




# Compliance Corner: New Rules for the New Year and other Compliance Concerns

**Presented by Joan Fusco and Pamela Mitroff**

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# TODAY'S PRESENTERS

## **Joan Fusco HIA,PAHM, RHU**

**Savoy Associates**

**Director, Research & Education**

Joan joined Savoy Associates in April 2003 and has over 30 years experience in the insurance field primarily focused on research and training and provides up to 100 Continuing Education courses every year. She has been a Continuing Education provider and instructor for 19 years and instructor for the annual NJAHU Conference for the past 10 years. Previous to her employment at Savoy Associates, Joan was the Compliance and Quality Manager for Horizon BCBSNJ and founded, managed and instructed their Continuing Education school. Joan is the chair of the NJ Commissioner's Life and Health Advisory Board, a member of the National Association of Health Underwriter's (NAHU) Legislative Council, and Co-Chair for the NAHU Compliance Corner Working Group. She is licensed in NY, NJ, PA, DE and MD.

## **Pam Mitroff, MBA**

**NAHU**

**Senior Director of Health Reform Compliance**

Pamela Mitroff has more than 30 years in the health care and workers' compensation insurance and cost control field. She joined NAHU's staff in 2011. Prior to joining NAHU's staff, Mitroff's consulting practice advised brokers, insurers and employers on health insurance and employer benefits and compliance issues. She has held positions with a major insurance company and a third-party administrator of benefit plans for self-funded companies. She was a lobbyist for the Illinois State Chamber of Commerce, lobbying on health insurance, employee benefits and workers' compensation issues. Mitroff is a licensed Illinois insurance producer. Prior to joining NAHU's staff, Mitroff had been an active NAHU member on federal, state and local levels.



# Small v Large Employer Defined 2016

- Small employer means an employer with an average of at least 1 but not more than 50 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.
- With the PACE Act, a State may elect to define small employer by substituting “100 employees” for “50 employees.”
- At this time, CA, CO, NY, VA and VT are using up to 100.
- <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/state-rating.html>
- In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small employer is based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year.
- A complicated factor is that not all states with use the same counting methodology i.e. ATNE (average total number employees) v FT employee plus equivalents v eligible
- NOTE: this count is not the same as the counting methodology to determine ALE status under the Employer Shared Responsibility/Play or Pay/ 4980(H).

# Tax Relief afforded 12-18-2015

- two-year delay (2018 and 2019) of the Excise (Cadillac) tax on high-cost plans. It also makes the tax deductible to the employer,
- a one year suspension (tax applies in 2016 and suspended for 2017 premium) of the Health Insurance Tax (HIT) and,
- a suspension of the medical devices tax until December 31, 2017.

# Demise of ESR Transitional Relief

- All employers with at least 50 FT including FT equivalents will be subject to the ESR in 2016. Note Union employees are included in group size determination.
- Affiliated companies (controlled groups), as defined under IRC 414 (b), (c), (m), or (o), are included as well.
- Non calendar year relief for employers with 100 or more Ft including equivalents expires at the employer's 2016 ERISA plan year renewal.
- The safe harbor affordability was indexed and is 9.56% for 2015 (retroactive to Jan 1, 2015) and 9.66% beginning January 2016.
- Employers who want to avoid any tax assessment /penalty will have to offer coverage to at least 95% of FT employees in 2016. Offering to 70% is now over.
- Employers will have to offer to DU26 as well as FT employees. There is no mandate to offer to spouses in order to avoid penalty.
- Transitional relief codes used to complete form 1095C will no longer apply for employer reporting 2016 data in 2017. We anticipate that there will be updated instructions for reporting 2016 data. The major change is that the relief code for when there is an multiemployer plan (unions) in place will no longer apply.



# 2016 Max Out of Pocket

## 2016 Benefit & Payment Parameters

- Insurers must limit out-of-pockets costs to the individual limit, regardless of if the enrollee is in a family plan with a higher out-of-pocket cap. The maximum out-of-pocket spending in 2016 will be **\$6,850 for individuals and \$13,700 for families**. The guidance also clarified how plans can offer a family deductible of \$10,000 and remain in compliance with the requirement; so long as each individual is not subjected to more than the \$6,850 out-of-pocket maximum as the limit applies to each person individually.
- NOTE that for HSA compatible plans the 2016 MOOP is \$6,550/\$13,100

# HIGHLIGHTS of IRS Notice 2015-87

## HRA Related Questions

- Current-employee HRA may NOT be used to purchase individual insurance (clarifies intent of Notice 2013-54)
- “Accordingly, a current-employee HRA that includes terms permitting the purchase of individual market coverage will constitute a group health plan that fails to meet the market reforms because it is not integrated with another group health plan.” (Question 2)
- Relief: Funds previously credited to an HRA before 1/1/14 may reimburse individual policy premiums (Questions 3)



# Notice 2015-87

## Still HRAs

- New provision -- HRA is only integrated if individuals enrolled in both HRA and employer's group health plan
- Transitional Relief: Only members covered by both the employer plan and the HRA may be reimbursed. Non-covered health plan dependents allowed to benefit from HRA for plan years beginning before 1/1/17 (Question 4)
- HRA can reimburse individual premiums for excepted benefits if plan terms specify excepted benefits only (Question 5) i.e. dental or vision
- Use of a cafeteria plan does not allow for reimbursement of cost of individual coverage (Question 6)

# Notice 2015-87

## Affordability

- Clarifies when HRA funds apply to affordability or minimum value
  - If can reimburse premium or cost-sharing then counted toward employee's required premium contribution
  - If plan doesn't allow premiums, then applies to minimum value (Question 7)
- Cafeteria Plan/Flex contributions that can be used as cash or NON-health care benefits cannot be used for affordability purposes (Question 8)

# Notice 2015-87

## more Affordability

- After 12/16/2015 Cash-out, opt-out or “cash in lieu” must be added to the employee contributions to determine affordability (Question 9)
- More regulations to come regarding conditional opt-outs such as employee providing proof of having coverage through spouse (Question 9)
- Conditional means the employer conditions the cash-out on other coverage.
- Unconditional is provided to anyone who waives.

# Davis-Bacon Act/Service Contract Act

unique nature of payment makes compliance w ESR difficult

Rules for Federally contracted employers

- More guidance to come
- Plan years beginning before 1/1/17
  - Employer fringe payments including flex contributions under SCA or DBRA even if available as cash treated as reducing employee's required contribution
  - Individual taxpayers do not have to take these amounts into account as reducing employee's required contribution (Question 10)
- Relief available in questions 8-10 may cause premium tax credit issues/questions on Form 1095-C – employers should expect questions (Question 11)

# ESR Safe Harbors and Penalties

- IRS aligning affordability safe harbors with marketplace affordability (QA12)
  - 9.56% for plan years beginning in 2015
  - 9.66% for plan years beginning in 2016
- Employer mandate penalties (QA13)

	2015	2016
A Penalty	\$2,080	\$2,160
B Penalty	\$3,120	\$3,240

# Hours of Service (QA14)

- Terminated employee does not accrue “hours of service”
- Employee on disability (short or long-term) included unless employer did not contribute directly or indirectly
  - Employee paid with after-tax contributions – treated as no employer contribution
  - No hours of service
- WC wage replacement not hours of service



# Gov't entities and VA recipients

- Governmental entities may apply a reasonable good faith interpretation of “controlled group” aggregation rules as it applies to government entities
- Government entities must each have an EIN for reporting purposes
- Individual receiving medical benefits from VA is **not disallowed** from HSA contributions if medical benefits meet specifications  
(Questions 18-20)

# COBRA and Health FSA Carryovers

- If non-COBRA beneficiaries can carryover unused FSA, must allow for COBRA. Continuees may be barred from additional salary reduction amounts
- Health FSA may require participation in following plan year to allow carryover
- May limit ability to carryover unused amounts to one year (QA21-25)

# Reporting Relief

- Must show good faith effort to comply QA26
- (complete ALL cells/ no blanks)

## Notice 2016-4

- The notice extends due dates for both furnishing to individuals and filing with the IRS for insurers, employers and other providers of minimum essential coverage (MEC) and information reporting by applicable large employers (ALEs).

There is an automatic extension for furnishing 1095s (B and C) to individuals from February 1, 2016 to March 31, 2016.

If not filing electronically, there is an automatic delay from February 29, 2016 to May 31, 2016.

There is an automatic extension to file electronically with the IRS from March 31, 2016 to June 30, 2016.

The notice also provides guidance to individuals who might not receive Forms B or C by the time they file their 2015 tax returns.

# 2017 PROPOSED Benefit & Payment HIGHLIGHTS

- For small group rating purposes the business address of a multi location employer is where most of the employees are located
- ALEs enrolled in the small group market would NOT have to satisfy any participation or contribution requirements
- Only ONE in network provider tier permitted
- Addition of deductible exempt services e.g primary care, specialist visits, generic drugs.
- 2017 cost sharing limits \$7,150/14,300

# QUESTIONS?

- You can submit written questions in the questions pane.
- Any questions that we do not answer we will review and post responses to on the webcasts page of the Compliance Corner.


# Other Questions?

## Other Compliance Questions

NAHU Compliance Corner

Current NAHU Members can submit their benefits compliance questions to NAHU's Legislative Council's team of Compliance Corner experts online.



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# **Thank You for Attending!**