

The ACA Awakens

ACA and Other 2016 Compliance Considerations What Now?

Sponsored by:

The Massachusetts Health Connector

Springfield Marriott
Springfield, MA
April 7, 2016

Newton Marriott
Newton, MA
April 11, 2016

Beechwood Hotel
Worcester, MA
April 26, 2016

Presented by:

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Today's Agenda

- ◆ 1095-C Debriefing
- ◆ Overview / What Now?
- ◆ Extensions & Indexing
- ◆ ACA Pot Luck Guidance
- ◆ Tale of Two Appeals
- ◆ Misc. Guidance/Issues
- ◆ Questions



**We made it to 2016!
Now What?**

1095-C Debriefing





Paid Interns / Co-ops

- ◆ **There are 3 ways to treat these individuals:**
 - ▶ Offer medical coverage to the interns, subject to the plan's waiting period. Assumption: likely covered elsewhere (will not be in the Connector with a tax credit)
- ◆ **Implement look back measurement periods to exclude seasonal employees**
 - ▶ Obviously, the intern program would need to meet the definition of seasonal employee under the ACA –annual recurring employment of no more than 6 months
- ◆ **Use waiting period (ideally 90 days), then the waiting period will be an LNAP -- no penalty is imposed during that period**
 - ▶ It may be possible to create different waiting periods for seasonal and non-seasonal employees provided the insurance carrier approves



The Map for ESR Compliance

- ◆ Determine Applicable Large Employer (ALE) each year
- ◆ If an ALE, determine the date any ESR penalties become effective
 - ▶ **50-99 ER Transition Rule may Apply in 2016 for NCY PY**
- ◆ Identify full-time EEs who must be offered coverage to avoid penalties
- ◆ Determine full-time EE contribution needed to meet affordability standards
- ◆ Plan documentation reflecting FT EE eligibility

2015 Employer Reporting in a Nutshell



- ★ Determine the employees who were FT for at least one month in 2015
- ★ Prepare a 1095-C for each FT employee with a full 12 month history
- ★ Send the employee a copy of his/her 1095-C
- ★ Bundle up all 1095-Cs and file with the IRS with a 1094-C Transmittal Form

STILL TO DO

Survived March 31, 2016

What Now?



The primary use for Part II of Form 1095-C by individuals is to help them determine their eligibility for the federal premium tax credit for health plan coverage purchased in the Marketplace. If not enrolled in a health plan in the Marketplace, Part II will not be relevant to the individual.

Source: IRS Q&A about Health Care Information Forms for Individuals (Forms 1095-A, 1095-B, and 1095-C)

January 11, 2016 7

95 and 30 Return to the A-Tax Penalty



- ◆ **For months beginning with the first month of the 2016 plan year for all ALEs:**
 - ▶ **ALE members offering coverage to at least 95 percent (rather than 70 percent) or that fails to offer to no more than 5 percent (rather than 30 percent) of its full-time employees will not be subject to an assessable A-Tax payment**
 - **Watch those interns**
 - ▶ **The assessable A-Tax payment is calculated by reducing the ALE member's number of full-time employees by that ALE member's allocable share of the first 30 (rather than an allocable share of 80) FT employees**

Information Reporting Deadlines Extended for 2015 Only



- ◆ **Calendar year reports, even if non-calendar plan year**
- ◆ **Filing Deadlines Extended Automatically**
 - ▶ **No request or other documentation required**
 - ▶ **No additional extensions from 2015 instructions permitted**

	Original Deadline	New Extended Deadline
Distribution to employees	February 1, 2016	March 31, 2016 (2-month extension)
Electronic filing with IRS	March 31, 2016	June 30, 2016 (3-month extension)
Paper filing with IRS	February 29, 2016	May 31, 2016 (3-month extension)

- ◆ **Extension applies only to “B” and “C” returns/statements for calendar year 2015 filed and furnished in 2016**
- ◆ **No extension for 2015 “A” returns/statements filed and furnished by the Exchanges**

Filing 1040 Before 1095 Receipt

- ◆ **Individuals should file their 2015 tax returns as normal as they will not be affected by the deadline extension to March 31, 2016**
- ◆ **The Form 1095-B and Form 1095-C are not required to prepare the Form 1040 tax return**
- ◆ **Individuals should NOT attach any Form 1095 (A, B or C) to their tax return. The information contained in these Forms are required to be sent to the IRS separately by the entity issuing the applicable Form**



No Amendment After 1095 Receipt



- ◆ **Individuals will not be required to file an amended tax return after they file their 2015 tax return**
 - ▶ **May rely upon other information received from employers about their offers of coverage for purposes of determining eligibility for the premium tax credit, and/or**
 - ▶ **May rely upon other information received from their coverage providers about their enrollment in MEC coverage**
- ◆ **Other forms of documentation need not be sent to the IRS as proof of health coverage, but should be kept with the individual's tax records**
- ◆ **Any Form 1095 received should be kept with the individual's tax records**

Reliance on Other Docs Before 1095 Receipt



- ◆ **Other forms of documentation can be used by an individual in lieu of the Form 1095 information returns to prepare a tax return, including:**
 - ▶ **Insurance cards**
 - ▶ **Explanation of benefits**
 - ▶ **Statements from the individual's insurer**
 - ▶ **W-2 or payroll statements reflecting health insurance deductions**
 - ▶ **Records of advance payments of the federal premium tax credit**
 - ▶ **Other statements indicating that the individual or a family member had health care coverage**

- ◆ **In MA, the MA Form 1099-HC**

Information Reporting Deadlines Extended for 2015 Only



- ◆ **Electronic filing required if ER is filing 250+ statements**
- ◆ **Electronic filing for ER with fewer than 250 statements encouraged**
- ◆ **IRS encourages early submission if possible**
- ◆ **Supersedes shorter extensions in the 2015 Instructions and cannot be further extended**
- ◆ **Non-compliance with extended deadlines will result in IRS penalties for failure to timely furnish and file**
- ◆ **Reminder: Keep copies filed with the IRS for at least 3 years from the due date of the returns**
- ◆ **2016 Form 1095-Cs due in 9 months: 1/31/17**

Affordable Care Act Information Return System (AIR)



- ◆ **Created by IRS to facilitate electronic transmission of reporting data to the feds**
- ◆ **The AIR System only accepts the following information returns:**
 - ▶ **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 Information Returns**
 - ▶ **Form 1095-C, Employer-Provided Health Insurance Offer and Coverage**

Filing Submissions with AIR

- ◆ **Entities eligible to apply to use AIR:**
 - ▶ **A Software Developer**: An organization writing either origination or transmission software according to IRS specifications;
 - ▶ **A Transmitter**: A third-party sending the electronic information return data directly to the IRS on behalf of any business required to file; or
 - ▶ **An Issuer**: A carrier or employer filing their own ACA Information Returns regardless of whether they are required to file electronically (transmit 250 or more of the same type of information return) or volunteer to file electronically



Electronic Filing with IRS AIR

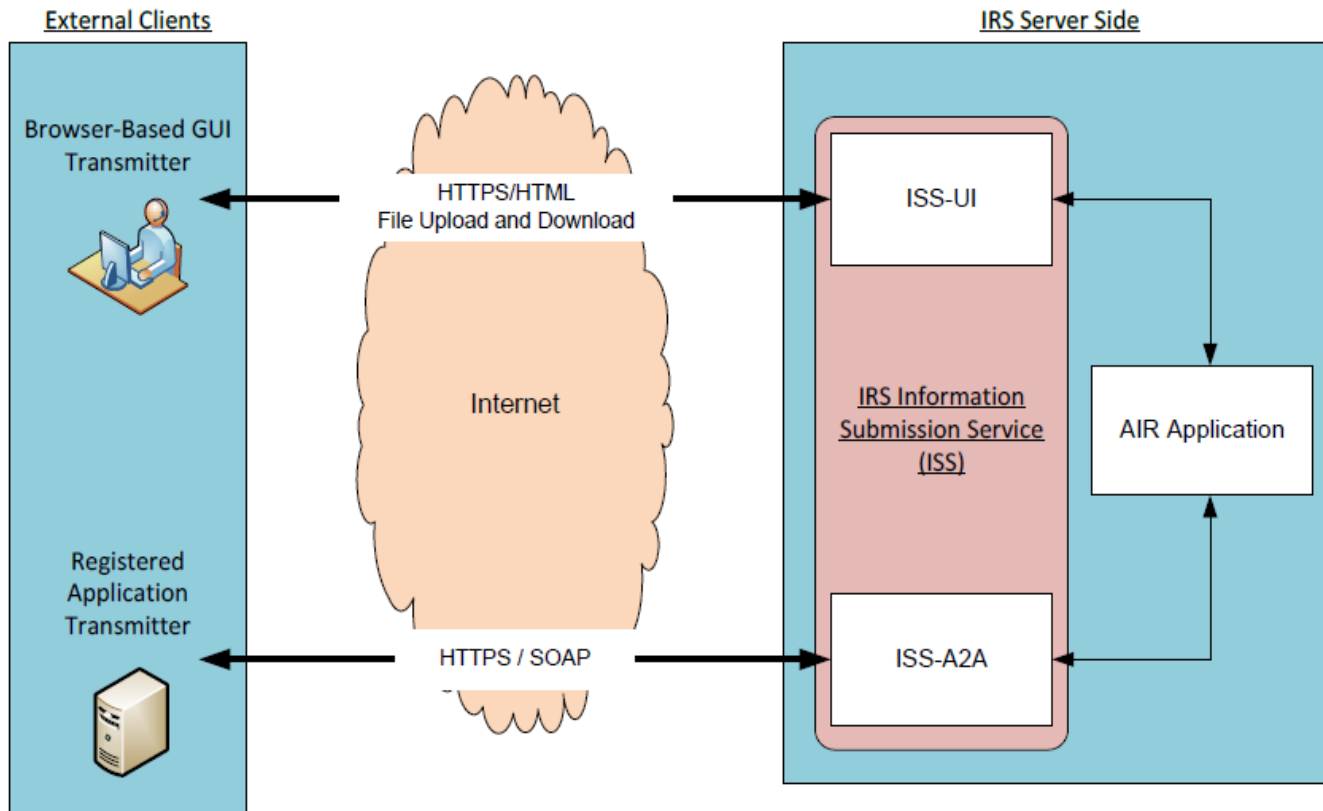


Figure 2-1: External Clients and IRS AIR

AIR Submission Composition and Reference Guide

Version 4.2, February 2016

IRS AIR Transmission Confirmation



The screenshot shows the IRS AIR Transmission Confirmation page. At the top left is the IRS logo. On the right, there are links for Print, Contact Us, Home, and Logout. The main heading is "Transmission Confirmation" in a dashed box. Below it, a message states: "Your uploaded file has been transmitted. Please see details of this transmission below. It is **highly recommended** to print this page to keep for your records. Remember to check the status of this transmission by using the Receipt ID provided below to ensure your file is accepted." The Receipt ID is 1095C-15-00000645 and the Date of Transmission is 11/16/2015 07:10:42 PM UTC. A section titled "Your Transmitted Form File" contains a table with two columns: File Name and File Size. The table lists one file: 1094C_Request_xxxxx_20141110T122240000Z.xml with a size of 8.91 KB. A blue PRINT button is located below the table. At the bottom of the page, it says "AIR 2016".

IRS

[Print](#) | [Contact Us](#) | [Home](#) | [Logout](#)

Transmission Confirmation

Your uploaded file has been transmitted. Please see details of this transmission below. It is **highly recommended** to print this page to keep for your records. Remember to check the status of this transmission by using the Receipt ID provided below to ensure your file is accepted.

Receipt ID: 1095C-15-00000645
Date of Transmission: 11/16/2015 07:10:42 PM UTC

Your Transmitted Form File

File Name	File Size
1094C_Request_xxxxx_20141110T122240000Z.xml	8.91 KB

[PRINT](#)

AIR 2016

Figure 6-4: Sample AIR ISS-UI Transmission Intake Response Message

Waiver From Electronic Filing

- ◆ **File Form 8508 at least 45 days before the due date of the returns**
 - ▶ **For 2015, file 8508 by May 16, 2015**
 - ▶ **Cannot apply for more than one tax year at a time**
- ◆ **If approved, any corrections for the same returns are covered**
- ◆ **Failures to file electronically when required to do so -- without approved waiver – subject to \$250 per return penalty**
- ◆ **Principal factor in waiver approval is cost of electronic filing vs. paper filing**
- ◆ **8508 must be filed on paper and mailed to address indicated**





IRS Form 8508

Form 8508 (October 2015)	Department of the Treasury - Internal Revenue Service Request for Waiver From Filing Information Returns Electronically <small>(Forms W-2, W-2G, 1042-S, 1097-BTC, 1098 Series, 1099 Series, 3921, 3922, 5498 Series, and 8027, or ACA Forms 1095-B, 1095-C or an Authoritative Transmittal Form 1094-C (Refer to Instructions for Form 1094-C and 1095-C)) (Please type or print in black ink when completing this form - Refer to instructions on the back.)</small>	OMB Number 1545-0957
------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------

Note: Only the person required to file electronically can sign Form 8508. A transmitter cannot sign Form 8508 for the payer, unless a power of attorney has been established. If you have a power of attorney, attach a copy to this form.

1. Type of submission Original Reconsideration

2. Payer name, complete address, and contact person. (A separate Form 8508 must be filed for each payer requesting a waiver.)

Payer name _____

Address _____

City _____ State _____ Zip code _____

Contact person _____

3. Taxpayer Identification Number
(9-digit EIN/SSN)

4. Telephone number
() _____ - _____

Email address _____

5. Waiver Requested for:	Enter the Number of Returns that:		Waiver Requested for:	Enter the Number of Returns that:	
	(a) You expect to file on paper	(b) You expect to file next tax year		(a) You expect to file on paper	(b) You expect to file next tax year
<input type="checkbox"/> 1042-S			<input type="checkbox"/> 1099-Q		
<input type="checkbox"/> 1094-C/1095-C			<input type="checkbox"/> 1099-R		
<input type="checkbox"/> 1095-B			<input type="checkbox"/> 1099-S		
<input type="checkbox"/> 1097-BTC			<input type="checkbox"/> 1099-SA		
<input type="checkbox"/> 1098			<input type="checkbox"/> 3921		
<input type="checkbox"/> 1098-C			<input type="checkbox"/> 3922		
<input type="checkbox"/> 1098-E			<input type="checkbox"/> 5498		
<input type="checkbox"/> 1098-T			<input type="checkbox"/> 5498-ESA		
<input type="checkbox"/> 1099-A			<input type="checkbox"/> 5498-SA		
<input type="checkbox"/> 1099-B			<input type="checkbox"/> 8027		
<input type="checkbox"/> 1099-C			<input type="checkbox"/> W-2		
<input type="checkbox"/> 1099-CAP			<input type="checkbox"/> W-2AS		
<input type="checkbox"/> 1099-DIV			<input type="checkbox"/> W-2G		
<input type="checkbox"/> 1099-G			<input type="checkbox"/> W-2GU		



IRS Form 8508 (con't)

<input type="checkbox"/> 1099-CAP			<input type="checkbox"/> W-2AS		
<input type="checkbox"/> 1099-DIV			<input type="checkbox"/> W-2G		
<input type="checkbox"/> 1099-G			<input type="checkbox"/> W-2GU		
<input type="checkbox"/> 1099-INT			<input type="checkbox"/> W-2PR		
<input type="checkbox"/> 1099-K			<input type="checkbox"/> W-2VI		
<input type="checkbox"/> 1099-LTC					
<input type="checkbox"/> 1099-MISC					
<input type="checkbox"/> 1099-OID					
<input type="checkbox"/> 1099-PATR					

6. Is this waiver requested for corrections ONLY? Yes No

7. Is this the first time you requested a waiver from the electronic filing requirements for any of the forms listed in Block 5?

Yes (Skip to signature line) No (Complete Block 8 if your request is due to undue hardship)

8. Enter **two current cost estimates** provided to you by third parties for software, software upgrades or programming for your current system, or costs to prepare your files for you.

Cost estimates for any reason other than the preparation of electronic files will not be acceptable.

Attach the two **current** cost estimates to Form 8508.

Note: Failure to provide current cost estimates and/or signature will result in a denial of your waiver request.

\$

\$

Under penalties of perjury, I declare that I have examined this document, including any accompanying statements, and, to the best of my knowledge and belief, it is true, correct, and complete.

9. Signature

Title

Date



From the 8508 Instructions

- ◆ **Complete a Form 8508 for each Taxpayer Identification Number (*TIN*)**
- ◆ **You may use one Form 8508 for multiple types of forms**
- ◆ **After evaluating your request, an approval or denial letter will be issued**
- ◆ **Block 7. If this is the first time you have requested a waiver for any of the forms listed in Block 5, for any tax year, check “YES” and skip to Block 9, *Signature*. However, if you have requested a waiver in the past and check “NO,” complete Block 8 to establish undue hardship. Waivers, after the first year, are granted only in the case of undue hardship or catastrophic event.**

Increased Information Reporting Penalties

◆ Failing to file with IRS or to furnish copies to employees

Penalty	New Amount
Failure to file/furnish generally	\$250
Annual cap on penalties	\$3,000,000
Failure to file/furnish – if corrected within 30 days	\$50
Annual cap on penalties if corrected within 30 days	\$500,000
Failure to file/furnish if corrected by August 1	\$100
Cap on penalties if corrected by August 1	\$1,500,000
Lesser cap for persons with gross receipts of not more than \$5,000,000	\$1,000,000
Lesser cap for persons with gross receipts of not more than \$5,000,000 if corrected within 30 days	\$175,000
Lesser cap for persons with gross receipts of not more than \$5,000,000 if corrected by August 1	\$500,000
Penalty in case of intentional disregard (no cap applies in this case)	\$500



Correcting 1094-C Transmittal



Original Authoritative Form 1094-C	
IF any of the following are incorrect...	THEN...
<p>ALE Member or Designated Government Entity (name and/or EIN)</p> <p>Total Number of Forms 1095-C filed by and/or on behalf of ALE Member</p> <p>Aggregated Group Membership</p> <p>Certifications of Eligibility</p> <p>Minimum Essential Coverage Indicator</p> <p>Full-Time Employee Count for ALE Member</p> <p>Aggregated Group Indicator</p> <p>Section 4980H Transition Relief Indicator</p>	<ol style="list-style-type: none"> 1. Prepare a new authoritative Form 1094-C 2. Enter an "X" in the "CORRECTED" box at the top of the form 3. Submit the standalone corrected transmittal with the correct information present

- ◆ **To file corrections for electronically filed forms, see IRS Publication 5165**

Correcting 1095-C IRS Paper Submissions



Original Form 1095-C Submitted to IRS and Furnished to Employee	
IF any of the following are incorrect...	THEN...
Name, SSN, Employer EIN	<ol style="list-style-type: none"> 1. Prepare a new Form 1095-C 2. Enter an "X" in the "CORRECTED" box at the top of the form 3. Submit corrected Form 1095-Cs with a non-authoritative Form 1094-C transmittal to the IRS 4. Furnish a corrected Form 1095-C to the employee
Offer of Coverage	
Premium Amount	
Safe Harbor and Other Relief Codes	
Covered Individuals Information	

- ◆ Only enter "X" in the check box when correcting a 1095-C previously filed with the IRS
- ◆ If previously furnished to recipient but not filed with IRS, write "corrected" on the new 1095-C furnished to recipient

Recordkeeping Requirements

- ◆ **Keep copies of information returns filed with the IRS**
- ◆ **(or have the ability to reconstruct the data)**
- ◆ **for at least three years, from the due date of the returns**





Undeliverable 1095-Cs

- ◆ **No clear answer provided by 2015 Instructions to 1095-C**
- ◆ **Absent additional IRS guidance:**
 - ▶ **Document the attempt to deliver by mail and retain a copy of the 1095-C if requested later**
 - ▶ **Keep for 4 years – the IRS requirement for undeliverable W-2 Forms**



Methods For Determining Full-time Employee Status

Two Methods to Determine FT Status

- ◆ **There are two methods for determining full-time employee status—**
 - ▶ **the monthly measurement method (MMM)**
 - ▶ **the look-back measurement method (LBMM)**
- ◆ **These prescribe minimum determination stds.**
- ◆ **May treat additional EEs as eligible**
- ◆ **No special rules for short-term or temporary employees or interns**



Monthly Measurement Method in a Nutshell



- ◆ **Full-time employees identified based on the hours of service for each calendar month**
 - ▶ 30 hours/wk on average – 130 hours/mo
- ◆ **Break In Service/Parity rules apply but not special unpaid leave/short employment break rules do not**
 - ▶ Rehired vs continuing employee
- ◆ **No penalty during up to 3 full month LNAP due to waiting period**
 - ▶ Available once per employment period

Look-Back Measurement Method in a Nutshell



- ◆ **Used for penalty determination – not ALE status**
- ◆ **Determines FT status for a future period based on a prior period**
 - ▶ **30 hours/wk on average – 130 hours/mo –1560 hours in 12 months**
 - ▶ **Measurement / admin / stability periods**
- ◆ **Used for ONGOING employees AND new non-FT hires**
- ◆ **All Break In Service/Parity/Special Unpaid Leave/Short Employment Break rules apply**
 - ▶ **Rehired vs continuing employee**
- ◆ **No penalty during up to 3 full month LNAP due to waiting period**

Identifying Full-Time Employees: New Employees under LBMM



- ◆ **There are 4 categories of new employees: FT, PT, Variable Hour and Seasonal**
- ◆ **New employees are divided into 2 groups:**
 - ▶ **New FT employees and**
 - ▶ **New variable hour / seasonal / part-time employees**
- ◆ **Variable hour -- on start date, employer unable to determine if EE reasonably expected to be employed on average 30 or more hours of service per week**
- ◆ **Seasonal -- is customary annual recurring employment of 6 months or less**
- ◆ **Part – Time – EE hired with reasonable expectation of working less than 30 hours per week**

Standard vs. Initial Measurement Periods



STANDARD

- ◆ Applies to **ONGOING** employees
- ◆ Std Measurement Period fixed and timed to end prior to open enrollment period

INITIAL

- ◆ Applies to new non-FT hires
- ◆ Initial Measurement Period not related to OE and begins with start date or 1st of month following start date
- ◆ Individuals in an Initial Measurement Period are in an LNAP for coding purposes



Extensions and Indexing

9.5% Affordability Standard -- The Problem --



- ◆ **The 9.5% standard used by Marketplaces to determine APTC eligibility is statutory and is indexed annually**
- ◆ **By contrast, the 3 affordability safe harbors were created by the ESR regulation**
- ◆ **All 3 affordability safe harbors apply the 9.5% affordability standard, but the regulation did not provide for annual indexing**
- ◆ **This discrepancy, while small in 2015, would obviously grow over time if not addressed**

9.5% Affordability Standard

-- The Fix --



- ◆ IRS announces intention to amend final ESR regulation to index the 9.5% affordability safe harbor standard
- ◆ Accordingly, employers may use the following when applying the affordability safe harbors for PYs beginning in:

Affordability	2014	2015	2016
Applicable Percentage	9.5%	9.56%	9.66%
Maximum Affordable Federal Poverty Line	\$92.39	\$93.76	\$94.75

Example: The safe harbor affordability standard for a group health plan with July 1 plan year, would be:

**9.50% for January 2015 through June 2015,
9.56% for July 2015 through June 2016 and
9.66% for July 2016 through June 2017.**

Affordability – Demonstrating Affordable Health Coverage



FT EE contribution for single coverage of ER's least expensive GHP option

9.50%

9.56% ≥

FT EE's actual Household (HH) income

9.66%

- OR -

One of the three IRS Safe Harbor proxies for FT EE's HH income:

Rate of Pay

W-2

FPL

Used by the Exchange for purposes of awarding the APTC

Can be used by the employer to avoid IRS assessment even if APTC is awarded

Affordability Percentage Indexing on Form 1095-C



Form **1095-C** **Employer-Provided Health Insurance Offer and Coverage**
 Department of the Treasury Internal Revenue Service
 Information about Form 1095-C and its separate instructions is at www.irs.gov/form1095c

OMB No. 1545-2251
2015

VOID
 CORRECTED

Part I Employee				Applicable Large Employer Member (Employer)									
1 Name of employee	2 Social security number (SSN)	7 Name of employer				8 Employer identification number (EIN)							
3 Street address (including apartment no.)		9 Street address (including room or suite no.)				10 Contact telephone number							
4 City or town	5 State or province	6 Country and ZIP or foreign postal code		11 City or town	12 State or province	13 Country and ZIP or foreign postal code							

Part II Employee Offer and Coverage	14 Offer of Coverage (enter required code)	Plan Start Month (Enter 2-digit number):												
		All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
15 Employee Share of Lowest Cost Monthly Premium, for Self Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)														

Part III Covered Individuals															
If Employer provided self-insured coverage, check the box and enter the information for each covered individual. <input type="checkbox"/>															
(a) Name of covered individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Q: How will the IRS know which percentage to apply?

A: The Plan Start Month indicator

New Plan Start Month Indicator Box



- ◆ **New 2-digit box on final 2015 Form 1095-C to insert 2 digit month**
 - ▶ Enter 01 through 12 for month plan year begins
 - ▶ Enter “00” if no health plan offered
 - ▶ If change in PY, enter the earliest month
 - ▶ Optional for 2015 filing; mandatory for 2016
- ◆ **IRS needs this info to enforce APTC rules**
 - ▶ 9.50 percent for plan years beginning in 2014
 - ▶ 9.56 percent for plan years beginning in 2015
 - ▶ 9.66 percent for plan years beginning in 2016

Indexing of ESR's A-Tax and B-Tax Penalty Assessments



- ◆ \$2,000 / \$3,000 ESR excise tax penalty amounts were originally to apply beginning in calendar year 2014
- ◆ The excise tax penalties were delayed for one year – until calendar year 2015
- ◆ Indexed excise tax penalty amounts for 2015 and 2016 are:

	2015	2016
\$2,000 A-Tax “no offer penalty”	\$2,080/year	\$2,160/year
	\$173/month	\$180/month
\$3,000 B-Tax “unaffordable/non-MV penalty”	\$3,120/year	\$3,240/year
	\$260/month	\$270/month

- ◆ Future annual adjustments will be posted on the irs.gov website

Pot Luck ACA Guidance under IRS Notice 2015-87



- ◆ **Affordability and opt-out payments**
- ◆ **Other affordability guidance**
- ◆ **Hours of service for hours paid but not worked**
- ◆ **HRA reimbursement rules**
- ◆ **Medical FSA carryovers**
- ◆ **ERs supporting educational orgs**

The 4 Compliance Steps for Medical Opt-Out Plans



Medical opt-out plans must address the following 4 issues:

- ◆ **Section 125**
- ◆ **Medicare Secondary Payer Rules**
- ◆ **Avoidance of Employer Payment Plan Status**
- ◆ **ACA affordability**

**NOW an
ISSUE**

Some Opt-Outs Affect ACA Affordability



- ◆ **Opt-out = cash in lieu or waiver or stipend**
- ◆ **General Rule: Opt-out payments reduce the ACA affordability of coverage -- must be added to the employee contribution for single only coverage under the ACA affordability calculation**
 - ▶ Employer charges \$150/mo for single only coverage, but employer pays employees who waive coverage \$100/mo. Employee contribution for single only coverage (Line 15 on 1095-C) is now \$250/mo ($\$150 + \$100 = \250)
- ◆ **Transition Relief: Pending future IRS guidance, unconditional/unrestricted opt-out payments in place on or before 12/16/15 will NOT be added to the employee's contribution for single only coverage under the affordability calculation**
 - ▶ However, they will be added for APTC and ISR affordability calculations
- ◆ **Unofficially, IRS views conditional/restricted opt-out payments as not impacting ACA affordability**
 - ▶ Conditional/restricted payments require proof of other GHP coverage

Some Flex Credits Affect Affordability



- ◆ **Employer section 125 plan “flex credits” will reduce an employee’s contribution for single only coverage for the ACA affordability calculation ONLY IF they meet 3 part test (to be a “health flex contribution”):**
 - ▶ The employee may not opt to receive flex credits in cash (e.g., cashable credits);
 - ▶ The credits may be used to purchase MEC (e.g., the employer’s major medical plan); and
 - ▶ The credits must be used exclusively to pay for medical/dental/vision care (can’t be contributed to a DCAP or used to purchase group life insurance)

- ◆ **Employer flex credits not meeting the above requirements will only reduce an employee’s contribution under the affordability calculation**
 - ▶ Only for plan years beginning before 1/1/17 and
 - ▶ Only for existing arrangements in place as of 12/16/15

Some HRA Amounts Affect Affordability



- ◆ **Newly credited amounts for integrated HRA may be subtracted from the an employee's contribution for single only coverage for affordability purposes IF:**
 - ▶ **Employee may use amounts to pay premiums for employer's GHP (even if also available for cost sharing expenses); and**
 - ▶ **Annual HRA amount is either required by HRA's terms or is determinable within a reasonable time before the employee must decide to enroll in GHP**

- ◆ **Example: Employee contribution for single only coverage is \$200/mo and \$1200 annual HRA can be used for premiums or cost sharing for GHP**
 - ▶ **Employee contribution for single only coverage is treated as \$100 for affordability purposes (1/12 of \$1200 = \$100. \$200 - \$100 = \$100)**

General ACA Hours of Service Rules



- ◆ **Active duty:** Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer = an hour of service
- ◆ **Inactive Payments:** Each hour for which an employee is paid, or entitled to payment, for a period of time during which no duties are performed due to below = an HoS:
 - ▶ vacation
 - ▶ holiday
 - ▶ illness
 - ▶ **incapacity (including disability),**
 - ▶ layoff
 - ▶ jury duty
 - ▶ military duty or
 - ▶ leave of absence

Hours of Service for Hours Paid But Not Worked Due to Disability



- ◆ **Disabled employees must be treated as earning HoS for ESR purposes unless these exclusions apply:**
 - ▶ **Employment is terminated or**
 - ▶ **Disability premiums were paid 100% after-tax by employee**
- ◆ **Disability payments are deemed to be paid by employer even if payment is not made directly by employer (e.g., insurer or trust fund)**
- ◆ **Disability payments paid pre-tax or 100% employer paid result in disabled employees being treated as earning HoS for ESR purposes**
- ◆ **Not addressed: If disability payments are 60% of pay, can employer only credit 60% of pre-disability hours?**

Other Exclusions from Hours of Service Due to Disability



- ◆ **Workers' compensation payments**
- ◆ **Unemployment compensation payments**
- ◆ **State disability payments (or voluntary replacements to comply with state requirements)**
 - ▶ **E.g., statutory disability plans in HI, NJ, NY, RI**
 - ▶ **CA SDI**
- ◆ **Therefore, unless exclusions apply, employee receiving 130 or more HoS of STD or LTD will be a FT employee under the MMM. If using the LBMM, HoS will be included in measurement period**

New Guidance on HRA Reimbursements



- ◆ **Affirms prior guidance that an HRA or EPP cannot reimburse active employees for premiums of non-group coverage purchased on their own**
 - ▶ **Exception: if policy purchased covers only excepted benefits (e.g., dental or vision).**
 - ▶ **Plan must specifically limit reimbursement to excepted benefits**
- ◆ **Confirms that retiree-only HRAs may reimburse retirees for cost of non-group policies**
 - ▶ **Retiree HRAs must cover less than 2 active employees**
- ◆ **NEW: HRA cannot reimburse family member (spouse & dependent) medical expenses UNLESS that family member is enrolled in the employer's major medical plan**
 - ▶ **HRAs in place as of 12/16/15 have until 1st day of 2017 plan year to amend HRA document to comply**
 - ▶ **HRA can be structured to automatically cover only family members enrolled in the major medical**

Health FSA Carryover Clarifications



- ◆ **Plan Can Limit Carryovers to Only Those Who Elect New Amounts**
 - ▶ Plan can limit access to carryover amounts (up to \$500) only to employees who elect to contribute to the plan in the subsequent plan year
 - ▶ Example: employees will forfeit any potential carryover amount if they do not elect a minimum salary reduction amount for in the next plan year

- ◆ **Plan Can Limit Carryovers to a Maximum Period**
 - ▶ Plans are not required to continue access to carryovers for an indefinite duration
 - ▶ A plan could provide that any carryovers remaining unused at the end of the subsequent plan year will be forfeited
 - ▶ Example: the plan could provide that an employee who carries over \$500 from 2015 into 2016 – but does not use the carryover in 2016 – forfeits the \$500 carryover amount at the end of 2016

General Health FSA COBRA Rules



- ◆ **Underspent Account at Time of COBRA QE: COBRA Applies**
- ◆ **Underspent = maximum Health FSA amount still available on QE date (net of claims) exceeds the COBRA premium for the remainder of the year**
- ◆ **Special COBRA Limitations for Health FSAs:**
 - ▶ **COBRA rights last only for the remainder of the plan year in which the Qualifying Event occurred**
 - ▶ **No open enrollment rights for subsequent plan years as with other COBRA benefits**
 - ▶ **COBRA payments must be made on an after-tax basis (unless there is a stream of payment from the employer (e.g., severance pay))**
- ◆ **Overspent Account at Time of COBRA QE: COBRA Does Not Apply**
 - ▶ **Unreimbursed health FSA balance is forfeited, except for run-out claims**

New COBRA Guidance for Health FSA Carryovers



Carryover Amounts Subject to COBRA

- ◆ **Health FSA carryover amounts (up to \$500) must be included when determining if FSA is underspent and COBRA must be offered. Example:**
 - ▶ Employee carried over \$500 from 2015 plan year into 2016 plan year
 - ▶ Employee also elects \$2,500 for the 2016 plan year
 - ▶ Employee terminates employment May 31, 2016 after receiving \$1,100 in reimbursement from the health FSA in 2016

- ◆ **Result:**
 - ▶ \$1,400 unreimbursed from 2016 is available through COBRA (\$2,500-\$1,100)
 - ▶ The \$500 carryover from 2015 is also available through COBRA
 - ▶ Total of \$1,900 available through COBRA (\$1,400 + \$500)

New COBRA Guidance for Health FSA Carryovers



Carryover Not Included in COBRA Premium

- ◆ **If health FSA COBRA is offered, unspent carryover from prior year is excluded from COBRA premium calculation. Example:**
 - ▶ Employee carried over \$500 from 2015 plan year into 2016 plan year
 - ▶ Employee also elects \$2,500 for the 2016 plan year
 - ▶ Employee terminates employment May 31, 2016 after receiving \$1,100 in reimbursement from the health FSA in 2016

- ◆ **Result:**
 - ▶ Total of \$1,900 available through COBRA (\$1,400 + \$500)
 - ▶ Maximum monthly amount the plan can charge for COBRA for the remainder of the year is 102% of 1/12 of \$2,500 (not \$3,000) or \$208.33/mo (x 7 mos = \$1,487.50, which is < \$1,900 unspent)
 - ▶ The \$500 carryover amount is not factored into COBRA premium

New COBRA Guidance for Health FSA Carryovers



Carryover Available in Subsequent Years Under COBRA

- ◆ **Exception to general COBRA rule for underspent health FSAs upon QE. Example:**
 - ▶ Employee carried over \$500 from 2015 plan year into 2016 plan year
 - ▶ Employee also elects \$2,500 for the 2016 plan year
 - ▶ Employee terminates employment May 31, 2016 after receiving \$1,100 in reimbursement from health FSA in 2016

- ◆ **Result:**
 - ▶ The \$500 carries over and is available through COBRA for 2017
 - For 18 months total, until November 30, 2017
 - ▶ No new election for 2017 – only carryover is available
 - ▶ COBRA premium = \$0 in 2017; no charge for carryovers

Employers Supporting Educational Organizations



- ◆ **IRS anticipates revising ESR regulation to clarify that special rules applying only to educational organizations . . .**
 - ▶ **26 week break in service rather than 13 weeks and**
 - ▶ **Employment break periods – at least 4 consecutive weeks**
- ◆ **. . . to employees of organizations that provide services primarily to one or more educational organizations**
- ◆ **Examples: 3rd party staffing orgs providing services to educational orgs**
 - ▶ **Bus drivers . . . Cafeteria workers**



A Tale of Two ACA Appeals

Oops. No Federal 2015 APTC Notices for Employers



- ◆ **Unnumbered and undated FAQ, issued by CMS on 9/18/15 on the Employer Notice Program**
 - ▶ ENP is the program where Exchanges notify employers whose employee was determined eligible for an APTC
 - ▶ There is an appeal process associated with the notice program
- ◆ **No FFM notices will be issued for APTCs granted in 2015**
- ◆ **State based marketplaces (SBMs) have the same flexibility to phase in their notice program**
- ◆ **IRS will independently determine employer liability for ESR penalties without any exchange notice or employer appeal**

Federal 2016 APTC Notices for Employers



- ◆ Notices from federally facilitated marketplaces (FFM) will be sent in 2016 to employers whose employees qualified for an APTC in 2016 **IF** the employee provided a complete employer address on the exchange application
 - ▶ No notice when employee terminates exchange coverage
- ◆ Notices will be sent in batches; the first planned for spring 2016 following close of open enrollment
 - ▶ Employers can't designate specific address for the notice – it's whatever is supplied by employee
- ◆ The Exchange notice to the employer must:
 - ▶ Identify the employee
 - ▶ Indicate that the employee has been determined eligible for APTC and has enrolled in a qualified health plan through the exchange
 - ▶ Indicate that, if the employer has 50+ full-time employees, the employer may be liable for excise taxes assessed under section 4980H of the Code and
 - ▶ **Notify the employer of the right to appeal the determination**

Employer Appeal of Marketplace Notice



- ◆ **Employers have an opportunity to appeal the employer notice. Purpose of appeal is to**
 - ▶ **prove employer offered the employee access to affordable, MV coverage**
 - ▶ **making the employee ineligible for the APTC**
- ◆ **Any employer appeal of the notice does not**
 - ▶ **determine IRS excise tax penalties or**
 - ▶ **foreclose any employer appeal rights with the IRS regarding excise tax penalties**
- ◆ **While an appeal may be beneficial, employers are not required to appeal to preserve their rights against the IRS assessment of excise tax penalties**



Employer Appeal Request

- ◆ Appeal must be submitted by employer within 90 days of the date of the notice
- ◆ Appeals are requested by submitting HHS form or mailing a letter to the HHS appeals center
- ◆ Use the HHS form if appealing a notice received from a FFM or a state-based Marketplace operating in
 - ▶ CA, CO, DC, **MA**, MD, NY or VT
- ◆ Employers may designate a secondary contact to act on the employer's behalf



Employer Appeal Request Form

Form Approved
OMB No. 0938-1213
Appeal Request Form - Employer

Use this form to appeal a Marketplace determination that an employee was eligible for advance payments of the premium tax credit and cost-sharing reductions (if applicable) in part because your business didn't offer health coverage that met minimum value requirements and was affordable with respect to this employee.

Please print in capital letters using black or dark blue ink only.

SECTION 1: Tell us about the employer who's requesting this appeal.

1. Business Name		Federal Employer ID Number (EIN)	
<input type="text"/>		<input type="text"/> - <input type="text"/>	
Primary business mailing address		Suite #	
<input type="text"/>		<input type="text"/>	
City	State	ZIP code	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Name of the primary contact (First name, Middle initial, Last name)		Phone number	
<input type="text"/>		<input type="text"/> - <input type="text"/> - <input type="text"/>	
Title of primary contact			
<input type="text"/>			
Primary business mailing address		Suite #	
<input type="text"/>		<input type="text"/>	
City	State	ZIP code	Phone number
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>

SECTION 2: Designate a secondary contact. (optional)

This is someone who may act on your organization's behalf regarding this appeal request.

Name of the secondary contact (First name, Middle initial, Last name)		Phone number	
<input type="text"/>		<input type="text"/> - <input type="text"/> - <input type="text"/>	
Organization name (if applicable)		Title	
<input type="text"/>		<input type="text"/>	
Secondary contact mailing address		Suite #	
<input type="text"/>		<input type="text"/>	
City	State	ZIP code	Phone number
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>



SECTION 3: Tell us why you're appealing the Marketplace determination of this employee's eligibility for help with the costs of Marketplace coverage.

What's the date on the Marketplace notice? (mm/dd/yyyy)

 / /

What's the employee's first and last name?

What's the employee's date of birth (if available)?

 / /

What's the employee's Application ID # (if available on your notice)?

An individual may qualify for help with the costs of Marketplace coverage if the coverage that's offered by an employer doesn't meet minimum value requirements or isn't affordable with respect to the employee.

Use the space below to explain why this employee shouldn't have been eligible for advance payments of the premium tax credit and cost-sharing reductions (if applicable). Use extra paper, if necessary. If you're including documents to support your request, send us copies. Keep all original documents.

SECTION 4: Signature

By completing, signing, and dating below, I authorize the Marketplace Appeals Center to perform a review of whether the employer named on this form offered minimum essential coverage through an employer-sponsored plan that's considered affordable with respect to the relevant employee, and meets the minimum value standard.

I understand I may request a copy of my Marketplace appeal record and that certain information about the relevant employee's eligibility determination may or may not be made available to me as described in 45 CFR §155.555(g)(2) and 45 CFR §155.555(h).

By signing this form under penalty of perjury, I declare that I've provided true answers to all the questions that I've answered to the best of my knowledge. I know that I may be subject to penalties under federal law if I provide false information.

Signature

1. Printed name of primary contact (First name, Middle name, Last name)

Title

Signature

Date (mm/dd/yyyy)

 / /

Appeal Process and Decision



- ◆ **HHS will acknowledge receipt of the appeal request from the employer**
- ◆ **If there's a problem with the appeal request, HHS will inform the employer how to correct the issue**
- ◆ **HHS will also notify the associated employee that an appeal has been submitted by the employer**
- ◆ **HHS reviews the appeal, including any additional documentation provided by the employer and/or the associated employee. HHS may request additional information**
- ◆ **HHS sends appeal decision notices, within 90 days, explaining the outcome of the appeal to the employer and the associated employee**
- ◆ **HHS may redetermine APTC eligibility if appeal decision affects employee eligibility**

Excise Tax Penalty Assessments Enforced by IRS



- ◆ **IRS will use the following as basis for penalty assessments:**
 - ▶ Annual report filed with IRS by each ALE member
 - ▶ **Certification of APTC status filed by Exchange with IRS**
 - ▶ Individual employee income tax returns
- ◆ **IRS contact will not occur until after all information has been reported for the previous year**
- ◆ **IRS will contact employers to inform them of potential liability and a chance to respond**
- ◆ **If determined liable after employer response, IRS will send tax notice and demand for payment – Appeal??**
- ◆ **IRS will not impose a penalty for incorrect reporting for 2015 as long as **the employer files timely** and makes a good faith effort to comply with the reporting requirements**

Possible IRS Assessment Procedures and Appeal



- ◆ What “procedures” the IRS may “adopt” is unknown – what follows is just one option -- a guess
- ◆ The IRS could create a new process from scratch or use a process already in place
- ◆ If IRS adopts an existing benefit plan excise tax process for ESR assessments, the first employer notice may come in the form of IRS “Letter 2005,” from a field examiner explaining
 - ▶ why the IRS believes a tax liability is necessary
 - ▶ the taxpayer’s appeal rights when they do not agree with the results of the examination



IRS Letter 2005

- ◆ **The taxpayer generally has 30 days to respond to the Letter 2005**
- ◆ **If no response is received within 30 days, the IRS will assume that the proposed assessment is correct:**
 - ▶ **If you accept our findings . . . please . . . sign and return the enclosed Form . . . with your payment within 30 days from the date of this letter to the address listed herein. We have enclosed a return envelope for your convenience.**
- ◆ **During the 30-day response period additional information or documentation can be submitted**
- ◆ **A meeting with the revenue agent's supervisor to discuss the findings may also be requested**
- ◆ **If there is further disagreement then the taxpayer is urged to appeal the case to an Appeals Office or directly to court**



IRS Appeals Office

- ◆ **The Appeals Office is the only level of appeal within the IRS**
- ◆ **Appeal conferences are generally conducted informally by correspondence, by telephone, or at a personal conference**
- ◆ **Employer must file a written protest or brief statement of disputed issues containing the following:**
 - ▶ **Name and address**
 - ▶ **A statement that employer wants to appeal the examination findings to the Appeals Office**
 - ▶ **The date and symbols from the letter showing the proposed changes and findings in disagreement**
 - ▶ **The tax periods or years involved**
 - ▶ **An itemized schedule of the items with which employer disagrees**
 - ▶ **A statement of facts supporting employer's position on any issue which the employer disagrees, and**
 - ▶ **A statement stating the law or other authority relied upon**
- ◆ **May represent self at the appeals conference, or may be represented by an attorney, certified public accountant, etc.**

Calculation of the A Tax Penalty



- ◆ **Applicable if ALE member fails to offer MEC**
 - ▶ to substantially all full-time employees, AND
 - ▶ at least one full-time employee receives an APTC
- ◆ **Assessment is imposed on the ALE member for the calendar month equal to the product of:**
 - ▶ (1) the number of full-time employees of the ALE member, minus
 - Full-time employees in a **limited non-assessment period** and
 - The ALE members allocable share of the first 80 full-time employees and
 - ▶ (2) the section 4980H(a) applicable payment amount, which is **\$173** per month in **2015** and **\$180** in **2016**

Calculation of the B Tax Penalty



- ◆ **Assessment imposed on ALE member equal to the product of:**
 - ▶ (1) the number of full-time employees of the ALE member receiving an APTC, minus
 - employees in a **limited non-assessment period** and
 - the number of other employees who were offered the opportunity to enroll
 - in MEC under an eligible employer-sponsored plan
 - that satisfied minimum value, and
 - met one or more of the affordability safe harbors, and
 - ▶ (2) the section 4980H(b) applicable payment amount, which is **\$260** per month in **2015** and **\$270** in **2016**



Other Items of Note

Quick Cadillac Tax Background

- ◆ Tax added to Code section 4980I by the ACA
- ◆ **ORIGINALLY** effective for taxable years after 12/31/17
- ◆ **ORIGINALLY** not deductible for federal income tax purposes
- ◆ The aggregate cost of applicable coverage provided to employee exceeding a statutory dollar limit is subject to a 40% excise tax
- ◆ Statutory limits for 2018 are \$10,200 for self-only coverage and \$27,500 for coverage that is not self-only
 - ▶ Possible one time adjustment to these limits in 2018 if cost growth in a benchmark plan between 2010 and 2018 exceeds 55%
 - ▶ Beginning in 2019 the dollar limits will be subject to annual cost of living adjustments



Cadillac Tax Delayed/Revised

- ◆ **As part of the Consolidated Appropriations Act, 2016 the Cadillac Plan Tax was amended**
 - ▶ **To provide for a 2-year delay, until 2020, in the effective date**
 - ▶ **To make the excise tax tax-deductible as a business expense. Previously it was not tax deductible.**

- ◆ **Pres. Obama proposes additional fix in his proposed 2017 budget**
 - ▶ **Set the tax threshold to the cost of Gold coverage available through Exchange in each state. Any employer-sponsored plan with a cost below that would be exempt from the Cadillac tax.**



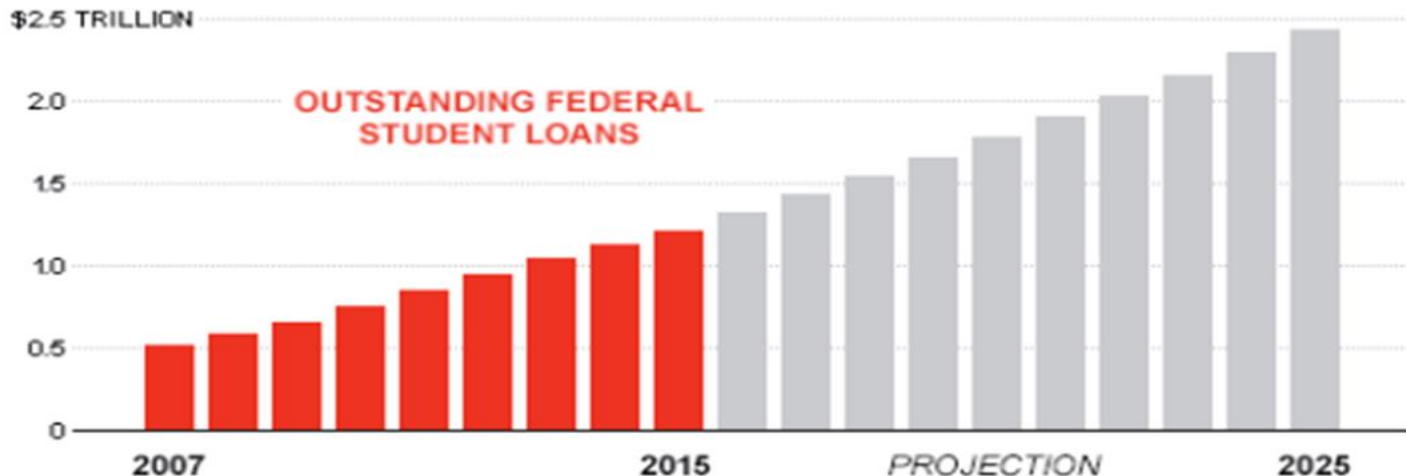
Student Loan Repayment Benefit



By 2025 Millennials (born 1980 to 2000) will comprise 75% of the workforce

**NATIONAL STUDENT-LOAN DEBT IS AT AN ALL-TIME HIGH
— AND IS EXPECTED TO DOUBLE IN 10 YEARS.**

Projections by the Congressional Budget Office put total outstanding federal student-loan debt at \$2.4 trillion by 2025.



Sources: Department of Education; Congressional Budget Office

The Student Loan Debt Problem



- ◆ **\$1.3 trillion in student loan debt and rising, higher than credit cards and auto loans**
- ◆ **40 million people with student loan debt in U.S.**
- ◆ **70% of current students taking on debt**
- ◆ **Class of 2015 borrowed \$70 Billion**
- ◆ **Average graduate student has \$35k in student loan debt**
- ◆ **Savings rate and net worth of millennials continue to drop**

National Survey of 5000 Job Seekers



- ◆ **89% believe employers should offer student loan payment (SLP) as part of the benefits package**
- ◆ **81% claim they'd be more willing to stay with employer if leaving meant losing SLP**
- ◆ **58% said receiving SLP in small increments in each paycheck would be most enticing**
- ◆ **29% would choose to receive a SLP at end of each year**
- ◆ **13% said a lump sum SLP after a certain work anniversary is preferable**
- ◆ **10% ranked SLP HIGHER than paid vacation as the “most important” benefit**

What is a Student Loan Payment (SLP) Plan?



- ◆ **A SLP Plan is an employer contribution paid directly toward an employee’s outstanding student loan account balance**
 - ▶ Results in meaningful debt reduction and everyone qualifies
 - ▶ Refinancing only impacts amount of interest paid and is subject to lender approval
- ◆ **Intended to be an additional payment on principal**
- ◆ **SLP Plan contributions generally occur monthly but can be designed to support a variety of program payment structures**
- ◆ **SLP Plans are innovative tools to reduce new and existing employee stress while increasing loyalty, retention and talent acquisition for employers**

Student Loan Payment (SLP) is Currently Taxable



- ◆ **Section 61 of the Internal Revenue Code (Code) provides:**
 - ▶ all cash and non-cash fringe benefits provided to an employee are taxable unless otherwise excluded in a subsequent Code section
- ◆ **Code Section 127 excludes employer-provided educational assistance up to \$5250/year for educational expenses incurred currently**
 - ▶ Not for educational costs incurred in the past
- ◆ **Bills in Congress to exclude employer payments on student debt from income**
 - ▶ H.R. 4363 Student Tax Affordability and Relief Act
 - ▶ H.R. 3861 Employer Participation in Student Loan Assistance Act
 - ▶ S. 2457 Employer Participation in Repayment Act of 2016

Transportation (Commuting) Expense Benefit



- ◆ **Qualified Transportation Benefits are excludable from employee income subject to limitations**
- ◆ **Can be provided directly by the employer or through a reimbursement arrangement**
 - ▶ **Pre-tax salary reduction permitted under IRC section 132 – NOT under section 125**
- ◆ **Parity in federal limits for exclusion from federal gross income for 2016 and beyond:**
 - ▶ **\$255/month for combined transit passes and commuter highway vehicles**
 - ▶ **\$255/month for qualified parking**
 - ▶ **Can receive both transit and parking benefits up to \$510/month tax-free in 2016**



The Massachusetts Wrinkle

- ◆ **NO parity in MA limits for exclusion from MA gross income. For 2016:**
 - ▶ \$130/month for combined transit passes and commuter highway vehicles
 - ▶ \$255/month for qualified parking
 - ▶ Can receive both transit and parking benefits up to \$385/month tax-free in 2016
- ◆ **Why? Because MA follows the Internal Revenue Code in effect as of January 1, 2005, which is the last time the MA legislature adopted the IRC**
- ◆ **For an explanation, see MA DOR TIR 15-16 (12/23/15):**
 - ▶ <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2015-releases/tir-15-16.html>

Qualified Transportation Benefit

- ◆ **Transportation in a commuter highway vehicle between the employee's home and work place**
 - ▶ **A vehicle that seats at least 6 adults (not including the driver) operated by a person in the business of transporting persons for pay or hire**

- ◆ **A mass transit pass**
 - ▶ **Any pass, token, fare card, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate**
 - ▶ **May be publicly or privately operated -- includes bus, rail, or ferry**

- ◆ **Qualified parking**
 - ▶ **Parking a vehicle in a facility that is near the employee's place of work, or parking at a location from where the employee commutes to work (for example, the cost of parking in a lot at the train station so that the employee can continue his/her commute on the train)**



Identity Protection Services Benefit



- ◆ **Not an ERISA benefit**
- ◆ **For identity protection services (IPS) provided either BEFORE or AFTER a data breach occurs:**
 - ▶ **Employee's gross income does not include the value of IPS provided the employer or other organization to which personal information was provided**
 - ▶ **Employers providing IPS to employees are not required to include the value of IPS services in the employees' gross income and wages, and**
 - ▶ **The value of the IPS provided to employees is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC)**

Questions and Answers



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