

update

Public Sector Benefits Compliance News

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 employers 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 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.

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:

- **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.³
- **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 on the next page](#) 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 and other providers of minimum essential coverage to report plan enrollment.

Continued on the next page.

³ 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.](#)"

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. Segal has evaluated many service providers. Based on that experience, Segal 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 plan sponsor 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 Segal's January 15, 2015 *Update*, "[Identifying Full-Time Employees Under the Affordable Care Act's Employer Shared Responsibility Penalty.](#)"

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