

CAPLAW_{update}



Affordable Care Act Employer Mandate Q&A

By Eleanor A. Evans, Esq. and Graham Rogers, CAPLAW

After a one-year delay, the so-called “employer mandate” provisions of the federal health care reform law are set to take effect January 1, 2015. These rules require employers with 50 or more full-time employees and full-time equivalent employees to offer health insurance coverage to substantially all of their full-time employees and their dependents. The coverage offered must provide “minimum value” and be “affordable.”¹ The employer mandate rules (which are sometimes referred to as the employer “pay or play” rules or employer “shared responsibility” rules) apply not only to for-profit employers but also to tax-exempt organizations and federal, state, local and Indian tribal governmental entities.

This Q&A is intended to help employers in the Community Services Block Grant (CSBG) network better understand, in light of final employer mandate regulations issued earlier this year, how the employer mandate rules affect them and to help them comply with those rules. Ultimately, however, each employer should consult with a qualified professional to determine whether it is subject to the employer mandate rules and, if so, the best way for it to comply.

To determine whether it is subject to the employer mandate rules, an employer converts the total hours of its part-time

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Why It's Important for Your Organization to Use Custom Business Email Addresses

By Jean Carr, Esq., CAPLAW

Some CSBG network organizations may not use custom business email addresses but instead may permit employees to use individual accounts, such as *janedoe@yahoo.com* or *johndoe3@sbcglobal.net*, for work purposes. A custom business email address is one that reflects the company domain name, such as *janedoe@yourorganization.org*. Employee email accounts used for business purposes

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ACA Employer Mandate

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violations of, or failure of a federal grantee to comply with federal, state, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.³³ The Affordable Care Act, however, gives large employers a choice of whether to “play” or to “pay.” Only if an employer neither plays nor pays will it be violating or failing to comply with the Act. Therefore, it seems unlikely that employer mandate payments would be considered unallowable fines or penalties under this provision.

On the other hand, the payments could be construed as taxes. Taxes that a federal grantee is required to pay are generally allowable, except for taxes from which an exemption is available to the grantee.³⁴

Although the treatment of employer mandate payments under the federal cost principles is not clear, the cost principles clearly state that costs of providing health insurance to employees are allowable.³⁵

More Information

For more information about the rules discussed in this Q&A, see the following publications:

- The IRS’s “[Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act](#)”
- The Federal Register [notices](#) containing the final employer mandate regulations, the final 90-day waiting period [regulations](#), and the final [regulations](#) regarding orientation periods
- Health care reform [articles](#) for large employers from the Leavitt Group, a multistate insurance brokerage
- [Deciding Whether to Play or Pay Under the Affordable Care Act – 2014 Updates](#) from the law firm Jones Day
- A series of [alerts for employers](#) from the national employment law firm Seyfarth Shaw on selected health care reform topics. See, in particular, Issues 77 (final employer mandate regulations), 79 (final regulations on the 90-day waiting period limitation) 80 (employer reporting requirements) and 82 (final 90-day waiting period regulations on orientation periods).
- [The Health Care Reform Dashboard](#), created and maintained by the law firm Ballard Spahr LLP, contains information and alerts on various aspects of the Affordable Care Act, including the employer mandate. The site also includes “The ACA Tracker,” which tracks and includes links to regulations and other guidance issued by federal agencies on the ACA.

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Custom Business Email Addresses

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contain data that must be protected, preserved, and readily accessible by the organization at all times. Using customized business emails will enable your organization to fully control, access and store information in employees’ email accounts, thereby protecting the organization from legal liability of various kinds. It will also project a more professional image and enable recipients to readily identify emails as being sent in connection with the official business of your organization. Establishing custom business emails is not difficult or expensive to do; some “how-to” tips are provided later in this article.

Risks of Using Individual Email Accounts for Business Purposes

There are a number of legal risks associated with using individual email accounts for business purposes. Following are some examples of those risks:

- **Safeguarding Confidential Information:** A variety of state and federal privacy laws require organizations to protect certain sensitive information, such as social security numbers, driver’s license or passport numbers, health information, and financial account information. Email messages exchanged in the conduct of the organization’s business may contain information that requires protection under these laws. Without the ability to fully control and safeguard its employees’ email accounts, an organization will not be able to protect confidential information in those accounts to the extent required by law.
- **Securing Data:** Email sent or received from personal accounts is unlikely to be protected by the organization’s data backup systems, firewalls, encryption or other data protection procedures,

increasing risk of data breaches or loss of data due to viruses, malware, or malfunctions in data backup.

- **Retaining Records:** CSBG network organizations are subject to record retention requirements imposed by various laws, including those that apply to them as employers and recipients of government funds. To foster compliance with these laws, organizations often adopt record retention policies specifying how long records, which may include emails or information contained in them, are to be retained and when they may be destroyed. (For a sample record retention policy, see [CAPLAW's Sample Record Retention Policy](#)). If organization business is conducted through the use of individual email accounts the organization does not control, it will not be able to comply with the record retention requirements of these various laws or with its own record retention policy with respect to records contained in those accounts.
- **Producing Documents:** An organization may be required to produce emails in response to a discovery request in litigation or in connection with a government audit or investigation. If emails are located in individual email accounts, it may be difficult, if not impossible, for the organization to retrieve and produce them.
- **Controlling Access after an Employee Leaves:** If an employee who uses a personal email account to conduct organization business leaves the organization, the organization may not be able to access information contained in or connected with that account or to block the individual's access to the account. Requiring staff to use office email accounts enables an organization to control and ensure access to work product and important organizational information at all times.

Using Custom Business Email Addresses to Reinforce the Organization's Brand

"Online communication plays a key role in establishing an organization's public profile..."

Online communication plays a key role in establishing an organization's public profile, including the professionalism with which the organization operates. Part of an organization's brand is established by the email messages sent from the organization. When an organization's

employees send email from individual email addresses, such as *janedoe@hotmail.com* or *john30@aol.com*, recipients are less likely to connect that email correspondence with the organization's mission and work. Also, email addresses using a web mail service provider's name (such as Hotmail) may include advertising that may make the organization's communications appear unprofessional and/or imply that the organization is endorsing the products or services being advertised. On the other hand, use of custom business email helps build awareness of the organization's brand and projects a professional image.

In addition to using custom business email addresses, the use of a standard email signature block by every employee

reinforces the organization's brand identity and helps ensure that recipients can easily identify and contact the sender and the organization. Email systems generally enable users to establish signature blocks that will automatically appear at the end of each new email message as it is created. An email signature block typically contain the staff person's full name and title, the full name of the organization, the employee's work address and telephone number(s), and the organization's website address.

"...the use of a standard email signature block by every employee reinforces the organization's brand identity and helps ensure that recipients can easily identify and contact the sender..."

Setting Up A Custom Business Email Address

If your organization has a website, obtaining email addresses with your organization's name may be accomplished by the web host, a company which connects your website with the Internet. The email address would use your organization's "domain name" (discussed further below), that is the address on the Internet identifying where the website is located. An example of an email account set up this way would be *john.doe@yourCAA.org*.

Even if your organization does not have a website, it may utilize a service provider for email services, several of which are marketing low-cost or free services to eligible nonprofits. Two of these providers are [GoogleApps](#) and [Office 365 for Nonprofits](#). An email service provider can link your email accounts to your organization's domain name, rather than the name of the service provider. For IT information and resources tailored to nonprofits, visit the [Tech Soup website](#).

Establishing a Domain Name

A domain name, as noted earlier, is your organization's address on the Internet that identifies where your website is located so that the public (and funders) can learn more about your organization and how to contact your staff. For example, CAPLAW's domain name is [www.capl原因.org](#). In picking a domain name, it is important to keep it simple and easy to remember, avoid numbers and repeated letters, and make it a communication tool that helps make your services known and accessible. Sometimes the domain name is an acronym (as in CAPLAW) for the name of the organization, particularly if it is a long name. When you have picked a name or list of names, do an online search for those names to ensure that no one else is using them. (For additional information, here is a link to an [article](#) on choosing a domain name).¹

The next step in the process is to register the domain name by submitting an electronic application to any one of 240 registries, such as GoDaddy or Network Solutions. Once you have chosen the domain name for your organization, choose a suffix that further identifies it. The domain suffix ".org"

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was originally designed for nonprofits and will probably be the most suitable as it indicates a trustworthy organization dedicated to serving the public interest. Also registering a domain name with the suffixes “.com” and “.net” may be a good idea to prevent misdirection during web searches. The cost for each domain name is fairly low. In addition, it will reduce risk if someone at your organization ensures that the domain is registered in the name of the organization (not in a staff member’s name) and that fees for retaining the registration are paid promptly so that you will not lose that domain name to another organization. Note that legal issues can arise if an organization did not establish the domain in its own name. For example, the service provider may not agree to renew the domain name if it has been registered in the name of a staff person who has left the organization.

With a domain name established, your organization can proceed to set up email accounts linked to your domain name (see discussion above). If each person’s email address includes his or her full name or at least the first initial and last name, the recipient can easily identify the sender.

Using custom business email for all emails sent on behalf of your organization will help protect the information the organization holds as well as prevent loss and legal liability. It enables your organization to present a consistent, professional message through its email communications.

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Minimize Liability from Completed WAP Units *(continued from page 3)*

If a CAA decides to contract out all or most of its WAP work, it should again consult with an attorney licensed in its state when drafting a contractor agreement as such an agreement will be enforced under its state’s laws. An attorney should also be able to identify what, if any, implicit or explicit warranties are available under the applicable state laws.

Additionally, a CAA may obtain insurance that will cover costs relating to construction errors caused by a CAA’s in-house WAP crew and/or contractors. The DOE WAP Procurement Toolkit requires CAAs to obtain as part of the contractor bidding process documentation showing that the contractor maintains insurance that meets the minimum professional and equipment liability insurance requirements in a state. CAAs will also typically include in the contractor agreement language requiring a contractor to provide proof of such insurance.

Generally, under the Office of Management and Budget (OMB) Cost Principles² and the Omni Circular³ (which will replace the Cost Principles in 2015) the cost of insurance required or approved and maintained pursuant to a federal grant award is allowable where as the cost of other insurance maintained by the organization in connection with the general conduct of its operations is allowable subject to certain limitations.⁴ Also, it is important to note that actual losses which could have been covered by permissible insurance are unallowable unless the losses are (1) expressly provided for in an award, (2) not covered under a nominal deductible and are in keeping with sound business practice or (3) minor ones not covered by insurance (spoilage, breakage, and disappearance of supplies) which occur in the ordinary course of operations.⁵ Under the WAP regulations, the cost of liability insurance for personal injury

NEW CSBG Q&A



Q&A on...

Child Support Referral

If your CAA has questions or concerns about the Community Service Block Grant Act (CSBG) child support referral requirements, check out CAPLAW’s recent analysis. With this analysis, CAPLAW proposes practical ways to approach and implement these sections of the Act. It is important to note that the analysis does not represent the opinions of the federal Office of Community Services (OCS).

[Learn more and download the Q&A!](#)

Article End Notes

Affordable Care Act Employer Mandate Q&A

1. 26 C.F.R. § 54.4980H.
2. 26 C.F.R. § 54.4980H-1(a)(4), -1(a)(21), -1(a)(22) and -2.
3. 26 C.F.R. § 54.4980H-4 and -5.
4. 26 C.F.R. § 54.4980H-6(b) and 79 Fed. Reg. 8543, 8574 (Feb. 12, 2014).
5. 79 Fed. Reg. 8543, 8574.
6. 79 Fed. Reg. 8543, 8573.
7. 79 Fed. Reg. 8543, 8570-8571.
8. 79 Fed. Reg. 8543, 8575.
9. 79 Fed. Reg. 8543, 8576.
10. 79 Fed. Reg. 8543, 8574-8575 and 26 C.F.R. § 54.4980H-1(a)(12).
11. 26 C.F.R. § 54.4980H-1(a)(21).
12. 26 C.F.R. § 54.4980H-1(a)(24).
13. 26 C.F.R. § 54.4980H-1(a)(24)(ii).
14. 26 C.F.R. § 54.4980H-1(a)(7).
15. 79 Fed. Reg. 8543, 8550-8551.
16. 26 C.F.R. § 54.4980H-3(e).
17. 26 C.F.R. § 54.4980H-5(c).
18. 26 C.F.R. § 54.4980H-3(c)(2).
19. 26 C.F.R. § 54.4980H-3(c)(3).
21. 26 C.F.R. § 54.4980H-5(c).
20. 26 C.F.R. § 54.4980H-3(d).
21. 79 Fed. Reg. 8543, 8573.
22. 26 C.F.R. § 54.4980H-3(d).
23. 26 C. F. R. § 54.4980H-3(d)(2)-(3).
24. 26 C.F.R. § 54.4980H-3(d)(2).
25. 26 C.F.R. § 54.4980H-3(d)(3).
26. 26 C.R.R. § 54.9815-2708.
27. 26 C.F.R. § 54.9815-2708(b)-(c)(1).
28. 26 C.F.R. § 54.9815-2708(c).
29. 26 C.F.R. § 54.9815-2708(c)(3)(i).

30. 26 C.F.R. § 54.4980H-3(c)(4) and -3(d)(6) (in the case of an “educational organization,” the relevant break in service period is 26 weeks rather than 13 weeks. However, CSBG network organizations are generally not likely to qualify as educational organizations.)
31. 26 C.F.R. § 54.4980H-5(e).
32. 26 C.F.R. § 54.4980H-1(28) and 26 U.S.C. § 36B(c)(2)(C)(ii) and 45 C.F.R. § 156.145.
33. 2 C.F.R. Part 230, App. B, ¶16 (O.M.B. Circular A-122, which applies to nonprofit grantees); see similar provision in 2 C.F.R. Part 225, App. B, ¶16 (O.M.B. Circular A-87, which applies to state and local government grantees). See also 2 C.F.R. § 200.441 (O.M.B. “Super Circular” cost principle rules, which when effective, will apply to both nonprofit and state and local government grantees).
34. 2 C.F.R. Part 230, App. B, ¶147.a. (O.M.B. Circular A-122, which applies to nonprofit grantees); see similar provision in 2 C.F.R. Part 225, App. B, ¶140 (O.M.B. Circular A-87, which applies to state and local government grantees). See also 2 C.F.R. § 200.470 (O.M.B. “Super Circular” cost principle rules, which when effective, will apply to both nonprofit and state and local government grantees).
35. 2 C.F.R. Part 230, App. B, ¶18.g. (O.M.B. Circular A-122, which applies to nonprofit grantees); see similar provision in 2 C.F.R. Part 225, App. B, ¶18.d. (O.M.B. Circular A-87, which applies to state and local government grantees). See also 2 C.F.R. § 200.431 (O.M.B. “Super Circular” cost principle rules, which when effective, will apply to both nonprofit and state and local government grantees).

Why It’s Important for Your Organization to Use Custom Business Email Addresses

1. When using this link, note that the pdf will automatically open in the Download folder.

How Does a CAA Minimize Liability Arising from Completed WAP Units?

1. 10 C.F.R. § 440.18(e)(2).
2. OMB Circular A-122; OMB Circular A-87.
3. 2 C.F.R. Part 200.
4. See OMB Circular A-122, Attachment B, ¶ 22.a(1), (2); OMB Circular A-87, Attachment B, ¶ 22.a, b; 2 C.F.R. § 200.447(a), (b).
5. See OMB Circular A-122, Attachment B, ¶ 22.a(3); OMB