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HEALTHCARE REFORM UPDATE 2016-4



WHAT YOU NEED TO KNOW



IRS Reporting: Now What?

Applicable large employers and self-funded employers of all sizes have now completed the first round of required IRS reporting under the Patient Protection and Affordable Care Act (ACA). The ACA requires individuals to have health insurance, while applicable large employers (ALEs) are required to offer health benefits to their full-time employees. In order for the 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) ALEs are meeting their shared responsibility (play or pay) obligations, employers with 50 or more full-time or full-time equivalent employees and insurers were required to report on the health coverage they offered. Similarly, insurers and employers with less than 50 full time employees but that have a self-funded plan also have reporting obligations. All of this reporting is done on IRS Forms 1094-B, 1095-B, 1094-C and 1095-C.

Now that the first set of forms has been completed, many employers are wondering what the next steps are. Employers that did not fulfill all of their obligations under the employer shared responsibility provision (play or pay) might owe a penalty to the IRS. A penalty will be owed in regard to the 2015 plan year if:

- The employer does not offer health coverage or offers coverage to fewer than 70 percent of its full-time employees and the dependents of those employees, and at least one of the full-time employees receives a premium tax credit to help pay for coverage on a Marketplace; or
- The employer offers health coverage to all or at least 70 percent of its full-time employees, but at least one full-time employee receives a premium tax credit to help pay for coverage on a Marketplace, which may occur because the employer did not offer coverage to that employee or because the coverage the employer offered that employee was either unaffordable to the employee or did not provide minimum value.

As of March 2016, the only [information from the IRS](#) on the payment of these penalties is as follows:

The IRS will adopt procedures that ensure employers receive certification that one or more employees have received a premium tax credit. The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made. The contact for a given calendar year will not occur until after the due date for employees to file individual tax returns for that year claiming premium tax credits and after the due date for applicable large employers to file the information returns identifying their full-time employees and describing the coverage that was offered (if any).

If it is determined that an employer is liable for an Employer Shared Responsibility payment after the employer has responded to the initial IRS contact, the IRS will send a notice and demand for payment. That notice will instruct the employer on how to make the payment. Employers will not be required to include the Employer Shared Responsibility payment on any tax return that they file.

Exchange Notification "Employer Notice Program"

The penalty is only triggered if an employee, who either was not offered coverage, or who was not offered affordable, minimum value, or minimum essential coverage, goes to the Exchange and gets a subsidy or "advance premium tax credit."

Although the IRS has not completely determined its [system for penalty assessment](#), it does have a system to notify employers when one of their employees enrolls in Exchange coverage and is eligible to receive advance payment of the premium tax credit. The Marketplace notice will identify the employee, that he or she is eligible for the tax credit, that this could trigger a penalty on the part of the employer, and that the employer may appeal the decision. Employers are strictly prohibited from retaliating against an employee for going to the Exchange or receiving a tax credit.

The IRS has a four-page [Employer Appeal Request form](#), which must be submitted within 90 days of receipt of a Marketplace notice. The form asks for basic information about the employer, provides a place to identify a secondary contact, and asks for the employer to explain why it is appealing the determination that the employee is eligible for premium assistance.

Alternatively, the employer can send a letter requesting an appeal. An employer must submit an appeal with the following information:

- Business name
- Employer ID Number (EIN)
- Employer's primary contact name, phone number and address
- The reason for the appeal
- Information from the Marketplace notice received, including date and employee information

Employers must then mail the appeal request form or letter and a copy of the Marketplace notice to:

Health Insurance Marketplace
 Department of Health and Human Services
 465 Industrial Blvd.
 London, KY 40750-0061

This appeal will not determine if the employer owes a fee, but could help prevent employees from erroneously obtaining an advance premium tax credit, which in turn could provide the employer with information about whether or not it might owe a penalty. By preventing employees from incorrectly obtaining the advance premium tax credit, employers could lessen the chance of being asked to provide further information to the IRS to prove they met their obligations under the employer shared responsibility requirements.

Documentation

Employers should keep in mind that, in order to consider their offer of coverage affordable, they must meet the requirements of one of three affordability safe harbors. Affordability may be met under any of these criteria:

- The W-2 test, which requires that the employee's cost not exceed 9.5 percent (indexed) of the employee's income as reported in Box 1 of the W-2.
- The rate of pay method, which requires that the employee's cost not exceed 9.5 percent (indexed) of the lowest hourly rate paid to the employee, multiplied by 130 hours per month.
- The federal poverty line test, which requires that the employee's cost not exceed 9.5 percent (indexed) of federal poverty rate (or about \$93/month for 2015).

In some rare instances an employer might meet the requirements of an affordability safe harbor, but based on unique factors in an employee's household, the employee will be eligible for premium assistance (a tax subsidy or an advance premium tax credit) because the coverage is not affordable in relation to their household income. This situation would not trigger a penalty for the employer, so long as it met the requirements of one of the three affordability safe harbors. As a best practice, employers should have documentation that their offer of coverage fulfilled the requirements of their chosen affordability safe harbor.

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

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