

September 17, 2015

Final 2015 1094-B/C Instructions Reverse Reporting Status of HRAs – No Separate Reporting of HRAs is Required Where Employee is Covered by Multiple MEC Plans or Programs from the Same Employer

The IRS released today final versions of the 2015 Instructions for Forms 1094-C and 1095-C and for Forms 1094-B and 1095-B. The “C” Forms are used by applicable large employers to report their compliance with the ACA’s employer shared responsibility provisions. The “B” Forms are used to report certain information about individuals who are covered by minimum essential coverage (MEC) for purposes of the individual shared responsibility provisions under the ACA.

Both sets of final 2015 instructions contain important clarifications on employer reporting requirements for health reimbursement arrangements (HRAs) that differ from the draft instructions released by the IRS last month. According to the final 2015 instructions, an employer with an insured major medical plan and HRA coverage for which an individual is eligible because the individual enrolls in the insured major medical plan is not required to separately report the coverage under the HRA when the individual is covered by both arrangements.

Last month the IRS surprised (frightened, actually) many people when it issued draft 2015 Instructions for Forms 1094-C and 1095-C and for Forms 1094-B and 1095-B. As has been widely reported, the draft 2015 instructions took a sudden left turn by taking a position on HRAs that would require an employer with an insured group health plan and a self-insured HRA covering employees of the same employer to report “B” Form MEC information for its self-insured HRA on either Form 1095-B or Part III of the Form 1095-C, depending on the applicable large employer (ALE) status of the employee. This position was contrary to previously issued guidance in proposed and final Section 6055 MEC reporting regulations, which provided that reporting is not required for arrangements such as HRAs that supplement MEC.

2015 FINAL INSTRUCTIONS PROVIDE RULES FOR SEPARATE REPORTING OF HRAs WHERE EMPLOYEES ARE COVERED BY MULTIPLE MEC PLANS OR PROGRAMS

Both sets of the final 2015 instructions contain new reporting rules specific to HRAs relative to reporting MEC coverage. These reporting rules can be summarized as follows:

- An employer with a self-insured major medical plan and a health reimbursement arrangement (HRA) is required to report the coverage of an individual enrolled in both plans of minimum essential coverage but only for one of the arrangements.

- An employer with an insured major medical plan and an HRA is not required to report HRA coverage of an individual if the individual is eligible for the HRA because the individual enrolled in the insured major medical plan.
- An employer with an HRA must report coverage for any individual who is not enrolled in a major medical plan of the employer
 - *For example, if an employee is enrolled in an employer's HRA and in a spouse's employer's major medical plan, then the employee's employer would be required to report for the HRA, and the employee's spouse's employer (or the health insurance carrier, if the plan is insured) would be required to report for its major medical coverage.*

Of course, any MEC reporting for an employer's insured major medical coverage would be the responsibility of the insurance carrier.

IRS NOTICE 2015-68 – ADDITIONAL GUIDANCE TO BE PROPOSED

The IRS also released Notice 2015-68 concurrently with the final 2015 instructions. This Notice announces the IRS' intent to issue proposed regulations in the future regarding Information Reporting on Minimum Essential Coverage under Code section 6055. The future proposed regulations will, in relevant part, specify when a provider of minimum essential coverage is not required to report coverage of an individual who has other minimum essential coverage. Essentially, the new HRA reporting rules contained in the final 2015 instructions will be codified in the proposed regulation.

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Please contact me if you have any questions.

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