A Service Contractor’s Planning Guide to the Affordable Care Act
Planning for compliance and the impact of health care reform

Starts with understanding the basics:

- The McNamara-O’Hara Service Contract Act of 1965 (SCA)
- The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA) or “Obamacare”
What is special about an SCA covered government contractor from a benefit perspective?

- In general, *Service Contractors* have minimum hourly requirements for payment of wages and fringe benefits.

- This hourly funding requirement for benefits is called a *fringe rate*.

- Fringe rates are adjusted each year; the current fringe is $4.02.

- *Benefits are required to be tracked on an hourly basis.*
  - (Complications can arise from trying to fit the hourly requirement into a traditionally priced monthly benefit plan.)
What must a contractor do to satisfy the fringe benefit obligation?

- Fringe benefits need to be provided separate from, and in addition to, specified wages
- They may be discharged by furnishing equivalent benefits or cash in lieu of benefits
- Wages paid in excess of the WD (Wage Determination) minimum wage requirement cannot offset fringe requirement
- Benefits must be “bona fide”
- The fringe allocation must be tracked and accounted for compliance
- The employer, not the employee, has the right to choose how fringe dollars are allocated

**Bona Fide Fringe Benefit**

Fringe benefits that meet the requirements of the SCA defined in 29 CFR Part 4 Section 171.
Are all employees working for a government contractor subject to an hourly fringe?

- Most **hourly employees** who are working on a government services related contract are subject to the **Service Contract Act** and are entitled to fringe benefits.

- The FLSA (Fair Labor Standards Act) is the law which classifies employees as exempt or non-exempt.

- Examples of employees who may be exempt from an hourly benefit requirement include:
  - Executive
  - Administrative *(managerial)*
  - Professional
  - Computer Professional Exemption ($27.62 per hour or more)

- Trend indicates an expansion of SCA to cover previously exempt labor categories.
Are SCA covered employees treated differently under the Affordable Care Act?

The answer is “no.” However, planning to correctly capture and allocate fringe dollars to meet the ACA employer mandate requirements is different for non-exempt (SCA covered) than for exempt employees.

• Exempt employees are not entitled to fringe benefits
  ▪ Careful consideration should be taken to follow ACA laws in a traditional manner.

• Non-Exempt or SCA employees receive an hourly fringe benefit
  ▪ How a contractor allocates the health and welfare fringe rate will determine compliance with the ACA.
With ACA, SCA covered contractors can look at two ends of the spectrum …

- **Minimally embrace the law**
  - Do the minimum to comply with ACA and SCA guidelines.
  - Examples
    - Establish a minimum essential coverage (MEC) or minimum value (MV) affordable employee benefit plan.
    - Retain as much of the fringe as possible to continue to pay some cash in lieu of benefits
    - Divert underspent fringe to retirement.

- **Fully embrace the law**
  - Provide the best health plan possible within the fringe rate
  - Plan for cost containment and competitiveness
  - Support initiatives to reduce rate increases, and promote wellness on their jobsites
Understand the basic aspects of the Affordable Care Act (ACA) to design the best strategy.

Questions for a Service Contractor:

• Who is covered under ACA?

• What benefits are required?

• What does a contractor have to provide?

* For more information refer to the document titled “Preparing for the Affordable Care Act, A Service Contractors Checklist and FAQ’s”
Who is covered under ACA?

**Full-time employees**

- Full-time employees only (simplified)
- Full-time employees are deemed by the ACA to average at least 30 hours of service per week.
- Standard look-back periods (no less than 3 months, and no more than 12 months) are one way to determine full-time status.
What benefits are required?

Offer at least Minimum Essential Coverage (MEC) / Minimum Value (MV) health plans

- ACA applies to health insurance and self-funded health plans, not to other benefit plans
- MEC and MV are baselines for coverage required under the Affordable Care Act
- Most limited medical, mini-med, and fixed indemnity plans sold in the past will need to migrate to compliant programs by the first of the 2014 plan year
- It is recommended that contractors seek out the expertise of brokers or carriers to determine if their current plans will meet minimum requirements
- Make sure to ask your benefit provider if your plan is compliant with current ACA guidelines
- A common modification to existing plans is a reduction of out-of-pocket maximums
What must a contractor provide?

**Employer Mandate to provide affordable coverage**

- In order to use fringe benefit dollars to satisfy the Employer mandate to provide affordable coverage to its full-time population:
  - A contractor should remove “cash as an option”
    - By providing an employee with the choice of cash in lieu or health benefits, employee receives constructive receipt of fringe dollars.
  - When an employee has constructive receipt of how to use fringe dollars
    - The fringe is considered employee money
    - The benefit election becomes “payroll deduction”
    - This process doesn't satisfy the employer mandate
  - Fringe is only considered employer dollars when the plan is employer paid.
What must a contractor provide?

**Employer Mandate (continued)**

- To structure a compliant plan using fringe dollars
  - Employees should be required to participate (in the employer health plan) unless they have a valid waiver (group based medical plan excluding Medicare)
  - Or, the contractor could offer a defined contribution style plan, where an employee can choose between a selection of benefits. (However, here cash is not an option)
What are the ACA Employer Mandate Requirements?

- There are three parts to the mandate:
  - Employers must offer a medical plan
  - It must be creditable coverage meeting the minimum requirements
  - It must be affordable (less than 9.5% of employee’s gross salary)
- You can not count any funds that any employee receives as compensation as an employer contribution.
- This is why employers must take away the cash option for employees on the contract
- The funds can still go to the employee but they must meet constructive receipt guidelines to be considered an employer contribution and not a deferral
Employer Contributions

• The employer contributions can go to medical, supplemental benefits or retirement
• The health and welfare funds are then not taxable
• This significantly reduces the employers tax burden
• FICA,FUDA and workers compensation
• It also reduces the employees tax liabilities as these funds are now no longer part of their gross earnings.
When must I comply?

- The Employer Mandate applies to employers with 50 or more full-time employees, or full-time equivalents, and will be phased in during 2015 and 2016 based on employer size.
- Employees who work 30 or more hours per week are considered full-time. This chart shows how the employer mandate will be phased in based on employer size:

<table>
<thead>
<tr>
<th>EMPLOYER SIZE</th>
<th>2015 PLAN YEAR</th>
<th>2016 PLAN YEAR AND BEYOND</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–49 full-time employees</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td>50–99 full-time employees*</td>
<td>Does not apply</td>
<td>Employer must offer coverage to 95% of full-time employees and dependents to age 26</td>
</tr>
<tr>
<td>100 or more full-time employees</td>
<td>Employer must offer coverage to 70% of full-time employees and dependents to age 26</td>
<td>Employer must offer coverage to 95% of full-time employees and dependents to age 26</td>
</tr>
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* For 2015, these employers will need to certify that they are not reducing the size of their workforce to stay below 100 employees.
The employer mandate and employer penalties

- Employers subject to the employer mandate are required to offer coverage that provides “minimum value” and is “affordable.”
- The chart below explains these requirements and the penalties that apply if they are not met:

**Do you offer coverage?**

- **Yes**: No penalty
- **No**: $2,000 per FTE (minus first 30)** applies if one full-time employee receives federal premium subsidy for marketplace coverage.

**Does the plan provide “minimum value”? (60%+ of total allowed costs)**

- **No**: Lesser of:
  - $3,000 per FTE receiving subsidy
  - $2,000 per FTE (minus first 30)**
- **Yes**: No penalty

**Is the coverage affordable? (≤9.5% of income)**

- **No**: $2,000 per FTE (minus first 30)**
- **Yes**: No penalty

**Note**: For plan years beginning in 2015, the penalty is $2,000 for each full-time employee minus the first 80 employees. For plan years beginning in 2016 and beyond, employers can exclude 30 employees from the penalty calculation.
Challenges facing SCA contractors with the onset of the Affordable Care Act.

- How to satisfy ACA requirements?
- How to plan for and minimize exposure to rising health insurance costs?
- How to remain competitive in a market of Low Price Technically Acceptable – LPTA contracts?
How to satisfy ACA requirements?

Suggested best practices *(Cost reduction ideas such as worksite wellness program and telemedicine service)*

- Review ACA requirements thoroughly with a broker, lawyer, or carrier representative.
- Try to cover 100% of the premium cost of employee level health coverage using fringe dollars.
- Consider offering ancillary benefits (dental, life, disability, vision) on an employee paid voluntary basis.
- Remember that benefits are owed to all employees working an average of at least 30 hours per week.
- Try to structure a benefit plan that can accommodate premium increases.
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