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OFFICE OF THE
HEALTH INSURANCE COMMISSIONER
STATE OF RHODE ISLAND

MARKET STABILITY WORKGROUP

Tuesday, May 15, 2018
8:00 – 10:00 a.m.
The Institute for the Study & Practice of Non-Violence

RI Market Stability Workgroup: Eight Week Syllabus

Topic(s) for Discussion	Meeting Date
Meeting 1 Introductions + Setting the Stage	Wednesday, April 18
Meeting 2 What has been accomplished + What is at risk in RI	Wednesday, April 25
Meeting 3 National Survey of State Actions + Considerations	Tuesday, May 1
Meeting 4 Policy Deep Dive: the “carrot” approach	Tuesday, May 8
Meeting 5 **Policy Deep-Dive: the “stick” approach**	**Tuesday, May 15**
Meeting 6 Regroup on Policy Options + Begin Discussion on Recommendations	Tuesday, May 22
Meeting 7 Overview of Factors Influencing Premiums + Moving Toward Final Recommendations	Tuesday, May 29
Meeting 8 Reaching Final Recommendations	Tuesday, June 5

Today's Agenda

Purpose of Today's Meeting

- Cover the components of a shared responsibility requirement and how it would be implemented at the state level
- Cover some data points relating to a shared responsibility requirement
- Assess other policy options aimed at incenting health coverage ("sticks")

Today, we ask that you

- Assess the pro's and con's of these approaches to incentivizing coverage, and be prepared to discuss the best path forward for RI

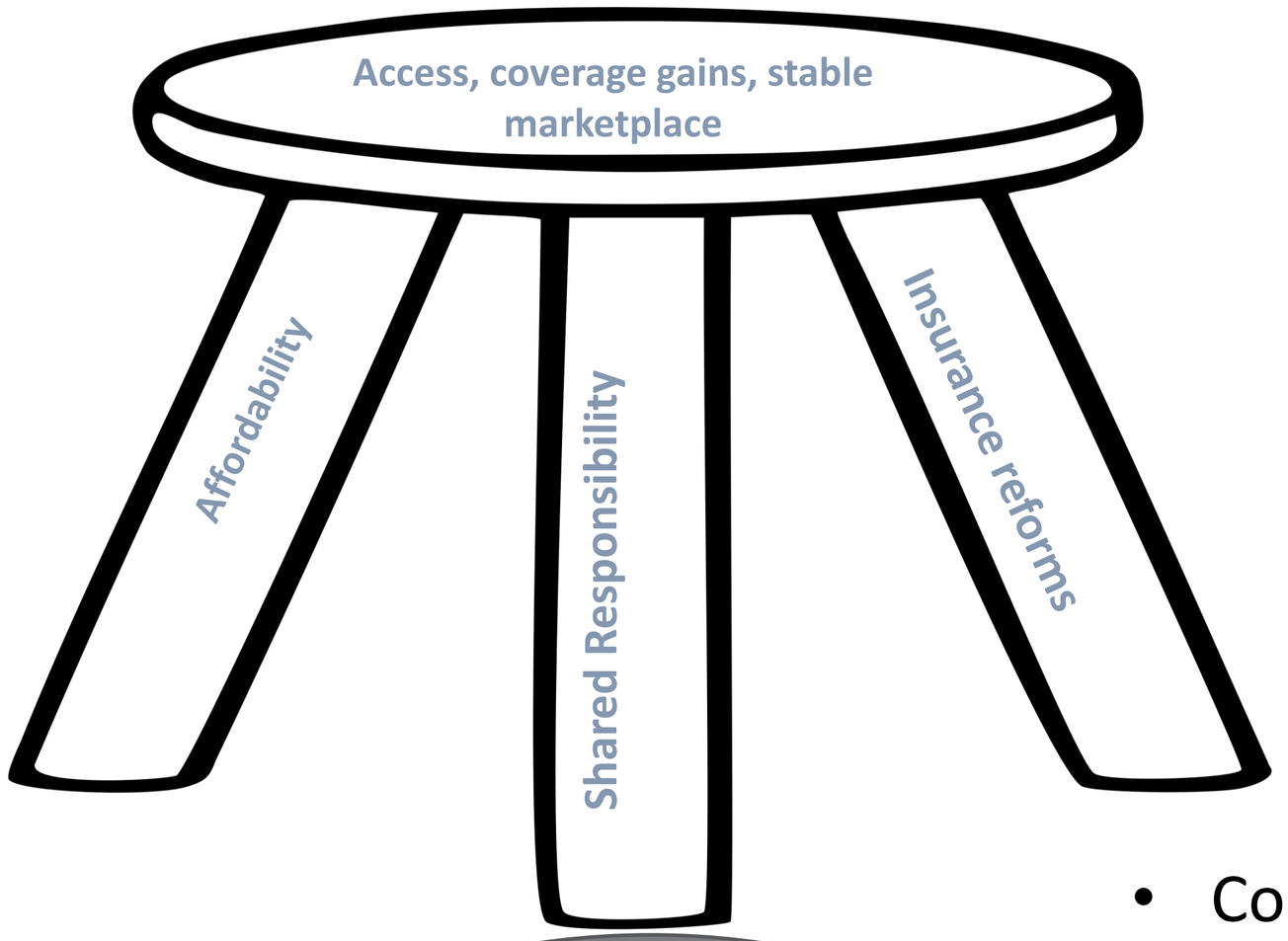
Agenda for Today

- Building a shared responsibility requirement
- State-level shared responsibility requirement considerations
- Other continuous coverage options
- Discussion and Taking Stock – is there a consensus amongst the group?

Addressing Feedback from Previous Sessions

- Backup math for cost of a reinsurance program
- Draft bill language to legislators
- Updated Policy Options
- Timeline Updates
- How today’s discussion fits into Workgroup schedule

Sources of Market Stability: Shared Responsibility



- Reinsurance
- State funded additional premium subsidies
- Coverage Incentive Program

- **State based individual mandate**
- **Continuous coverage requirements, lockouts**

- Consumer protections
- Statutorily ban/create stricter rules for STLD plans
- Limit expansion of AHPs

Considerations for a State Individual Responsibility Provision

Jason Levitis
State Health and Value Strategies

About Jason Levitis:

Jason Levitis is principal at Levitis Strategies LLC, a healthcare consultancy focusing on the Affordable Care Act's tax provisions and state innovation waivers. He provides technical assistance to states in partnership with State Health and Value Strategies. He is also a nonresident fellow at the Brookings Institution and a senior fellow at Yale Law School's Solomon Center for Health Law and Policy. Until January 2017 he led ACA implementation at the U.S. Treasury Department.

About State Health and Value Strategies:

State Health and Value Strategies (SHVS) assists states in their efforts to transform health and health care by providing targeted technical assistance to state officials and agencies. The program is a grantee of the Robert Wood Johnson Foundation, led by staff at Princeton University's Woodrow Wilson School of Public and International Affairs. The program connects states with experts and peers to undertake health care transformation initiatives. By engaging state officials, the program provides lessons learned, highlights successful strategies, and brings together states with experts in the field. Learn more at www.shvs.org.

Questions? Email Heather Howard at heatherh@Princeton.edu.

Review of Reasons to Consider a State Individual Responsibility Provision

- Replaces federal policy: keeps premiums down and enrollment up (next slide)
- Creates outreach opportunities
- Tool for limiting substandard plans
- Favorable fiscal calculus
- Expands 1332 options by improving baseline
- Manageable implementation

Review of Reasons for Federal Individual Responsibility Provision

Status Quo Pre-ACA

- Individual insurance market characterized by practices that disadvantaged people with pre-existing conditions or who incurred large expenses while enrolled
- High rates of uninsured, “free riders”
- Uncompensated care increased prices broadly

Experience with Applying Consumer Protections without Ensuring Broad Coverage

- Adverse selection death spiral: higher premiums, diminished risk pool, fewer choices

Approach in ACA (and Mass. Health Reform)

- Consumer protections paired with coverage incentives (premium subsidy, individual responsibility provision)
- CBO: penalty repeal will reduce coverage by 13M, increase premiums 10%

Potential Approach: Mirror Federal Rules

How It Works:

- Use federal law as baseline and default
- Enact state penalty through "conformity" with federal penalty as of a fixed date (pre-repeal)
- Incorporate federal regulations and guidance as starting point
- Make technical adjustments for state legal and administrative context
- Make policy adjustments as desired to reflect state preferences
- Penalty is administered through state tax system

Potential Approach: Mirror Federal Rules

Why:

- Maximizes continuity and eases compliance amid short implementation timeline
- Simplifies legislative drafting
- Eases implementation (regs, forms, taxpayer education)
- Reduces re-litigation and “winners and losers”
- Readily accommodates specific policy changes

Model legislation reflecting this approach is available at http://shvs.org/resource/model-legislation-for-state-individual-mandate/

Components of Legislation

I. Individual Responsibility Provision

- Definition of qualifying coverage
- Exemptions
- Penalty calculation

II. Reporting Requirement for Certain Coverage Providers

- Federal programs exempted
- Requires only nominal effort on top of Federal reporting

III. Procedures for Granting Certain Exemptions

- Hardship and affordability exemptions may be available prospectively

IV. Notification of Uninsured about Coverage Options

Potential Policy Adjustments

Interaction with Federal Penalty

- Reduce state penalty by any Federal penalty to avert double-payment if reinstated (like Mass.)

Address Substandard Plans

- Options include AHPs, health sharing ministries, grandfathered plans, certain employer coverage

Use Penalty Revenue to Improve Affordability

- Options include state subsidies (like Mass., DC), reinsurance (NJ, DC), individual accounts (Maryland, Conn.)

Change Penalty Amounts and Exemption Rules

Review of Activity in Other States

Massachusetts

- Individual responsibility provision enacted as part of 2007 health reform, remains in effect
- Revenue supports affordability measures

New Jersey

- Legislation modeled on ACA individual responsibility provision passed state legislature, awaiting governor's signature
- Revenue supports reinsurance program

District of Columbia

- Legislation modeled on ACA individual responsibility provision introduced as part of Mayor's Budget, to be considered by City Council in late May
- Revenue supports affordability measures

Vermont

- Conference committee convened to reconcile Assembly- and Sen.-passed versions
- Committee agreed to compromise requiring coverage and appointing working group to recommend penalty effective 2020

Maryland

- Legislation enacted instructing advisory commission to consider individual responsibility provision

Contact Information and Resources

Contact information:

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Model Legislation:

http://shvs.org/resource/model-legislation-for-state-individual-mandate/

STATE-LEVEL SHARED RESPONSIBILITY CONSIDERATIONS

John Cucco
Director of Strategy and SHOP
HealthSource RI

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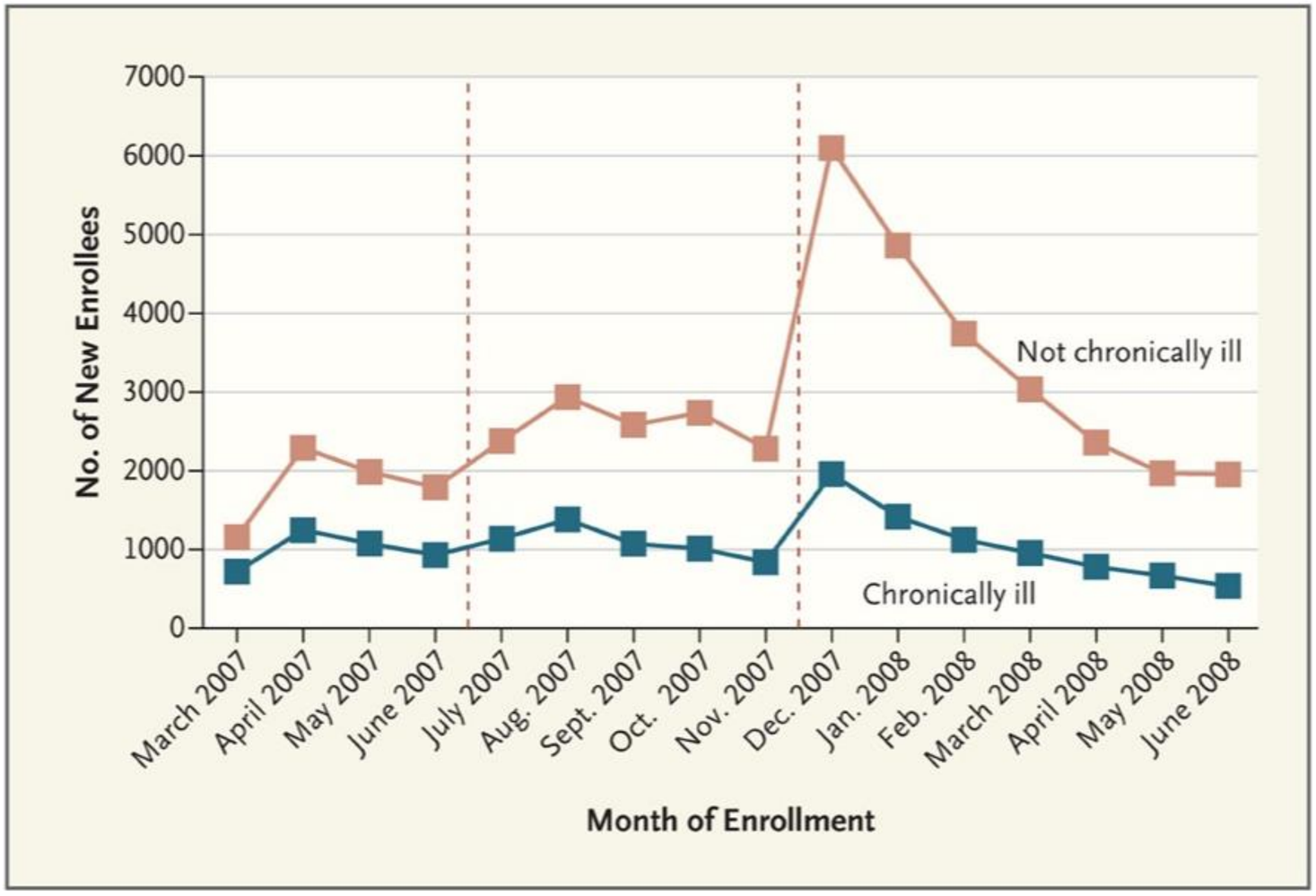
STATE-LEVEL SHARED RESPONSIBILITY CONSIDERATIONS

1. Is a shared responsibility requirement effective in promoting a healthy risk pool?
2. How much revenue would be raised?
3. Who is uninsured? Who is exempt? Who pays the penalty?
4. What is the timeline for a shared responsibility requirement?
5. What are the potential advantages and challenges associated with having a shared responsibility requirement?
6. What are the alternatives to a requirement to buy insurance?

1. EFFECTIVENESS OF THE MANDATE ON HEALTHY ENROLLMENT, MASSACHUSETTS



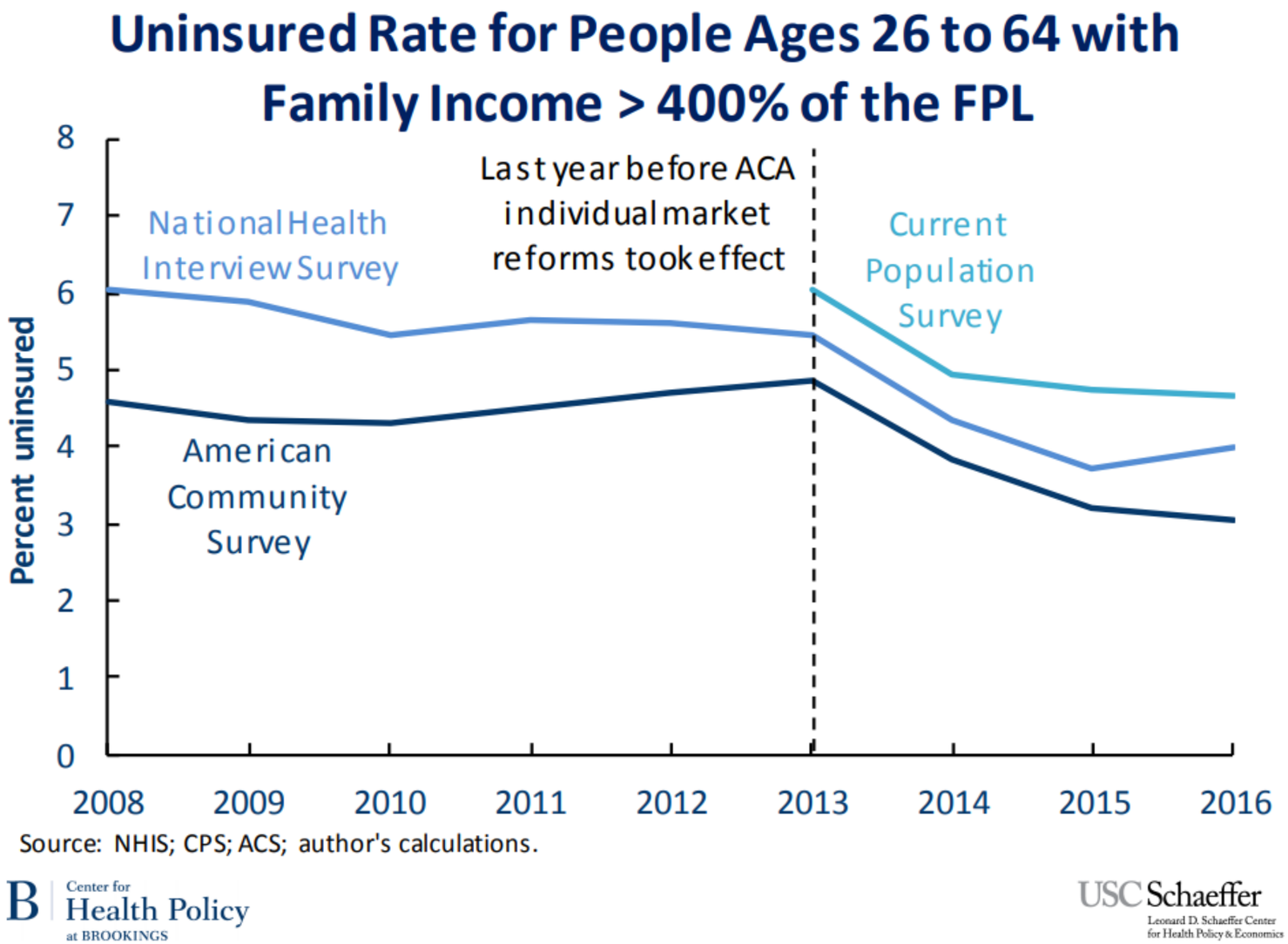
- Phased in separately from subsidies
- Increased enrollment in general
- Significant and disproportionate effect on healthy population
- MA rollout accompanied by messaging campaign

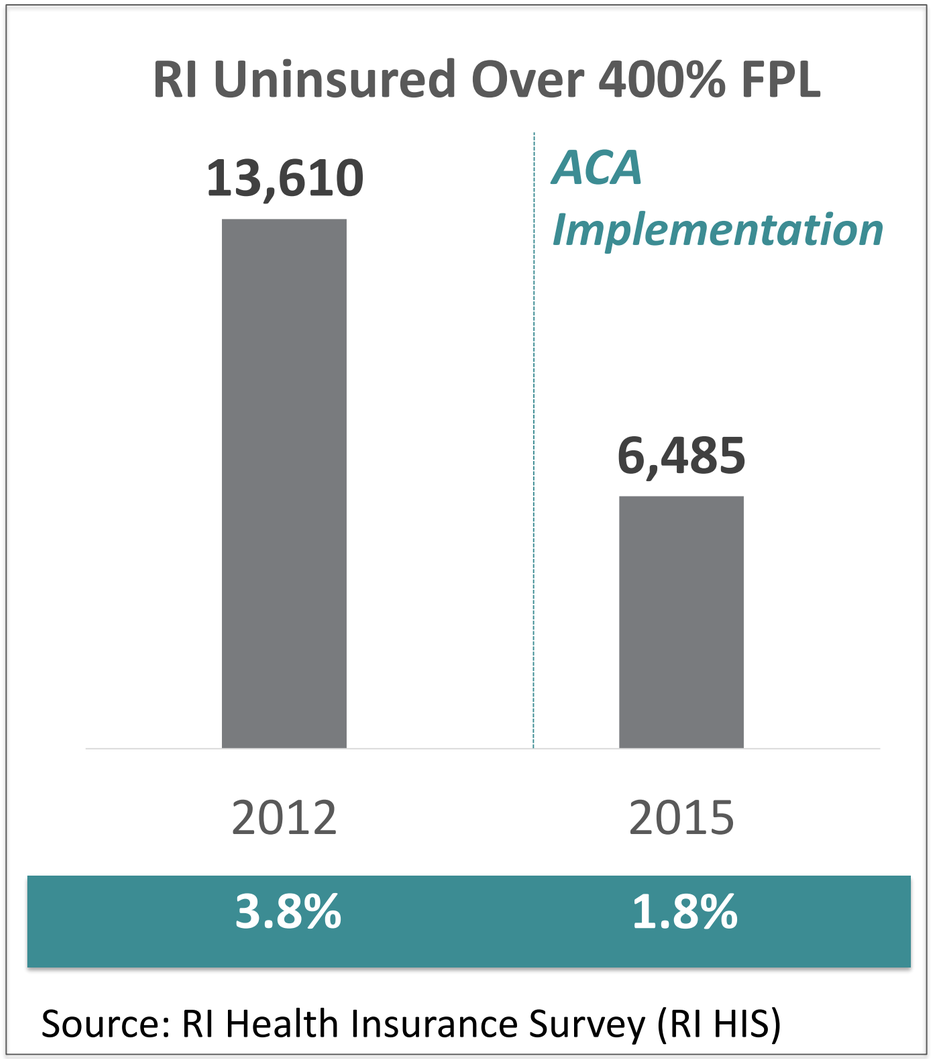
Number of New Enrollees in Commonwealth Care, According to Chronic-Illness Status.

The two vertical dashed lines represent the start of the mandate phase-in period (from July through November 2007) and the start of the period when the mandate became fully operational (from December 2007 onward)

Source: https://www.nejm.org/doi/full/10.1056/NEJMp1013067

1. EFFECTIVENESS OF THE MANDATE, >400% FPL



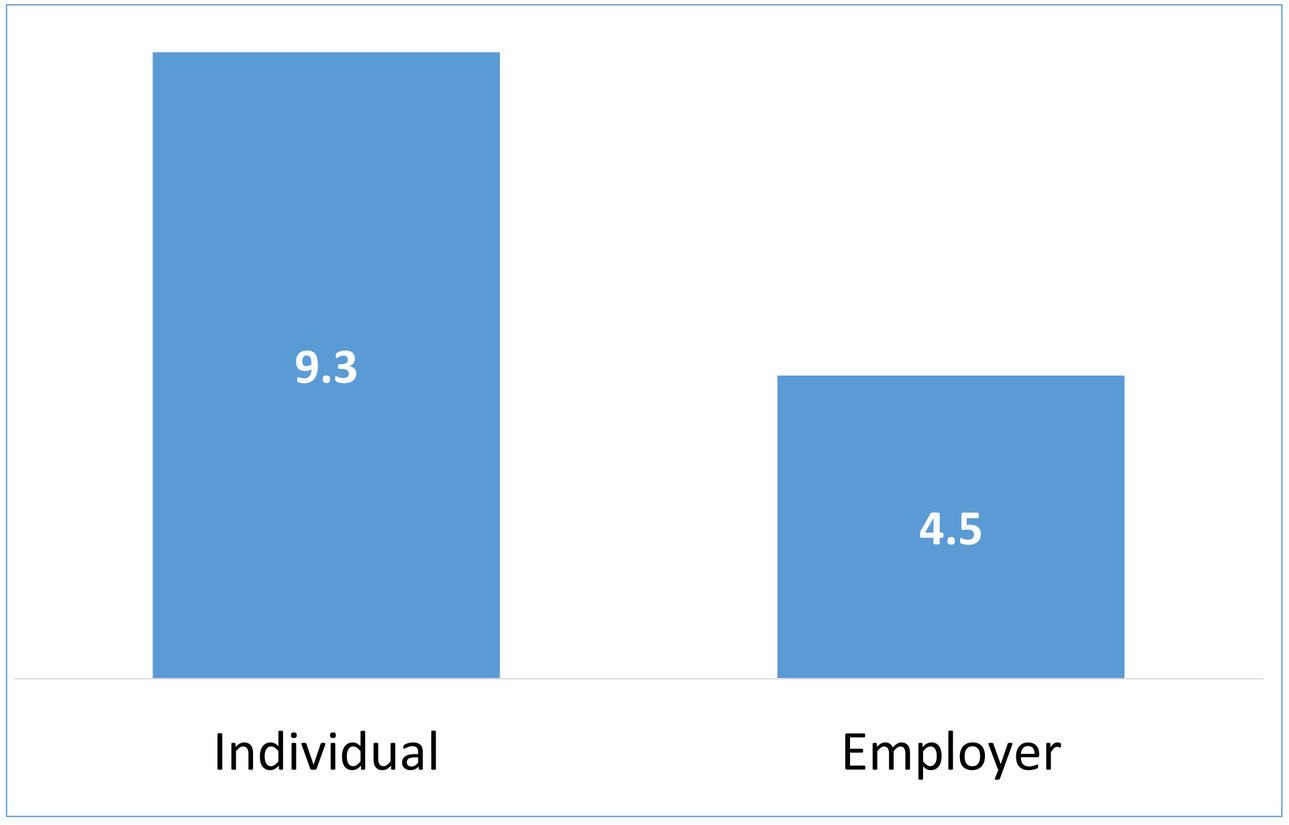


- Unsubsidized population
- Notable drop post-mandate implementation
- Mandate not the only 2014 ACA change

Source: https://www.brookings.edu/wp-content/uploads/2018/02/fiedlerslidesfor030618-for-posting.pdf

1. EFFECTIVENESS OF THE MANDATE, RECENT POLL

Recent Commonwealth Fund Survey (May 2018)
Percent of insured adults ages 19–64 who said they planned to drop coverage after mandate repeal, by coverage type:



- Those most likely to drop coverage are the healthiest enrollees, deteriorating the risk pool
- Employer risk pool may be affected too

Source: First Look at Health Insurance Coverage in 2018 Finds ACA Gains Beginning to Reverse. Commonwealth Fund. May 1, 2018.

2. FEDERAL PENALTY STRUCTURE IN RHODE ISLAND: REVENUE

- IRS likely to release final 2016 tax year data in Aug 2018
- IRS preliminary 2016 data* released for national level
  - Data as of Sept 2017, but projected for full year
  - National count of returns with a payment for tax year 2016 was 28% lower than 2015.
  - RI uninsured dropped by only 12.5% (4.8%--> 4.2%) over same time
  - Total national amount of payments was up 12%. RI may be up by more.
- Applying a 12% growth to RI 2015 data:

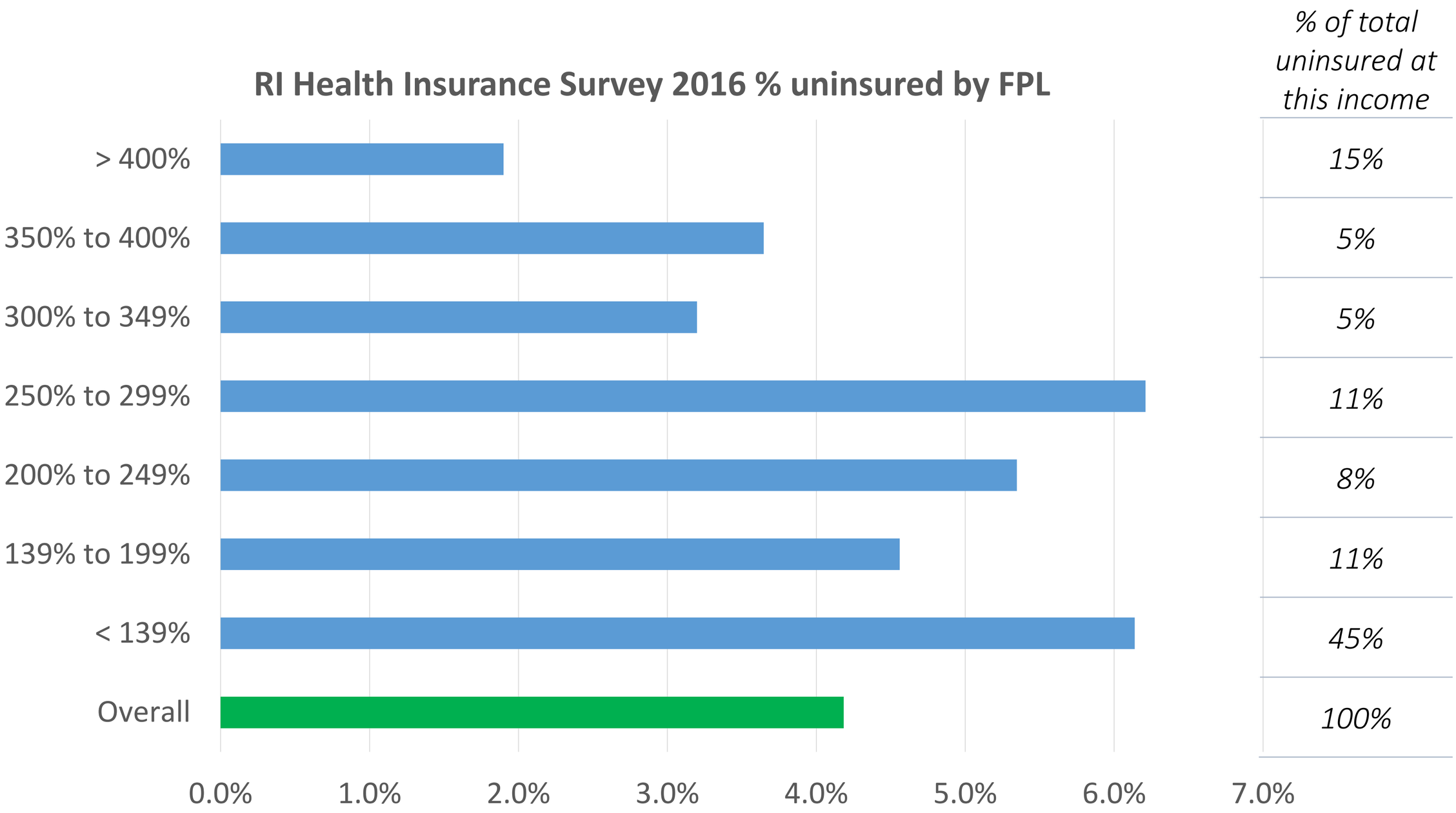
	2014	2015	2016	2017
Penalty Amount	Larger of $95 per person or 1% of income	Larger of $325 per person or 2% of income	Larger of $695 per person or 2.5% of income	Indexed for inflation
Total Payment	**$4.3M**	**$8.6M**	**$9.7M**	**tbd**

- 2017 onward—amount of penalty relatively steady per person, uninsured rate expected to be relatively steady as well, form revised for simpler exemptions
- Federal tax reform: increased filing threshold in 2018 may result in more exemptions and more disregarded income, and therefore less revenue

Source: *https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns#prelim

3. WHO ARE THE RI UNINSURED?

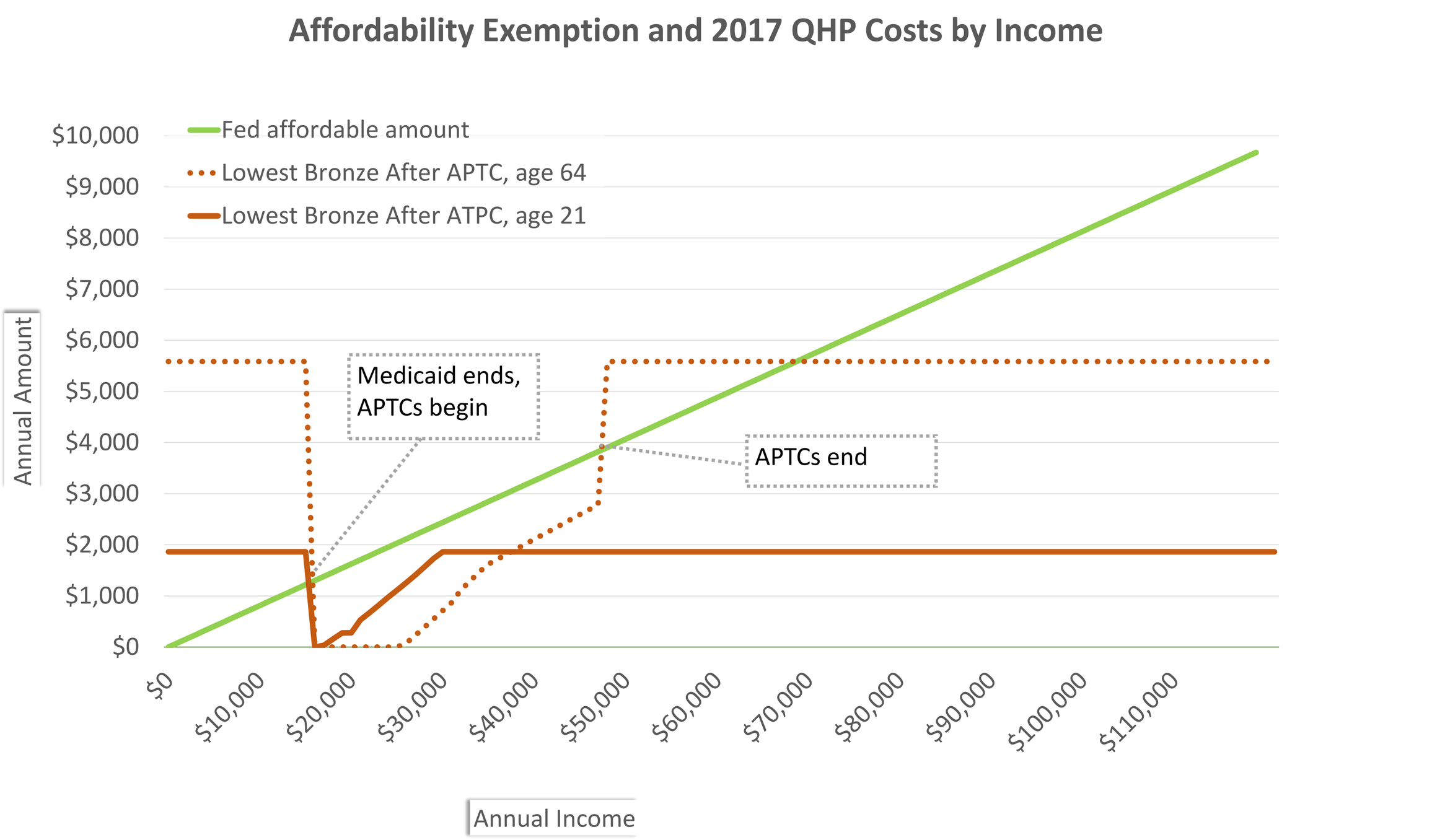
Generally, higher than average uninsured rate under 300% FPL, lower than average above 300% FPL



% of total uninsured at this income
15%
5%
5%
11%
8%
11%
45%
100%

Source: 2016 HIS data from https://healthsourceri.com/wp-content/uploads/2017/09/2016-Rhode-Island-Health-Information-Survey%E2%80%94Data-Compendium-1.xlsx

3. FEDERAL AFFORDABILITY EXEMPTION

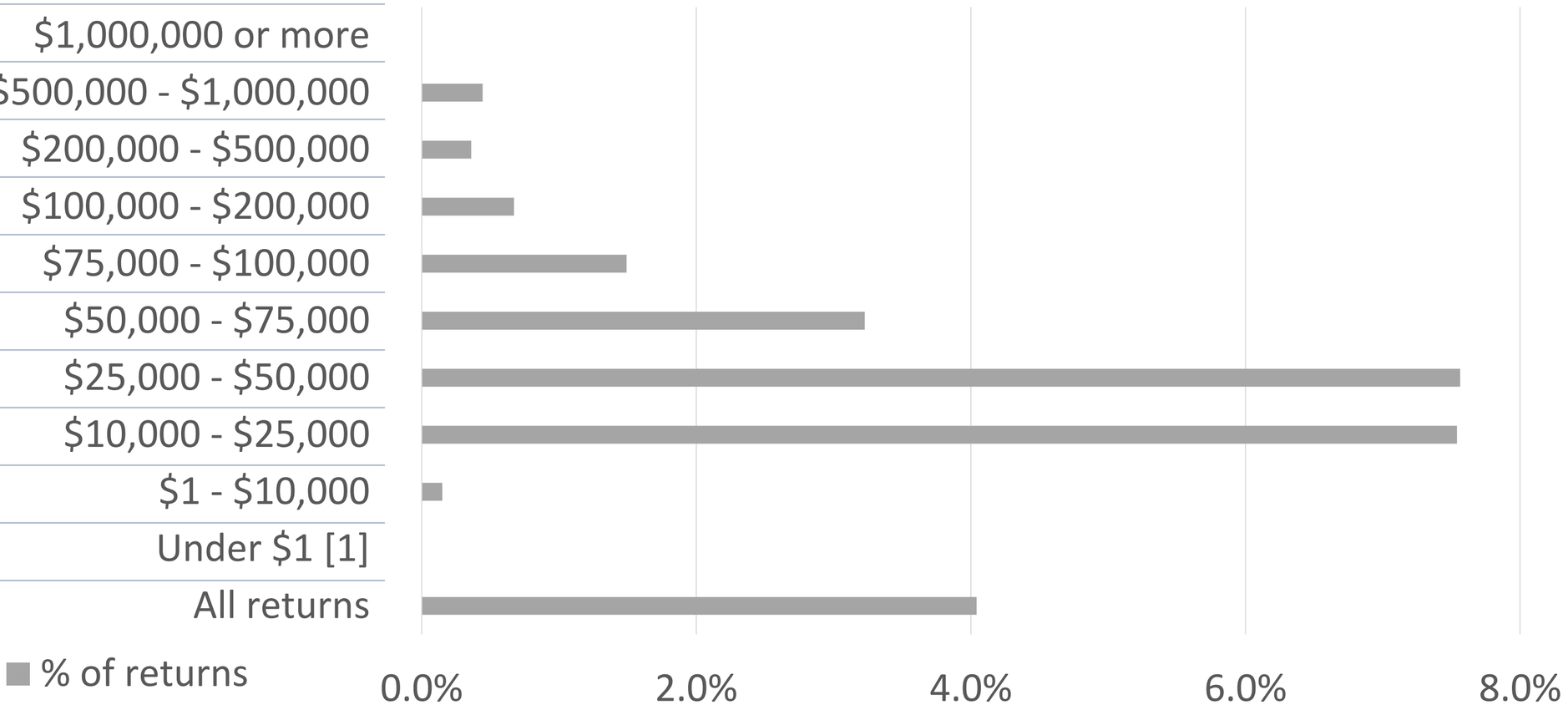


3. WHO PAID THE PENALTY?

- Lowest income bracket generally exempt
- Next lowest brackets pay most frequently—highest uninsured rates
- IRS instructions were confusing in 2015

% of Returns with a 2015 Penalty Payment by income range

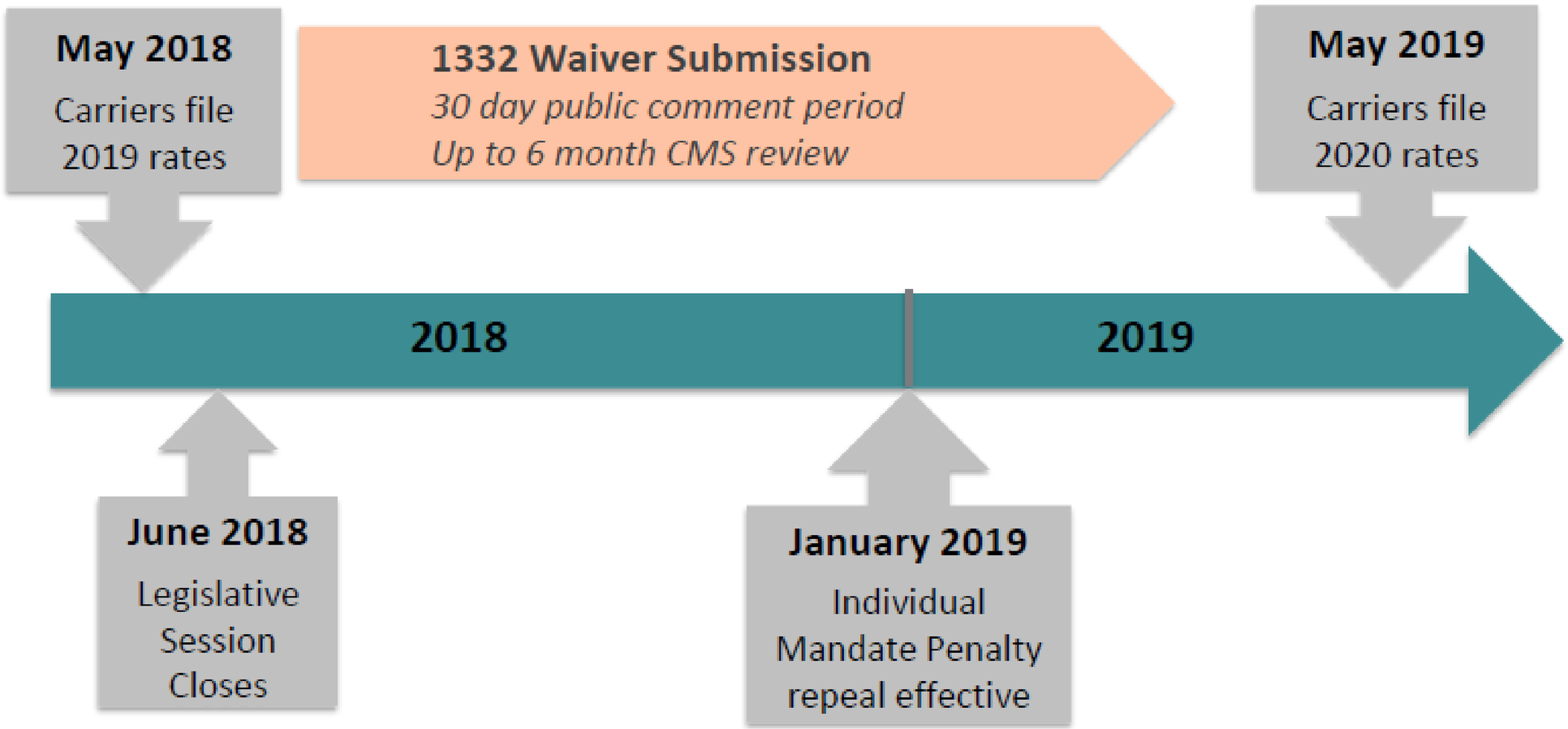
# RI returns in this category	
1,030	$1,000,000 or more
2,250	$500,000 - $1,000,000
16,660	$200,000 - $500,000
68,440	$100,000 - $200,000
46,900	$75,000 - $100,000
72,820	$50,000 - $75,000
122,030	$25,000 - $50,000
111,530	$10,000 - $25,000
80,010	$1 - $10,000
5,840	Under $1 [1]
527,510	All returns



Source: 2015 RI data from https://www.irs.gov/statistics/soi-tax-stats-historic-table-2

4. TIMING

The timeline for action is short and is limited by the rate filing and legislative calendars.



- Reinsurance is 2020 at earliest
- Shared responsibility requirement, if passed this year, helps in 2019, potentially both with rates and enrollment
- Harder to regain healthy enrollment than to maintain it

5. ADVANTAGES AND CHALLENGES

Potential Advantages

- Greater certainty about 2019 premium and enrollment; mitigation of the impact of the fed. mandate penalty repeal
- State revenue which could be used to invest in affordability and coverage outreach programs
- Ability to conduct outreach to the remaining uninsured

Potential Challenges

- Financial burden on penalty-payers
- New administrative implementation and function at the State Division of Taxation
- Philosophical opposition

6. CONTINUOUS COVERAGE REQUIREMENTS

- As part of “repeal and replace” efforts, various proposals included substitutes for the individual mandate
- Incentive for the insured population
  - Like the mandate, continuous coverage requirements would incentivize the insured to remain insured

- **American Health Care Act**—Coverage Surcharge
  - 30% premium surcharge for a year, if a gap in coverage within last 12 months
  - Included in the bill passed by the House of Representatives in 2017

6. CONTINUOUS COVERAGE REQUIREMENTS

Coverage Lockout

- 6-month lockout from coverage if a gap in coverage within last 12 months
- Included in the Senate's 2017 Better Care Reconciliation Act as an alternative to the surcharge
- Debated but did not pass

6. CONTINUOUS COVERAGE REQUIREMENTS

Health Underwriting

- Existing practice prior to ACA
- Concept: Allow premium variations by health status, but only after a gap in coverage
- Included in various Congressional ACA repeal/replace proposals, none passed

6. CONTINUOUS COVERAGE REQUIREMENTS

According to the CBO, the AHCA's continuous coverage requirement:

- Would have increased coverage by 1 million in 2018, but reduced it by 2 million in subsequent years

Why? Lack of incentive for the uninsured

- Unlike the mandate, continuous coverage requirements make it harder or more expensive to enroll in coverage
- Those most motivated to enroll (the sick) will be likely do so, while those less motivated (the healthy) will not

Additionally, while these options were considered at the federal level, states may not have the authority

- Guaranteed issue, community rating may pose a conflict

DISCUSSION

PUBLIC COMMENT?

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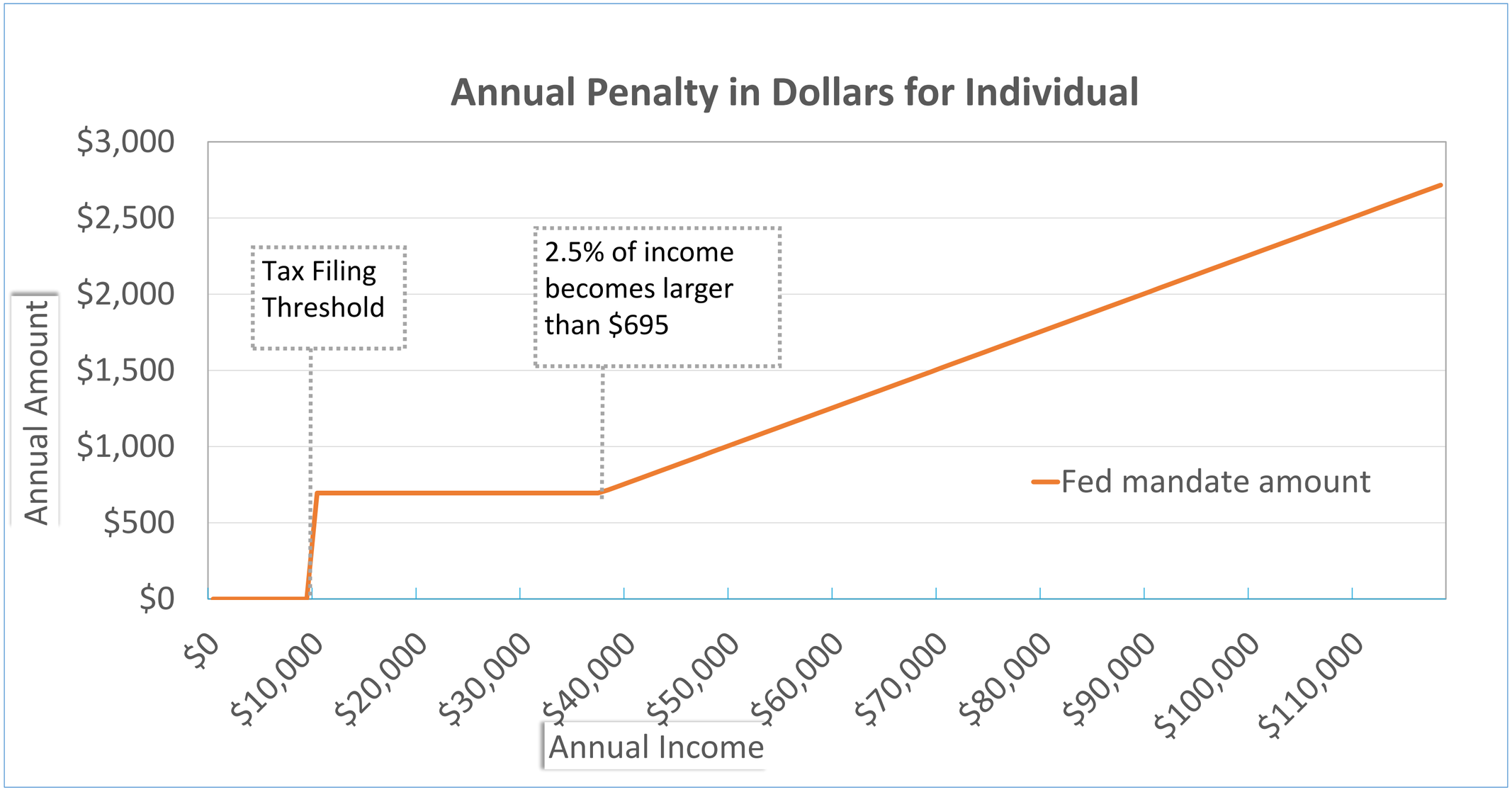
APPENDIX

FEDERAL PENALTY STRUCTURE IN RHODE ISLAND: REVENUE

	2014	2015	2016	2017
Penalty Amount	Larger of $95 per person or 1% of income	Larger of $325 per person or 2% of income	Larger of $695 per person or 2.5% of income	Indexed for inflation
# of RI filers with Shared Responsibility Payment	23,540	21,320	tbd	tbd
% of RI filers with payment	4.5%	4.0%	tbd	tbd
Average Payment	$183	$404	tbd	tbd
Total Payment	**$4.3M**	**$8.6M**	tbd	tbd
% Uninsured in RI, per HIS Survey	n/a	4.8%	4.2%	n/a
Source for filers, filers with payment, and total payment	IRS, RI 2014 and 2015 at: https://www.irs.gov/statistics/soi-tax-stats-historic-table-2			

AMOUNT OF THE PENALTY

- Larger of 1) $695 per person, or 2) 2.5% of income above filing threshold
  - *Smaller dollar amount for children, and max per family on dollar amount*
  - *Overall max set at bronze plan cost*



KEY EXEMPTIONS

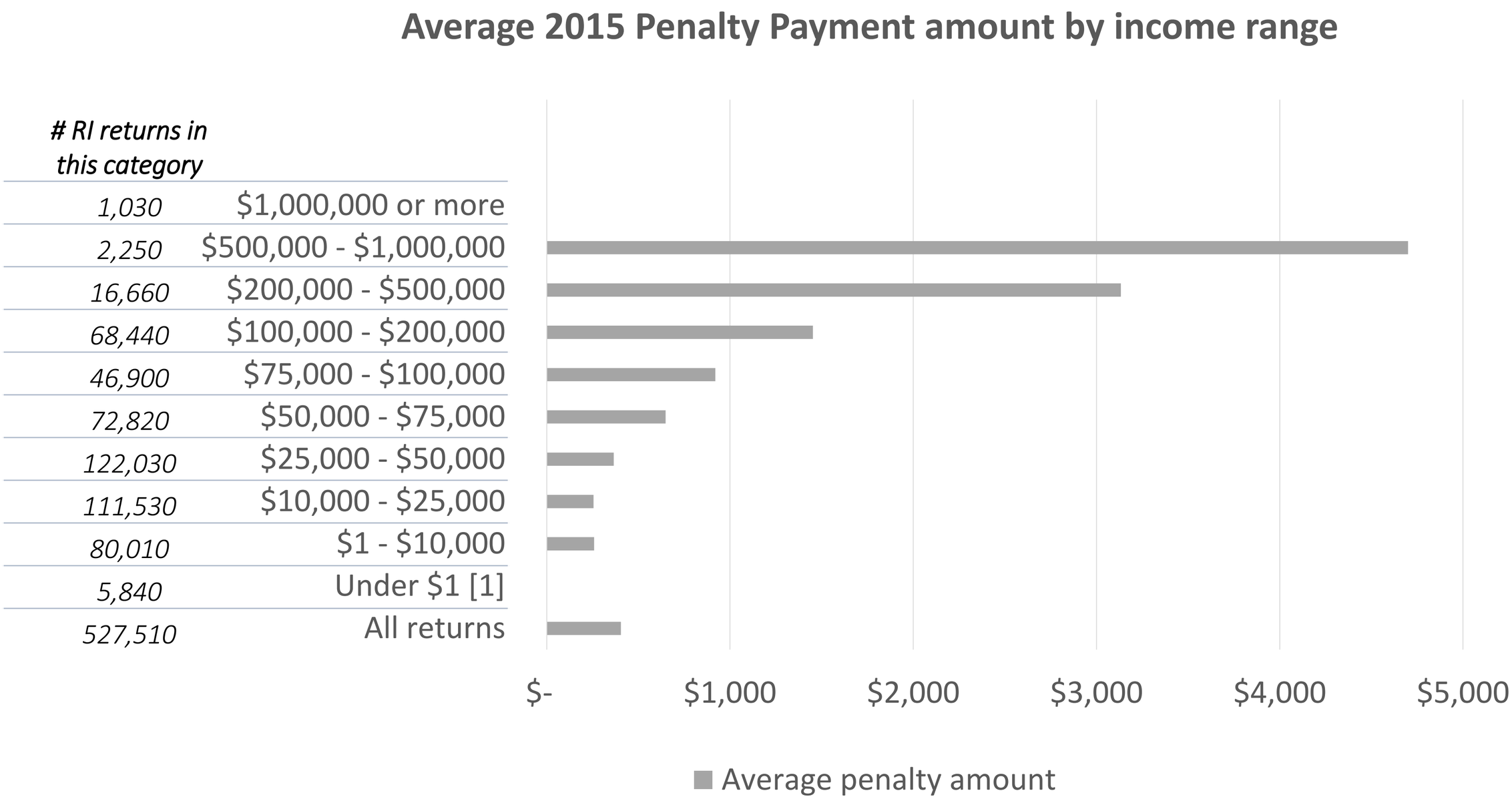
- Tax filing threshold—no payment if income below $10,400, approx. 90% FPL for individual

- Affordability Exemption—no payment if cheapest employer or QHP w/ APTC coverage costs more than 8.13% of income
  - Medicaid coverage not considered, so vast majority of those below 138% FPL would be exempt

- Variety of additional hardship exemptions (e.g. bankruptcy, flood/fire, death in family)

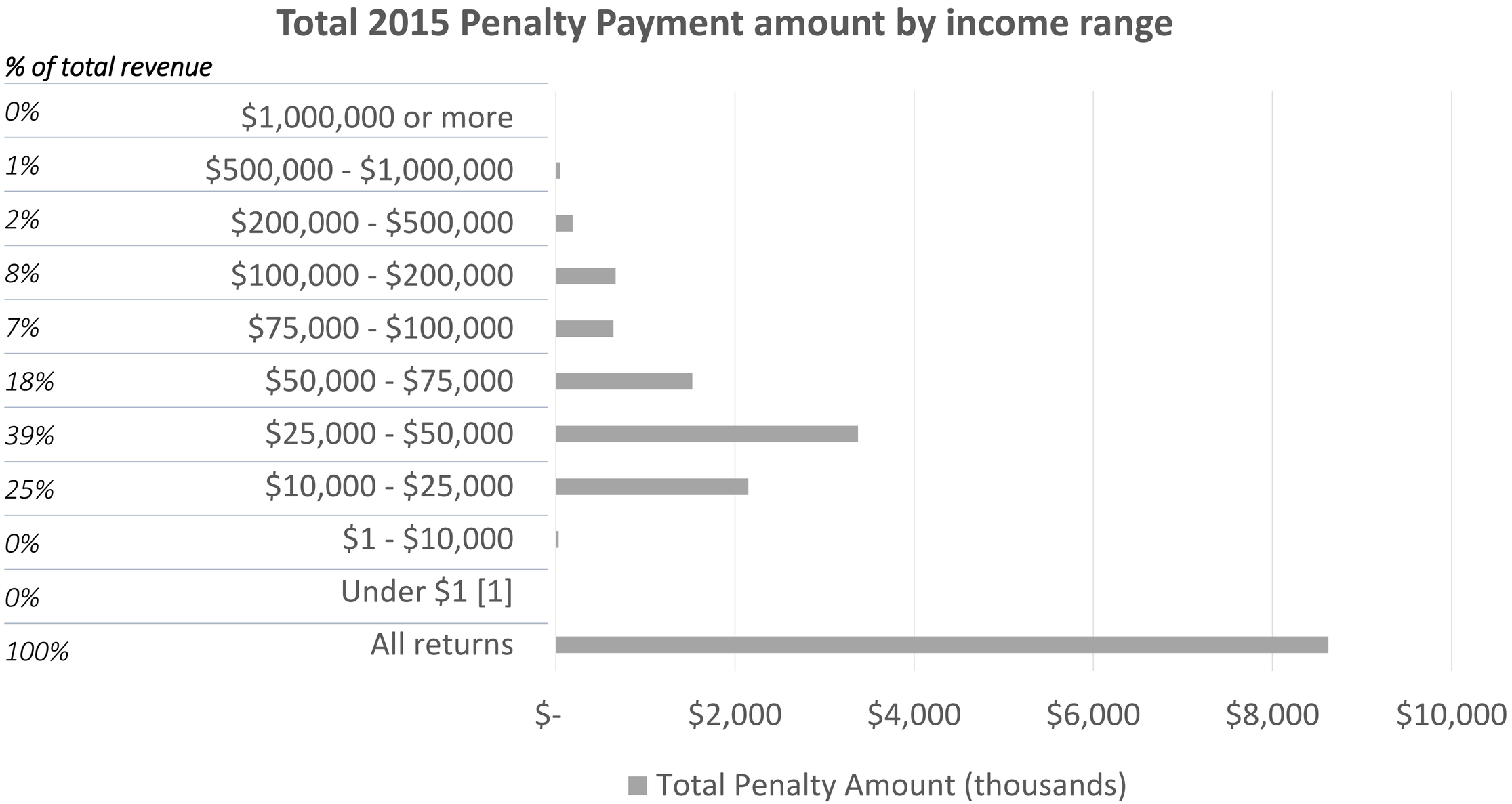
WHO PAID THE PENALTY?

- Average payment amounts scale up with income



Source: 2015 RI data from https://www.irs.gov/statistics/soi-tax-stats-historic-table-2

WHO PAID THE PENALTY?



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