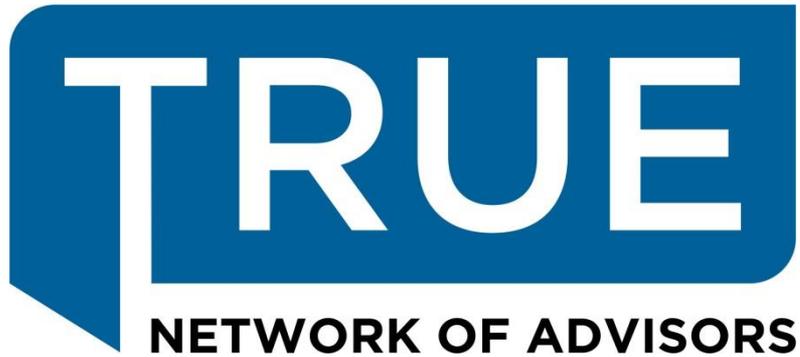


ACA Compliance in 2016: What's Gone, What's Here & What's Coming?



Presented By
Matt Stiles & Matthew Cannova
Maynard Cooper & Gale, P.C.
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Agenda

- ▼ Delay in Cadillac Health Plan Tax
- ▼ Update: ACA Nondiscrimination Requirements
- ▼ Repeal of ACA Automatic Enrollment Requirements
- ▼ Developments in “Affordability”
- ▼ Increased Pay or Play Penalties Confirmed
- ▼ Repeal of Increased Form 5500 Extension
- ▼ ACA Reporting
 - ▼ Extensions
 - ▼ Breaking the Codes

Delay in Cadillac Health Plan Tax

- ▼ **Cadillac Health Plan Tax**
 - ▼ 40 percent excise tax imposed on employer-sponsored health coverage that exceeds certain limits
 - ▼ Currently \$10,200 for individual coverage, and \$27,500 for family coverage, but expect changes for new effective date
- ▼ **Consolidated Appropriations Act of 2016 - included a two-year delay to the effective date from January 1, 2018 to January 1, 2020**
- ▼ **Employers should continue to review their health insurance plans to determine whether they may be subject to exposure under the Cadillac Tax and plan appropriately for design changes that may be required to avoid the tax prior to the new effective date**



UPDATE:

ACA Nondiscrimination Requirements

- ▼ Applies rules “similar” to the rule in Code § 105(h) to fully-insured health plans
- ▼ Prohibits discrimination in favor of highly compensated employees with respect to eligibility classification and benefits
- ▼ DELAYED – IRS Notice 2011-1
 - ▼ Still currently applicable to self-funded health plans
- ▼ Common Issue: Varying Premium Levels



REPEALED:



ACA Automatic Enrollment Requirements

- ▼ ACA originally included provisions that would have required employers subject to the FLSA with more than 200 full-time employees to:
 - ▼ Automatically enroll new full-time employees in one of the employer's health plans, subject to any waiting period authorized by law.
 - ▼ Continue the enrollment of current employees in the employer's health plans.
- ▼ In 2010 FAQ guidance, DOL delayed the requirements pending the issuance of implementing regulations.
- ▼ Practical Impact:
 - ▼ Because repeal of automatic enrollment occurred before final regulations were issued, employers were never required to comply with this provision

Opt-Out Incentives & Affordability

- ▼ IRS established position that *unconditional* opt-out arrangements have the effect of increasing an employee's required contribution for health coverage

- ▼ **Unconditional vs. Conditional Opt-Out Arrangements**
 - ▼ Unconditional – conditions the opt-out payment solely upon the employee declining coverage without any other conditions
 - ▼ Conditional – also requires satisfaction of some other meaningful requirement related to the provision of health care to employees, such as a requirement to provide proof of coverage provided by a spouse's employer

- ▼ **Transition Relief**
 - ▼ For opt-out arrangements adopted prior to December 16, 2015, employers are not required to increase the amount of an employee's required contribution by the amount of an opt-out payment for affordability purposes

IRS to Index Affordability Safe Harbors

- ▼ Affordability rate for purposes of exchange subsidies under Code § 36B is indexed
 - ▼ 2015: 9.56%
 - ▼ 2016: 9.66%
- ▼ Previously unclear, but the IRS has indicated that it does intend to index affordability safe harbors to be consistent with Code § 36B
 - ▼ Applies for 2015 coverage

Increased Pay or Play Penalties

- ▼ **CONFIRMED**: Inflation-adjusted employer shared responsibility penalties for 2015 and 2016:

Employer Shared Responsibility Penalties			
	Old	2015	2016
Code § 4980H(a)	\$2,000	\$2,080	\$2,160
Code § 4980H(b)	\$3,000	\$3,120	\$3,240

REPEALED: Increased 5500 Extension

- ▼ ERISA employee benefit plans must file the Form 5500 Annual Report by the end of the seventh month following the end of the plan year (e.g., July 31 for calendar year plans)
- ▼ Form 5558 Automatic Extension
 - ▼ Currently 2 ½ months (e.g., October 15 for calendar year plans)
 - ▼ ~~Repealed: New extension of 3 ½ months (e.g., November 15 for calendar year plans)~~
- ▼ Keep in mind filing exceptions for certain small and unfunded or fully-insured plans

ACA REPORTING – EXTENDED 2015 DEADLINES

To IRS	
Old	New
Paper Filers	
February 29, 2016	May 31, 2016
Electronic Filers	
March 31, 2016	June 30, 2016

To Employees	
Old	New
February 1, 2016	March 31, 2016

Includes corresponding extension to August 1, 2016 deadline to correct failures for reduction in penalty amounts

“Good Faith Effort To Comply”

- ▼ Relief for 2015 reporting if filer can show good faith effort to comply
- ▼ Not available for failure to file or furnish employee statements
- ▼ Existing penalty relief for “reasonable cause” failures (Code § 6724)
- ▼ Extensions may “raise” burden of establishing this standard

Code Series 1 – 1095-C, Line 14

- **ONLY use these if your coverage meets the requirements to be a “Qualifying Offer”**
- **1094-C, Line 22 – Certifications of Eligibility: You should have marked options A. Qualifying Offer Method or B. Qualifying Offer Method Transition Relief 2015**

1A. Qualifying Offer: Minimum essential coverage providing minimum value offered to full-time employee with employee contribution for self-only coverage equal to or less than 9.5% mainland single federal poverty line and at least minimum essential coverage offered to spouse and dependent(s).

1I. Qualifying Offer Transition Relief 2015: Employee (and spouse or dependents) received no offer of coverage; received an offer that is not a qualifying offer; or received a qualifying offer for less than 12 months.

Code Series 1 – 1095-C, Line 14

- **If you offer coverage (but not a “Qualifying Offer”), then you will use one—and only one—of these for months in which you offered coverage to the employee**
- ***Remember – coverage must have been effective for each day of the calendar month**
- **Ask: Did you offer coverage? If so, what and to whom?**

1B. Minimum essential coverage providing minimum value offered to employee only.

1C. Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) (not spouse).

1D. Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to spouse (not dependent(s)).

1E. Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse.

Code Series 1 – 1095-C, Line 14

- **Unique circumstances**

1F. Minimum essential coverage NOT providing minimum value offered to employee; employee and spouse or dependent(s); or employee, spouse and dependents.

1G. Offer of coverage to employee who was not a full-time employee for any month of the calendar year (which may include one or more months in which the individual was not an employee) and who enrolled in self-insured coverage for one or more months of the calendar year.

1H. No offer of coverage (employee not offered any health coverage or employee offered coverage that is not minimum essential coverage, which may include one or more months in which the individual was not an employee).

Code Series 2
1095-C, Line 16

- **Trump Codes**

2C. Employee enrolled in coverage offered. Enter code 2C for any month in which the employee enrolled in health coverage offered by the employer for each day of the month, regardless of whether any other code in Code Series 2 (other than code 2E) might also apply (for example, the code for a section 4980H affordability safe harbor). Do not enter 2C in line 16 if code 1G is entered in the All 12 Months Box in line 14 because the employee was not a full-time employee for any months of the calendar year. Do not enter code 2C in line 16 for any month in which a terminated employee is enrolled in COBRA continuation coverage (enter code 2A).

2E. Multiemployer interim rule relief. Enter code 2E for any month for which the multiemployer arrangement interim guidance applies for that employee, regardless of whether any other code in Code Series 2 (including code 2C) might also apply. This relief is described under *Offer of Health Coverage* in the *Definitions* section of these instructions.

Line 14 must be 1H

Code Series 2
1095-C, Line 16

2A. Employee not employed during the month. Enter code 2A if the employee was not employed on any day of the calendar month. Do not use code 2A for a month if the individual was an employee of the employer on any day of the calendar month. Do not use code 2A for the month during which an employee terminates employment with the employer.

2B. Employee not a full-time employee. Enter code 2B if the employee is not a full-time employee for the month and did not enroll in minimum essential coverage, if offered for the month. Enter code 2B also if the employee is a full-time employee for the month and whose offer of coverage (or coverage if the employee was enrolled) ended before the last day of the month solely because the employee terminated employment during the month (so that the offer of coverage or coverage would have continued if the employee had not terminated employment during the month). Also use this code for January 2015 if the employee was offered health coverage no later than the first day of the first payroll period that begins in January 2015 and the coverage offered was affordable for purposes of the employer shared responsibility provisions under section 4980H and provided minimum value.

Code Series 2
1095-C, Line 16

Employee in a section 4980H(b) Limited Non-Assessment Period. Enter code 2D for any month during which an employee is in a Limited Non-Assessment Period for section 4980H(b).

2D. If an employee is in an initial measurement period, enter code 2D (employee in a section 4980H(b) Limited Non-Assessment Period) for the month, and not code 2B (employee not a full-time employee). For an employee in a section 4980H(b) Limited Non-Assessment Period for whom the employer is also eligible for the multiemployer interim rule relief for the month, enter code 2E (multiemployer interim rule relief) and not code 2D (employee in a Limited Non-Assessment Period).

2I. Non-calendar year transition relief applies to this employee. Enter code 2I if non-calendar year transition relief for section 4980H(b) applies to this employee for the month. See the instructions later under Section 4980H Transition Relief for 2015 and 2015 Section 4980H(b) Transition Relief for Employers with Non-Calendar Year Plans (Form 1095-C, line 16, code 2I), for a description of this relief.

Code Series 2
1095-C, Line 16

2F. Section 4980H affordability Form W-2 safe harbor. Enter code 2F if the employer used the section 4980H Form W-2 safe harbor to determine affordability for purposes of section 4980H(b) for this employee for the year. If an employer uses this safe harbor for an employee, it must be used for all months of the calendar year for which the employee is offered health coverage.

2G. Section 4980H affordability federal poverty line safe harbor. Enter code 2G if the employer used the section 4980H federal poverty line safe harbor to determine affordability for purposes of section 4980H(b) for this employee for any month(s).

2H. Section 4980H affordability rate of pay safe harbor. Enter code 2H if the employer used the section 4980H rate of pay safe harbor to determine affordability for purposes of section 4980H(b) for this employee for any month(s).

WHAT AMOUNT IS ENTERED INTO LINE 15 OF FORM 1095-C?

15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
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- ▼ Complete line 15 only if code 1B, 1C, 1D, or 1E is entered on line 14 either in the “All 12 Months” box or in any of the monthly boxes.
- ▼ Enter the lowest-cost monthly premium for self-only minimum essential coverage providing minimum value that is offered to the employee
- ▼ This amount may differ from the amount the employee actually pays for, depending on the level of coverage elected
- ▼ For example, if the employee chose to enroll in family coverage, it may cost more than self-only coverage



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