

IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #50 September, 2015

IRS Releases Final Forms 1094/1095 and Instructions for 2015 With Relief for HRA Reporting and Other Modifications

The IRS has released final Forms 1094 and 1095 and accompanying instructions for 2015. The 2015 forms will be used for mandatory filings required in early 2016 to enforce Code § 4980H employer penalties, as well as individual mandate and tax credit eligibility rules. The final forms and instructions generally follow the drafts released in August, but with some important modifications.

Highlights of the final instructions:

Form 1095-B HRA Reporting:

The final instructions replace the section on supplemental coverage with a section addressing two common coverage situations, under the heading “Coverage in More Than One Type of Minimum Essential Coverage.”

In a self-insured situation, a coverage provider providing more than one type of minimum essential coverage (MEC) to an individual needs to report only one type of coverage. An employer sponsoring both a self-insured major medical plan and an HRA is required to report coverage under either the major medical plan or the HRA, but not both.

In the fully insured situation, a MEC provider does not have to report MEC for which an individual is eligible only because the individual has other MEC for which reporting is required. An employer sponsoring both a fully insured medical plan and an HRA, (or partial self-funding) for employees enrolled in the fully insured medical plan is not required to report the coverage under the HRA (or partial self-funding) for an individual covered by both arrangements.

The HRA reporting rules in the draft instructions prompted concern since they would have imposed additional reporting obligations on HRA sponsors with fully insured health plans. This change provides welcome relief and reverts to what many thought the rule should be. Since the insurer is obligated to report enrollment in the major medical coverage on a Form 1095-B, requiring the employer to separately report HRA coverage would have been redundant. Note, however, that if a health plan and HRA are sponsored by different employers (e.g., for employees enrolled both in their own employer’s HRA and their spouse’s employer’s non-HRA self-insured group health plan), each employer will have to separately report. In [Notice 2015-68](#), the IRS has announced its intention to issue proposed regulations on this subject.]

Form 1095-C:

The final instructions include several clarifications and simplifications.

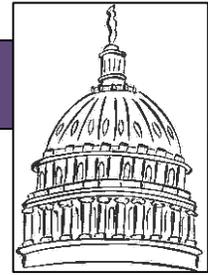
Reporting COBRA Offers to Terminated Employees:

An offer of COBRA coverage made to a former employee upon termination of employment is not reported as an offer of coverage on line 14. Instead, the applicable large employer (ALE) will enter code 1H (no offer of coverage) on line 14 and code 2A (individual not employed) on line 16 for any month for which a COBRA offer was made to a terminated employee.

This is a major reversal from a position announced in Q&A guidance earlier this year, which would have required ALEs to report the “offer” of COBRA based on actual COBRA elections. Under the final instructions, COBRA



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #50 September, 2015

IRS Releases Final Forms 1094/1095 and Instructions for 2015 With Relief for HRA Reporting and Other Modifications

offers for terminated employees are not reported as offers of coverage under any circumstances, even if a former employee elects the coverage. By entering code 2A on line 16, the ALE is protected from potential Code § 4980H penalties for the month.]

Counting Total Employees:

The final instructions state that an ALE can count employees on the 12th day of each month. [EBIA Comment: With this addition, ALEs now can choose any of five permissible days within each month to count total employees. The ALE must use the same day for all months in the year.]

HRA Reporting:

The final instructions incorporate HRA reporting rules consistent with the revised reporting rules under Form 1095-B, discussed above.

ALE Definition:

The final instructions note that an employee is not counted for the ALE determination for any month that he or she has coverage under the TRICARE or Veterans' Administration health care programs. This change reflects recent legislation.

For more information and a copy of the final forms, use the links below.

[1094-B](#)

[1095-B](#)

[1094-C](#)

[1095-C](#)

[B Instructions](#)

[C Instructions](#)

[IRS Release 2015-68](#)

Bernie Lowe & Associates, Inc. is not providing any legal advice with regard to compliance with the requirements of the Affordable Care Act ("ACA"). Bernie Lowe & Associates, Inc. makes no representation as to the impact of plan changes on a plan's grandfathered status or interpretation or implementation of any other provisions of ACA. Bernie Lowe & Associates, Inc. will not determine whether coverage is discriminatory or otherwise in violation of Internal Revenue Code Section 105(h).