



# update

Compliance News for Multiemployer Plans

September 1, 2015

## Latest Guidance for Employers and Multiemployer Plan Sponsors on Reporting Required by the Affordable Care Act

The Internal Revenue Service (IRS) recently published draft instructions for employer information reporting requirements under the Affordable Care Act<sup>1</sup> as well as request for comments. The instructions provide additional guidance on how employers would prepare the Form 1095-C<sup>2</sup> for full-time employees for whom they contribute to a multiemployer plan, clarifications for what sponsors of multiemployer plans need to do, and some additional minor clarifications.<sup>3</sup>

### Previous Guidance

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, 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).

### The New Multiemployer Reporting Guidance

Under the new draft instructions, for reporting on the Form 1095-C for 2015, contributing employers relying on the multiemployer interim guidance<sup>4</sup> 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



### Health Compliance News Highlights:

- Draft form and instructions for 2015 Affordable Care Act reporting have been released.
- Contributing employers to multiemployer plans have new, improved instructions.
- Clarifications were made to other reporting rules.
- Check the ability of service providers to assist with filing.

**NEW!** On September 16, 2015, the IRS published final forms and instructions for large employers' and for multiemployer plans' reporting requirements under the Affordable Care Act. For a summary of that guidance, see Segal 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.

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> The 2015 1095-C [draft form](#) and [instructions](#) are on the IRS website.

<sup>4</sup> 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](#)."

employee for that month and therefore is eligible for multiemployer interim rule relief.<sup>5</sup> 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. The 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.<sup>6</sup>

## 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):<sup>7</sup>

- **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.

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<sup>5</sup> For information about this relief, see Segal's January 15, 2015 *Capital Checkup*, which can be accessed from footnote 4.

<sup>6</sup> There are additional issues that require clarification from the Treasury/the 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.

<sup>7</sup> 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.

- **Delivery** The forms may be delivered 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.<sup>8</sup>
- **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.

## Checking the Ability of Service Providers to Assist with Forms

Multiemployer plans should discuss with their systems providers and administrators (or insurers) how the required plan reporting forms will be provided to plan participants and the IRS.

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<sup>8</sup> For information about that new structure, see Segal's July 15, 2015 *Update*, "[Penalties Increased for Noncompliance with Reporting Requirements Under the Affordable Care Act.](#)"

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