

REFORM UPDATE

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UPDATED IRS QUESTION AND ANSWERS (Q & A'S) ON REPORTING REQUIREMENTS AND PENALTIES

Over the holidays, the IRS updated the following Q & A's on three different topics related to employer reporting and "pay or play" penalties:

- Shared Responsibility ("Pay or Play") - <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act>
- IRC Code Section 6056 Q & A's - <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-reporting-of-offers-of-health-insurance-coverage-by-employers-section-6056>
- Form 1094/1095 Q & A's - <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-about-information-reporting-by-employers-on-form-1094-c-and-form-1095-c>

This *Reform Update* summarizes the changes.

SHARED RESPONSIBILITY ("PAY OR PLAY")

The IRS initially posted the "pay or play" Q & A's shortly after it issued final regulations and has been updating them periodically as it clarifies different aspects of these rules. The latest update reorganizes various questions and adds new ones. Following are some of the key changes:

- The 2017 adjusted mandate penalty (or the A penalty) increased to \$2,260 annually. This penalty is assessed when an Applicable Large Employer (ALE) fails to offer 95% of full-time employees and dependents minimum essential coverage. The penalty for not offering minimum value/affordable coverage (or the B penalty) increased to \$3,390 annually.
- The IRS expects to send letters in early 2017 informing ALEs of potential "pay or play" penalties for the 2015 calendar year. A new Q & A deals with the relative timing of penalty notifications in the future. In general, the penalty notices will be sent near the end of the year in which forms are submitted. For example, because 2017 forms will be submitted in early 2018, penalty notices will be sent in late 2018. The IRS indicates that additional

guidance on the payment process will be released before the letters are sent and that “pay or play” penalty payments will be separate from an ALE’s other tax payments.

- The Q & A’s also include a reminder that a Marketplace’s notice that an employee has enrolled in subsidized coverage will not automatically trigger a “pay or play” penalty. The IRS determines penalties.
- A number of questions deal with specific situations and whether or not a “pay or play” penalty would apply. These Q & A’s confirm an employer will *not* have to pay a penalty if an employee chooses Medicaid or Medicare instead of employer coverage.
- A question was added that explains the relationship between 1094 C and 1095 C reporting requirements and determining “pay or play” penalties. The Q & A’s also clarify the additional information self-funded plans must provide so that employees can prove they have coverage under the individual mandate.
- Employers looking for information should review the information posted on the ALE Resource Center - <https://www.irs.gov/affordable-care-act/employers/aca-information-center-for-applicable-large-employers-ales> .
- The revisions include more detail on determining ALE status, with a focus on the rules for aggregated ALE groups. They also include additional information on counting hours of service, and further explain exclusions from the hours of service definition. In addition, they very clearly state most interns are to be treated the same as other employees (unless they are excluded because they are part of a Federal Work Study program).
- New questions analyze whether offers of coverage to full-time employees and dependents count for purposes of the “pay or play rules” under various scenarios. The rules on employers contributing to multiple employer welfare plans are also discussed. An offer of coverage from the organizations listed below can be treated as the employer’s offer of coverage:
 1. Another employer in the aggregated ALE group of employers treated as a single employer
 2. A multiemployer or single employer Taft-Hartley plan
 3. A multiple employer welfare arrangement (MEWA)
 4. In certain cases, a staffing firm
- The questions on affordability of employer-sponsored coverage have been expanded. In particular, they now refer employers to the specific guidance on HRA contributions, wellness program incentives, flex credits, and opt-out payments. Cost-of-living adjustments to the 9.5% affordability threshold are explained in a separate question.

These Q & A’s provide valuable reminders of the various provisions of the “pay or play” rules.

IRC CODE SECTION 6056 Q & A'S

The Q & A's explaining the reporting requirement under IRC Section 6056 (Forms 1094 C and 1095 C) have been reorganized and updated. Although most changes are minor, they clarify the following issues:

- The 2015 tax year extended deadlines.
- The continued availability of good faith penalty relief for the 2016 tax year.
- The extended deadline for sending employees 1095 C forms in 2016. The 1095-C forms for 2016 should be sent to employees by March 2, 2017.

These Q & A's provide a timely reminder for employers getting ready to complete and send out 1094 and 1095 C Forms.

FORM 1094/1095 Q & A'S

These Q & A's explain the actual Forms 1094 C and 1095 C. Many of the issues are covered in the instructions for completing the forms. These instructions can be found at <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>.

The Q & A's clarify the following:

- The extended deadlines for 2016, the 2016 forms must be furnished to employees by March 2, 2017.
- An ALE must submit a 1094 C tied to its own employer identification number (EIN), even if the ALE is part of an IRS control group.
- Specific situations that need to be reported on Lines 14, 15 and 16. None of these differ from the explanations in the final instructions. This is a good resource if your organization has questions about these forms.
- Two new questions clarify the changes on reporting COBRA coverage.
 - An offer of COBRA made to a former employee, a former employee's spouse or dependent child(ren) should not be reported as an offer of coverage on line 14. Instead, use code 1H on line 14 – “no offer of coverage.” On line 16, if an employee terminates mid-month, 2B on line 16 for that month and subsequent months should be 2A – “not an employee that month.” Do not enter 2C on line 16 if a terminated employee elects COBRA.
 - An offer of COBRA made to a current employee should be reported as an offer of coverage. The Line 14 code should reflect who is offered COBRA. Remember, COBRA must be offered only to qualified beneficiaries who were covered under the group health plan on the day before the qualifying event. This means if the employee was the only person the plan covered and was offered COBRA because reduced work hours made the employee ineligible for the health plan, the employer would enter 1B in line 14. The code 1B indicates minimum value coverage was offered to the employee only. The codes in line 16 will indicate the employer should

not be penalized. If COBRA is elected, 2C should be entered. An employer is treated as having made an offer of coverage to an employee's dependents for the entire year if the employer provides an opportunity to enroll at least once each plan year. If the employee chooses not to enroll dependents and a qualifying event resulting in a loss of coverage occurs, those dependents are not eligible for COBRA because they were not covered the day before the event.

- Many questions include examples of how to report specific situations. None of the material facts vary from what was included in final instructions. It may be helpful for employers to read the logic of how to handle various situations.

Keep these Q & A's in mind as your organization starts working through 2016 forms and reporting.

CONCLUDING THOUGHTS

A new President and a new administration took office in January 2016. On President Trump's first day in office, he signed an executive order confirming his intention to repeal the Affordable Care Act. At some point, this may mean these reporting requirements may no longer apply.

Until Congress and the Trump administration take definitive action, the ACA remains the law of the land. Employers can't count on the reporting requirements being eliminated before the 2016 due dates. Employers should plan on submitting these forms until the government officially makes changes.

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