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WHAT EMPLOYERS NEED TO KNOW RIGHT NOW ABOUT HEALTH CARE REFORM

## IRS Issues Additional FAQs and Hosts Webinar to Assist with Reporting Requirements under PPACA's Play or Pay

### Background

In order for the Internal Revenue Service (IRS) to verify that (1) individuals have the required minimum essential coverage, (2) individuals who request premium tax credits are entitled to them, and (3) applicable large employers (ALEs) are meeting their shared responsibility (play or pay) obligations, employers with 50 or more full-time or full-time equivalent employees and insurers will be required to report on the health coverage they offer. Reporting will first be due early in 2016, based on coverage in 2015. All reporting will be for the calendar year, even for non-calendar year plans. Mid-size employers (those with 50 to 99 employees) will report in 2016, despite being in a period of transition relief in regard to having to offer coverage. The reporting requirements are in Sections 6055 and 6056 of the Patient Protection and Affordable Care Act (PPACA).

The IRS has issued forms and instructions for reporting, along with accompanying FAQs on 6055 and 6056 reporting, and specific information on using the various reporting forms. On May 20, 2015, the IRS updated all of its FAQs relating to reporting and forms. Shortly after the release of the updated FAQs, the IRS held a webinar for the public on reporting and employer requirements. This PPACA Advisor will cover the main points of the updated FAQs and the webinar. A more detailed overview of employer reporting requirements can be found in the UBA documents "[IRS Releases Final Reporting Regulations](#)" and "[IRS Issues Final Forms and Instructions for Employer and Insurer Reporting Forms](#)."

Which forms for self-funded plans?

Our access to PPACA Advisor resources can help you clear up PPACA questions and better craft your company's benefit strategy for the future.



This information is general and is provided for educational purposes only. It reflects UBA's understanding of the available guidance as of the date shown and is subject to change. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.

As a refresher, employers with fewer than 50 employees, with a self-funded plan will complete forms 1094-B and 1095-B for all individuals that participated in the plan during the year. Employers with more than 50 employees and a self-funded plan will first have to determine if they covered non-employees (such as former employees on COBRA, retirees, and board members). If they covered these non-employees on their plan, they will complete forms 1094-B and 1095-B for non-employee participants, and then complete forms 1094-C and 1095-C parts I, II, and III for all full-time employees (regardless of enrollment or eligibility) and any other employees that participated. However, if they do not cover the above-listed non-employees, they will only complete forms 1094-C and 1095-C parts I, II and III for all full-time employees (regardless of enrollment or eligibility) and any other employees that participated in the plan year.

Which forms for fully-insured plans?

An employer with fewer than 50 employees that offers a fully-insured plan will have no employer reporting, and the insurer will submit forms 1094-B and 1095-B.

An employer with more than 50 employees and a fully-insured plan will complete Forms 1094-C and 1095-C (Parts I and II) for all full-time employees (regardless of enrollment or eligibility) and any other employees that participated in the plan during the calendar year.

Webinar recap

In the webinar, the IRS stated that when it comes to paying penalties, the IRS will notify employers of a penalty potential after they have reviewed every employee's individual tax return for the reporting year. If they believe an employer could owe a penalty, the IRS will notify the employer of the potential penalty and allow time to respond. If it is determined the employer owes a penalty, information regarding payment will be provided at that time.

During the webinar the IRS stated that there is no code for Line 16 on Form 1095-C for employees who choose not to elect coverage, and in that instance Line 16 should be left blank. Furthermore, only one code can be used on Line 16; if more than one code applies, a reporting entity should refer to the hierarchy of codes in the IRS Instructions.

Finally, during the question and answer period of the webinar, the IRS stated that, to determine how to treat an intern in terms of pay or pay, you should consider whether the intern is paid or unpaid. Unpaid hours of service are not counted, but a paid intern's hours would count in the full-time employee calculation, and if the employee was full-time, he or she would need to be offered coverage accordingly.

Questions and Answers on Reporting of Offers of Health Insurance Coverage by Employers (Section 6056)

Section 6056 requires applicable large employers (ALEs) to file information returns with the IRS and provide statements to their full-time employees about health insurance coverage that they offered.

The updated [FAQ](#) answered questions on how to handle reporting if an ALE has no full-time employees, if it is not subject to shared responsibility provisions (by virtue of not being an ALE), and the responsibility of an ALE that sponsors a self-funded plan if it has no full-time employees.

For an ALE with no full-time employees, the employer is not required to report under Section 6056. If even one employee was full-time for any month in the year, it must report. Furthermore, an employer that is not an ALE (or has less than 50 employees) is not subject to any reporting requirements under Section 6056. An ALE is still required to report under Section 6056 with respect to full-time employees who are not offered coverage.

**Self-funded reporting.** An ALE sponsoring a self-funded health plan in which any employee or employee spouse or dependent has enrolled must file Forms 1094-C and 1095-C regardless of whether it has any full-time employees and whether or not that individual is a current employee or full-time employee. An employer that is not an ALE (has fewer than 50 employees) that sponsors a self-funded plan has no requirements under Section 6056, but has obligations under Section 6055 by way of Forms 1094-B and 1095-B.

**Qualifying offers.** The FAQ also provided information on how to report qualifying offers. The IRS stated that if an ALE has made a qualifying offer for all 12 months of the year to one or more full-time employees, it may use an alternate reporting method. A qualifying offer is one that satisfies all of the following:

- It is an offer of minimum essential coverage that provides minimum value;
- The employee cost for employee-only coverage does not exceed 9.5 percent of the mainland single federal poverty line (FPL) divided by 12; and
- An offer of minimum essential coverage is also made to the employee's spouse and dependents.

An ALE reporting under the certification of a qualifying offer may simply furnish a statement to employees rather than a copy of Form 1095-C. The simple statement method is *not* available to an employer sponsoring a self-insured plan with respect to employees enrolling in the self-insured coverage because that coverage must be reported on a 1095-C. An ALE reporting under the 98 percent offer method may qualify for simplified reporting.

Information on qualifying offers was provided in other FAQs released by the IRS contemporaneously.

**When to file and provide employees with forms.** An ALE must file Forms 1094-C and 1095-C for each employee with the IRS on or before February 28 (March 31 for electronic filers) of the year immediately following the calendar year for which the offer of coverage information is reported. ALEs may give employees the Form 1095-C via hand delivery. An ALE is not required to give an employee a Form 1095-C within 30 days of written request if the employee terminated employment. If an employer chose to do so and the information changed (for instance, the employee was rehired) the employer would be obligated to furnish an updated form to the employee.

**Governmental units.** The FAQ also provided information for governmental units that are subject to Section 6056, such as allowing an employer that is a governmental unit that sponsors a self-insured employer-sponsored health plan to designate a third party to return and furnish the statements under Section 6055, and if it chooses to do so, is not obligated to also designate its reporting obligations under Section 6056.

Finally, the FAQ stated that an ALE may file more than one Form

1094-C provided that one of the forms is an authoritative transmittal reporting aggregate employer-level data for the member.

#### Questions and Answers about Employer Information Reporting on Form 1094-C and Form 1095-C

Under Section 6056, an ALE must file a Form 1095-C for each employee who was a full-time employee for any month during the calendar year, as well as for any employee that enrolls himself or a family member if the ALE offers a self-funded plan. The updated [FAQ](#) stated that an employee who was not full time in any month of the year, or an employee who was in a limited non-assessment period for all 12 months of the year, does not need a Form 1095-C.

Reporting on terminated employees. The FAQ also provided information on reporting an offer of coverage for a month in which the employee terminates employment. In this situation, because an employer should only report an offer of coverage if the employee would have been covered for all days of the calendar month, if the termination results in a coverage expiration before the end of the month, the ALE should report that no offer of coverage was made on Form 1095-C by using code 1H on Line 14. For Form 1095-C, the FAQ also clarified that Line 16 may be left blank if no code is applicable.

Self-funded plans covering non-employees. The FAQ provided instruction on reporting for a self-funded plan that provides coverage to an individual who is not an employee, such as a non-employee COBRA beneficiary, a member of a board of directors, or a retired employee. In this instance, the plan should report enrollment information for individuals who were not employees by entering code 1G in Line 14 of Form 1095-C for all 12 months, and completing Part III for Form 1095-C. The IRS cautions that the use of Form 1095-C requires the reporting entity to have the recipient's Social Security Number on Line 2.

Qualifying offer method. The FAQ provided further information on using the qualifying offer method discussed above. If an ALE is eligible for the qualifying offer method, on Form 1094-C, Line 22, the employer should check Box A. On Form 1095-C, Line 14, the ALE should enter code 1A for each employee receiving a qualifying offer for all 12 months of the year. When an employee receives a qualifying offer, no entry is needed for Line 15.

Qualifying Offer Method Transition Relief. If the ALE is eligible to use the Qualifying Offer Method Transition Relief for 2015, which certifies that it made qualifying offers to at least 95 percent of its full time employees, it may qualify for simplified reporting. An ALE using this method should check Box B on Line 22 on Form 1094-C, and code 1A on line 14 of Form 1095-C for any month which an employee received a qualifying offer, or code 1I for any month which an employee did not receive a qualifying offer. Again, no entry is necessary for Line 15.

98 percent offer method. If the employer is using the 98 percent offer method, by virtue of offering affordable health coverage providing minimum value to at least 98 percent of its employees for whom it is filing a 1095-C employee statement, and offered minimum essential coverage to those employees' dependents (spouses are not required for this offer method), it would check Box D on Line 22 of Form 1094-C and is not required to complete Form 1094-C Part III (b) on its authoritative transmittal. Affordability will be calculated by any of the affordability safe harbors for Form 1095-C.

Information on qualifying offers was provided in other FAQs released by the IRS contemporaneously.

COBRA coverage and reporting. The IRS also discussed how to report coverage for an employee who receives an offer of COBRA continuation coverage. In general, a former employee will not be reported on Part II of Form 1095-C, unless the former employee enrolls in COBRA coverage. Different rules apply for an employee who is offered COBRA due to a reduction in hours. The IRS provided the following examples.

Example 1: Steve was a full-time employee of ABC Corporation and received an offer of coverage providing minimum value for an employee, spouse and dependents under the ABC Corporation health plan. ABC Corporation is an ALE and its health plan is a self-insured health plan. Steve enrolled in self-only coverage under the ABC Corporation health plan effective January 1, 2015, through the earlier of December 31, 2015, or Steve's termination of employment. On June 15, 2015, Steve terminated employment with ABC Corporation and received an offer of continuation coverage under COBRA but did not enroll in the coverage.

For the months January 2015 through May 2015, ABC Corporation should enter code 1E, Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse, on line 14 of Form 1095-C and should enter code 2C, Employee enrolled in coverage offered, on line 16 to report that Steve enrolled in coverage under the plan. For the months January 2015 through May 2015, ABC Corporation should report on line 15 the employee contribution for the lowest-cost self-only coverage providing minimum value offered under the ABC Corporation health plan to Steve as an active employee. For June 2015 (the month in which Steve terminated employment), ABC Corporation should enter code 1H, No offer of coverage, on line 14 and code 2B, Employee not a full-time employee, on line 16 (see question 8 above concerning reporting an offer of coverage in the month of termination of employment). For July 2015 through December 2015, ABC Corporation should enter code 1H, No offer of coverage, on line 14 and code 2A on line 16 (reporting that Steve was no longer an employee in those months).

Example 2: Same facts as Example 1, except that Steve enrolls in self-only COBRA coverage under the plan effective June 15, 2015, through December 31, 2015.

For the months January 2015 through December 2015, ABC Corporation should enter code 1E, minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse, on line 14 of Form 1095-C and should enter code 2C, Employee enrolled in coverage offered, on line 16 to report that Steve enrolled in coverage under the plan. For the months January 2015 through May 2015, ABC Corporation should report the employee contribution for the lowest-cost self-only coverage providing minimum value offered under the ABC Corporation health plan to Steve as an active employee. For the months June 2015 through December 2015, ABC Corporation should report the COBRA premium for the lowest-cost self-only

coverage providing minimum value offered to Steve. For the months January 2015 through December 2015, ABC Corporation should enter code 2C, Employee enrolled in coverage offered, on line 16 to report that Steve enrolled in coverage under the plan.

Example 3: James was a full-time employee of ABC Corporation and received an offer of coverage under the ABC Corporation health plan providing minimum value, including an offer of minimum essential coverage to his spouse and dependents. James enrolled in self-only coverage offered from January 1, 2015, through October 31, 2015. The required employee contribution for the lowest cost self-only coverage option under the plan was \$150 per month. On November 1, 2015, James transferred to a part-time position and was no longer eligible for coverage under the terms of the ABC Corporation health plan. James received an offer of COBRA continuation coverage on account of the transfer to the reduced-hours position, with a COBRA premium of \$250 per month for self-only coverage (which was the lowest-cost option for COBRA coverage available). James elected to enroll in the COBRA continuation coverage for the months of November and December, 2015.

ABC Corporation should complete Part II of Form 1095-C for James as follows. For January through October, ABC Corporation should enter code 1E, Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse, on line 14, should report \$150 as the employee contribution on line 15, and should enter code 2C, Employee enrolled in coverage offered, on line 16 to report that James enrolled in the coverage offered. For November and December, ABC Corporation should enter code 1E, Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse, on line 14, should report \$250 on line 15 (the required employee contribution for the lowest-cost self-only COBRA coverage providing minimum value), and should enter code 2C, Employee enrolled in coverage offered, on line 16.

Example 4: The same facts as Example 3, except James elects not to enroll in the COBRA continuation coverage. ABC Corporation should complete line 14 and line 15 in the same manner as in Example 3. However, the applicable code, if any, for line 16 is determined as it would be for any other active employee, and so will depend on whether James is treated as a full-time employee for purposes of section 4980H, and if so, whether the offer of COBRA continuation coverage for James satisfies one of the section 4980H affordability safe harbors.

The IRS also provided an example for situations where an employee's dependents or spouse separately elect COBRA coverage when the employer sponsors a self-funded plan.

Example: Keri was a full-time employee of ABC Corporation and effective for the plan year beginning January 1, 2015, elected to receive self-and-spouse coverage under the self-insured ABC Corporation health plan covering herself and her spouse, Gerald. On May 15, 2015, Keri and Gerald divorce and Gerald loses eligibility for coverage under the plan. ABC

Corporation makes an offer of COBRA continuation coverage to Gerald, who elects to enroll in the COBRA continuation coverage and remains enrolled from May 15, 2015, through December 31, 2015.

ABC Corporation should report Keri's enrollment on Part III of Form 1095-C by reporting that Keri was enrolled in minimum essential coverage in January 2015 through May 2015, and that Gerald had coverage (due to Keri's enrollment in coverage providing coverage to a spouse) for the months January through May 2015.

For the period June through December 2015, Gerald should receive a separate Form 1095-B or Form 1095-C reporting him as enrolled in minimum essential coverage under ABC Corporation's self-insured health plan.

### Questions and Answers on Information Reporting by Health Coverage Providers (Section 6055)

The IRS also provided an updated [FAQ](#) on reporting under Section 6055, which provides that every provider of minimum essential coverage will report coverage information by filing an information return with the IRS and furnishing a statement to individuals, to allow the IRS to determine compliance with the individual shared responsibility provisions of PPACA.

The FAQ emphasizes that an employer is not required to report under Section 6055 if it sponsors a health plan that provides coverage by purchasing insurance from a health insurance issuer. In that case, the health insurance issuer or carrier is responsible for reporting that health coverage. For a self-funded health plan, the following are plan sponsors that must report under section 6055:

- For a self-insured group health plan maintained by a single employer, the plan sponsor is the employer. For a plan maintained by more than one employer that is not a multiemployer plan (as defined in ERISA) the plan sponsor is each participating employer. For purposes of identifying the employer, the Section 414 employer aggregation rules do not apply.
- For a plan that is a multiemployer plan (as defined in ERISA), the plan sponsor is the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.
- For a plan maintained solely by an employee organization, the plan sponsor is the employee organization.
- For any plan for which a plan sponsor is not identified above, the plan sponsor is the person designated by plan terms or, if no person is designated, each entity that maintains the plan.

Government-sponsored programs. The FAQ provides information for government-sponsored programs. The FAQ clarifies that a health insurance issuer does not have to report under Section 6055 on coverage under a qualified health plan in the individual market enrolled through a Marketplace. No reporting is required for supplemental benefits. To ensure complete and accurate reporting, providers should report for all covered individuals, even if the individual is exempt from the individual shared responsibility provision. When furnishing information to individuals, the provider must include a phone number for the provider's designated contact person so the recipient of the statement can contact them with questions. The statement must be

mailed to the responsible individual at their last known permanent address, or they may provide it electronically if the individual consents to electronic receipt.

Combined reporting. The FAQ provides guidance on combined reporting for the provider of self-insured health coverage under Sections 6055 and 6056 to avoid duplication. An applicable large employer with self-insured coverage will report on Form 1095-C, completing separate sections to report the information required under Sections 6055 and 6056. An applicable large employer that provides insured coverage will complete only the section of Form 1095-C that reports the information required under Section 6056. Entities reporting as health insurance issuers, sponsors of self-insured group health plans that are not applicable large employers, sponsors of multi-employer plans, and providers of government-sponsored coverage, will report under Section 6055 on Form 1094-B and Form 1095-B.

Third-party reporting. Third party reporting arrangements are allowed, but do not transfer liability of the provider for failure to report information and furnish statements. If the person who prepares returns or statements under Section 6055 is a tax return preparer, the person will be subject to requirements applicable to tax return preparers.

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