



1st Quarter 2016

Employee Benefits Year-End Recap

As it seems to be its usual modus operandi around any holiday, the government was busy during this past holiday season issuing employee benefits related guidance, regulations, and updates. Many employers who were taking a well-deserved break during this time may have missed some of these when they were released. This Newsletter provides a recap of much of the important guidance that has been issued recently that may affect your organization and specifically, your employee benefit plans.

IRS Delays 2015 Due Dates for ACA Reporting

On Monday, December 28, 2015, the Internal Revenue Service (IRS) issued Notice 2016-4 extending the due dates for information reporting by insurers and self-insured employers as required by the Affordable Care Act and Sections 6055 and 6056 of the Internal Revenue Code. These extensions were provided as the IRS determined that “some employers, insurers, and other providers of minimum essential coverage need additional time to adapt and implement systems and procedures to gather, analyze, and report information.”

The Notice extends the 2015 due dates for providing both individuals with their required statements and filing the applicable forms with the IRS. Specifically, the new due dates are as follows:

- 2015 Form 1095-B and 2015 Form 1095-C to individuals: March 31, 2016 (extended from January 31, 2016).
- 2015 Form 1094-B and 2015 Form 1094-C to the IRS **if not filing electronically**: May 31, 2016 (extended from February 28, 2016).
- 2015 Form 1094-B and 2015 Form 1094-C to the IRS **if filing electronically**: June 30, 2016 (extended from March 31, 2016).

This Notice also provides additional information related to ACA reporting. Please see our [December 29, 2015 ALERT](#) for more details.

What does this mean for you?

We are urging employers not to wait until the extended due dates to complete their filings. The IRS will be prepared to accept filing this month; therefore, as soon as employers are ready to file, they should.

If you are using Assured Answers to assist with your ACA reporting, please go to www.AssuredAnswers.com to learn more.

Cadillac Tax Delayed Until 2020

On Friday, December 18, 2015, Congress passed and the President signed into law the \$1.1 trillion “Consolidated Appropriations Act, 2016” (the “Bill”).

As it pertains to the health insurance industry, this Bill specifically provides for the following:

- A two-year delay of the Cadillac Tax provision of the ACA, making the Tax effective in 2020 rather than 2018. The Bill also provides that the Tax will now be deductible (rather than payable/non-deductible as provided by the ACA). Finally, the Bill calls for a study (within 18 months of the Bill’s enactment) on the appropriate benchmarks for an “age and gender” adjustment of this Tax.
- A one-year moratorium (during 2017) of the annual excise tax on insurance carriers as provided by the ACA.
- A two-year moratorium (during 2016 and 2017) of the ACA’s Medical Device Tax.

For more information on this Bill, please see our [December 22, 2015 ALERT](#)

What does this mean for you?

As with the ACA reporting delay, we are urging employers not to wait until close to the deadline to prepare for the Cadillac Tax. We believe the best practice is to assume this provision will go forward in 2020 and to continue to work with your employee benefits broker now on strategies to avoid this tax.

Final ACA Market Reform Rules Issued

On Nov. 18, 2015, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (the “Departments”) published [final regulations](#) regarding a number of the ACA’s market reform requirements. These final regulations generally finalize provisions from previous interim final regulations without any substantial changes, incorporating clarifications issued by the Departments in frequently asked questions (FAQs) and other sub-regulatory guidance.

These final regulations address the following:

- Grandfathered plans;
- Pre-existing condition exclusions;
- Lifetime and annual dollar limits on benefits;
- Rescissions;
- Dependent coverage up to age 26;
- Internal and external appeals; and
- Patient protections.

For more information and further details on the changes to any of the above ACA provisions, please see our [January 7, 2016 ALERT](#) on these final regulations.

Source: Zywave

Automatic Enrollment Provision Repealed

The automatic enrollment requirement of the ACA, which had not yet become effective as of 2015, was repealed on November 2, 2015 when the President signed the Bipartisan Budget Act of 2015. Repeal of this provision means employers will not be required to automatically enroll employees in coverage.

Although the automatic enrollment requirement has been repealed, the IRS has previously issued guidance that allows employers to continue with an automatic enrollment process under certain circumstances. In general, employers wishing to use an automatic enrollment arrangement may do so if they provide adequate notice to employees and an opportunity for employees to opt out of the coverage. Employers should also be aware of any wage withholding laws in their state before implementing such arrangements.

Updates on Opt-Out Payments and Affordability

As we have addressed in prior communications, beginning in 2014 the regulators expressed that Section 125 Cafeteria Plan benefit dollars, payments to participants who opt-out of medical benefits, Service Contract Act and Davis-Bacon cash-in-lieu-of-fringe payments, cash options required under Union contracts, and similar types of payments create issues under the “affordability test” of the Affordable Care Act.

The typical example provided by the regulators was as follows:

An employer charges \$250 per month for its lowest cost self-only medical benefits coverage. The employer offers a \$125 opt-out bonus if the employee waives coverage (or simply pays the employee \$100 as cash-in-lieu of coverage). The employer is treated, for ACA affordability purposes, as “charging” the employee \$375 for its lowest cost self-only coverage. (The regulators’ rationale is that an employee wishing to enjoy coverage must pay \$250 plus “forego \$125” to have coverage, and therefore the coverage “costs” the employee \$375.)

Numerous commentators challenged the regulators’ logic on this point and requested that they withdraw this position. (The AFL-CIO, for example, held an in-person meeting with the regulators formally requesting that they withdraw their position on including the opt-out-credits in their calculations.)

In December 2015, the Departments (HHS, IRS, DOL) issued Notice 2015-87 which, although it does not withdraw the position, provides additional time for employers to comply with it in some cases (and, perhaps, is intended to provide additional time for the regulators to consider withdrawing their position).

The following are some of the most important points made in this extremely complex Notice:

- For plan years beginning before 2017 (as defined in the Notice), employer “benefit dollars” or “flex contributions” that can be used by Section 125 plan participants for health, other benefits or cash are not added to the stated cost of the employer’s lowest cost self-only health coverage for ACA affordability test purposes.
- Until future guidance is issued, opt-out payments under existing opt-out arrangements (as defined in the Notice) are not added to the stated cost of the employer’s lowest cost self-only health coverage for ACA affordability test purposes.

- Until future guidance is issued, cash-in-lieu payments under the SCA or Davis-Bacon Act are not added to the stated cost of the employer's lowest cost self-only health coverage for ACA affordability test purposes.

The Departments hinted in the Notice that they would consider further relief for opt-out payments that are "conditioned on the employee meeting certain conditions such as demonstrating that the employee has other coverage," and hinted that they may consider further unspecified relief for SCA and Davis-Bacon employers.

The Departments' prior position was effective January 1, 2015. This Notice provides retroactive, limited and highly technical relief that at least will provide some breathing room to some employers who found themselves struggling to comply with the regulators' position.

Source: Crawford Advisors, LLC

ACA Employer Mandate Penalties Indexed

IRS Notice 2015-87 not only addresses how opt-out payments will be treated for the purposes of the ACA's Employer Mandate affordability test, but it also contains important information on the indexed employer mandate penalties for 2015 and 2016. Per the Code, the 4980(H)(a) and 4980H(b) penalty amounts, the "\$2,000" and "\$3,000" penalties, respectively, are to be adjusted based on a defined premium adjustment percentage for years after 2014. The Notice specifically states that the 2015 and 2016 penalty amounts are as follows:

- 2015 Code §4980H(a) penalty ("\$2,000" or "Sledge-hammer" penalty) - \$2,080
- 2015 Code §4980H(b) penalty ("\$3,000" or "Tack-hammer" penalty) - \$3,120
- 2016 Code §4980H(a) penalty ("\$2,000" or "Sledge-hammer" penalty) - \$2,160
- 2016 Code §4980H(b) penalty ("\$3,000" or "Tack-hammer" penalty) - \$3,240

Source: IRS Notice 2015-87

2015 Form 5500 Information

The U.S. Department of Labor (DOL) has released the [2015 Form 5500](#) and related instructions. Modifications to Form 5500 as well as schedules and instructions for plan year 2015 are described under "Changes to Note" in the [2015 instructions](#). Examples of these changes include:

IRS Electronic Filing Requirements: On September 29, 2014, the Treasury Department issued final regulations providing that certain filers must electronically file the Form 5500 series returns/reports (including actuarial schedules). Under the regulations, you are required to file a Form 5500 series return/report electronically if you are required to file at least 250 returns of all types during the calendar year that includes the first day of the applicable plan year. Because the IRS may now require certain filers to electronically file the Form 5500 series returns/reports, the IRS is adding questions to the Form 5500 and its Schedules relating solely to IRS compliance issues. However, these new IRS compliance questions are optional for the 2015 plan year.

IRS Compliance Questions (optional for the 2015 plan year):

- New Lines 4o, 4p 6c and 6d were added to Schedules H and I. You are encouraged to answer these questions relating to unrelated business taxable income, in-service distributions and trust information.
- New Part VII (IRS Compliance Questions) was added to Schedule R (applicable to pension plans) for purposes of satisfying the reporting requirements of section 6058 of the Code. You are encouraged to answer these questions though they are optional for the 2015 plan year.

Schedule MB (applicable to pension plans): The instructions are modified to add RP-2000 and RP-2000 (with Blue Collar Adjustment) to the list of mortality tables for non-disabled lives that plans may report in line 6c. The schedule MB and instructions are also modified to add a new question in line 8b that would require large multiemployer plans (500 or more total participants as of the valuation date) to provide in an attachment a projection of expected benefit payments to be paid for the entire plan (not including expected expenses) for each of the next ten plan years starting with the plan year to which the filing relates. The Schedule MB is modified to require all multiemployer plans to report the funded percentage for monitoring the plan's status in line 4. Previously, only plans in critical or endangered status were required to report this information. As a result of the Multiemployer Pension Reform Act of 2014, the Schedule MB and instructions are further modified to extend the reporting requirements in line 4 for multiemployer plans in critical status to plans in critical and declining status and require that additional information to be reported by plans that have been partitioned or have had benefits suspended.

Schedule SB (applicable to pension plans): The instructions are modified to simplify the alternative age/service scatters that cash balance plans with 1,000 or more active participants have an option to report on an attachment to line 26.

Form 5500 Final Return/Report for Plans Trusteed by PBGC (applicable to pension plans): The instructions for "Final Return/Report" are modified to add a statement that a filter for a terminated defined benefit plan for which PBGC has been appointed trustee may contact DOL at PBGCTrusteedPlan@dol.gov for further information.

Pension and welfare benefit plans that are required to electronically file an annual return regarding their financial conditions, investments and operations generally satisfy that requirement by filing the Form 5500 or Form 5500-SF and any required attachments.

Form 5500 Automatic Extension Remains at 2 1/2 months

On December 4, 2015, Congress repealed the Form 5500 extension period that had been increased back in July of this year. In July, the automatic extension of 2 1/2 months was increased to 3 1/2 months for plans years beginning in 2016. ***This increased extension period has now been repealed and will remain at 2 1/2 months.***

Under ERISA and the Internal Revenue Code employee benefit plans generally are required to file the Form 5500, "Annual Return/Report of Employee Benefit Plan," together with any required attachments

and schedules. The Form 5500 is not a tax return. It is an informational return, required by and filed with, the DOL. It also serves as a disclosure document for plan participants and beneficiaries, and an important source of information and data for use by other Federal agencies.

Source: Crawford Advisors

IRS Provides Guidance on Employee Benefits after *Obergefell*

On December 9, 2015, the IRS issued [Notice 2015-86](#), which consists of questions and answers addressing the application of the Supreme Court's June, 2015 *Obergefell* decision to employer-sponsored employee benefit plans.

The Notice states that because same-sex marriages were already recognized for federal tax purposes after the Supreme Court's 2013 *Windsor* decision and subsequent guidance, the *Obergefell* decision would have limited effect for federal tax law purposes. Indeed, *Obergefell* notably holds that a state's civil marriage laws must now apply to same-sex couples in the same manner as opposite-sex couples and that a state is prohibited from declining to recognize a lawful marriage between persons of the same sex in another state due to the nature of the "same sex character" of the marriage.

Though *Obergefell* is concerned with state law, and the *Windsor* decision and subsequent guidance previously addressed same-sex marriages from a federal tax perspective, the IRS published this Notice to assist plan sponsors who seek clarification on how to apply the *Obergefell* decision to certain plan changes they may be putting into effect. Specifically, the Notice indicates the following related to plan changes:

For qualified retirement plans, including 401(k) plans:

- No Required Amendments. Amendments needed to comply with *Windsor* were required to be adopted no later than December 31, 2014. There are no required amendments to comply with *Obergefell*.
- Discretionary Amendments. Plan sponsors that wish to provide new rights or benefits for participants with same-sex spouses may adopt discretionary amendments that comply with applicable qualification requirements. This might include, for example, an amendment to recognize same-sex marriages retroactively as of a date earlier than June 26, 2013. These discretionary amendments must be adopted by the end of the plan year in which the amendment is operationally effective (a later date applies for governmental plans).

For health and welfare plans:

- No Required Amendments. Federal tax law generally does not require health and welfare plans to offer any specific rights or benefits to a participant's spouse. To the extent that a plan offers benefits to same-sex spouses, the federal tax treatment of the benefits was addressed in previous IRS guidance.
- Operational Changes Might Be Necessary. If a plan's terms provide for coverage of a participant's spouse as defined under applicable state law and the plan administrator determines that state law has expanded to include same-sex spouses due to *Obergefell*, then the plan's operation must be changed to cover same-sex spouses as of the date of the change in state law—generally, June 26, 2015.

- Cafeteria Plan Election Changes. If the terms or operation of a cafeteria plan's underlying benefits change midyear to permit coverage of same-sex, affected participants may make an election change in accordance with the cafeteria plan election change rules for a "significant improvement" in coverage.

(Note that this permitted election change event does not apply to health FSAs.) An affected participant could elect to add coverage for a same-sex spouse in a benefit in which the participant is enrolled, or to add coverage for both the participant and a same-sex spouse. If the cafeteria plan's terms do not allow election changes due to a significant improvement in coverage, the plan sponsor may amend the plan at any time to allow such changes. The amendment must be adopted by the end of the plan year that includes December 9, 2015 or, if later, the date same-sex spouses first became eligible for coverage under the plan, and may be retroactive to the date same-sex spouses first became eligible for coverage.

Source: EBIA

DON'T MISS OUR UPCOMING WEBINAR!

Save the date! AssuredPartners is hosting a webinar on January 19, 2016 at 2 p.m. to address topics included in this Newsletter in further detail.

Registration information will be forthcoming.

Assured Neace Lukens continues to monitor all compliance matters in order to keep you abreast of the latest news and regulatory changes. In addition to this newsletter, our Observer Compliance Alerts will provide you with the most relevant and up-to-date information and guidance. If you have questions or need assistance with any of these or other compliance matters, please contact your Assured Neace Lukens Benefit Team.