

Employee Benefit Plan Select Issues: ACA Update

Reporting Deadlines Postponed: In Notice 2016-4, the IRS postponed the 2016 deadlines to report on 2015 health insurance coverage offered and taken (i.e. Forms 1095-B, 1094-B, 1095-C and 1094-C). Specifically, this Notice extends the due date (1) for furnishing to individuals the 1095-B and the 1095-C from February 1, 2016 to March 31, 2016 and (2) for filing with the IRS the 1094-B, 1095-B, 1094-C and 1095-C from February 29, 2016 to May 31, 2016, if not filing electronically, and from March 31, 2016 to June 30, 2016, if filing electronically. The IRS also indicated in a recent FAQ that it is only looking for good faith compliance from employers this first year of reporting. While “good faith compliance” is a comforting standard for employers, care should still be taken to help avoid an erroneous Employer Mandate penalty assessment.

Cadillac Tax Postponed: The Cadillac Tax imposes a nondeductible excise tax on the cost of health insurance benefits in excess of certain thresholds. This particular provision of the Affordable Care Act has been met with significant bipartisan disapproval and the Protecting Americans from Tax Hikes (PATH) Act of 2015, which became law in late December 2015, delayed the commencement of the Cadillac Tax from January 1, 2018 to January 1, 2020. Because the Cadillac Tax is intended to be a significant source of funding for the Affordable Care Act (estimated before this postponement to be \$90 billion through 2025), it is questionable whether Congress will completely repeal the concept of taxing rich benefits. The two-year postponement may provide lawmakers time needed to formulate a more “friendly” tax which fills the revenue void that a complete repeal of the Cadillac Tax would create.

Automatic Enrollment Repealed: In November, President Obama signed the Bipartisan Budget Act of 2015, which, among other things, repealed the auto-enrollment provisions the Affordable Care Act added to the Fair Labor Standards Act. This provision required employers with more than 200 fulltime employees to automatically enroll such fulltime employees in health insurance coverage. Employers have been waiting for regulations triggering enforcement of this since 2010; these regulations were never implemented and no longer will be.

Small Group Market Definition Changed: The ACA’s definition for the small group market was set to expand starting 2016 to encompass employers with up to 100 employees (up from 50); however, in late 2015, the President signed the Protecting Affordable Coverage for Employees (PACE) Act repealing this

expansion. Now, the definition of the small group market still only encompasses employers with up to 50 employees, though states have the discretion to expand the definition to include employers with up to 100 employees. This means that, except when a state elects an expanded definition, health plans sponsored by employers with 50-100 employees will continue to be exempt from special ACA rules applicable to the small group and individual health insurance markets and will retain greater flexibility in obtaining health insurance coverage. North and South Carolina did not expand the definition from 50 to 100 employees.

Marketplace Notices to Employers Begin This Year: Beginning in 2016, some applicable large employer members (i.e. those subject to the Employer Mandate) may receive notices from the Marketplace that some of their employees are eligible for premium tax credits with respect to coverage purchased through the Marketplace. It is anticipated that the first round of notices will be sent this spring. If a North or South Carolina employer receives a notice indicating that any of its fulltime employees who were offered compliant coverage received subsidized coverage from the Marketplace, that employer will want to appeal the subsidy notice to the Department of Health and Human Services (HHS) within 90 days from the date on the notice. The IRS has indicated that regardless of the success of an employer’s appeal to HHS, the IRS will make its own determination of an Employer Mandate penalty assessment. However, the HHS appeal still has value; if the appeal is successful, the government will notify each relevant employee to update his or her subsidy eligibility status and when an employee complies, this should negate the penalty trigger with the IRS as to that employee. If an employer should receive a penalty assessment from the IRS (whether or not the employer received a notice from the Marketplace or appealed that notice), the IRS determination can be appealed through procedures which should be explained by the IRS later this year.

Affordability Percentage Adjusted: IRS Notice 2015-87, issued late last year affirmed that the affordability percentage for the three safe harbors under the Employer Mandate will be indexed (even though the regulations do not provide for this). The affordability percentage for plan years beginning in 2015 is 9.56%; the percentage will adjust to 9.66% for plan years beginning in 2016.

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