

## CLIENT BULLETIN

### ***Draft IRS 2015 Form 1094/1095-C Instructions Give Clear Guidance to ALEs Contributing to Multiemployer Plans***

The IRS just released **draft** [Instructions for Forms 1094-C and 1095-C for 2015](#) which appear to resolve for 2015 both of the problems with Applicable Large Employer (ALE) Reporting that were discussed in [Benefit News Briefs 2015-38](#).

In brief, at least for 2015, the IRS states ALEs contributing to multiemployer group health plans should fill in Part II, line 14 by using code 1H if it uses code 2E on Line 16.

Recall Form 1095-C has three parts:

- Part I concerns information on the employee and the employer.
- Part II concerns information on the Employer's offer of coverage.
- Part III concerns information on covered individuals.

In addition, the draft Instructions specifically state that ALEs that are contributing employers under the multiemployer arrangement interim guidance do not fill out Part III. The problems discussed in [Benefit News Briefs 2015-38](#) centered on Lines 14 and 16 of Part II, as discussed below.

#### ***A Look At The Reporting Problem And The IRS Solution***

In a nutshell, Lines 14 and 16 of the 2014 Form 1095-C Instructions required ALEs to report certain information (employee enrollment information) which an employer contributing to a multiemployer group health plan would not generally have. In addition to the employer not having such data, multiemployer health plans do not generally capture data on which plan participants are connected with which employer(s) over a plan year.

In addition to these two data issues, the disclosure of enrollment information to an ALE would be a disclosure of protected health information (PHI) under *HIPAA*. Disclosing such PHI to an ALE by the health plan is considered to be an improper disclosure by HHS according to various sources.

The other related issue was who would bear the cost of collecting plan information in a form usable by an ALE for use on Form 1095-C. Using plan assets to benefit ALEs runs afoul of *ERISA*'s fiduciary duty rules. Thus, essentially, an ALE relying on the multiemployer arrangement interim guidance should, for its employees for whom it contributes to a multiemployer group health plan, complete line 14 by entering code "1H" and line 16 by entering code "2E". We will discuss the draft 2015 1095-C Instructions in more detail below.

### **A Closer Look At The 2015 Instructions For Form 1095-C**

The draft 2015 Form 1095-C Instructions state:

For reporting offers of coverage for 2015, *an employer relying on the multiemployer arrangement interim guidance should enter code 1H on line 14 for any month for which the employer enters code 2E on line 16* (indicating 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). For reporting for 2015, Code 1H may be entered without regard to whether the employee was eligible to enroll in coverage under the multiemployer plan. For 2016 and future years, reporting for offers of coverage made through a multiemployer plan may be reported in a different manner.

[2015 instructions for Forms 1095-B and 1095-C](#), PDF page 10 (emphasis added)

Thus, for Line 14 the contributing ALE would enter Code 1H *for any month in which the employer enters Code 2E on line 16*.

Code 1H says:

**1H.** No offer of coverage (employee not offered any health coverage or employee offered coverage that is not minimum essential coverage, which may include one or more months in which the individual was not an employee).

The question becomes when does an ALE report Code 2E on line 16?

After reviewing the 2 series codes, the only 2 series code the ALE would have information on regarding the relationship of an employee to the plan and coverage under the plan seems to be 2E. More than one code can apply but the Instructions appear to give precedence to Code 2C in the event of a conflict (**2C.** Employee enrolled in coverage offered. Enter code 2C for any month in which the employee enrolled in health coverage offered by the employer for each day of the month, *regardless of whether any other code in Code Series 2 might also apply*).

However, an ALE contributing to a multiemployer group health plan will not know which of its employees are enrolled in the plan and would not know if Code 2C was applicable, so the code priority would seem to most likely default to the most relevant code, which is 2E. But, it also appears that the ALE would know if an individual was not an employee for a month (Code 2A) or was not a Full-Time Employee (FTE) for a month (Code 2B) and may consider using those codes instead. Hopefully, this will be clarified in the Final Instructions, but it appears a plan could in good faith, enter Code 2E as the superseding code for line 16. Plan Sponsors should consult Fund Counsel and watch for the Final Instructions.

The 2 series codes are:

**2A.** Employee not employed during the month.

**2B.** Employee not a full-time employee.

**2C.** Employee enrolled in coverage offered.

**2D** Employee in Section 4980H(b) limited non-assessment period

**2E.** Multiemployer interim rule relief.

Enter Code 2E for any month for which the multiemployer interim guidance applies for that employee. This relief is described under Offer of Health Coverage in the *Definitions* section of these instructions

**Note.** An employer eligible for the relief provided in the multiemployer interim guidance for a month for an employee should enter Code 2E and not Codes 2F, 2G, or 2H.

**2F.** Section 4980H affordability Form W-2 safe harbor.

**2G.** Section 4980H affordability federal poverty line safe harbor.

**2H.** Section 4980H affordability rate of pay safe harbor.

So, an ALE contributing to a multiemployer group health plan that meets the criteria for the multiemployer interim guidance would enter Code 1H on Line 14 and could enter Code 2E on line 16.

As a refresher, we repeat the multiemployer interim guidance below.

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

Reporting by ALEs that contribute to a multiemployer health plan is subject to transition relief as set forth in Preamble to the [final regulations](#) in the *Shared Responsibility for Employers Regarding Health Coverage* at Section XV.E (PDF page 34). This transition relief was summed up on page 15 of the draft 2015 Instructions to Forms 1094-C and 1095-C:

***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 the Section 4980H transition relief regarding offers of coverage to dependents. For more information, see Section XV.E of the preamble to the final Code Section 4980H regulations.

Thus, ALEs that are required to contribute to a multiemployer plan will not be considered to have failed to offer MEC to its employees and dependents and will not be subject to a penalty for failing to do so. In accordance with this rule, the 2015 Draft Instructions were revised to allow for this relief to be properly expressed with by multiemployer ALEs using Codes 1H and 2E to avoid the PHI and plan asset usage issues.

### **Conclusion**

Any employer with less than 50 FTEs does not have to file the 1094/1095-C series forms.

Employers with 50 FTEs (ALEs) must file the 1094/1095-C series forms to report offers of coverage to employees. Employers who contribute to a multiemployer plan that complies with the multiemployer interim guidance, can use the 1H/2E codes to report on employees for which it makes contributions to the plan.

If such an ALE has other employees that are not covered by the multiemployer plan, it must also report those employees using the 1094/1095-C series forms.

If such other employees are covered by an *insured plan*, the insurance company would do the reporting required under Part III of Form 1095-C. If such other employees are covered under a *self-insured* arrangement, the employer would complete Part III of Form 1095-C. *See draft 2015 Instructions at the bottom of page 2 and top of page 3.*

The IRS is to be commended for providing this clarification for 2015 and we can only hope this relief will continue thereafter.

### **Draft 2015 Forms 1094-C and 1095-C**

In addition to the draft instructions the IRS also released the following 2015 draft forms:

[2015 Draft Form 1094-C](#)

[2015 Draft Form 1095-C](#)

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