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# Continuing to Implement the ACA in a Careful, Thoughtful Manner

(BY Delaying Employer and Insurer Mandatory Reporting Requirements and Employer Shared Responsibility Payments until 2015)

Yesterday, the Treasury Department delayed both the employer and insurer reporting requirements and the employer shared responsibility (ESR) provisions under the ACA until 2015. This was done via a five paragraph blog entry written and posted on the Treasury Department's web site by Mark J. Mazur, the Assistant Secretary for Tax Policy at the Treasury Department.

**According to the blog post:**

- **Formal guidance will be issued "within the next week" describing this transition.**
- **Proposed rules implementing the mandatory employer and insurer reporting requirements are expected to be published this summer.**
- **Premium tax credits will still be available in the Marketplaces for those who qualify beginning in 2014.**

<u>What Just Happened?</u>

**The ESR provisions have been delayed under the guise of issues with the new employer and insurer reporting requirements. A close reading of the blog post indicates that the stated reason behind the delay was the new employer and insurer reporting requirements.** The stated goal of the delay was (1) to allow the regulators time to simplify the new reporting requirements consistent with the ACA law, and (2) to provide employers time to adapt health coverage and reporting systems while employers are moving toward making their health coverage affordable and accessible to their employees. Voluntary compliance with the reporting requirements will be strongly encouraged for 2014.

T**he blog post notes, almost as an aside, that the delay in the reporting requirements will make it impractical to determine which employers owe ESR penalties for 2014 and, accordingly, extends the one year delay to ESR payments as well so that ESR penalties will not apply until 2015.**

**However, missing from this blog post is any delay in the implementation of the federal individual mandate, which requires all individuals to have health**

**insurance or pay a penalty to the IRS beginning in 2014. The individual mandate also relies on information from the new employer and insurer reporting requirements. Following the same logic applied to the ESR delay, if there is no delay in the individual mandate provision, how will the IRS determine which individuals owe the individual mandate assessment?**

What is the Practical Effect for Employers?

**Quite simply, the practical effect of these changes on employers is time to prepare.** Employers now have the time to implement ESR in a more timely fashion, including time to get their written plan documentation and safe harbor measurement rules in order and time to properly notify employees of any applicable measurement periods. As a result, many of the transition rules necessary to compress safe harbor measurement rules into the last half of 2013 for a 2014 effective date will no longer be necessary. **Rather than begin with transition rules that are the exception, employers can now begin ESR compliance with full measurement periods that are adopted in advance.**

**Employers with calendar year health plans that intend to use a 12 month measurement period for ongoing employees can start a full 12 month measurement period this fall (2013) to conclude in time for open enrollment in the fall of 2014 for coverage taking effect on January 1, 2015.**

The Reporting Requirements. The ACA includes information reporting (under section 6055) by insurers, self-insuring employers, and other parties that provide health coverage. It also requires information reporting (under section 6056) by certain employers with respect to the health coverage offered to their full-time employees. **Reporting was scheduled to begin in 2015 for coverage provided on or after January 1, 2014. Apparently reporting will now begin in 2016 for coverage provided on or after January 1, 2015.** For those familiar with Mass health care reform, the data elements to be reported are very similar to the data elements reported to the Mass Department of Revenue via the Form 1099-HC and to the former Division of Health Care Finance and Policy (now the responsibility of the Health Connector) via the Employer HIRD Report.

The ESR. Under the ESR provisions, if larger employers (over 50 full-time employees) do not offer affordable health coverage that provides a minimum level of coverage to substantially all full-time employees, they may be subject to an ESR penalty/assessment if at least one of their full-time employees receives a premium tax credit for purchasing individual coverage in a Health Insurance Marketplace. **The ESR was scheduled to be effective for months beginning after December 31, 2013.**

**Apparently the ESR will now be effective for months beginning after December 31, 2014.**

The Blog Entry in its Entirety

Here is Mark Mazur's July 2, 2013 blog entry in its entirety:

> "Over the past several months, the Administration has been engaging in a dialogue with businesses - many of which already provide health coverage for their workers - about the new employer and insurer reporting requirements under the Affordable Care Act (ACA). We have heard concerns about the complexity of the requirements and the need for more time to implement them effectively. We recognize that the vast majority of businesses that will need to do this reporting already provide health insurance to their workers, and we want to make sure it is easy for others to do so. We have listened to your feedback. And we are taking action. The Administration is announcing that it will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin. This is designed to meet two goals. First, it will allow us to consider ways to simplify the new reporting requirements consistent with the law. Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees. Within the next week, we will publish formal guidance describing this transition. Just like the Administration's effort to turn the initial 21-page application for health insurance into a three-page application, we are working hard to adapt and to be flexible about reporting requirements as we implement the law.
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> Here is some additional detail. The ACA includes information reporting (under section 6055) by insurers, self-insuring employers, and other parties that provide health coverage. It also requires information reporting (under section 6056) by certain employers with respect to the health coverage offered to their full-time employees. We expect to publish proposed rules implementing these provisions this summer, after a dialogue with stakeholders - including those responsible employers that already provide their full-time work force with coverage far exceeding the minimum employer shared responsibility requirements - in an effort to minimize the reporting, consistent with effective implementation of the law.
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> Once these rules have been issued, the Administration will work with employers, insurers, and other reporting entities to strongly encourage them to voluntarily implement this information reporting in 2014, in preparation for the full application

of the provisions in 2015. Real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015.

We recognize that this transition relief will make it impractical to determine which employers owe shared responsibility payments (under section 4980H) for 2014. Accordingly, we are extending this transition relief to the employer shared responsibility payments. These payments will not apply for 2014. Any employer shared responsibility payments will not apply until 2015.

During this 2014 transition period, we strongly encourage employers to maintain or expand health coverage. Also, our actions today do not affect employees' access to the premium tax credits available under the ACA (nor any other provision of the ACA).

Mark J. Mazur is the Assistant Secretary for Tax Policy at the U.S. Department of the Treasury."

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Stay tuned for next week's "formal guidance."

Please contact me if you have any questions.

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