Health Care Reform:
Employer Reporting Requirements

The onset of the Affordable Care has brought with it several new tax forms that affect individuals, insurers and employers and understanding which forms to use can sometimes be confusing. The following is a summary of the various forms required and how they may or may not affect you and your employees. In summary there are a few distinct types of IRS forms required depending on how health insurance coverage was purchased.

1095A. If you or anyone in your household enrolled in a health plan through the Health Insurance Marketplace in 2014, you will receive and be required to file Form 1095-A — Health Insurance Marketplace Statement along with your taxes. This form comes directly from the Marketplace or "exchanges", not the IRS. A sample can be found here

1095B. Generally 1095-B forms are filed by *health insurers* for: employers who use the SHOP, small self-funded groups, and individuals who get covered outside of the health insurance Marketplace. The forms are to be filed with the IRS and provided to taxpayers by insurers, as well as by self-insured employers that are not subject to the employer "shared responsibility" mandate, to verify that individuals have minimum essential coverage that complies with the individual coverage requirements. A sample can be found here

What is required of "large" employers?

Effective 2015 (with the first cycle of reports due in early 2016), as required by the Affordable Care Act (ACA) large employers have new reporting requirements regarding the health coverage and minimum essential coverage (MEC) being offered to their employees.

Who exactly is a large employer?

Under the ACA employers with more than 50 fulltime equivalent employees (FTEs) on average are considered to be a large employer. Under the final regulations, employers with 50 to 100 full-time employees are exempt from penalties for 2015. However, these employers must still report under Section 6056 for 2015, certifying eligibility for the transition relief and if these "small" employers are self-insured, then they will still be subject to reporting but complete it on a different form.

What forms are required and why?

The IRS will use the new reporting requirements to verify that individuals have a minimum essential coverage, applicable large employers are providing minimum essential coverage, and to determine potential penalties or tax consequences for the employer or individual should there be any.

The new information reporting systems will be similar to the current Form W-2 reporting systems in that an information return (Form 1095-B or 1095-C) will be prepared for each applicable employee, and these returns will be filed with the IRS using a single transmittal form (Form 1094-B or 1094-C).

When the reporting rules take effect?

The first required reports to be filed are for the 2015 calendar year and must be filed no later than May 31, 2016, or June 30, 2016, when filed electronically. Electronic filing is required if the employer files at least 250 returns. A copy of the Form 1095, or a substitute statement, must be given to the employee by March. 31 and can be provided electronically with the employee's consent. Employers will be subject to penalties of up to $250 per return for failing to timely file the returns or furnish statements to employees.

What the rules require? Form 1095-C

Part I — Employee and Employer Information:

Large employers must prepare a Form 1095-C for each full-time employee regardless of whether the employee is participating in an employer-sponsored group health plan. In addition, the employer will complete a Form 1095-C for each non-full-time employee who is in the plan. The employer will not prepare Form 1095-C for non-full-time employees who are not in the plan. Form 1095-C will report the following information to the IRS:

- The employee's name, address
- The employer's name, address and employer identification number
- Whether the employee and family members were offered health coverage each month that met the minimum value standard
- The employee's share of the monthly premium for the lowest-cost minimum value health coverage offered
- Whether the employee was a full-time employee each month
- The affordability safe harbor applicable for the employee
- Whether the employee was enrolled in the health plan
- If the health plan was self-insured, the name and Social Security number (or birth date if the Social Security number is unavailable) of each employee and family member covered by the plan by month

Employers may expect many different permutations of mid-year changes as their employees are hired, terminated, rehired, transferred to different positions, go on leave, elect or decline COBRA, or retire. Scenarios could be endless.

Part II — Employee Offer and Coverage:

Part II of Form 1095-C includes three key lines through which employers will identify, for each month, information such as whether the employee was full-time; whether he/she was offered coverage and information about the coverage offered; whether he/she was actually covered; whether such coverage was made available to the employees' spouse and/or dependents; the monthly cost to the employee of the lowest-cost self-only coverage offered; and any applicable transition relief or safe harbor codes.

Line 14 provides for reporting of "Code Series 1," which can be entered for "All 12 Months" or for each calendar month. Code Series 1 identifies information about the health coverage actually offered to the employee, if any, and his/her spouse/dependents. A code must be entered for each calendar month, even if the employee was not a full-time employee for one or more months.

- **Code 1A** denotes a Qualifying Offer, which is an offer of minimum essential coverage providing minimum value to a full-time employee with an employee contribution for self-only coverage equal to or less than 9.5% of the mainland single federal poverty line, and at least minimum essential coverage offered to the spouse and dependent(s).
- Codes **1B through 1E** indicate that minimum essential coverage providing minimum value was offered to the employee only, or employee plus dependents, or employee and spouse, or to all.
- **1F** denotes that minimum essential coverage NOT providing minimum value was offered.
- **1G** identifies an employee who was not full-time for any month of the year, but was offered coverage and enrolled in self-insured coverage for one or more months of the calendar year. If applicable, Code 1G must be entered in the "All 12 Months" box. The monthly boxes should NOT be completed.
- **1H** is used to report that an employee was not offered any health coverage, or was offered coverage that is not minimum essential coverage.
- Code **1I** is used to establish the Qualified Offer Transition Relief for 2015, as described above.

Line 15 should be completed only if Code 1B, 1C, 1D, or 1E is entered on line 14. This line reports the monthly employee share of the lowest-cost premium for self-only coverage offered to the employee.

Line 16 provides for the reporting of any applicable 4980H safe harbor or transition relief code, from Code Series 2. Only one code from Code Series 2 may be entered for any month. These codes indicate that, under a 4980H safe harbor or transition relief, the employer will not be subject to a penalty for the month with respect to the employee, or that the health coverage offered will be treated as affordable for purposes of Section 4980H(b) under an affordability safe harbor.

- **Code 2A** identifies an employee who was not employed on any day that month.
- **2B** indicates that the employee was not a full-time employee for the month and did not enroll in minimum essential coverage.
- **2C** identifies an employee who was enrolled in coverage offered during the month, regardless of whether any other code in Code Series 2 might also apply; i.e., use Code 2C if Code 2C and any other code(s) may apply for the month.
- **2D** is for employees in a Section 4980H(b) Limited Non-Assessment Period during a month. A Limited Non-Assessment Period generally refers to a period during which an ALE Member will not be subject to an assessable payment under Section 4980H(a), and in certain cases Section 4980H(b), for a full-time employee, regardless of whether that employee is offered health coverage during that period. Examples include:

  January through March for first-year ALEs
  Waiting Periods (e.g., generally the first 3 calendar months of employment)
  Initial Measurement and Administrative Periods
  Periods following a change in status that occurs during an Initial Measurement Period

- **2E** is entered to claim the "Multiemployer" interim rule relief. If both Code 2D and 2E could apply or any of the Section 4980H affordability safe harbors (Codes 2F, 2G, or 2H), enter Code 2E.
- **2F, 2G, and 2H** denote a Section 4980H Affordability Safe Harbor:
- **2F** is the Section 4980H Affordability Form W-2 safe harbor. If an employer uses this safe harbor for an employee, it must be used for all months of the calendar year for which the employee is offered health coverage.

- **2G** is the Section 4980H Affordability Federal Poverty Line safe harbor.
- **2H** is the Section 4980H Affordability Rate of Pay safe harbor.
- **2I** is used to report that non-calendar year transition relief applies to this employee for the month. See the instructions and definitions for details.

Part III — Covered Individuals

Part III identifies each covered individual under an **employer-sponsored self-insured health plan**, including spouses and dependents, and identifies the months of coverage. Part III is ONLY completed if the employer offers self-insured health coverage in which the employee enrolled. This part must be completed by an ALE Member offering self-insured health coverage for any employee who enrolled in the coverage, regardless of whether the employee is a full-time employee. Self-insured health coverage *does not include coverage under a multiemployer plan.*

Employers that offer employer-sponsored self-insured health coverage to non-employees (e.g., directors) who enroll in the coverage will complete Forms 1094-B and 1095-B, rather than Form 1095-C for those individuals.

Form 1094-C

An applicable large employer group member will file Form 1094-C to transmit its Forms 1095-C to the IRS. The Form 1094-C will report the following information:

- The employer's name, address, employer identification number and contact person
- The total number of Forms 1095-C filed
- A certification by month as to whether the employer offered its full-time employees (and their dependents) the opportunity to enroll in minimum essential health coverage
- The number of full-time employees for each month of the calendar year
- The total number of employees for each month
- Whether special rules or transition relief applies to the employer
- The names and employer identification numbers of other employers that are in a controlled group or affiliated service group with the employer
- Members of an applicable large employer group that has fewer than 100 full-time employees are generally eligible for transition relief from the employer shared responsibility penalty for their 2015 plan year. Nonetheless, these employers are required to file Forms 1095-C and 1094-C for the 2015 calendar year.
- As noted above, each applicable large employer group member is required to file Forms 1095-C and 1094-C for its own employees, even if it participates in a health plan with other employers (e.g., when the parent company sponsors a plan in which all subsidies participate). Special rules apply to governmental entities and to multiemployer plans for collectively-bargained employees.

COBRA Employees:

In general, an offer of COBRA continuation coverage that is made to a former employee due to termination of employment is not reported as an offer of coverage on Part II of Form 1095-C, **unless the former employee enrolls in the COBRA coverage.**

If COBRA coverage is offered to the former employee's spouse or dependents as well as the former employee, but

only the former employee enrolls and only for coverage of the former employee (and not for coverage of the spouse or dependent), the indicator code used in Line 14 should indicate an employee-only offer of coverage. If the former employee elects COBRA coverage for additional family members, such as electing family coverage, the indicator code used in Line 14 should indicate the type of coverage offered to the former employee, dependents and spouse.

If the former employee does not elect COBRA coverage, but a previously covered individual such as a spouse or dependent elects COBRA coverage, this coverage should not be reported on Part II of the Form 1095-C.

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 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. 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.

Summary

It will be important for all employers to closely monitor these reporting requirements as they have important ramifications for both the employee and the employer. An employer that fails to comply with these reporting requirements risks a variety of possible penalties. Employers who will be, or may be subject to the employer mandate should do the following in preparation of the reporting requirement outlined above:

- Determine its reporting obligation. Employers should determine whether it is subject to Form 6056 reporting, Simplified Reporting, or Combined Reporting (self-funded).
- Review and evaluate current TPA agreements to cover the reporting requirements and allocate responsibilities.
- Work closely with accountants and legal counsel to ensure full compliance.

RESOURCES:

1. **IRS Publication 5196, Understanding Employer Reporting Requirements of the Health Care Law**