

National Legislative Update October 2014

Attempts to Urge Treasury to Simplify ACA Reporting and Process for Verifying Employee Coverage:

A number of national organizations including FMI and the E-FLEX Coalition have sent letters to Treasury Secretary Jacob Lew that focused on four areas of concern: 1) ACA employer reporting requirements; 2) determination of employee eligibility for premium tax credits; 3) the employer notification process when Exchanges have determined employees eligible for premium tax credits; and 4) administration of advanced premium tax credits for 2015. The Coalition also reiterated interest in voluntary “prospective” reporting options that would essentially serve as a one-page, up-front certification that the employer offers at least one health plan that meets the ACA affordability and minimum value requirements for all full-time employees. In addition, the E-FLEX coalition “urge the Administration to consider a grace period if such tax consequences occur as a result of inaccurate APTC determinations, delayed notifications, wrong addresses, lack of personally-identifiable information on notifications, appeals backlogs, or other process inefficiencies during this learning period.”

FMI on behalf of our industry continues to meet with both Democrat and Republican Senate and House Leadership offices to reiterate the need for action ASAP to raise the ACA 30-hour/week “full-time” definition and streamline employers’ reporting/verification requirements.

On a related note, Representative Dianne Black (R-TN) introduced legislation to allow streamlined reporting options for employers under the Affordable Care Act (ACA) while also increasing interagency communications and accuracy during the individual tax credit and employer health coverage offer verification process, and remove a requirement by IRS for employers to collect dependents’ Social Security Numbers. FMI, as part of the E-FLEX Coalition, worked with Rep. Black’s office in drafting the legislative text. Earlier this year, Sen. Mark Warner (D-VA) introduced legislation to protect dependents’ Social Security Numbers and require IRS to provide a report on potential streamlined reporting options for employers. It is hopeful that this bipartisan, bicameral interest in this issue could allow for a solution to this concern.

Swipe Fee Amicus Briefs Filed; Fed Report on Debit Transactions:

The campaign against the Federal Reserve’s debit card swipe fee rule continues. At the end of the summer, FMI filed a petition with the Supreme Court seeking its review of the March 2014 swipe fee decision by the U.S. Court of Appeals for the D.C. Circuit. Parties wishing to support our petition for writ of certiorari and have the Court review the case filed amicus briefs with the Court. Senator Dick Durbin (D-IL), whose namesake amendment authorized the implementation of the swipe fee reforms, filed a brief. Ahold and Wal-Mart Stores, Inc. also filed an amicus brief with the court. In the Supreme Court, the first step is to convince the

Court to accept an appeal in the case. The Supreme Court gets thousands of requests per year but agrees to consider less than one hundred.

At issue in this petition is whether the Fed's shift from allowing debit swipe fees of seven to twelve cents per debit card transaction in its proposed rule to allowing fees of twenty four cents per debit card transaction in its final rule was consistent with the law passed by Congress. The District Court held that the Fed's shift was contrary to the law as passed; the Circuit Court held the opposite. The Fed had indicated that they had no plans to issue revisions to the Durbin amendment's interchange fee standard or the fraud prevention adjustment as a result of their report's survey data. .

OSHA Issues New Severe Injury Reporting Requirements:

The Occupational Safety and Health Administration (OSHA) issued a final rule that will require employers to notify the agency when an employee is killed on the job or has suffered a work-related hospitalization, amputation or loss of an eye. The new rule, which updates the list of employers who are partially exempt from OSHA's recordkeeping requirements, will become effective on January 1, 2015.

Under the revised rulemaking, employers will be required to notify OSHA of work-related fatalities within eight hours, and work-related hospitalizations, amputations or eye loss within 24-hours. Previously, the agency's regulations required an employer to report only work-related fatalities and in-patient hospitalizations of three or more employees. Reporting single hospitalizations, amputations or loss of an eye was not required under the old rule.

All employers covered by the Occupational Safety and Health Act, even those who are exempt from maintaining injury and illness records, will be required to comply with the agency's new severe injury and illness reporting requirements. To assist employers in fulfilling these obligations, OSHA is developing a web portal for employers to report incidents electronically in addition to telephone reporting options. Employers with 10 or fewer employees are still exempt from having to maintain routine recordkeeping requirements.