



*Your Compliance Guide  
for Employee Benefits*

**IRS Publishes 2018 Benefit Plan Adjustments**

It's the most wonderful time of the year----when the IRS announces limits and adjustments on employee benefit plans. On October 19th the IRS released its 2018 Cost-Of-Living Adjustments (COLAs) for tax-related employee benefits in Revenue Procedure 2017-58 and in IRS Notice 2017-64. Some limits have increased while others remained the same.

**What Employers Need to Know**

- Health Flexible Spending Accounts Increased. The annual employee salary contribution limit to health flexible spending accounts (FSAs) will increase to \$2,650 for 2018 (a \$50 increase from 2017). An employer may decide to have a different limitation on employee health FSA contributions, it just cannot be more than the IRS limit. The limit applies on an employee-by-employee basis. Any non-elective employer contributions generally do not count toward the employee's dollar limit.
- The monthly limit under IRC Section 132 for fringe benefits is \$260 for the combined monthly limit for transit pass and vanpooling expenses. The monthly limit for parking expenses is also \$260 per month.
- Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) is an HRA that is available only to small employers that are not subject to the employer shared responsibility penalties under health care reform. As of January 1, 2018, the limitation for QSEHRA payments and reimbursements is \$5,050 for an individual and \$10,250 for family. This is a \$50 increase for individual reimbursements and a \$250 increase for family reimbursements.
- The penalty for failure to file correct information returns (which include W-2s, W-3s, 1095 and 1094-C's) will increase to \$270 per failure. This increased penalty will be applicable for returns required to be filed in 2019.

The below table demonstrates the 2018 limits for many of the common benefits offered by employers. This is not a comprehensive list.

| <b>IRS Indexed Figures for 2018</b>         |             |             |
|---|-------------|-------------|
|   | <b>2017</b> | <b>2018</b> |
| 401(k) Limit                                | \$18,000    | \$18,500    |
| 401(k) Catch-up                             | \$6,000     | \$6,000     |
| 403(b)                                      | \$18,000    | \$18,500    |
| 403(b) Catch-up                             | \$6,000     | \$6,000     |
| <b>Health Savings Accounts</b>              |             |             |
| Maximum Individual Contribution             | \$3,400     | \$3,450     |
| Maximum Family Contribution                 | \$6,750     | \$6,900     |
| Catch up Contribution                       | \$1,000     | \$1,000     |
| HDHP Minimum Annual Deductible (Individual) | \$1,300     | \$1,350     |
| HDHP Minimum Annual Deductible (Family)     | \$2,600     | \$2,700     |
| <b>FICA Taxable Wage Base and Rate</b>      |             |             |
| Social Security                             | \$127,200   | \$128,700   |
| Medicare                                    | Unlimited   | Unlimited   |
| Social Security                             | 6.20%       | 6.20%       |
| Medicare                                    | 1.45%       | 1.45%       |

Employers should begin to review their payroll and plan administration systems for the 2018 adjustments. When preparing open enrollment materials, an employer should incorporate these limits in any communications.

Finally, the employer should determine to distribute updated Summary Plan Descriptions (SPD) or provide a Summary of Material Modifications (SMM) for any required amendments.

## PCORI Fee Increased

PCORI fees, which are used to fund research on patient-centered outcomes, apply to plan and policy years ending before October 1, 2019. The function gives the fee its name, the Comparative Effectiveness Research Fee (sometimes referred to as “CER fees” or “PCORI assessment”). Insurers pay this fee for a fully-insured plan with the cost being built into the premium. Self-insured plan sponsors are responsible for the payment and filing of the fee.

The amount of the fee is adjusted each year for inflation. On October 6, 2017, the Internal Revenue Service issued IRS Notice 2017-61 providing that the PCORI fee will increase by 13 cents.

### Fees and Form

The fee is based on the average covered lives for the applicable 12-month policy or plan year. As a reminder, if an employer’s ERISA plan year is different than their policy year, then the ERISA plan year is used for calculating the fee. CER/PCORI fees are due by July 31, 2018 for 2017 calendar plan years and for plan years ending on or after October 1, 2016 and before September 30, 2017.

- For 2017 calendar plan years, employers must pay a \$2.39 per average covered life fee by July 31, 2017.
- For plans ending on or after October 1, 2016 and before September 30, 2017, employers must pay a \$2.26 per covered life fee by July 31, 2018.

Plan fees must be paid via IRS Form 720 Quarterly Federal Excise Tax Return annually, a plan sponsor will report and pay the fee on the second quarter Form 720.

## Counting Lives

There is a special rule for the PCORI fee when coverage is provided under multiple self-insured health plans:

- Generally, separate fees apply for lives covered by each specified health insurance policy or applicable self-insured health plan.
- However, two or more applicable self-insured health plans may be combined and treated as a single applicable self-insured health plan for purposes of calculating the PCORI fee **but only if the plans have:**
  - The same plan sponsor; and
  - The same plan year.

For example, if amounts in an HRA may be used to pay deductibles and copays under a fully insured health policy, the HRA (an applicable self-insured health plan) and the policy would be subject to separate PCORI fees. However, an HRA that may be used to pay deductibles and copays under an applicable self-insured health plan is not subject to a separate fee (and the fee will apply only to the applicable self-insured health plan) **if both the HRA and the applicable self-insured health plan have the same plan sponsor and the same plan year.**

## Conclusion

The PCORI fee is not payable until July 31 of next year. However, as employers budget for the new year, the 13 cents per average covered life increase recently published by the IRS needs to be taken into consideration. JRG will publish a reminder of the fee and additional information as the July 31, 2017 due date nears.

## IRS Releases Final 2017 Forms for 1094 and 1095 Reporting

Employers are continually being reminded that the Affordable Care Act (ACA) is still intact and remains the law of the land. Final 2017 forms and instructions for reporting information to the IRS to assist with the enforcement of the individual and employer mandates under the ACA have been released by the IRS. This release serves as another reminder that employers should continue to comply with the ACA based on current guidance.

As a summary, Internal Revenue Code (IRC) section 6056 requires applicable large employer members to report to the IRS about offers of, and enrollment in, health coverage for their full-time employees. The 1095-C form assists the IRS in determining an ALE's compliance with the employer mandate and the eligibility of employees for the premium tax credit.

Under IRC section 6055 employers and insurers providing minimum essential coverage (MEC) are subject to reporting requirements which assist the IRS with enforcement of the individual mandate.

### Reporting Deadline

The deadline for furnishing the reports to employees/covered individuals is January 31, 2018. The transmitting of information to the IRS is February 28, 2017 for those filing paper copies of the reports. Electronic filers (those filing 250 or more forms, or electing to file electronically) must meet the reporting deadline by April 2, 2018, since the regular filing date of March 31 falls on a Saturday. These are the deadlines regardless of whether an employer's plan is a fiscal or calendar plan year.

### Minimal Form Changes

The 2017 final forms and instructions show minimal modifications and include the following:

- As transition relief is no longer available for ALEs in 2017, relief reference has been removed from Form 1094-C.
- Provided a safe harbor for *de minimis* errors when reporting the amount of an employee's required contribution. If the amount reported is off by \$100 or less, a corrected 1095-C is not required to avoid penalties, if the employer qualifies for use of the safe harbor.
- Noted that for 2017 reporting the "Plan Start Month" on Form 1095-C remains optional.
- Confirmed that a Series 2 code is not available for reporting an employee's non-enrollment in health care coverage or waiving offered coverage on line 16 of Form 1095-C.
- Noted that there is no "good-faith compliance relief" in the instructions and provided the 2017 adjusted penalty amounts unless a waiver for reasonable cause is granted.

- Reminded that paper returns must be provided in landscape format.

The final forms and instructions can be found at the following links:

Final 2017 1095-C Form: <https://www.irs.gov/pub/irs-pdf/f1095c.pdf>

Final 2017 1094-C Form: <https://www.irs.gov/pub/irs-pdf/f1094c.pdf>

Final instructions for both forms: <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>

Final 2017 Form 1094-B: <https://www.irs.gov/pub/irs-pdf/f1094b.pdf>

Final 2017 Form 1095-B: <https://www.irs.gov/pub/irs-pdf/f1095b.pdf>

Final instructions for both forms: <https://www.irs.gov/pub/irs-pdf/i109495b.pdf>

Employers should familiarize themselves with the final forms as they being to plan for any 2017 reporting requirements. If using a vendor to assist with the forms, conversations should be conducted to see if any system requirements have changed and any responsibilities the employer may have for gathering and clarifying information. If an employer anticipates not being able to meet its requirement to provide the forms to full-time employees by January 31, then it should consider filing for an extension which is not automatically granted.

### Enforcement of the Affordable Care Act Mandates

Under the Affordable Care Act (ACA) taxpayers are required to maintain what is considered "minimum essential coverage" (MEC) health care for themselves, their spouses and dependents, as applicable. Failure to maintain MEC during any month in the year (with limited exceptions) exposes a taxpayer to a "shared responsibility" penalty. Because the tax penalty has the effect of requiring individuals to have health coverage, this aspect of the ACA is commonly referred to as the "individual mandate".

Additionally, the ACA requires that an Applicable Large Employer (ALE) offer its full-time employees and dependents minimum essential coverage. That coverage must also provide minimum value and be affordable for the full-time employee. If the employer does not meet this responsibility, and a full-time employee receives subsidized coverage from the Marketplace, then the employer may be assessed a penalty. The amount of the penalty will depend on whether the offer of MEC was met (it must be offered to 95 percent of full-time employees and dependents), and whether the coverage offered was affordable minimum value. This penalty is referred to as the “employer mandate”.

The Internal Revenue Service is the agency that is responsible for the enforcement of both mandates.

### **Individual Mandate**

For individuals who were covered with minimum essential coverage in 2015, coverage providers began providing individuals with a Form 1095-B or 1095-C in 2016. This information was also provided to the IRS as assistance with the administration and enforcement of the individual mandate. These forms are required to be provided every year in January as long as the ACA is in effect.

Taxpayers use the information from a Form 1095-B or 1095-C to indicate on their 1040 tax filing whether they and everyone on their returns had health coverage, were exempt from the health coverage requirement, or are making a penalty payment. In response to President Trump’s executive order telling agencies to exercise authority and discretion to reduce potential burdens under the ACA, the IRS accepted 2017 tax returns, regardless of whether the health coverage information was or was not provided. Thus, the tax filing process may have been delayed, but it was not rejected.

In mid-October, the IRS stated that for the 2018 tax filings, electronic taxpayer returns that do not indicate meeting the ACA health coverage requirements or are not paying the penalty will be rejected. If a taxpayer files a paper return, the IRS provides it could suspend processing of the return and delay any taxpayer refund if the filing omits information addressing the individual shared responsibility.

### **Employer Mandate**

As to the employer mandate, the IRS has confirmed that employers are still subject to the mandate and compliance is expected. There are indications that the IRS will begin mandate enforcement and will begin issuing penalty notices. Take note, “indications” does not mean a confirmed statement from either the IRS or the Administration.

As a reminder, an ALE’s ACA reporting obligation requires that it must provide its full-time employees a Form 1095-C by January 31<sup>st</sup> of every year. The employer then files a Form 1094-C with the IRS attaching copies of the 1095-C distributed to employees.

In 2016, the IRS sent letters notifying employers that they may be noncompliant with their ACA reporting obligations. This communication gave employers the opportunity to either file their ACA returns late, or provide further information to the IRS. However, receipt of a letter, or actually not receiving a letter, was not a determination that the employer would, or would not be penalized.

### **Conclusion**

The IRS’ guidance on the collection of information under the individual and employer mandates is a reminder that the Affordable Care Act is still a viable law and requires compliance. The ultimate enforcement of the ACA mandate provisions by the agency remains to be seen and probably relies on further Administration guidance. In the meantime, employers should continue their ACA compliance strategy in order to avoid possible penalties. If that strategy consisted of not complying with the mandate, then a possible strategy review may need to be considered.

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