

July 5, 2013

## PPACA Update: Employer Penalties Delayed

On July 2, 2013, the Obama administration announced that it will delay enforcement of the employer shared responsibility penalties under the Patient Protection and Affordable Care Act (PPACA) until 2015. The one-year enforcement delay will also apply to certain related health plan reporting requirements under PPACA. Treasury will issue formal guidance regarding the delay within the next week.

The formal guidance will give us more information, but here is what we know so far:

- The only official statement regarding the delay has been issued in the form of a blog post from Mark J. Mazur, the Assistant Secretary for Tax Policy, on the U.S. Department of the Treasury website (treasury.gov). The primary subject of the post was Treasury's decision to delay certain mandatory reporting requirements under Internal Revenue Code (Code) sections 6055 and 6056 that were added by PPACA.
- Code section 6055 requires health insurance issuers and self-insured health plans to report to the Internal Revenue Service (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. Section 6056 requires "applicable large employers" (generally, employers with 50 or more full-time or full-time equivalent employees) to report to IRS information on the number of full-time employees covered under any employer-sponsored health plans.
- According to the blog post, the administration postponed these reporting requirements because of concerns voiced about their complexity and the need for additional time to implement the reporting. The postponement is intended to allow the agency to review options for simplifying the new reporting requirements and provide additional time for insurers and employers to adapt their administrative systems.
- The blog post further noted that, as a result of the delay of this reporting, Treasury would offer "transition relief" for the employer shared responsibility requirements under Code section 4980H<sup>1</sup>, as added by PPACA. Section 4980H imposes penalties on large employers for failing to offer affordable, comprehensive health care coverage to full-time employees. According to the announcement, employers will not be subject to penalties under section 4980H until 2015.
- Mazur's blog post encouraged employers to continue to maintain and expand health coverage during 2014, and to voluntarily comply with the reporting requirements in the interim.

Note that the announcement does not delay the requirement for individuals to obtain health insurance by January 1, 2014, nor does it delay the effective dates of PPACA's coverage mandates for group and individual health insurance plans. It also does not delay 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.

However, employers struggling with implementation of the shared responsibility requirements, particularly the issues related to identifying full-time employees who must be offered coverage under section 4980H, will welcome the transition relief on the eve of the 2014 open enrollment season.

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<sup>1</sup> Beginning January 1, 2014, large employers would have been subject to penalties of either (1) \$2,000 per full-time employee if the employer did not offer minimum essential coverage and an employee received subsidized coverage through an insurance exchange; or (2) \$3,000 for each full-time employee who received subsidized coverage, if the employer offered coverage to that employee, but the coverage was not affordable.



*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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