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HEALTH CARE REFORM

## Eye on Washington

# EMPLOYERS WITH MULTIEMPLOYER PLANS FACE UNIQUE ACA REPORTING CHALLENGES

Applicable large employer members (ALE members) (employers subject to the Internal Revenue Code (Code) Section 4980H Employer Shared Responsibility provisions) contributing to a multiemployer health coverage plan face some unique coordination challenges to comply with their reporting obligations under the Affordable Care Act (ACA). A multiemployer plan is typically a plan that covers the employees of unrelated companies in accordance with a collective bargaining agreement.

### Background

As background, an applicable large employer (ALE) is an employer that, together with other employers in its controlled group, employed an average of at least 50 full-time and full-time equivalent employees on business days during the preceding calendar year. ALE members are required by Code Section 6056 to report details of health coverage offered, including cost and affordability, using Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage.

On February 8, 2015, the Internal Revenue Service (IRS) published final Forms 1094-C and 1095-C and instructions on the employer reporting requirements under Code Section 6056.

Although the Preamble to the Code Section 6056 final regulations indicated that the multiemployer plan administrator may prepare the forms for the employees eligible for the multiemployer plan (reporting information for both the plan and the ALE member), the instructions for the final forms do not appear to provide any way for the plan administrator to do so, and thus, it appears that the ALE member must report under Section 6056 for its full-time employees eligible for a multiemployer plan and the ALE member is responsible for any penalties resulting from incorrect reporting.

ALE members must file one Form 1095-C for each employee who was a full-time employee for any month of the calendar year, providing information regarding the offer of health coverage. In cases of multiemployer arrangements, the ALE member is not directly making

the offer, so details of any such offers must be obtained from the coverage provider (i.e., the multiemployer plan). The Preamble to the Code Section 4980H final regulations contains interim guidance for employers that contribute to a multiemployer plan, which is reflected in the Form 1095-C instructions. Specifically, the instructions state the following:

#### **Interim Guidance Regarding Multiemployer**

**Arrangements:** *An employer is treated as offering health coverage to an employee if the employer is required by a collective bargaining agreement or related participation agreement to make contributions for that employee to a multiemployer plan that offers, to individuals who satisfy the plan's eligibility conditions, health coverage that is affordable and provides minimum value, and that also offers health coverage to those individuals' dependents, or is eligible for Section 4980H transition relief regarding offers of coverage to dependents. For more information, see Section XV.E of the Preamble to the final Section 4980H regulations.*

An ALE member relying on the interim guidance reports on the Forms 1094-C and 1095-C in the following manner:

- On the Form 1094-C, Part III, column (a), which reports whether the employer offered minimum essential coverage to at least 70% of its full-time employees (95% after 2015), for the month(s) in which the employer is eligible, employees for whom the employer is contributing to the multiemployer plan should be treated as having been offered minimum essential coverage (even if not actually offered coverage) for the months in which the employer is eligible to use the interim guidance.



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- However, on the Form 1095-C, Part II, line 14 (detailing offers of coverage), ALE members should not enter a code for health coverage the employer is treated as having offered (but did not actually offer), even if the employee is included in the count of full-time employees offered coverage on Form 1094-C, Part III, column (a). Rather, although the language in the instructions is somewhat unclear it appears that line 14 must reflect the coverage actually offered to the employee.
- Similarly, for the 1095-C, Part II, line 15 (Employee Share of Lowest Cost Monthly Premium for Self-Only Minimum Value Coverage), it appears that the ALE must obtain the lowest-cost self-only coverage premium amount applicable to each employee from the multiemployer plan for Form 1095-C, line 15 reporting purposes.
- ALE members that rely on this interim guidance for a full-time employee will generally enter Code "2E" (multiemployer interim rule relief) on line 16 of that employee's Form 1095-C (Section 4980H Safe Harbor Codes and Other Relief for Employers) unless the employee actually enrolled in the coverage offered, in which case the ALE member will report Code "2C."
- If multiple Forms 1094-C are completed for one ALE member, perhaps due to the plan administrator reporting on behalf of the ALE member for union employees and the ALE member reporting for nonunion full-time employees, one Form 1094-C must be marked the authoritative transmittal and include aggregate employer-level data for all full-time employees.
- The sponsor of the multiemployer plan providing the self-insured coverage or the insurer for insured multiemployer plan coverage is required to furnish the information about their health coverage to any enrolled employees and other individuals under Code Section 6055 on Forms 1094-B and 1095-B, and the ALE member should not complete Form 1095-C, Part III (detailing months of coverage), for those employees and individuals.

For additional background and explanation of what is reported on these forms, see the earlier *Eye on Washington* summaries entitled, [IRS Releases Draft Instructions for 2014 Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage](#) and [IRS Releases Final ACA Reporting Forms and Instructions](#).

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