Employer health care reporting and mandate payments postponed until 2015 - On July 2, 2013, the Administration announced on the White House and Treasury websites that it will provide an additional year, until Jan. 1, 2015, before the mandatory employer and insurer reporting requirements under the Affordable Care Act (ACA, commonly referred to as "Obamacare") begin. Since this will make it impractical to determine which employers do not provide minimum essential health coverage, and therefore would owe shared responsibility payments under (Code Sec. 4980H for 2014), transition relief is also being extended for those payments. Any employer shared responsibility payments will not apply until 2015.

The Congressional Research Service (CRS) has issued a report outlining the required functions of health insurance exchanges under the ACA - Under the ACA, qualified individuals and small businesses will be able to purchase private health insurance through exchanges set up by states or by the federal Health & Human Services Agency (HHS). The initial open enrollment period for all exchanges will begin on October 1, 2013, and all exchanges are to be operational and offering coverage on January 1, 2014. Exchanges must carry out a number of functions, including determining eligibility and enrolling individuals in appropriate plans. In general, health plans offered through exchanges will provide comprehensive coverage and meet the private market reforms specified in the ACA. To make exchange coverage more affordable, qualifying individuals will receive premium assistance in the form of tax credits. Some recipients of these premium credits also may qualify to receive subsidies to help cover their cost-sharing expenses. The CRS report provides a detailed explanation of these exchanges, coverage offered through them, and the cost assistance features mentioned above.

Guidance on health care premium tax credit **-** The IRS has issued proposed regulations as well as released Questions and Answers (Q&As) on the health care premium tax credit on its website, which applies for tax years ending after Dec. 31, 2013. The credit is designed to make health insurance affordable to individuals with modest incomes (i.e., between 100% and 400% of the federal poverty level, or FPL) who are not eligible for other qualifying coverage, such as Medicare, or "affordable" employer-sponsored health insurance plans that provide "minimum value." It is available for individuals who purchase affordable coverage through "Affordable Insurance Exchanges." In general, an employer-sponsored plan is not affordable if the employee's required contribution with respect to the plan exceeds 9.5% of his household income for the tax year. The proposed regulations address (i) minimum value, including the treatment of health reimbursement arrangements, health savings accounts, wellness program incentives, arrangements that reduce premiums, and methods for determining minimum value; (ii) the definition of "modified adjusted gross income" as it comes into play in determining household income for purposes of the credit; (iii) coverage for retirees, newborns and newly adopted children; and (iv) premium assistance amounts for partial months of coverage.

The Q&As note that individuals can choose to have the credit paid in advance to their insurance company to lower what they pay for their monthly premiums, and then reconcile the amount paid in advance with the actual credit computed when they file their tax return. Alternately, individuals can claim all of the credit when they file their tax return for the year. The Q&As explain exactly who is eligible for the credit and address other important aspects of it.

Guidance on required employer notice on health care coverage options - Beginning Jan. 1, 2014, individuals and employees of small businesses will have access to affordable health care coverage through a new competitive private health insurance market called the "Health Insurance Marketplace" (the Marketplace). Certain employers must provide written notice to employees about health insurance coverage options available through the Marketplace. A government agency has provided the following guidance on the notice requirement and has issued model notices:

- ***Who must provide notices*** - Notices must be provided by any employers to whom the Fair Labor Standards Act applies. Generally, this means an employer that employs one or more employees who are engaged in, or produce goods for, interstate commerce. For most firms, this rule doesn't apply if they have less than $500,000 in annual dollar volume of business.
- ***To whom must notices be provided*** **-** Employers must provide a notice to each employee, regardless of plan enrollment status (if applicable), or of part-time or full-time status. Employers do not have to provide a separate notice to dependents or other individuals who are, or may become, eligible for coverage under any available plan, but whom are not employees.
- ***Form and content of notice*** - The notice must be provided in writing in a manner calculated to be understood by the average employee. The notice must include information regarding the existence of a new Marketplace, as well as contact information and a description of the services provided by the Marketplace. In addition, the notice must: (1) inform the employee that the employee may be eligible for a premium tax credit if the employee purchases a qualified health plan (QHP) through the Marketplace, and (2) include a statement informing the employee that if the employee purchases a QHP, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer, and that all or a portion of such contribution may be excludable from income for federal income tax purposes.
- ***Timing and delivery of notice*** **-** Employers must provide the notice to each new employee at the time of hiring *beginning Oct. 1, 2013.* For 2014, a notice is considered to be provided at the time of hiring if it is provided within 14 days of an employee's start date. For employees who are current employees before Oct. 1, 2013, employers must provide the notice no later than *Oct 1, 2013.*

Proposed regulations on small employer's health insurance tax credit **-** The IRS issued proposed regulations on the tax credit available to certain small employers that offer health insurance coverage to their employees. This credit is available to an employer with no more than 25 full-time equivalent employees (FTEs) employed during its tax year, and whose employees have annual full-time equivalent wages that average no more than $50,000. However, the full credit is available only to an employer with 10 or fewer FTEs and whose employees have average annual full-time equivalent wages from the employer of not more than $25,000. The proposed regulations would become effective when they are formally adopted as final regulations. However, employers may rely on the proposed regulations for tax years beginning after Dec. 31, 2013, and before Dec. 31, 2014.

Affordable Care Act - Shared Responsibility Payment - The IRS issued final regulations on the "shared responsibility" payment under the ACA, which is the enforcement mechanism for the ACA's mandate that most individuals maintain health insurance coverage. Starting in 2014, the individual shared responsibility provision calls for each individual to have basic health insurance cover age (known as minimum essential coverage), qualify for an exemption, or make a shared responsibility payment when filing a federal income tax return. Individuals will not have to make a payment if coverage is unaffordable, if they spend less than three consecutive months without coverage, or if they qualify for an exemption under one of several other reasons, including hardship and religious beliefs. The final regulations address these and other aspects of the shared responsibility payment.

Final regulations on wellness incentives in group health plans **-** The IRS, acting in concert with other government agencies, has issued final regulations on nondiscriminatory wellness incentives offered in connection with group health plans. Before Obamacare, group health plans and group health issuers were prohibited from discriminating against individual participants and beneficiaries regarding eligibility, benefits and premiums, based on a health factor. However, an exception allowed premium discounts or rebates or modifications to otherwise applicable cost sharing in return for adherence to certain programs of health promotion and disease prevention. The exception allowed benefits, premiums, and contributions to vary depending on the employees' participation in a wellness program. Obamacare made changes to the rules impacting wellness programs, most notably increasing the maximum financial incentives available to employees who participate in wellness programs. The new regulations provide numerous examples of participatory wellness programs, including a program that reimburses employees for all or part of the cost of membership in a fitness center; a diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes; and a program that provides a reward to employees for attending monthly, no-cost health education seminars. They also clarify that participatory wellness programs are permissible as long as they are available to all similarly situated individuals, regardless of health status.