



## ***FMI Supermarket Industry Background on Impact of Affordable Care Act (ACA)***

### **Supermarket Industry Impact**

The Food Marketing Institute (FMI) represents the supermarket industry, consisting of food retailers and wholesalers who employ 3.4 million people, many operating under variable work schedules and lengths of service. Since the supermarket industry operates at a one-percent margin, on average, health coverage and compliance costs impact grocery store operations, prices and customer service but also the ability to offer flexible health coverage and work options to supermarket employees.

### **Background**

The Affordable Care Act (ACA; PL 111-148) has imposed several new requirements impacting how food retailers and wholesalers offer health coverage benefits, the structure of the supermarket industry workforce, and several aspects of supermarket retail operations, including pharmacies, over-the-counter medicines, and even fresh food offerings.

The ACA requires “large employers” (50+ full-time equivalents) to offer health coverage to full-time employees (averaging 30 hours/week) and that employer-offered coverage must be “affordable” (not cost the employee more than 9.5% of household income) and provide a “minimum value” of at least 60% of the average benefit costs covered or face a tax penalty. The ACA mandates coverage of no-cost preventive care services and prohibits annual or lifetime benefit limits, prohibits denial of coverage based on “pre-existing conditions” and prohibits waiting periods longer than 90 days, including for plans voluntarily offered to part-time employees. The ACA has imposed several fees on employers who offer health coverage, restricts the use of Flexible Spending Account (FSA) debit cards for over-the-counter medicines without a prescription, and mandated chain-restaurant “menu labeling” on grocery stores.

### **FMI Engagement on the Affordable Care Act**

FMI actively engaged the Obama Administration to secure extended ACA implementation for employers until 2015, as well as to provide flexibility within several employer coverage requirements, including establishment of measurement periods for variable-hour workers and some predictable options for employers to certify that health coverage meets the ACA’s employee affordability and benefits value requirements. Most of these requirements became effective January 1, 2015, and employers were required to begin filing reports to IRS in 2016.

- ***Determining employee eligibility for coverage:*** On February 10, 2014, the Treasury Department released the ACA’s “Shared Responsibility for Employers” Final Rule ([79 FR 8543](#)) allowing employers to use a look-back “measurement period of up to 12 months to determine whether new variable-hour employees or seasonal employees are full-time employees” followed by a “stabilization period” that maintains coverage for a length of time that matches the look-back period used.
- ***90-Day Waiting Period Limitation:*** On February 24, 2014, the Treasury Department published a Final Rule ([79 FR 10295](#)) implementing ACA’s 90-day waiting period limit. The Rule clarifies that the waiting period begins after an employee is considered eligible for coverage but no longer than 13 months from the date of hire. In addition, the Rule provides guidance for employers voluntarily offering coverage to part-time employees by allowing eligibility conditions such as 1,200 cumulative hours of service. A “reasonable and [bona-fide employment-based orientation period](#) of up to one month may be used as a condition of eligibility under the plan.”

- **Coverage Affordability Requirement:** The ACA’s “Shared Responsibility for Employers” Final Rule ([79 FR 8543](#)) provides guidance to comply with ACA’s “affordability” requirements and an affordability test safe-harbor for employers who can demonstrate that their lowest cost self-only coverage offered to employees does not exceed 9.5 percent of an employee’s wages. Penalty enforcement would still be based on whether an employee’s premium share exceeds 9.5 percent of household income, as required in the ACA.
- **Coverage Minimum Value Requirement:** HHS issued final regulations ([78 FR 12833](#)) for certifying that employer-sponsored coverage meets a “minimum value” of 60% of out-of-pocket costs through a calculator and for non-standard plans, allowed “designed-based” safe-harbors and the ability to use a certified actuary.
- **Mandatory Employee Auto-enrollment:** Sec. 1511 of ACA required employers with more than 200 full-time employees to automatically enroll full-time employees in health coverage (subject to ACA’s 90-day waiting period) even if no election is made by the employee. The Department of Labor concluded (Notice 2012-17) “automatic enrollment guidance will not be ready to take effect by 2014,” indicating auto-enrollment for health coverage is complicated for regulators to implement and for employers to comply. **In October 2015, Sec. 1511 of the ACA, employer mandatory auto-enrollment provision, was repealed as part of the Bipartisan Budget Act of 2015 that was passed by Congress and signed into law by President Obama on Nov. 2, 2015.**
- **Employer Reporting:** On March 6, 2014, the Treasury Department released final rules ([79 FR 13231](#) ; [79 FR 13220](#)) for IRS Code Sec. 6056 to verify “large employer” compliance with ACA’s employer mandates and IRS Code Sec. 6055 for employer and multi-employer self-insured plans and insurers of qualified health plans to verify individuals’ (i.e. employees) eligibility to receive a health care premium tax credit from an Exchange. FMI, as part of the E-FLEX Coalition, has supported voluntary prospective, exceptions-based reporting, and other methods to streamline employer reporting, minimize premium tax credit errors and reduce transmission of sensitive individual data, such as SSNs. Employers were required to submit reporting to IRS in June 2016.

Information for ACA 2017 reporting deadlines is below:

Action	2017 Reporting Due Dates for...		
	Applicable Large Employers – Including Those That Are Self-Insured	Self-insured Employers That Are Not Applicable Large Employers	Coverage Providers – other than Self-Insured Applicable Large Employers*
Provide 1095-B to responsible individuals	Not Applicable**	Mar. 2	Mar. 2
File 1094-B and 1095-B with the IRS	Not Applicable**	Paper: Feb. 28 E-file: Mar. 31*	Paper: Feb. 28 E-file: Mar. 31*
Provide 1095-C to full-time employees	Mar. 2	Not Applicable	Not Applicable
File 1095-C and 1094-C with the IRS	Paper: Feb. 28 E-file: Mar. 31*	Not Applicable	Not Applicable

**FMI Contact:**

**Robert Rosado, Senior Director Food & Health Policy, [rrosado@fmi.org](mailto:rrosado@fmi.org); (202) 220-0642**