



## Compliance Corner

November 14, 2017

### Health Care Reform

#### **IRS Announces Enforcement of Employer Mandate Penalties**

On Nov. 2, 2017, the IRS released new FAQs on their website and a sample ESRP notification letter (Letter 226J) with corresponding webpage. On the sample letter and website, the IRS provides details regarding assessment and collection of ESRPs for the 2015 calendar year (i.e., the first year employers were subject to the employer mandate).

As background, employers with 50 or more full-time equivalent employees are required to offer coverage to all full-time employees (FTEs) and their dependent children or face paying an ESRP. An ESRP is triggered if at least one FTE of an ALE received a premium tax credit through the federal exchange, and that ALE failed to offer coverage to at least 95 percent (70 percent in 2015) of FTEs or the coverage offered was unaffordable or did not meet minimum value.

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#### **2019 Draft Actuarial Value Calculator and Methodology**

On Oct. 27, 2017, in conjunction with the Notice of Benefit and Payment Parameters for 2019, CMS published its draft 2019 actuarial value (AV) calculator and methodology. The AV calculator is designed by HHS and CMS to help estimate the AV for a given plan design in the individual and small group markets, which is used to categorize such plans into the metal levels of coverage (bronze, silver, gold and

### Announcements

#### **Podcast Episode 19: The Executive Order and Reform Proposals**

In this episode, Suzanne Spradley and Jill Brooking discuss President Trump's recent Executive Order, the latest health care reform proposals and the Republican tax reform proposal. While it may seem that nothing is currently happening on the reform front, there's a lot of potential for change in the future. Suzanne and Jill go into detail on how the proposals could impact employers and the insurance market overall. They also briefly review recent state political races and consider how they could impact health care reform and future elections in 2018.

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#### **November Webinar Series – Register Now**

NFP Benefits Compliance has one webinar remaining in its November series: "Health Care Reform: 2018 and Beyond" on Nov. 15, 2017, at 3:00 p.m. ET. The recordings for the

platinum). The proposed rules describe the calculator's methodology and operation, and can be quite technical and complex. The rules primarily provide technical guidance to insurers, but contain general information regarding medical trends.

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## 2019 Proposed Notice of Benefit and Payment Parameters

On Oct. 27, 2017, CMS proposed standards for issuers and exchanges for plan years beginning on or after Jan. 1, 2019. The rules are intended to increase flexibility in the individual market, improve program integrity and reduce regulatory burdens associated with the ACA in the individual and small group markets. The specific proposals are discussed below.

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## CMS to Allow More Flexibility for Small Businesses Enrolling Through the SHOP

In the recently released proposed rules regarding benefit and payment parameters for 2019, CMS proposed new rules pertaining to the implementation of the Small Business Health Options Program (SHOP) exchanges. Under the proposed rules, which the federally facilitated SHOPs and state-based SHOPs using the federal platform would adopt if finalized, employers would enroll in a SHOP plan directly with an insurance company offering SHOP plans, and could use the assistance of a SHOP registered agent/broker. Employers would still need to obtain a determination of eligibility by going to HealthCare.gov.

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## Federal Updates

### IRS Issues QSEHRA Guidance

On Oct. 31, 2017, the IRS issued guidance related to qualified small employer health reimbursement arrangements (QSEHRAs), which were created by the 21st Century Cures Act in December 2016. As a reminder, small employers with fewer than 50 full-time equivalent employees who are not subject to the employer mandate may implement a

two previous sessions are available on the NFP Client Learning Portal: "Open Enrollment Training Camp" and "Plan Sponsors, Beware: Practical Take-Aways from Recent Litigation and Government Guidance."

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## Employer Shared Responsibility Payment White Paper Now Available

The IRS confirmed that enforcement of employer mandate penalties, referred to as employer shared responsibility payments (ESRPs), will begin in late 2017. This new white paper walks through the background of ESRPs and details of the IRS guidance, including how applicable large employers (ALEs) will be notified of an ESRP, how to respond to or dispute the assessment, and how to remit an owed ESRP to the IRS. Please ask your advisor or account management team for a copy.

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## Retirement Legal & Compliance Update Volume 7, No. 3 Available Now

The newest edition of the *Retirement Legal & Compliance Update* (Volume 7, No. 3) is now available. The newsletter includes an article on the IRS and DOL semiannual regulatory agenda, an update on the university lawsuits and an article on the church plan case, *Advocate Health Care Network v. Stapleton*. The newsletter also contains an FAQ on excluding classes of employees from 403(b)

QSEHRA. A QSEHRA is 100 percent employer funded and is generally the only way that a small employer may reimburse or pay the cost of an individual policy for an employee.

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## IRS Publishes Additional Guidance for Those Impacted by Hurricane Maria and the California Wildfires

Similar to action taken a few weeks ago in response to other recent disasters, the IRS recently published guidance containing certain relief for those individuals and businesses affected by Hurricane Maria and the 2017 California Wildfires.

The IRS offered extensions in relation to certain tax filing deadlines because of the California Wildfires (CA-2017-06). The extensions apply automatically to any individual or business in an area designated by the Federal Emergency Management Agency (FEMA) as qualifying for individual assistance. Specifically, in California, individuals who reside or have a business in Butte, Lake, Mendocino, Napa, Nevada, Sonoma and Yuba Counties may qualify for tax relief. As a result, if a form was due on or after Oct. 8, 2017, and before Jan. 31, 2018, additional time to file the form through Jan. 31, 2018, is available. The relief would apply to quarterly payroll/employment/excise tax filings due, as well as for any employers that may have previously applied for a Form 5500 filing extension.

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## Retirement Updates

### IRS Employee Plans Memo Provides Guidelines for Missing Participant Audits

On Oct. 19, 2017, the IRS issued a memorandum to Employee Plans auditors that discusses the steps an employer should take in attempting to locate missing plan participants. As background, the memo specifically addresses how to locate missing participants who may be due required minimum distributions from their 401(k) plan. However, the IRS guidance is also helpful for any situation

plans. Please ask your advisor or account management team for a copy.

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## Next Edition of *Compliance Corner* Delayed

The next edition of *Compliance Corner* is regularly scheduled to be released on Tuesday, Nov. 28, 2017. Due to the Thanksgiving holiday, that edition will be delayed and released on Wednesday, Nov. 29.

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## State Updates

 [California Read Update »](#)

 [Massachusetts Read Update »](#)

## FAQ

How long should employers retain employee benefits plan-related records?

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## Reference

Commonly Used Acronyms

[Glossary »](#)

where an employer must locate participants for purposes of distributing benefits.

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11/17 | 265714 | 17-CB-BP-COMP-0925

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