, 2013 to at least 1/3 of your employees, the school district will avoid liability for a payment if, by July 1, 2014, it expands the plan to offer coverage satisfying the Employer Shared Responsibility provisions (discussed above) to the full-time employees who had not been offered coverage.

Q17: Is Transition Relief available to help employers to determine their options for 2014?

A17: Yes. School districts may measure whether it has 50 full-time equivalent employees (as discussed above) using any 6-consecutive month period in 2013.

Q18: What are the reporting requirements for school districts in 2013 and 2014?

A18: Although the ACA provides for the following written notice to current employees (and each newly hired employee thereafter) no later than March 1, 2013, the U.S. Department of Labor has delayed this notification date.

- The existence of an exchange, including services and contact information;

- The employee's potential eligibility for premium credits and cost-sharing subsidies if the employer plan's share of covered health care expenses is less than 60%; and
- The employee's potential loss of any employer contribution if the employee purchases a plan through the exchange and is not eligible for a free choice voucher. *PPACA §1512.*

It is our understanding that model notices are being developed at this time and further guidance will be available in the near future.

Starting in 2014, large employers will be required to comply with certain reporting requirements with respect to their full-time employees. These reporting requirements will include:

- Providing a return including the name, address and employer identification number;
- Certification as to whether the employer offers its full-time employees (and dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan;
- Length in any waiting period;
- Months coverage was available;
- Monthly premiums for the lowest-cost option
- The employer plan's share of covered health care expenses
- The number of full-time employees
- The Tax identification number of each full-time employee
- Information about the plan for which the employer pays the largest portion of the costs (and the amount for each enrollment category);
- Contact information for the person required to make the return; and
- Specific information included in the return for that individual. PPACA§1502.

It is our understanding that model notices are being developed at this time.

Q19: How does the ACA impact health insurance plans that are collectively bargained?

A19: Special rules apply to health insurance offered under plans maintained pursuant to a collective bargaining agreement. If health insurance coverage is provided pursuant to a collective bargaining agreement ratified before March 23, 2010, the coverage is grandfathered until the last agreement relating to the coverage that was in effect on March 23, 2010 terminates. The special rules are not applicable to any collective bargaining agreement that was in place on or before March 23, 2010 and has been renegotiated.