

# September 2015 Employee Benefits Update

## Compliance Deadlines and Reminders

**POSTED:**

Sep 15, 2015

### **1. Summary Annual Report for Calendar Year Group Health Plans.**

The Summary Annual Report must be distributed to participants and beneficiaries no later than September 30, 2015 for calendar year plans (nine months after the end of the plan year) unless an extension is available.

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### **2. Medicare Part D Notice of Creditable Coverage.**

All group health plans that offer prescription drug coverage to Medicare-eligible employees (under either an active plan or retiree plan) must provide an annual creditable coverage disclosure notice to Medicare-eligible participants and dependents no later than October 15, 2015. Centers for Medicare and Medicaid Services ("CMS") provides a model notice that can be accessed through the CMS website. Plan sponsors should review the model notice to ensure that it accurately reflects the plan provisions.

### **3. Reinsurance Fee for Group Health Plans.**

Contributing entities (the third-party administrator for self-funded plans or the insurer for fully insured plans) must report to the Department of Health and Human Services ("HHS") their annual enrollment counts by November 16, 2015 using the electronic "2015 ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form." The Form will then calculate the contribution amount owed. The contribution rate for 2015 is \$44 per reinsurance covered life.

### **4. Health Plan Open Enrollment Requirements.**

a. Plan sponsors of group health plans must issue a new summary of benefits and coverage ("SBC") to participants and beneficiaries covered under the plan with each open enrollment. Group health plans without open enrollment must issue the SBC 30 days in advance of the plan year (December 2, 2015 for calendar year plans).

b. Plan sponsors of health reimbursement arrangements ("HRA") must offer participants an annual opportunity to opt-out of and waive all future reimbursements from their HRA. This notice of opt-out can be provided with the open enrollment materials.

### **5. Retirement Plan QDIA Notice.**

Plan sponsors of defined contribution plans that invest participant contributions in a qualified default investment alternative ("QDIA") because the participant failed to make an investment election must provide an annual notice to all participants at least 30 days but not more than 90 days, before the beginning of the plan year. Plan sponsors of calendar year plans must send the notice between October 3 and December 2, 2015.

### **6. Retirement Plan Automatic Enrollment Notice.**

Plan sponsors of defined contribution plans with an eligible automatic contribution arrangement or a qualified automatic contribution arrangement must provide an annual notice to all participants on whose behalf contributions may be automatically contributed to the plan at least 30 days, but not more than 90 days, before the beginning of the plan year. Plan sponsors of calendar year plans must send the notice between October 3 and December 2, 2015. Plan sponsors can combine the automatic enrollment notice with the QDIA notice.

### **7. Safe Harbor 401(k) Plan Notice.**

Plan sponsors of safe harbor 401(k) plans must provide participants an annual safe harbor notice that describes the safe harbor contribution and other material plan features at least 30 days, but not more than 90 days, before the beginning of the plan year. Plan sponsors of calendar year plans must send the notice between October 3 and December 2, 2015. Plan sponsors can combine the safe harbor notice with other required notices such as the QDIA notice.

## **Retirement Plan Developments**

### **Internal Revenue Service Issues Corrections under the Multiemployer Pension Reform Act**

The Internal Revenue Service ("IRS") issued corrections to temporary regulations published in June 2014 under the Multiemployer Pension Reform Act of 2014 ("MPRA"). The corrections address generally grammatical errors and typos, but the IRS is concerned that, as published, the notices contain errors that may be misleading.

### **IRS Issues Temporary Regulations Related to Participant Vote to Approve a Suspension of Benefits under MPRA**

Under MPRA, multiemployer plans that are projected to have insufficient funds in the future to pay full promised benefits may reduce the benefits payable if certain conditions are satisfied. One of the conditions is that a suspension of benefits

cannot occur until the participants of the plan have affirmatively voted for such a suspension. Recently, the IRS issued temporary regulations providing guidance on how to administer such a participant vote.

These temporary regulations apply as of June 17, 2015, and will expire on June 15, 2018.

## Health and Welfare Plan Developments IRS

### Issues Second Notice on Cadillac Tax Proposals

The Patient Protection and Affordable Care Act ("ACA") added a new section 49801 to the Internal Revenue Code ("Code") imposing an excise tax on high cost employer-sponsored coverage ("Cadillac Tax"). The Cadillac Tax, beginning in 2018, generally provides that each provider will pay a nondeductible 40% excise tax on its share of each employee's excess benefit each year.

No regulations have been issued to implement the Cadillac Tax, but the IRS issued two notices in 2015 seeking comments on certain aspects of, and approaches for implementing, the Cadillac Tax. The first notice (Notice 2015-16) was issued on February 23, 2015. The second notice (Notice 2015-52) was issued on July 30, 2015. Employers and plan sponsors are not permitted to rely on the notices. However, the notices provide employers with some idea of what the IRS may incorporate into its future regulations.

Notice 2015-52 provides clues as to (1) who will be responsible for paying the tax, (2) what benefits and costs will be counted for purposes of the tax, and (3) how to allocate contributions made to account-based programs, such as FSAs, HSAs and HRAs.

### IRS Releases Draft 2015 Instructions for Forms 1094-B, 1095-B, 1094-C and 1095-C

The ACA added sections 6055 and 6056 to the Code, generally requiring employers and plan sponsors to file annual information returns with the IRS. More specifically, Code section 6055 requires all self-funded plan sponsors (and insurance carriers, for insured plans) to file a return with the IRS to report participants and dependents who were enrolled in "minimum essential coverage." Forms 1094-B and 1095-B will be used to report this information to the IRS and participants.

Code section 6056 requires all applicable large employers to file a return with the IRS to report the type of coverage offered to full-time employees. Applicable large

employers will use IRS Forms 1094-C and 1095-C for this purpose. Applicable large employers who are plan sponsors of a self-funded plan will also use Forms 1094-C and 1095-C to satisfy both the Code sections 6055 and 6056 reporting requirements for employees covered by that plan.

The IRS recently released draft instructions for the B-Series (1094-B and 1095-B) and the C-Series (1094-C and 1095-C) forms ("Instructions"). This reporting obligation is effective beginning with coverage offered during the 2015 calendar year and the filing is due to the IRS no later than February 29, 2016 (March 31, 2016 if filing electronically). A copy of the return is due to employees/participants no later than February 1, 2016.

The Instructions for both forms incorporate the recent failure to file penalty increase to \$250 per return (previously \$100) up to a \$3 million cap (previously a \$1.5 million cap), and provide a new, automatic 30-day extension to the deadline to file the returns with the IRS. To receive the 30-day extension, plan sponsors or applicable large employers must file a Form 8809, Application for Extension of Time to File Information Returns, by the due date of the returns, absent certain hardship conditions. The Instructions also allow plan sponsors or applicable large employers to request an extension of time to furnish the statements to recipients by sending a letter to the IRS.

Additionally, the Instructions for Forms 1094-C and 1095-C incorporate the COBRA guidance previously issued by the IRS in the form of questions and answers. The IRS has also provided simplified reporting options for applicable large employers who participate in multiemployer plans and qualify for, and rely upon, the multiemployer interim transition relief.

### **Departments Issue FAQ on Transparency Reporting Rulemaking for Non-QHP Coverage**

HHS previously issued a proposed information collection for public comment related to the collection of certain information from Qualified Health Plan ("QHP") issuers in the Exchanges. The Department of Labor, HHS and the Treasury (the "Departments") recently issued a FAQ stating that the Departments intend to propose transparency reporting for non-QHP issuers and non-grandfathered group health plans in the future. The FAQ notes that the requirements may differ from those described in the HHS proposal.

### **CMS Issues Operational Guidance on Reinsurance Contributions Updated for the 2015 Benefit Year**

On August 18, 2015, CMS issued updated guidance providing operational guidance to assist contributing entities (the third-party administrator for self-funded plans or the insurer for fully insured plans) to determine their annual enrollment counts for purposes of the transitional reinsurance program. This guidance updates earlier guidance for the 2015 benefit year.

A contributing entity's annual enrollment count is important because CMS uses this count to calculate the reinsurance contribution amount due for that benefit year. This new guidance describes each of the counting methods allowable under the law and provides additional examples related to each of the methods.

### **IRS Issues Proposed Regulations Related to Minimum Value of Eligible Employer-Sponsored Health Plans**

The IRS issued guidance at the end of August that withdraws prior portions of a proposed rulemaking published on May 3, 2013, relating to the definition of minimum value.

Under the ACA, applicable large employers must offer minimum essential coverage that is affordable and that provides minimum value to full-time employees or be exposed to a penalty. Previously, a plan provided "minimum value" if the plan's share of the total allowed costs of benefits provided under the plan was at least 60%.

Earlier this year, HHS issued guidance stating that a plan provides minimum value only if it covers at least 60% of the total allowed costs of benefits provided under the plan and the plan benefits include substantial coverage of inpatient hospitalization and physician services. The IRS's proposed regulations mirror HHS's final regulations and require that a plan provide substantial coverage of inpatient hospital and physician services in order to provide minimum value coverage. The IRS has also asked for comments on how to define "substantial coverage" of inpatient hospital and physician services.

### **PLR Clarifies that Adding Active Employee Benefits to Retiree VEBA Does Not Result in Disqualified Benefit**

In a recent Private Letter Ruling (PLR 201530022), the IRS determined that a voluntary employees' beneficiary association ("VEBA") trust providing benefits for retirees could be amended to provide benefits for active employees and that such an amendment would not create a disqualified benefit.

Under the facts of PLR 201530022, the taxpayer's VEBA trust held assets to provide health benefits for retirees. The taxpayer deducted contributions to the



trust in accordance with Code section 419A(c)(2). The taxpayer questioned whether it could amend the trust to also provide health benefits for active employees.

The IRS concluded that no part of the VEBA trust would revert to the taxpayer and the use of trust assets for active employees' health benefits would not result in a disqualified benefit. However, the IRS further concluded that the amendment would result in amounts that were originally reserved for retiree benefits to be used for active employees, which results in taxable income (under the tax benefit rule) because the contributions to the trust were previously deducted by the taxpayer as reserves for retiree benefits in a prior year. The use of the funds for active employees is inconsistent with the intention of the original deduction. Accordingly, the IRS agreed with the taxpayer that the taxpayer should include the amounts available for the payment of active employees' health benefits as income.

#### **IRS Issues Guidance Related to Electronic Filing for ACA Reporting Requirements**

The IRS released various publications aimed at providing guidance on how to electronically file ACA information returns. These publications provide information on the technical aspects of the electronic filing process, including general and program specific testing information for use with ACA Assurance Testing System. These publications are available through the IRS website.

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