

# **AFFORDABLE CARE ACT – CRITICAL ISSUES FOR TAX DEPARTMENTS**

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**Tax Executives Institute  
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Robin Solomon  
(202) 662-3474  
RSolomon@ipbtax.com

Jonathan Zimmerman  
(202) 662-3464  
JZimmerman@ipbtax.com

# INTRODUCTION: THE ACA AS A PRISON CELL (FOR LARGE EMPLOYERS)

- Employer mandate is the “floor”
  - Employers owe an excise tax (Code Section 4980H) for failing to offer minimum essential coverage to a sufficient percentage of full-time employees, or for failing to offer affordable coverage that provides minimum value
- Cadillac plan excise tax is the “ceiling”
  - Employers and other providers owe an excise tax (Section 4980I) for offering coverage that is too valuable
- Market reform rules are the “bars”
  - Employers and insurers owe an excise tax (Section 4980D) if coverage fails to meet certain substantive requirements (e.g., dependent child coverage through age 26, preventive care with no cost-sharing)
- Non-discrimination rules are the “elephant”
  - Treasury is required by statute to issue non-discrimination rules for insured plans, but thus far has been unable to do so
  - Non-discrimination requirements for self-insured plans (Section 105(h)) have been on the books for decades, but are rarely enforced
  - Violation triggers taxation of benefits provided to highly-paid employees

# INFORMATION REPORTING

# REPORTING REQUIREMENTS: KEY FACTS

- **WHAT:** New reporting requirements for 2015
  - Same filing schedule as W-2
- **WHO:** Requirements apply separately to each CG member.
  - Parent may file on behalf of each employer, but liability ultimately on employer
  - Liability ultimately falls on each employer
- **WHEN:** First mandatory filing due in early 2016, for the 2015 year.
  - Optional for 2014 (“strongly encouraged”) but no penalty
- Failure to file may trigger penalties under Code sections 6721 and 6722.
  - Generally, up to \$250 per return, to \$3 million annual maximum for each violation.
  - May be waived if due to reasonable cause and not willful neglect
  - Good faith standard for 2015

# SUMMARY OF EMPLOYER REPORTING PROVISIONS

Due January 31 each year  
**FORM W-2**

**§ 6051**  
**(Wage reporting)**

- **Purpose:** Provide employees with information on cost of employer-provided coverage, to determine if Cadillac tax applies

Starting 2016, due each January 31 to employee & March 31 to IRS

**FORMS 1094-B & C, 1095-B & C**

**§ 6055**  
**(MEC reporting)**

- **Purpose:** Provide individuals and IRS with information to administer individual mandate

**§ 6056**  
**(ESR reporting)**

- **Purpose:** Provide IRS with information to administer employer mandate and IRS and individuals information to administer premium tax credit

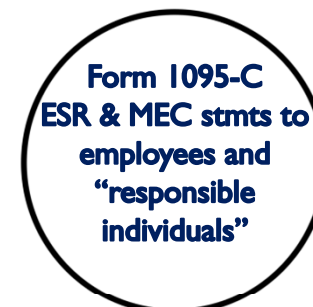
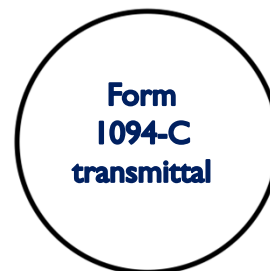
# WHICH FORM DO I USE?

## IRS Filings

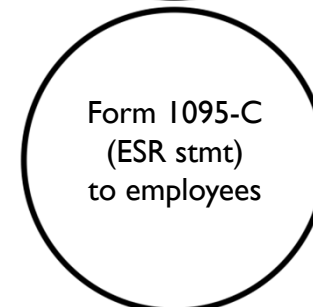
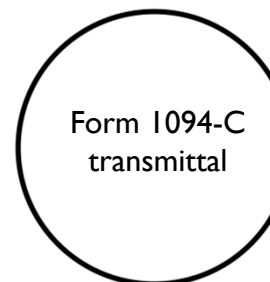
## Transmittal Forms

## Individual Statements

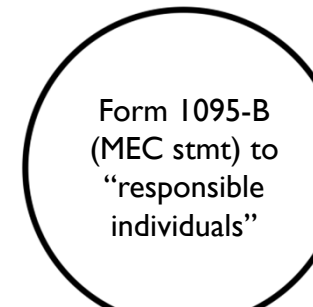
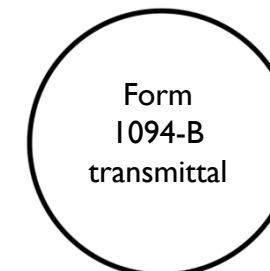
**Large employer  
with self-funded  
plan**



Large employer  
with insured plan



Insurer





## **IRS REPORTING INSTRUCTIONS**

# SECTION 6055: MEC REPORTING – PURPOSE

- MEC = Minimum Essential Coverage
- Every self-insured employer providing MEC to an individual during the CY must furnish a MEC statement to each “responsible individual” and file those statements with the IRS
  - If fully insured, the insurer will transmit this info to IRS
- The MEC statement reports only *enrollments*, not mere offers of coverage
- What’s the point?
  - Notifies an individual whether he or she had MEC
  - Tells the IRS who received MEC from an employer plan in the prior CY
  - Enables the IRS to verify whether each person satisfied the ACA individual mandate



# SECTION 6055: MEC REPORTING – WHO

- Who gets a MEC statement?
  - “Responsible individual” = primary participant
  - Includes COBRA enrollees who elect separately (i.e., divorced spouse)
  - Includes non-U.S. citizens working in U.S., and also U.S. citizens working abroad
  
- Who issues the MEC statement?
  - Employers – if self-insured
    - Third party may file on behalf of employer, but employer remains responsible
    - Large and small employers
    - Each member of Applicable Large Employer (ALE), with unique EIN
  - Insurers – if fully insured
  - Exchange – if qualified health plans
  - Union joint board – if multiemployer
  - Governmental entity sponsor – if self-insured
    - Can delegate to “designated governmental entity” within same government

# SECTION 6055: WHAT IS MINIMUM ESSENTIAL COVERAGE?

## MEC

- Employer-sponsored major medical
- Retiree-only plans offering coverage beyond excepted benefits
  - No retiree exception
- HRAs
- Preventive services-only plans
- Expatriate coverage
- Exceptions:
  - Govt. coverage
  - Individual coverage
  - Supplemental benefits

## Not MEC

- Accident or disability coverage
- Worker's compensation
- Limited-scope dental or vision benefits
- Long-term, nursing home, and home- or community-based benefits
- Fixed indemnity insurance
- Specified disease insurance
- On-site medical clinics
- Medicare supplemental policies
- Health FSAs
- EAPs
- Stop loss coverage (not health coverage)

# SECTION 6055: MEC REPORTING – DATA & DELIVERY

- Filing similar to Form W-2
  - Employee statement plus employer transmittal form
  
- Delivery method (to employees)
  - Electronic
    - advance consent specific to Form 1095-C
    - by email or intranet
  - First class mail (can be sent with Form W-2)
  - Hand delivery
  
- Reporting entity must include specific data:
  - Filer – EIN, contact name, number of individual statements
  - Plan sponsor – EIN, name, address
  - Individual data
    - Name & address for primary insured
    - Name of each “covered individual” (enrolled in MEC)
    - SSN for each covered individual
    - Months of coverage for each individual, if enrolled at least one day

# SECTION 6056: ESR REPORTING – PURPOSE

- Large employers responsible for Employer Shared Responsibility (ESR) reporting must provide individual statements to any Full-Time Employee (FTE) and then file those statements with the IRS
- What's the point?
  - Helps an individual claiming premium tax credits determine whether he or she qualifies
  - Tells the IRS how many FTEs an employer has, and whether they received health coverage
  - Enables the IRS to verify whether the employer owes a shared-responsibility payment (line 16)
  - Enables the IRS to verify whether the individual is eligible for a premium tax credit (lines 14 & 15)

# SECTION 6056: ESR REPORTING – WHO RECEIVES

- Who gets an ESR statement?
  - Each employee who had FT status for at least one month of the reporting year
  - Doesn't matter if employee enrolled in coverage
    - Contrast with MEC statement, which is provided to each responsible individual with coverage, regardless of status as FT, PT, or nonemployee.
  - Self-funded employers must combine MEC and ESR reporting on “C” form
    - In practice, this means that Form 1095-C is provided to all employees who are either (i) FTE or (ii) covered by MEC for one or more months of CY
  
- Special cases
  - New hires
  - Terminated employees
  - COBRA beneficiaries

# SECTION 6056: ESR REPORTING – WHO PROVIDES

- Who issues the ESR statement?
  - Large employers – *each member of ALE*
    - Applicable Large Employer (ALE) = controlled group with more than 50 FTEs (100 for 2015)
    - Special rules for employee who works for more than one ALE entity
    - Can delegate to plan administrator, or third party, but each employer remains liable
  - Multiemployer plans
    - *Employer* remains liable for ESR reporting
  - Governmental employers
    - Can delegate to “designated governmental entity” within same government

# SECTION 6056: ESR REPORTING – DATA

- What must be reported on Form 1095-C?
  - By month, whether the Minimum Value (MV) standard was met and to whom coverage was offered
  - By month, any reasons why a penalty is not due, if MV coverage was not offered
  - By month, employee share of premium for lowest cost, self-only MV option (if offered)
  
- What must be reported on transmittal Form 1094-C?
  - General information on employer health plans and workforce
  - Number of individual statements filed (1095-Cs)
  - Whether transmittal is “authoritative” reporting of all aggregate data
  - By month, whether the employer offered MEC to “substantially all” FT employees and dependents (Y/N)
    - 70% in 2015, 95% in 2016+
    - Exclude employees in “non-assessment periods”
    - Include employees deemed to have received offer under transition relief
  - By month, number of FT employees using lookback or monthly measurement method
  - By month, total number of employees
  - Whether employer is part of aggregated group
    - List up to 30 other group members, in descending order by number of FTEs
  - Whether simplified method or transition relief is used





# SECTION 6056: “SIMPLIFIED” ALTERNATIVES

## Certification/ Qualifying Offer Method

- For employees that received “qualifying offer” for all months as FTE
- May provide generic letter instead of 1095-C...but only for employees with qualifying offer in all 12 months

## 98% Offer Method

- If employer can certify it offered minimum value coverage to at least 98% of employees for whom it is filing 1095-C (even if some of those are not FTEs), for entire year
- Need not identify total number of FTEs in a month or whether an employee was FT in particular month

## Transition Relief

- 2015 Qualifying Offer Transition Relief
  - Certification that qualifying offer was made to 95% of FTEs in 2015
- 50-99 Transition Relief

# 6055 & 6056 REPORTING: TIMING FOR 2015 PY

- Feb. 1, 2016: Individual statements to employees
  - MEC statement to “responsible individuals”
  - ESR statements to FTEs
- Feb. 29, 2016: Paper filers (< 250 returns)
  - MEC/ESR information returns + transmittal
- Mar. 31, 2016: Electronic filers (> 250 returns)
  - MEC/ESR information returns + transmittal
- Non-calendar year plans:
  - Same deadlines apply
- Extensions: Up to 30 days with good cause shown
  - “undue hardship”

# 6055 & 6056 REPORTING: PENALTIES

- Penalties increased by recent trade legislation
  - \$250 per return that is missing or inaccurate
  - \$250 per individual statement that is missing or inaccurate
  - Cap of \$3 million for each category
  - \$500 per return or statement for flagrant disregard
  - IRS can reduce if corrected
- No penalties in 2016 for incorrect or incomplete 2015 reports
  - Good faith effort required

# 6055 & 6056 REPORTING: OTHER KEY ISSUES

- Potential relief
  - IRS Extensions
  - Legislation - bipartisan HR 2712 (Commonsense Reporting and Verification Act of 2015)
    - Would direct regulators to create voluntary, prospective ESR reporting system
    - Would allow employers to certify the type of MEC that will be available to FTEs during the upcoming year, thus eliminating detailed statements under 6056
    - Would allow use of DOB for 6055 reporting, where SSN is unavailable
    - Ease electronic delivery
    - Not available for 2015 year
- Correcting mistaken filings
  - Must correct any errors, even if report was accurate when prepared

# **“CADILLAC PLAN” EXCISE TAX**

# GENERAL OVERVIEW

- Code section 4980I imposes a non-deductible, 40% excise tax to the extent the “aggregate cost” of “applicable” employer-sponsored health coverage exceeds a specified dollar limit
  - Tax is paid by the insurer for insured plans, by the employer for an HSA or Archer MSA, and by the plan administrator (which may be the employer or a TPA) for self-insured plans
  - Tax is payable for coverage provided to current employees, former employees (including retirees), surviving spouses, and any other primary insured
  - Scheduled to take effect for coverage provided in calendar year 2018
- IRS has provided preliminary guidance in Notices 2015-16 and 2015-52, but taxpayers are NOT permitted to rely on the Notices
- IRS intends to issue proposed regulations (with a notice and comment period) and final regulations by late 2016

# POLICY CONSIDERATIONS

- The purpose of the tax is to reduce healthcare spending, and shrink the tax expenditure for employer-provided health coverage.
  - Concern is that valuable plans incentivize individuals to purchase excessive amounts of care.
- The Congressional Budget Office estimates that the tax will raise \$91B of additional revenue through 2025.
  - This is based largely on the debatable assumption that employers will cut back non-taxable health benefits to avoid the tax, and provide a corresponding increase in taxable wages.
- Health economists argue that repealing the tax will cause employee costs to increase in the long-run.
  - But the threat of the tax has already led many employers to increase deductibles, co-pays and out of pocket maximums.

# CADILLAC TAX THRESHOLDS

- For 2018, the dollar limits will be at least \$10,200 for self-only coverage, and at least \$27,500 for other types of coverage
  - The 2018 limits may be higher, depending on the rate of increase in the standard BCBS plan in the FEHBP between 2010 and 2018
- Larger limits may apply to retiree plans, and plans that cover employees in high-risk professions
- Limits can be adjusted based on age and gender to the extent the employer's workforce differs from national averages
- Starting in 2019, the dollar limits are adjusted for inflation in accordance with the Consumer Price Index, but healthcare costs have tended to increase faster than CPI.



# CALCULATING THE COST OF COVERAGE

- The cost of coverage includes both the employee's and the employer's share of any premium, and generally includes pre-tax and after-tax employee contributions.
  - As a result, it is not possible to avoid the tax by increasing the employee's share of premiums
  - However, it is possible to avoid the tax by increasing deductibles, co-payments, and co-insurance; many employers are already taking these steps

# CALCULATING THE COST OF COVERAGE

- Applicable coverage generally refers to any type of coverage that is excludable under Code section 106, or would be excludable under Section 106 if provided by an employer.
- FSAs, HSAs and HRAs are included
- Wellness programs and employee physical programs are included
- Stand-alone dental or vision coverage is excluded if insured; regulations may extend this exclusion to self-insured coverage
- On-site medical clinics are included if they provide more than a de minimis amount of medical care
  - IRS has requested comments re: definition of “de minimis” and how to value the availability of an on-site medical clinic
- Regulations may clarify that employee assistance programs (EAPs) are excluded

# CALCULATING THE COST OF COVERAGE

- For most plans, premium cost is determined in accordance with COBRA rules
  - Guidance will address who is “similarly situated” for purposes of determining the applicable COBRA premium.
  - Guidance also will describe how to calculate COBRA premiums for self-insured coverage and HRAs
- For FSAs, HSAs and Archer MSAs, cost of coverage is based on employer contributions, including salary reduction contributions
- For employees who are enrolled in “self-only” and “other” coverage, the IRS may apply the 4980I limit that applies to the primary coverage (coverage that accounts for a majority of the cost) or a blending of the self-only and “other” coverage limits.
  - E.g., Employee elects family medical coverage, but also contributes to an FSA, which is always treated as self-only coverage.

# MECHANICS OF PAYING THE TAX

- Employers will need to calculate the excise tax and report the excess benefit to the IRS and coverage providers
  - Tax probably will be payable with Form 720, Quarterly Excise Tax Return, in an as-yet unspecified quarter of the calendar year.
- Tax liability is calculated separately for each month, based on the cost of coverage provided for that month
- If an employee receives coverage from multiple sources, the tax is allocated ratably among the coverage providers
- The employer is responsible for calculating the tax and telling each provider how much they owe.

# AN EXAMPLE OF HOW CRAZY THIS IS

- Coverage providers (insurers and TPAs) that owe the excise tax generally will charge that cost back to the employer.
- The chargeback will result in additional taxable income for the coverage providers, but the excise tax is not deductible.
- As a result, in order to recover the full cost of the excise tax, coverage providers will need to charge an additional “gross-up” amount to cover the income taxes due on the excise tax reimbursement, and the income taxes due on the gross-up.
- The statute excludes the excise tax reimbursement from the cost of applicable coverage, but does not exclude the additional income tax reimbursement.
- IRS has suggested that regulations may exclude the entire chargeback from the cost of applicable coverage, but only if it is billed separately.

# PENALTIES

- If the employer calculates the tax incorrectly, the employer owes a penalty equal to the amount of any resulting underpayment, plus underpayment interest under Code section 6621.
- Penalties are not assessed against other providers
- Penalty does not apply if the underpayment results from reasonable cause and is corrected within 30 days after the employer becomes aware or should have become aware of the failure; the IRS also has discretion to waive the penalty if the employer misses the 30-day deadline

# KEY UNANSWERED QUESTIONS

- Will there be delayed effective dates or transition rules?
- What if the Cadillac tax threshold falls below the minimum value threshold?
- Who pays the tax for self-insured plans?
- When will the applicable dollar limits be updated?
- When can the cost of coverage be calculated?
- To what extent should HSA, FSA and HRA contributions be included in the cost of coverage?
- What aggregation and disaggregation options will be available?
- Will geographic adjustments be permitted?

## REPEAL EFFORTS

- Bills introduced in both houses of Congress, with sponsors from both parties, would repeal the tax.
- One open question is whether such a bill would require a corresponding revenue-raising provision to offset the lost tax revenue.
- Another question is whether, if the tax is repealed, Congress may pursue similar goals in other ways, including a cap on the exclusion for employer-provided health benefits.





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