

July 11, 2013

IRS Issues Transition Relief Guidance on PPACA Reporting and Employer Penalty

On July 9, the Internal Revenue Service (IRS) released Notice 2013-45 (the [Notice](#)), granting transition relief from the “Employer Shared Responsibility” provisions and certain health plan reporting requirements under the Patient Protection and Affordable Care Act (PPACA). The guidance follows the Obama administration’s July 2 [announcement](#) that it would delay enforcement of these provisions until 2015. The relief is intended to provide stakeholders with more time to adapt administrative systems and provide input to the IRS on simplifying the reporting requirements.

This Legal Alert highlights key information in the Notice of interest to employers and issuers of health insurance.

Background

Internal Revenue Code (Code) section 6055 requires health insurance issuers and self-insured health plans to annually report to the IRS census data on each individual covered under the policy or plan. It also requires reporting entities to provide a copy of the information to covered individuals. Code section 6056 requires “applicable large employers” (generally, employers with 50 or more full-time or full-time equivalent employees) to annually report to the IRS information on the number of full-time employees covered under any employer-sponsored health plans, and to certify that the employer offers minimum essential coverage. Under PPACA, both reporting requirements are effective beginning January 1, 2014.

Code section 4980H(a) imposes an assessable payment of \$2,000 per year, per employee, on large employers that fail to offer minimum essential coverage to their full-time employees and dependents if one or more full-time employee enrolls in a qualified health plan on an exchange and receives a premium tax credit to assist with purchase of coverage. If a large employer does offer minimum essential coverage, but the coverage is not affordable or does not meet PPACA’s minimum value requirements, Code section 4980H(b) imposes an assessable payment of \$3,000 for each full-time employee who enrolls in a qualified health plan on an exchange and receives a premium tax credit. The provisions of Code section 4980H imposing these Employer Shared Responsibility payments are also effective beginning January 1, 2014.

Transition Guidance

Reporting Under Code Sections 6055 and 6056

The Notice provides that reporting under Code sections 6055 and 6056 will be optional in 2014, and no penalties will apply for failure to comply with the reporting provisions in 2014. The IRS plans to publish proposed rules regarding Code sections 6055 and 6056 this summer.

Employer Shared Responsibility Assessments Under Code Section 4980H

The Notice also provides that the IRS will not assess Employer Shared Responsibility payments in 2014. Since the IRS plans to use the information reported by employers under Code section 6056 to determine

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whether any of the employer's full-time employees received a premium tax credit that could subject the employer to penalties under Code section 4980H, the IRS has determined that it would be "impractical" to assess employer 4980H liability in 2014 given the one-year transition relief from Code section 6056 reporting.

Key Points

The Notice encourages employers and issuers to voluntarily comply with the reporting requirements of Code sections 6055 and 6056 in 2014 once guidance has been issued. As part of the Notice, the IRS emphasizes that the reporting requirements of Code sections 6055 and 6056 and the Employer Shared Responsibility provisions will be fully effective for 2015.

The Notice also states that the transition relief does not delay the implementation of other provisions of PPACA, including the requirement that individuals obtain health insurance by January 1, 2014 (the Individual Mandate). Presumably, it also does not delay the effective dates of PPACA's coverage mandates for group and individual health insurance plans, or the taxes and fees applicable to plans and issuers under the new law. Most of these requirements will still become effective on January 1, 2014.

What's Next

Despite clear language in the Notice confirming the effective date of PPACA's Individual Mandate, Members of Congress are supporting parallel transition relief for individuals. On July 10, the House Committee on Ways and Means' Subcommittee on Health held a hearing to discuss, in part, delaying the implementation of the Individual Mandate and other provisions of PPACA. Republican leaders in the U.S. House of Representatives have sent a letter to the White House suggesting that a delay in enforcement of the Employer Shared Responsibility provisions is imbalanced unless enforcement of the Individual Mandate is similarly delayed.¹ Given that a delay in enforcement of the Individual Mandate could have a significant impact on state and federal exchanges, and could further lead to implementation issues with various provisions of PPACA that are scheduled to become effective on January 1, 2014, it is unclear whether the current push for tandem transition relief for individuals will gain momentum.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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¹ In addition, Senator John Thune (R-S.D.) and 45 Republican Senate colleagues have sent a [letter](#) to President Obama requesting that the Administration extend transition relief to cover all provisions of PPACA.