Sibson Consulting

update

Compliance News for Plan Sponsors

September 1, 2015

Draft Instructions for Affordable Care Act Reporting by Employers: IRS Requests Comments

The Internal Revenue Service (IRS) recently published draft instructions for employer information reporting requirements under the Affordable Care Act.[1] The Treasury Department (Treasury) and IRS welcome comments on the draft instructions. However, there is no formal comment deadline.

This *Update* summarizes the draft instructions, notes action items for employers and outlines factors to consider when implementing the reporting rules.

Supplemental Coverage, Including Health Reimbursement Arrangements (HRAs)

The new draft instructions contain information about reporting supplemental coverage that is different from previous guidance. The final regulations published in 2014 provide that supplemental coverage does not have to be reported if it is either (1) coverage that supplements a government-sponsored program, such as Medicare or TRICARE (military health coverage) or (2) coverage of an individual in more than one plan or program by the same plan sponsor. Consequently, a retiree plan that supplements Medicare would not have to be reported. Similarly, under the regulations, an HRA sponsored by the same plan sponsor that sponsors a medical benefit plan would not have to be reported.

However, the draft instructions would change the manner in which some HRAs are reported. These instructions state that for the plan sponsor of a health plan and an HRA to be the same, the coverages must be reported by the same reporting entity. Consequently, under the new instructions a plan sponsor that provides a self-insured HRA and an insured group health plan would have to report the HRA coverage despite the fact that the insured coverage is reported by the health insurance carrier. Plan sponsors have raised concern about this clarification to the IRS.

Additional Clarifications

The 2015 draft instructions for both the employer and plan reporting forms contain additional clarifications, many of which were covered previously in answers to frequently asked questions (FAQs).[2]

Health Compliance News Highlights:

- Draft form and instructions for 2015 Affordable Care Act reporting have been released.
- Clarifications were made to reporting rules.
- How should plan sponsors select service providers to assist with filing?

NEW! On September 16, 2015, the IRS published final forms and instructions for large employers' reporting requirements under the Affordable Care Act. For a summary of that guidance, see Sibson Consulting's October 1, 2015 *Update*. On December 28, 2015, the IRS extended the due dates for employers' and health plans' Affordable Care Act reporting by several weeks.

[1] The Affordable Care Act is the shorthand name for the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-48, as modified by the subsequently enacted Health Care and Education Reconciliation Act (HCERA), Public Law No. 111-152.

[2] These FAQs, Questions and Answers on Reporting of Offers of Health Insurance Coverage by Employers (Section 6056), Questions and Answers about Information Reporting by Employers on Form 1094-C and Form 1095-C and Questions and Answers on Information Reporting by Health Coverage Providers (Section 6055), which are updated periodically, are on the IRS website.

The additional clarifications are summarized below:

- ***New Multiemployer Reporting Guidance***[3] The instructions provide additional guidance on how employers would prepare the Form 1095-C[4] for full-time employees for whom they contribute to a multiemployer plan.[5] Under the new draft instructions, for reporting on the Form 1095-C for 2015, contributing employers relying on the multiemployer interim guidance[6] should enter code 1H ("no offer of coverage") on **Line 14 – Offer of Coverage** for any month for which they enter code 2E on **Line 16 – Applicable Section 4980H Safe Harbor Codes and Other Relief for Employers**. Code 2E on line 16 indicates that the employer was required to contribute to a multiemployer plan on behalf of the employee for that month and therefore is eligible for multiemployer interim rule relief.[7] In an important clarification, the instructions also state that code 1H may be entered without regard to whether the employee was eligible to enroll in coverage under the multiemployer plan for that month. Under the new draft instructions, the contributing employer does not need to know whether an employee was eligible for coverage or not. Consequently, there is no longer a need for the plan to send this information to a contributing employer. Treasury and the IRS are continuing to review issues related to multiemployer plan reporting and have stated that for 2016 and future years, reporting for offers of coverage made through a multiemployer plan may be modified.[8]

- ***Extensions*** Both employers and plans may apply for an automatic 30-day extension of the IRS filing deadline (March 31) by submitting a Form 8809 on or before the due date. In order to receive an extension of the deadline to furnish forms to individuals, employers and plans must send a letter to IRS containing certain details and explaining why an extension is necessary. The IRS would have to grant the extension, and it would only be for a maximum of 30 days.

- ***Corrections*** The draft instructions now contain details on how to file corrected forms.

- ***Record Retention*** Copies must be kept for at least three years.

- ***Delivery*** The forms may be delivered to employees by hand. Affirmative consent from the individual, which meets IRS standards, is required to deliver the forms electronically.

- ***Penalties*** The draft instructions contain a summary of the newly increased penalty structure.[9]

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[3] Previously, the IRS had informally stated that multiemployer plans would be required to provide detailed information to contributing employers concerning whether each participant had become eligible/enrolled in the fund. Many plan sponsors raised questions with the Treasury and the IRS about this process. Some concerns were practical, in terms of timing and volume of information to be exchanged. Other concerns were legal/ regulatory ones, including whether the transfer of information and resources necessary to do so was consistent with the Health Insurance Portability and Accountability Act (HIPAA) privacy rules and fiduciary obligations under the Employee Retirement Income Security Act (ERISA).

[4] Large employers with more than 50 full-time employees, or equivalents, must furnish a copy of IRS Form 1095-C to full-time employees no later than February 1, 2016. In addition, they must file the Forms 1094-C and 1095-C with the IRS by February 29, 2016 — or March 31, 2016, if filing electronically.

[5] The 2015 1095-C draft form and instructions are on the IRS website.

[6] For information about the multiemployer interim guidance under the employer penalty rules see Segal Consulting's January 15, 2015 *Capital Checkup*, "How Contributing to a Multiemployer Plan Protects an Employer from the Affordable Care Act's Employer Shared Responsibility Penalty." Like Sibson, Segal Consulting is a member of The Segal Group.

[7] For information about this relief, see the publication referenced in the above footnote.

[8] There are additional issues that require clarification from Treasury/IRS, including whether rules concerning the priority order of certain codes would affect contributing employers. We understand that this issue is being reviewed. The IRS also has not addressed what coding would be used if the plan's coverage is not affordable or not minimum value.

[9] For information about that new structure, see Sibson's July 15, 2015 *Update*, "Penalties Increased for Noncompliance with Reporting Requirements Under the Affordable Care Act."

- ***Continued Coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA)*** An overview of how employers report COBRA continuation coverage is included, but without the details in the answers to FAQs.

Comments Welcome

Although there is no formal comment deadline, the Treasury and IRS are encouraging interested parties to comment on the draft instructions as soon as possible.

Action Items

Employers need to decide how to comply with the employer reporting requirements. In many cases, compliance will require choosing a service provider that will complete, deliver and file the Forms 1095-C. The text box below addresses that process.

Self-insured employers will need to also provide health coverage information on the Form 1095-C. However, employers with insured coverage will not have to provide that information because the carrier will report it on the Form 1095-B, which is used by health insurers, multiemployer plans and other providers of minimum essential coverage to report plan enrollment.

Choosing a Service Provider to Assist with Forms

Choosing a service provider will be a challenge because of several factors, including that the IRS has created a brand-new technical interface for reporting; the regulatory guidance is complicated and ever-changing; and the service providers have no proven track record because this is the first year the rules have been implemented. Sibson has evaluated many service providers. Based on that experience, Sibson has identified several factors to consider when implementing the reporting rules:

- ***Outsource or Build*** Most employers are choosing to outsource reporting requirements to a service provider. The IRS requires that service providers that are developing software for electronic filing register with the IRS and perform test filings. These requirements are generally too onerous for employers and would take away time from IT departments that are already busy.
- ***Security and Privacy Protections*** Service providers should not only be registered with the IRS, but should also be able to demonstrate to the employer that they have adequate security and privacy measures in place.
- ***Consistent with Employer Penalty Strategy*** Employers must make a decision about how to determine which employees are full-time employees (at least 30 hours/week or 130 hours/month). They may measure full-time status using either a look-back or monthly measurement method.* When choosing a reporting service provider, care should be taken to assure that the provider can accommodate the employer's strategy. For example, some systems are only using the look-back measurement strategy, which would not be consistent with an employer using a monthly measurement.
- ***Data Exchange*** Employers may be able to purchase a solution from an existing payroll company. However, if that is not a good choice, the employer may want to find a reporting service provider that can import data from a payroll system or benefits system and use it to complete the Forms 1095-C.
- ***Form Delivery*** Some service providers will complete and mail forms to employees. Others may offer an online portal from which employees may view their forms and obtain copies.
- ***Filing/Correction Experience*** Employers should ask potential service providers whether they have experience filing mass volumes of forms electronically with the IRS, and experience in sending corrections.

* For information about those criteria, see Sibson's January 15, 2015 *Update*, "Identifying Full-Time Employees Under the Affordable Care Act's Employer Shared Responsibility Penalty."

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If you would like additional information about this news, please contact your Sibson consultant or the Sibson office nearest you. Sibson can be retained to work with plan sponsors and their legal counsel on compliance issues.

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