

January 4, 2016

## Affordable Care Act: Extensions, Delays and Guidance as 2015 Ends

The last half of December saw a flurry of activity with respect to the Affordable Care Act. In the last week of 2015, the Department of the Treasury and the IRS extended the date by which employers and insurers have to comply with the ACA's information reporting requirements. Earlier in December, President Obama signed the Protecting Americans from Tax Hikes (PATH) Act, which, among other things, provides for a delay of the excise tax imposed on high cost health plans, commonly referred to as the "Cadillac Tax," and the Department of the Treasury, the Department of Labor and the Department of Health and Human Services (the "Departments") issued [Notice 2015-87](#), which provides guidance on a number of ACA-related topics.

### Notice 2016-4: Extension of Due Date for ACA Information Reporting

On December 28, the Department of the Treasury and the IRS issued [Notice 2016-4](#), which extends the due dates for the 2015 information reporting requirements under sections 6055 and 6056 of the Internal Revenue Code. The reports required under section 6055 provide information to individuals that allows them to indicate on their income tax returns whether they are enrolled in minimum essential coverage. The reports required under section 6056 provide the IRS with information to enable it to determine whether employers are offering coverage in accordance with the employer shared responsibility provisions of the ACA.

The Notice extends the due dates:

- for furnishing to individuals Form 1095-B, *Health Coverage*, and Form 1095-C, *Employer Provided Health Insurance Offer and Coverage*, from **February 1, 2016 to March 31, 2016** (Section 6055 reports); and
- for filing with the IRS Form 1094-B, *Transmittal of Health Coverage Information Returns*, Form 1095-B, *Health Coverage*, Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage*, and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, from **March 31, 2016 to June 30, 2016**, if filing electronically, and from **February 29, 2016 to May 31, 2016**, if not filing electronically (Section 6056 reports).

The extension is being granted to give employers, insurers, and other providers of minimum essential coverage additional time to adapt and implement systems and procedures to gather, analyze and report this information. Notwithstanding the extension, the Notice makes clear that the IRS is prepared to accept filings beginning in January 2016, and employers and other coverage providers are encouraged to furnish statements to individuals and file information returns with the IRS as soon as they are ready.

The extensions are automatic. Employers that do not comply with these extended due dates will be subject to penalties for failure to timely furnish and file, but they are still encouraged to furnish statements to individuals and file returns with the IRS because the IRS "will take such furnishing and filing into consideration when determining whether to abate penalties for reasonable cause."

Finally, the Notice acknowledges that some employees who enrolled in Marketplace coverage but did not receive a determination from the Marketplace that their employer's offer of coverage was not affordable, could be adversely

affected by the extension if they do not receive their Forms 1095-C before they file their income tax returns. To mitigate any adverse affects, for 2015 only, employees who rely upon other information received from employers about their offers of coverage for purposes of determining eligibility for the premium tax credit when filing their income tax returns will not need to amend their returns once they receive their Forms 1095-C. Similarly, the IRS recognizes that certain individuals may not have received information about their enrollment in minimum essential coverage before they file their income tax returns. For 2015 only, these individuals may also rely upon other information received from their employers or insurers about their coverage when filing their tax returns, and they will not need to amend their returns once they receive Form 1095-B or Form 1095-C.

## Cadillac Tax Delayed

Under the PATH Act, the Cadillac Tax provisions in section 4980I of the Internal Revenue Code, originally scheduled to be effective on January 1, 2018, will be delayed until January 1, 2020. The Cadillac Tax imposes a 40% excise tax on employer-sponsored health care coverage that exceeds certain cost thresholds. These thresholds will continue to be adjusted for inflation during this two-year period. In addition to the delay, the legislation allows employers paying the tax to treat it as a deductible expense, which, when coupled with the delay, is expected to cost the government an estimated \$20 billion in tax revenue over a 10-year period.

The accord also suspends the tax on medical devices for 2016 and 2017 and imposes a moratorium on taxes health insurers are required to pay under the ACA. While both of these additional changes are expected to reduce tax revenues collected, insurers are signaling that the moratorium on the insurer tax could have a positive effect on premiums.

It is still too early to tell whether an agreement to delay the Cadillac Tax is just a first step toward repeal. Regardless, the expectation is that employers and insurers will continue to take steps to reduce health plan costs.

## Notice 2015-87

In Notice 2015-87, the Departments issued a series of Q&As on a number of ACA topics, including the following:

- Applying the ACA market reforms to health reimbursement arrangements (HRAs) and employer payment plans under which an employer seeks to reimburse an employee for premium expenses incurred for individual market health insurance coverage or uses its funds to directly pay the premium for an individual health insurance policy.
- Determining employee contributions when employers offer HRAs, flex credits, and opt-out payments to employees who decline coverage under an employer-sponsored plan.
- Announcing that the 9.5% affordability standard is adjusted annually and is set at 9.56% for 2015 and 9.66% for 2016 and clarifying that the adjustment applies to all provisions of the ACA that use the 9.5% standard.
- Updating for inflation the assessments under Code sections 4980H(a) and 4980H(b). The annual per full-time employee penalty under section 4980H(a) increases from \$2,000 to \$2,080 for 2015 and to \$2,160 for 2016. The annual per employee assessment under section 4980H(b) increases from \$3,000 to \$3,120 for 2015 and to \$3,240 for 2016.
- Clarifying what constitutes an “hour of service” when no duties are performed, e.g., when an employee is receiving worker’s compensation benefits or long-term disability benefits.
- Applying employment break period rules for employees who perform services for an educational organization but who are not the employee of the educational organization because, for example, they are an employee of a staffing agency.
- Applying COBRA rules to unused amounts in health FSAs that are carried over to later years.

- Announcing relief from penalties for employers that make a good faith effort to comply with the ACA information reporting requirements under Code section 6056 (the employer shared responsibility provisions). Specifically, relief is provided for returns and statements filed and furnished in 2016 to report offers of coverage in 2015 for incorrect or incomplete information reported on the return or statement. This relief does not apply in the case of applicable large employer members that cannot show a good faith effort to comply with the information reporting requirements or that fail to timely file an information return or furnish a statement. However, consistent with existing information reporting rules, applicable large employer members that fail to timely meet the requirements still may be eligible for penalty relief if the IRS determines that the standards for reasonable cause are satisfied. This relief is similar to the relief that has been provided with respect to reporting on coverage under Code section 6055 (enrollment in minimum essential coverage).

For more information about the extension of the due dates for the ACA information reporting requirements, the delay in the Cadillac Tax or the topics addressed in Notice 2015-87, contact any member of the Ropes & Gray executive compensation and employee benefits [practice group](#) or your usual Ropes & Gray advisor.