

July 10, 2013

## **Transition Relief for 2014 Under the ACA's Information Reporting Requirements and Employer Shared Responsibility Provisions**

On July 2, 2013, the Treasury Department delayed both the ACA's employer and insurer information reporting requirements and the employer shared responsibility (ESR) provisions until 2015. This was done via a five paragraph blog entry written and posted on the Treasury Department's website. This blog post promised additional transition guidance "within the week." That transitional guidance came last night in the form of IRS Notice 2013-45.

IRS Notice 2013-45 is relatively short in length (3 pages) and even shorter on detail. Quite frankly, one might wonder whether the blog post was drafted from the contents of the Notice, or if the Notice was drafted from the contents of the blog post. Either way, those trying to navigate this delay will be disappointed, if not frustrated.

The Notice is in question and answer format and contains only four Q&A's, summarized below, which provide little in the way of new information and fail to address basic issues raised by the ESR delay.

**For example, the Notice provides that both the information reporting and the ESR provisions will be fully effective for 2015. What does it mean to "be fully effective for 2015?" Does this mean for months beginning after December 31, 2014? What about fiscal year plans – must they comply as of January 1, 2015, the first plan year beginning in 2015 or perhaps the first plan year beginning in 2014? Sorry, there are no answers provided in this Notice.**

### SUMMARY OF THE FOUR Q&As IN NOTICE 2013-45

#### Q-1. When will the rules be published regarding information reporting? How will these provisions apply for 2014?

- Proposed rules for the information reporting provisions are expected to be published this summer and will reflect the fact that transition relief will be provided for information reporting for 2014

- The transition relief will also provide employers, insurers, and other reporting entities additional time to develop their systems for assembling and reporting the needed data
- Employers, insurers, and other reporting entities are encouraged to voluntarily comply with these information reporting provisions for 2014 in preparation for the full application of the provisions for 2015

**Q-2. What does the 2014 transition relief for Information Reporting mean for application of the ESR provisions for 2014?**

- The information reporting is integral to the administration of the ESR provisions
  - The IRS will determine whether any of the employer's full-time employees received the premium tax credit and, if so, whether an assessable ESR payment may be due after receiving the information returns filed by applicable large employers and the information about employees claiming the premium tax credit for any given calendar year
  - If the IRS concludes that an employer may owe such an assessable payment, it will contact the employer, and the employer will have an opportunity to respond to the information the IRS provides before a payment is assessed
- For this reason, the transition relief from information reporting for 2014 is expected to make it impractical to determine which employers owe ESR payments for 2014
- Accordingly, no ESR payments will be assessed for 2014
- However, in preparation for the application of the ESR provisions beginning in 2015, employers and other affected entities are encouraged to voluntarily comply for 2014 with the information reporting provisions (once issued) and to maintain or expand health coverage in 2014
- Real-world testing of reporting systems and plan designs through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015

Q-3. Does this affect employees' access to the premium tax credit?

- No. Individuals will continue to be eligible for the premium tax credit by enrolling in a qualified health plan through the Health Insurance Marketplaces (exchanges) if their household income is within a specified range and they are not eligible for other minimum essential coverage, including an eligible employer-sponsored plan that is affordable and provides minimum value.

Q-4. What does this mean for other provisions in the Affordable Care Act?

- This transition relief through 2014 for information reporting and the ESR provisions has no effect on the effective date or application of other ACA provisions, such as the premium tax credit and the individual shared responsibility provisions.

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Please contact me if you have any questions.

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