

Legislative Alert

July 3, 2013

One year delay on the effective date of the Play or Pay mandate



On July 2, 2013, the Obama Administration (“Administration”) announced a one-year delay (January 1, 2015) in complying with the new reporting requirements applicable to employers, insurance carriers, and self-insured plans. The delay also extends to the payment of penalties under the Play or Pay mandate for large employers (employers with 50 or more full-time equivalent employees). The Play or Pay mandate requires large employers to pay a penalty if they fail to offer minimum essential coverage (“MEC”) to full time employees; offer coverage that is unaffordable (greater than 9.5% of the employee's household income for employee only coverage), or fails to meet the minimum value requirement (60% actuarial value). The Administration stated that the delay was necessary to address the new reporting requirements under the Patient Protection and Affordable Care Act (“ACA”), as systems had to be updated and reporting processes streamlined to address the needs of employers who offered coverage to employees in accordance with the ACA. The delay in the reporting requirements also grants employers additional time to amend their health plans

to extend MEC to all full-time employees, increase the actuarial value of plans, and/or make the plans affordable, as penalties will not be assessed against employers in 2014.

What does the delay mean to large employers?

The delay suspends the reporting obligation for employers, insurance carriers, self-funded plans, and other parties, and delays the assessment of penalties under the Play or Pay mandate for large employers that fail to offer MEC to full-time employees, and/or coverage that is affordable and meets the minimum value (60% actuarial value). The delay grants large employers one more year to amend their plans to conform to the Play or Pay mandate. This delay may be specially welcomed by large employers that had to comply with the Play or Pay mandate as of January 1, 2014, as they sponsored a calendar year plan, or sponsored a fiscal year plan (non-calendar year plans) that did not qualify for temporary relief. It is unclear from the announcement if the delay from complying with the Play or Pay mandate extends to January 1, 2015 for all plans, including fiscal year plans, or if fiscal year plans will be required to comply with the Play or Pay mandate as of the first plan year that commences in 2015. According to the Administration, additional guidance will be released next week, which hopefully will address this and other outstanding issues.

Note that the delay does not extend to exchanges, Medicaid expansion, or the individual mandate. Exchanges are still scheduled to go live on October 1, 2013, with open enrollment commencing in October 1, 2013, ending on March 31, 2014. Exchanges will provide subsidized coverage to eligible individuals, with coverage becoming effective on January 1, 2014. Medicaid expansion, in states pursuing expansion, is still

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scheduled to become effective on January 1, 2014, as well as the individual mandate, which requires every American to retain MEC as of January 1, 2014.

What reporting requirements are being delayed for an additional year?

Reports required under IRC Section 6056

In its communication, the Administration referred to the reporting obligations under Section 6056 of the Internal Revenue Code (“IRC”), which required large employers (employers with 50 or more full time equivalents employees) to report to the Internal Revenue Service (“IRS”) the employer’s information, if the employer offered MEC; such as, the number of full-time employees employed per month in a calendar year and identifying information for each full-time employee. In addition, employers that offered employees the opportunity to enroll in MEC are required to report the months during the calendar year for which coverage under the plan was available, the monthly premium for the lowest-cost option in each of the enrollment categories under the plan, the employer’s share of the total allowed costs of benefits provided under the plan, and the length of any waiting period for coverage.

Written statements to full-time employees

Large employers, subject to the reporting requirement described above, are also required to provide a written statement to each of their full-time employees whose names were required to be included in the report. This statement must include the information described below and be furnished to employees no later than January 31 of the year following the calendar year for which the information was reported to the IRS:

- The name, address, and contact information of the reporting employer
- The information required to be shown on the return with respect to the individual

Reporting requirements under IRC Section 6055

This IRC section requires insurance carriers and sponsors of self-funded plans, and other entities that provide MEC to individuals, to provide on an annual basis to individuals a report that includes all of the following information:

- The name, address, and taxpayer identification number (TIN) of the primary insured, and the name and TIN of each other individual obtaining coverage under the policy
- The dates during which the individual was covered during the calendar year
- If the coverage is health insurance coverage, whether the coverage is a qualified health plan (QHP) offered through a health benefit Exchange
- If the coverage is health insurance coverage and that coverage is a QHP, the amount of any advance cost-sharing reduction payment or of any premium tax credit with respect to such coverage
- Any other information required by the IRS

In addition, if health insurance coverage is through an employer-provided group health plan, the return must contain the following information:

- The name, address, and employer identification number (EIN) of the employer maintaining the plan
- The portion of the premium (if any) required to be paid by the employer
- Any other information the IRS may require to administer the new tax credit for eligible small employers under Code § 45R

The report is to be prepared and issued by insurance carriers for insured plans and by plan sponsors for self-funded plans.

According to the Administration, regulatory agencies will work closely with employers, insurers, and other stakeholders to simplify the new reporting requirements and eliminate duplicate reporting. Additional guidance will hopefully clarify the effective date of the new reporting requirements and minimize the number of reports employers are required to issue.

Please read the announcement released by the *Assistant Secretary for Tax Policy* at <http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner.aspx>. The Administration anticipates issuing additional guidance on this development next week. The benefits compliance team at Wells Fargo Insurance will continue to monitor these developments.

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