

## ACA Year-End Roundup September 27, 2016



Employee Benefits · Risk Management · Personal Insurance



**Welcome Tina Bull**

## What we will cover

- Employer mandate
  - Meeting the 95% offer requirement
  - Determining affordability
- Reporting
  - Lessons learned from 2015
  - Preparing for 2016
- Responding to Marketplace Notices
- Future of the Cadillac tax

## Employer Mandate Basics

- Applies to employers with **50 or more** full-time equivalent employees in the prior calendar year
  - Determined on controlled group basis
- Must make an offer of minimum essential coverage to at least 95% of full-time employees (as defined by the ACA) or pay a penalty that in 2016 equates to **\$2,160 annually (\$180/month)** times the number of full-time employees (less 30) if one full-time employee obtains a premium tax credit for Marketplace coverage
  - If less than 100 ACA full-time employees, offer must be made to **all but 5** full-time employees
  - Determined separately for each company within a controlled group
- If minimum essential coverage offered does not provide minimum value or is not affordable, pay a penalty that in 2016 equates to **\$3,240 annually (\$270 per month)** for each full-time employee who obtains a premium tax credit
  - Also applies if any ACA full-time employee who is not offered coverage obtains a premium tax credit

## Transition Relief Expiring in 2016

- Expires as of the **first day of the plan year** beginning in 2016
  - 70% offer requirement
    - 95% offer requirement applies
  - Mid-size employer relief
    - All employers with 50 to 99 full-time equivalent employees will be subject to the mandate
  - Exclusion of 80 employees
    - When calculating the penalty, only 30 employees can be excluded
    - This applies as of January 1, 2016 if minimum essential coverage is not offered

# 95% Offer Calculation

<b>Month-by-Month ACA Analysis for 2016</b>				
<b>Plan year begins January 1</b>	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>
<b>Full-time Benefit Eligible Employees</b>	300	320	400	390
<b>Less Full-time Benefit Eligible in Limited Non-Assessment Period (generally Waiting Period)</b>	10	2	10	8
<b>Subtotal - Offered Coverage for the Month</b>	290	318	390	382
<b>Non-benefit eligible with 130+ hours of service in month (excludes employees in Measurement Period)</b>	124	75	5	20
<b>Total ACA full-time</b>	414	393	395	402
<b>% Offered</b>	<b>70.05%</b>	<b>80.92%</b>	<b>98.73%</b>	<b>95.02%</b>
<b>Penalty if one ACA full-time obtained PTC</b>	<b>\$69,120</b>	<b>\$65,340</b>	<b>\$270</b>	<b>\$270</b>

## Affordability

- Cost of employee-only coverage for lowest cost plan offered by employer that provides minimum value
  - Plan option or coverage level selected by employee is irrelevant
  - Affordability only matters if coverage waived because employee who enrolls in employer plan cannot obtain a premium tax credit, even if coverage is not affordable
- For purposes of determining eligibility for a premium tax credit, affordability determined by comparing cost employee-only coverage to a percentage of household income
- These percentages are also used in determining affordability under the wage-based safe harbors available to employers

<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>9.5%</b>	<b>9.56%</b>	<b>9.66%</b>	<b>9.69%</b>

# Affordability Safe Harbors

## Form W-2 safe harbor - Employee contribution cannot exceed:

- **Plan years beginning in 2016**
  - 9.66% of Box 1 wages
- **Plan years beginning in 2017**
  - 9.69% of Box 1 wages
- Determined after end of calendar year on employee-by-employee basis
- Safe Harbor Code 2F

## Rate of pay safe harbor - Employee contribution cannot exceed:

- **Plan years beginning in 2016**
  - 9.66%\*130 hours\*hourly rate of pay
  - 9.66%\*employee's monthly salary
- **Plan years beginning in 2017**
  - 9.69%\*130 hours\*hourly rate of pay
  - 9.69%\*employee's monthly salary
- Safe Harbor Code 2H

## FPL safe harbor - Employee contribution cannot exceed:

- **Plan years beginning in 2016**
  - 9.66%\*FPL for a single individual (FPL is \$11,770) for maximum contribution of \$1,137/year or \$94.75/month
- **Plan years beginning in 2017**
  - 9.69%\*FPL for a single individual (FPL is \$11,880) for maximum contribution of \$1,151/year or \$95.93/month
- Safe Harbor Code 2G

## FPL safe harbor is also a Qualifying Offer as long as minimum essential coverage is offered to spouse without condition and dependent children

- Offer of Coverage Code 1A



# Factors Impacting Affordability

Factor	Impact	Comments
<b>Tobacco use differential</b>	Use non-tobacco user cost	
<b>Wellness differential</b>	Use cost for non-participation in wellness	Both participation only & standard-based wellness programs
<b>Conditional opt-out</b>	Exclude opt-out from employee cost	Opt-out provided only with proof of other group coverage
<b>Unconditional opt-out</b>	Include opt-out as additional employee cost	Opt-out provided to anyone who waives coverage
<b>Flex credits</b>	Use cost before flex credit is applied	Unless flex credit can be used only for health coverage
<b>SCA fringe dollars</b>	Exclude SCA fringe dollars from employee cost	

## Affordability Example

	Per Month	
Employee-only cost for non-smoker	<b>\$120</b>	\$120
Employee-only cost for smoker	\$200	
Surcharge for not completing Health Risk Assessment	\$30	\$30
Opt-out credit if coverage waived (no proof of other coverage required)	\$100	\$100
Cost to determine affordability		<b>\$250</b>

## ACA Reporting – Lessons Learned from 2015

- Basic requirements
- Data
- Vendors
- Timing

**Lesson #1: ACA Reporting is Challenging & Administratively Cumbersome**

## Missing TIN/SSN Solicitation Rules

- IRS has issued a proposed regulation with process for obtaining **missing TIN/SSN**
  - 1<sup>st</sup> attempt to obtain SSNs at time of initial enrollment
  - 2<sup>nd</sup> attempt within 75 days of initial enrollment
  - 3<sup>rd</sup> attempt by December 31 of the year following initial enrollment
    - This attempt can be made in conjunction with an active open enrollment
- Includes a transition rule for individuals enrolled as of July 29, 2016
  - Attempt within 75 days of July 29, 2016 (Oct. 12, 2016)
  - Attempt again by December 31, 2017
    - This attempt can be made in conjunction with an active open enrollment
- Date of birth may be used during solicitation process and after 3<sup>rd</sup> unsuccessful solicitation attempt
- **Form 1095-C error messages regarding incorrect TIN/SSN do not require the employer to follow the TIN/SSN solicitation process**
- **However, may be beneficial to make an attempt in calendar year of error message & following calendar year (if needed) as show of reasonable cause**

# Do You Have Your ACA Reporting Solution for 2016?

- Drafts of 2016 Form 1095-C, Form 1094-C and instructions for both have been released
- No significant changes
- As of now, no extensions of deadlines
  - Provide Form 1095-C to individuals by **January 31, 2017**
  - File Form 1094-C and Forms 1095-C with IRS by February 28, 2017 if on paper or March 31, 2017 if electronically
    - There are processes to request extensions of each deadline
- Drafts of 2016 Form 1095-B, Form 1094-B and instructions for both have also been released
  - Used by insurance carriers and by employers with self-insured plans who are not subject to the employer mandate
  - Can also be used for non-employees (COBRA, retirees) by employers with self-insured plans who are subject to the mandate

# Changes to Reporting Forms for 2016

- Form 1095-C
  - “Plan Start Month” box remains optional
  - Safe harbor code 2I is no longer applicable
  - Changes to Codes
    - New codes 1J and 1K for **conditional offer** of coverage to a spouse
      - A **conditional offer** is one that is subject to one or more reasonable objective conditions
      - Code 1K will be used as long as coverage is offered to dependent children
      - Code 1K is used **whether or not** spouse satisfies the condition
      - Code 1A can no longer be used if offer to spouse is conditional
    - Clarification of Qualifying Offer code (code 1A)
      - Use of code 1A is optional, not required
      - If used, line 15 (cost) must be left blank
      - If used, completion of line 16 (safe harbor code 2C or 2G) is optional
    - Clarification of code 1G
      - Applies to entire calendar year
      - Can only be used if individual was not an ACA full-time employee for any month of the calendar year but is enrolled in a self-insured plan
      - Form 1095-B can be used in lieu of Form 1095-C for non-employees

# Changes to Reporting Forms for 2016

- Form 1095-C
  - Terminated employees
    - No requirement to report an offer of coverage to a terminated employee
      - Even if offered COBRA or retiree coverage
      - Use codes 1H/2A
    - Terminated employee enrolled in a self-insured plan will still receive a Form 1095-C or Form 1095-B for as long as they are enrolled in minimum essential coverage
  - COBRA offered due to reduction in hours
    - Offer of coverage code will reflect **coverage level in which employee was enrolled** at the time of the reduction in hours
      - Use code **1B** for employee only, code **1C** for employee and child(ren), code **1D** for employee & spouse, code **1E** for employee, spouse and dependent child(ren)
    - Line 15 cost will be COBRA cost for employee-only COBRA coverage
    - Line 16 safe harbor code will depend upon the circumstances
    - Per IRS: employer will still be considered to have made an offer of coverage to dependents for the entire calendar year even though the employee waived coverage for the dependents and as a result COBRA was not offered to them

# Changes to Reporting Forms for 2016

- Form 1094-C
  - Certification of Eligibility for “Qualifying Offer Transition Relief” has been removed
  - In Part III column b, full-time employee count by month has been changed to “Section 4980H Full-Time Employee Count for ALE Member”
    - To clarify that the **ACA definition** of full-time employee must be used for reporting this number
- General
  - Descriptions of transition relief that no longer apply in 2016 have been removed from the instructions



## Reminders for 2016 Reporting Forms

- Reporting is separate for each employer within a controlled group (each separate EIN with employees)
  - If full-time employee moves from one employer in a controlled group to another, each employer must provide a Form 1095-C to the employee
- Form 1095-C can be provided electronically with employee consent
- Reporting is required even if employer subject to mandate does not offer minimum essential coverage
- Form 1095-C must be provided to any employee who met the ACA definition of full-time for any month of the calendar year
  - Does not have to be provided to employee who terminated before satisfying waiting period or who was still in waiting period at the end of the calendar year

## Marketplace Notices to Employers

- Marketplaces have begun sending Notices to employers stating that an employee has been determined eligible for a premium tax credit
- Employers are given 90 days to appeal the determination
- If employer appeal is successful, Marketplace will ask the employee to update the Marketplace application to indicate that they were offered affordable minimum value coverage

**The appeal & its outcome will not determine if the employer is subject to an employer mandate penalty. While the Marketplace determines an individual's initial eligibility for a premium tax credit, only the Internal Revenue Service can assess an employer mandate penalty.**

## Should an Employer Appeal?

- A successful appeal will lessen the chance that the IRS will assess a penalty as long as the employee updates the Marketplace application and does not receive the premium tax credit
- Considerations
  - Affordability determination since eligibility for premium tax credit is based on household income
    - Only Marketplace (not employer) can determine affordability
  - Administrative burden of collecting information for appeal (although this information may be needed in the future if IRS assesses a penalty)
  - Employee relations
  - Timing may be such that there is no corrective action an employee can take other than to repay premium tax credit when filing taxes
- Should not appeal if:
  - Individual was not an employee
  - Employee was not offered minimum essential coverage
  - Coverage offered did not provide minimum value

## Future of the Cadillac Tax

- Excise tax on high value group health plans
  - 40% tax on value over a threshold determined by the federal government
- Already delayed from 2018 to **2020** and changed from non-deductible to **deductible expense**
- From Democratic Platform:
  - “We will repeal the excise tax on high-cost health insurance and find revenue to offset it because we need to contain the long-term growth of health care costs, but should not risk passing on too much of the burden to workers.”
- From the Republican Platform:
  - “Any honest agenda for improving healthcare must start with repeal of the dishonestly named Affordable Care Act of 2010: Obamacare.”
- Repealing the Cadillac tax without repealing other provisions of the ACA will result in a significant revenue shortfall



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