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View From Groom: IRS FAQs on Employer Information Reporting Sheds Light on COBRA and Other Issues

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On May 19, 2015, the Internal Revenue Service (''IRS'') provided additional guidance for employers regarding new Affordable Care Act (''ACA'') reporting requirements in the form of ''Questions and Answers'' (''Q & As'') published on its website. The ACA added new Internal Revenue Code (''Code'') sections 6055 and 6056, which created new reporting requirements which apply for the 2015 calendar year (with the first reporting due in early 2016). Very generally, Code section 6055 requires most providers of coverage to report regarding those individuals enrolled in minimum essential coverage (''MEC''). Code section 6056 requires tax reporting by employers subject to the employer shared responsibility provisions of Code section 4980H.

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Employers have had many questions about how to meet these reporting requirements, some of which were addressed previously when the IRS released draft instructions and forms last August, and then released ''final'' instructions and forms in February of this year.[1] The IRS' most recent guidance comes in the form of revised Q & A's with regard to Code Section 6056 (which can be accessed at: http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056), and an entirely new set of Q & A's on the Forms 1094-C and 1095-C, which will be used by employers subject to Code Section 4980H to report under Code section 6056 (and Code section 6055, if the employer offers employer-sponsored self-insured coverage). The new document can be accessed at: http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-about-Employer-Information-Reporting-on-Form-1094-C-and-Form-1095-C

For employers, the most interesting guidance likely will relate to how to report an offer of COBRA continuation coverage for an employee or former employee on Part II of the Form 1095-C. This article focuses on the Q & As addressing those issues.

Reporting Offers of COBRA Coverage

Overview of Part II of Form 1095-C. Form 1094-C is the transmittal form to be used for employer mandate reporting and Form 1095-C is the reporting form for employer mandate reporting. Form 1094-C and Form 1095-C will be used by ''applicable large employer members'' (''ALE Members'')[2] only. In addition, ALE

[1] Revised forms were released on June 17, 2015, but the forms were not changed significantly.

[2] Code Section 6056 requires each ''applicable large employer member'' to file a return with the IRS after the close of each calendar year, and issue annual statements to full-time employees about the coverage (if any) offered to the employee, by month, including the lowest employee cost of self-only coverage offered. An ''applicable large employer'' is generally an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year, including full-time equivalents or ''FTEs''. An ''applicable

Members that sponsor self-insured group health plans will provide MEC reporting on these forms.

Much of the new guidance that will be most relevant for employers relates to Form 1095-C, the reporting form. Form 1095-C consists of three parts, with Part II likely the most challenging for employers to complete. In Part II, the ALE Member will enter the information that will allow the IRS to determine whether the offer of coverage for the year satisfied the employer shared responsibility provisions of the ACA, and will allow the employee to understand whether he/she may be eligible for a premium tax credit from his/her federal taxes for coverage purchased through the Marketplace.[3]

On Line 14 of the Form 1095-C, the ALE Member will enter one of nine codes specifying the type of coverage, if any, offered to the employee, the employee's spouse, and the employee's dependents. (This information will be used by the IRS to determine if the employer offered a sufficient percentage of its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan in accordance with Code Section 4980H(a), and for an employee to determine if he/she could be eligible for a premium tax credit because minimum essential coverage was not offered or was offered but did not provide minimum value.)

On Line 15, the ALE Member will generally enter the amount of the employee share of the lowest-cost monthly premium for self-only MEC providing minimum value that is offered to the employee (if applicable). This information will be used by the IRS and employees to determine if the coverage offered (if any) was ''affordable'' under the Code section 36B standards.

On Line 16, the ALE Member will enter one of nine codes which will allow the IRS to determine if the employee was enrolled in employer-sponsored coverage during the month in question, and if not, whether a potential penalty under Code section 4980H(b) would apply because of a failure on the part of the employer to offer that employee minimum value, minimum essential coverage that was ''affordable'' under the Code section 4980H standards.

New Guidance—Reporting Offers of COBRA Coverage

One of the areas not addressed by the Instructions for the Forms 1094-C and 1095-C was how to report an offer of COBRA coverage to an employee who had a termination of employment or a COBRA qualifying event due to a reduction of hours during a calendar year. The new guidance provided by the IRS provides two guiding principles:

- An offer of COBRA continuation coverage that is made to a former employee due to a termination is not reported as an offer of coverage on Part II *unless* the former employee enrolls in the COBRA coverage.

- An offer of COBRA continuation coverage that is made to a current employee due to a reduction of hours is reported differently than an offer of COBRA continuation coverage made to a former employee.

Example 1: Loss of Coverage Due to Termination Mid-Year, Employee Declines COBRA. The first example provided by the IRS relates to an employee who is: employed January through June 15; was offered coverage providing minimum value for an employee, spouse, and dependents by his employer; enrolled in self-only coverage as of January 1; terminated employment on June 15; was offered COBRA, and didn't enroll. In this example, assume the employee contribution for lowest cost self-only minimum value coverage is $100.

Note that in this example, the employer is treated as not having made an offer of coverage for June through the end of the year, even though the employer offered COBRA. (The offer of coverage from June 1 to June 15 is not considered an offer of coverage under the Code section 4980H rules, because those rules provide that an offer of coverage must provide coverage for all days of the calendar month.) The employer can enter Code 2B on Line 16 of Part II for June if the offer of coverage would have continued if the employee had not terminated employment during the month.

Example 2: Loss of Coverage due to Termination Mid-Year, Employee Elects COBRA The second example provided by the IRS relates to an employee who is: employed January through June 15; was offered coverage providing minimum value for an employee, spouse, and dependents by his employer; enrolled in self-only coverage as of January 1; terminated employment on June 15; was offered COBRA, and *did* enroll. In this example, assume the employee contribution for lowest cost self-only minimum value coverage is $100, and the COBRA premium for lowest-cost self-only minimum value coverage is $200.

This may seem like an odd result to many employers, in that the employer has taken the exact same action in both Example 1 and Example 2: offered regular employer-sponsored coverage during the period of employment, and made an offer of COBRA coverage after termination. But when the employee rejects the offer of COBRA coverage, the offer of COBRA coverage is not reported as an Offer of Coverage on Line 14, and if the employee accepts the offer of COBRA coverage, it is reported as an Offer of Coverage.

Instead, it is more useful to view it from the perspective of the employee who is reviewing the Form 1095-C while preparing his or her Form 1040 and determining eligibility for a premium tax credit for the year in question. An employee who rejected COBRA will see that he or she did not receive an offer of employer-sponsored coverage for certain months, which could mean that the employee is eligible for a premium tax credit for those

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large employer member'' includes both an applicable large employer, as well as any member of a controlled group that collectively meets the definition of applicable large employer. In other words, the determination of whether an entity employed on average 50 or more full-time employees and FTEs is made at the controlled group level, but the Section 6056 reporting requirements apply on a member-by-member basis to each member of that controlled group that had full-time employees during the year (regardless of how many full-time employees that particular member of the controlled group had).

[3] If the employer did not offer the employee health coverage that was MEC, or if it did offer coverage, but the coverage did not provide minimum value or was not affordable under the Code 4980H rules, and the employee purchased individual health insurance on a health insurance Marketplace, the employee might be eligible for a premium tax credit (depending on multiple factors, including the employee's income for the year).

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Figure 1. Part II of the Form 1095-C Is Structured as Follows:

Part II	Employee Offer and Coverage												
14 Offer of Coverage (enter required code)	All 12 Months	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage													
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)													

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months. The employee who elected COBRA, on the other hand, would not be eligible for a premium tax credit during those months—as a result, the Form 1095-C shows that he or she received an Offer of Coverage from the employer.

An employer who might be concerned about potential 4980H liability under the scenario when an employee rejects COBRA should note that on Line 16, the employee will not be reported as a full-time employee in the month of termination and months following; therefore, presumably the IRS systems will recognize that no 4980H liability could apply for those months with regard to that employee.

Example 3: Loss of Coverage due to Reduction of Hours Mid-Year, Employee Elects COBRA. As noted above, an offer of COBRA coverage that is made due to a reduction in hours mid-year is treated differently than an offer of COBRA continuation coverage to a former employee.

In the third example provided by the IRS, an employee is employed for the entire year and enrolled in family coverage as of January 1. However, the employee transfers to a part-time position on November 1 and as a result, is no longer eligible for coverage under the employer's plan. The employer offers COBRA and the employee enrolls through the end of the year. In this example, assume the employee contribution for lowest cost self-only minimum value coverage is $150, and the COBRA premium for lowest-cost self-only minimum value coverage is $250.

As with Example 2, because the employee was offered COBRA and accepted it, it is treated as an Offer of Coverage by the employer on Line 14, and Line 16 reflects that the employee enrolled in coverage in the Plan. But there is a different result if the employee does *not* elect COBRA continuation coverage, as described below.

Example 4: Loss of Coverage due to Reduction of Hours Mid-Year, Employee Declines COBRA. In the fourth example provided by the IRS, an employee is employed for the entire year and enrolled in family coverage as of January 1. However, the employee transfers to a part-time position on November 1 and as a result, is no longer eligible for coverage under the employer's plan. The employer offers COBRA and the employee *declines coverage* through the end of the year. In this example, assume the employee contribution for lowest cost self-only minimum value coverage is $150, and the COBRA premium for lowest-cost self-only minimum value coverage is $250.

In this example, the offer of COBRA coverage for November and December is reported as an Offer of Coverage on Line 14, and the employer reports the lowest-cost self-only COBRA coverage providing minimum value on Line 15 for those two months. However, on Line 16, the IRS states the ''the applicable code, if any. . . will depend on whether [the employee] is treated as a full-time employee for purposes of section 4980H, and if so, whether the offer of COBRA continuation coverage for [the employee] satisfies one of the section 4980H affordability safe harbors.''

What the IRS acknowledges here is a strategy some employers are adopting with regard to employees who switch from full-time status to part-time status, but are in a ''stability period'' under a Code section 4980H look-back measurement regime. Under the look-back measurement method, an employee is generally required to be treated as a full-time employee for any month in a stability period if the employee worked full-time hours during a ''measurement period'' that preceded the stability period.

For example, assume the employer in Example 4 was using the look-back measurement method with a 12-month measurement period, followed by a 12-month stability period based on the calendar year. If the employee in Example 4 worked full-time hours during the measurement period, he or she would have to be treated as a full-time employee during the 2016 stability period. Therefore, if that employee switched from full-time to part-time status as of November 1, 2016, the employer still would be required to treat the employee as full-time for Code section 4980H purposes during November and December of 2016.

However, it is possible that under the terms of the employer's plan, the employee loses eligibility for coverage when he or she is no longer working in a full-time

position. What some employers are doing to reconcile their Code section 4980H obligations with the loss of eligibility is to treat the employee's reduction in hours as a COBRA qualifying event, but then subsidize the employee's COBRA contribution in order to offer the employee affordable coverage for the duration of the stability period, therefore avoiding any potential Code section 4980H penalties. If the employer was adopting this strategy, it would enter on Line 16 one of the codes that correspond to a Code Section 4980H affordability safe harbor (Codes 2F, 2G, or 2H), or if none of the affordability safe harbors were met, Line 16 would simply be left blank. Note that the employer could not enter Code 2B—''employee is not a full-time employee''—for November and December, because the employee would be considered a full-time employee for those months based on the preceding look-back measurement method, regardless of the reduction in hours worked.

If, on the other hand, the employer adopted the ''monthly measurement method,'' under which the employer determines whether an employee is a full-time employee simply by counting the employee's hours of service for the month in question, the employer could enter Code 2B on Line 16 for November and December.

The new reporting requirements under Code sections 6055 and 6056 are creating new challenges for employers, and the IRS guidance relating to Form 1095-C reporting in COBRA situations illustrates how careful thought will be required to confirm that different scenarios are being reported in accordance with the IRS' wishes. With the first deadline for reporting rapidly approaching (in early 2016 for coverage offered in the 2015 year), employers will have to prioritize understanding the many nuances of these rules if they want to ensure accurate reporting.

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