

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Submitted Electronically via Federal eRulemaking Portal at <http://www.regulations.gov>
(IRS REG-103058-16)

September 22, 2016

CC:PA:LPD:PR (REG-103058-16)
Room 5203, Internal Revenue Service
PO Box 7604 Ben Franklin Station
Washington, DC 20044

Re: Information Reporting of Catastrophic Health Coverage and Other Issues Under Section 6055

Dear Ladies and Gentlemen:

The National Coordinating Committee for Multiemployer Plans (NCCMP) appreciates the opportunity to provide comments on the proposed rule regarding information reporting under section 6055 published in the *Federal Register* on August 2, 2016.¹

The NCCMP is the only national organization devoted exclusively to protecting the interests of the over 20 million active and retired American workers and their families who rely on multiemployer plans for retirement, health and other benefits. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit, non-partisan organization, with members, plans and contributing employers in every major segment of the multiemployer plan universe, including in the airline, agriculture, building and construction, bakery and confectionery, entertainment, health care, hospitality, longshore, manufacturing, mining, retail food, service, steel and trucking industries. Multiemployer plans are jointly trusted by employee and management trustees, and the sponsor of the plan is the joint board of trustees, not the individual contributing employers to the plan.

Introduction and Comment on Multiemployer Interim Guidance and the Draft Reporting Instructions for 2016

Prior to setting forth our comments on the proposed rule, we wish to express our support for the 2016 draft instructions for IRS Forms 1095-C and 1094-C, released on August 1, 2016. These draft

¹ <https://www.gpo.gov/fdsys/pkg/FR-2016-08-02/pdf/2016-18100.pdf>

instructions continue in place for 2016 the reporting rules applicable to employers who are required to contribute to multiemployer plans that applied in 2015. As we have previously commented, the NCCMP appreciates the efforts made by the Internal Revenue Service (IRS) and the Treasury Department to develop rules that recognize the unique structure of multiemployer plans and that provide clear, workable guidance to contributing employers. The Multiemployer Interim Guidance and the reporting instructions that applied for 2015 based on this interim guidance are good examples of such efforts.

Under the Multiemployer Interim Guidance,² an applicable large employer member will not be treated as failing to offer the opportunity to enroll in minimum essential coverage (MEC) to a full-time employee (and his or her dependents) under section 4980H(a) and will not be subject to a penalty under section 4980H(b) with respect to a full-time employee if:

- a. The employer is required to make a contribution to a multiemployer plan with respect to the employee pursuant to a collective bargaining agreement or an appropriate related participation agreement, and
- b. The multiemployer plan offers to individuals who satisfy the plan's eligibility conditions coverage that meets affordability standards and that provides minimum value, and offers coverage to their children under age 26. For purposes of determining whether the multiemployer plan coverage is affordable, employers may use any of the affordability safe harbors in the final 4980H regulations.

Permanency of this rule is important. Contributing employers need certainty that the contributions made to multiemployer plans on behalf of covered employees satisfy their responsibilities under the Employer Shared Responsibility rules. While there may be a few situations in which the Multiemployer Interim Guidance is not available, it works in most situations. Thus, the NCCMP recommends that the Multiemployer Interim Guidance be included in final 4980H regulations. We also recommend that related instructions with respect to reporting on Form 1095-C that rely on the Multiemployer Interim Guidance, as set forth in the 2016 draft instructions, be continued on a permanent basis.³ With respect to situations not covered by the interim guidance, we are happy to continue to work with the IRS and Treasury to identify the issues and address such situations as appropriate.

Summary of Comments to Proposed Rule

Our comments to the proposed rule address two issues: (1) the proposed changes to the rules regarding reporting of supplemental coverage, including coverage that supplements Medicare; and (2) the proposed changes to the rules governing soliciting and reporting Taxpayer Identification Numbers.

Our recommendations include the following:

² 79 Fed Reg at 8576 (Feb. 12, 2014); 78 Fed Reg at 237 (Jan. 2, 2013)

³ NCCMP has previously included these recommendations in formal comments. See, for example, NCCMP comments on Notice 2015-87 (Feb. 18, 2016), submitted electronically to notice.comments@irsounsel.treas.gov.

Supplemental Coverage:

- Retain the current rule that there is no requirement to report coverage that supplements government-sponsored coverage such as Medicare;
- Expand the rule on duplicative coverage to include coverage provided by the same reporting entity *or the same plan sponsor*; and
- Use the more broadly applicable terms “plan sponsor” and “self-insured group health plan coverage” – the terms used in the current regulations under section 6055 – instead of “employer” and “eligible employer-sponsored coverage.”

Soliciting and Reporting Taxpayer Identification Numbers:

- Establish rules and terminology that better reflect the group health plan environment, not just the individual insurance market (i.e., enrollment forms vs. application forms);
- Extend the 75-day deadline for the first annual solicitation; and
- Clarify what reporting entities must do when they receive error messages from the AIR system about a name/TIN mismatch.

I. Proposed Rule on Supplemental Coverage; 26 CFR § 1.6055–1(d)

The proposed rule would significantly revise how a multiemployer plan providing group health plan benefits would report minimum essential coverage that provides benefits in addition to or as a supplement to a health plan or arrangement that constitutes minimum essential coverage. The revisions narrow the existing guidance; would require costly and time-consuming modifications to the reporting procedures already in existence; and would cause confusion to plan participants who would be seeing coverage reported differently in two different years.

NCCMP urges Treasury/IRS to retain the current rule that does not require duplicate reporting of coverage provided by the same plan sponsor, and that does not require reporting entities to report coverage that supplements government-sponsored coverage such as Medicare. NCCMP also recommends other changes, as discussed below.

A. Background

The existing regulations implementing section 6055⁴ state that reporting is not required for supplemental health coverage in two situations: (1) when the primary and supplemental coverages have the same plan sponsor; and (2) when the coverage supplements government-sponsored coverage such as Medicare. The rule is relatively straightforward. For example, reporting is not required with respect to individuals enrolled in a Health Reimbursement Arrangement (HRA) if the plan sponsor is reporting their enrollment under the non-HRA self-insured group health plan or a health insurer is reporting their enrollment in that plan sponsor’s insured medical plan. In

⁴ 26 CFR § 1.6055-1(d)(2).

addition, plan sponsors do not need to report coverage that supplements Medicare (or other government-sponsored coverage).

B. The Proposed Rule

The proposed rule includes two parts:

- 1. Duplicative coverage:** Proposed section 1.6055-1(d)(2) would provide that if an individual is covered by more than one type of minimum essential coverage provided by *the same reporting entity*, reporting is required only for one type of coverage.
- 2. Supplemental coverage:** Proposed section 1.6055-1(d)(3) would provide that reporting is not required for minimum essential coverage when the individual is eligible for that coverage only when also enrolled in other coverage for which reporting is required. However, this rule would only apply to “eligible employer-sponsored coverage”⁵ if the same “employer” offers both types of coverage.

Duplicative Coverage

The proposed rule would require duplicate reporting of coverage where, for example, a multiemployer plan offers an insured medical plan and other self-insured benefits (e.g., a prescription drug benefit or an HRA), because the coverage is reported by two separate reporting entities. NCCMP recommends that this rule on duplicative coverage be expanded to include coverage provided by the same reporting entity *or the same plan sponsor*. In the alternative, we recommend retaining the language in the existing final rule.

Multiemployer plans may provide a variety of benefits to a range of eligible participants through various service providers. Some of the providers would be separate reporting entities, e.g., insurers, and others would not. In addition, different entities may have reporting obligations for different types of participants (e.g., actives, COBRA qualified beneficiaries, or retirees). Basing the reporting obligation on the identity of the “reporting entity” would require multiemployer plans to identify reporting obligations for each individual and each benefit. Instead, the current rule permits the plan to analyze the reporting obligation based on whether the coverage is offered by the same “plan sponsor.” Multiemployer plans are familiar with the concept of “plan sponsor” and utilize it for compliance under a number of laws (i.e., HIPAA). Retaining the plan sponsor concept for purposes of analyzing duplicate coverage reporting obligations will provide a more clear roadmap for plan sponsors, prevent changes in reporting systems already in place, and allow for analysis based on existing plan concepts.

Supplemental Coverage

The first part of the proposed rule on supplemental coverage would preserve the current rule that there is no requirement to report enrollment in coverage that supplements Medicare, Tricare, or Medicaid. That is because individuals only receive supplemental coverage if they are enrolled in Medicare or other governmental plans. However, the proposed rule includes an additional

⁵ The individual mandate regulations define “eligible employer-sponsored plan” as a type of minimum essential coverage that includes “a self-insured group health plan under which coverage is offered by, or on behalf of, an employer to the employee.” 26 CFR § 1.5000A-2(c)(1)(ii).

requirement: the supplemental coverage rule only applies to “eligible employer-sponsored coverage” if the same “employer” offers both types of coverage. This would appear to delete the clear and easy-to-follow current final rule at 26 CFR § 1.6055-1(d)(2)(ii) that exempts any coverage that supplements Medicare. The proposed rule would appear to require employer-sponsored coverage that supplements Medicare to be reported because it is impossible for Medicare coverage to be offered by the same “employer.”

As a result of the proposed rule, a multiemployer plan that offers a self-insured Medicare supplemental benefit would have to report enrollment in that benefit.

Many multiemployer plans provide supplemental coverage to retirees who are enrolled in Medicare. This coverage is typically self-insured, which means that the multiemployer plan would be the entity responsible for reporting enrollment if reporting were required. In many cases, particularly where there is a retiree-only plan, the supplemental coverage is the only coverage offered by the multiemployer plan. Such plans were not required to report this supplemental coverage for 2015. Many multiemployer plans also offer a retiree-only HRA to Medicare-eligible retirees. Plans were not required to report these retiree-only HRAs under the existing rules.

In our view, there is no reason for plan sponsors to be required to report enrollment in such supplemental coverage. An individual’s enrollment in Medicare meets the individual mandate to have coverage and Medicare is already responsible for reporting that coverage. Nothing is served by adding an additional reporting obligation on a multiemployer plan or other entity that offers supplemental coverage.

NCCMP recommends that any rule on supplemental coverage follow the approach in the existing regulations and exempt any coverage that supplements government-sponsored coverage such as Medicare.

In addition, NCCMP recommends that the final language use the more broadly applicable terms “plan sponsor” and “self-insured group health plan coverage” – the terms used in the current regulations under section 6055 – instead of “employer” and “eligible employer-sponsored coverage.” As noted above, multiemployer plans are group health plans sponsored by a joint board of trustees, not by their contributing employers.⁶

II. Soliciting and Reporting Taxpayer Identification Numbers (TINs)

A. Background

The existing TIN solicitation regulations⁷ have proved confusing to entities reporting health plan enrollment because they set out a schedule that is linked to when an “account is opened.” They

⁶ The “plan sponsor” of a multiemployer plan is defined in ERISA section 3(16)(B)(iii).

⁷ These regulations, which pre-date the ACA and are found in 26 CFR § 301.6724-1, govern reasonable-cause penalty waivers. They set out what filers have to do to be considered to have acted responsibly. In general, reporting entities need to act responsibly in order to avoid penalties for reporting a person’s date of birth instead of his/her TIN or for reporting incorrect TINs.

have also proved confusing because they refer to the three required solicitations of TINs as an “initial” solicitation, a “first annual” solicitation, and a “second annual” solicitation. Rather than setting out clear rules using terms that make more sense for reporting health plan coverage, the proposed rule defines what it means to “open an account” for purposes of ACA reporting.

As a general matter, NCCMP recommends that Treasury/IRS create rules that are tailored to the reporting of health care coverage instead of trying to fit health plan reporting rules into the existing regulations. That would be the best way to eliminate ongoing confusion about what is required. Other specific comments are discussed below.

B. Proposed Rule: Missing TINs

The proposed rule sets out the following TIN solicitation schedule:

1. The initial solicitation is considered made when the reporting entity receives a substantially complete “application” for coverage that requested TINs for the participant and any family members being enrolled. If family members (or additional family members) are added to the plan later, the initial solicitation for their TINs is considered made when the entity receives a substantially complete “application” to add the family member to existing coverage.
2. The first annual solicitation needs to be made within 75 days of the initial solicitation.⁸
3. The second annual solicitation needs to be made by December 31 of the year following the initial solicitation.

NCCMP recommends that the final rule include terms that better reflect the group health plan environment, not just the individual insurance market. Participants in multiemployer plans do not submit applications for coverage. Instead, eligible participants may be asked to complete enrollment forms. Historically, many multiemployer plans did not even request that enrollment forms be completed at the time of initial eligibility. Instead, participants were automatically covered once they met the plan’s eligibility rules. Nor was there a formal process to enroll dependents; instead, claims for dependents were paid when they were submitted to the plan for payment. Multiemployer plans have moved toward requiring eligible participants to complete enrollment forms, so that TINs can be requested, but these are not applications for coverage.

NCCMP also recommends that the deadline of 75 days for the first annual solicitation be extended. This deadline is too close to the initial solicitation. NCCMP also recommends an

extension of the 75-day deadline in the transition rule applicable to those who are covered on any day before July 29, 2016.

The proposed rule clarifies that it is sufficient to ask the responsible individual (e.g., the participant) for the TINs of his/her dependents. In other words, separate solicitations to each covered individual are not required. NCCMP supports this clarification.

⁸ In the case of retroactive coverage, this would be the 75th day after the determination of retroactive coverage is made.

C. Responding to Error Messages from the AIR System

NCCMP requests that Treasury/IRS clarify what actions reporting entities must take in response to error messages from the AIR system relating to name/TIN mismatches. The preamble to the proposed rule states in footnote 2:

A filer of the information return required under § 1.6055-1 may receive an error message from the IRS indicating that a TIN and name provided on the return do not match IRS records. An error message is neither a Notice 972GG, Notice of Proposed Civil Penalty, nor a requirement that the filer must solicit a TIN in response to the error message.

This would appear to mean that no further formal solicitation is required until the reporting entity receives some additional kind of notice from the IRS that the TIN is incorrect (such as an official penalty notice). It would be helpful for Treasury/IRS to clarify this. It would also be helpful to clarify when reporting entities are required to file corrected returns. The existing TIN solicitation regulations appear to require that entities use a newly obtained TIN on any filings with an *original due date* that is *after* the entity receives a correct or formerly missing TIN.⁹ This appears to mean that reporting entities do not need to file corrected returns merely to provide a new or different TIN. Nonetheless, confusion about this is common within the reporting community, and further clarification would be helpful.

We appreciate the opportunity to provide comments on the proposed rule.

Sincerely,



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Executive Director

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⁹ See 26 CFR § 301.6724-1(e)(1)(iv)(regarding missing TINs) and 301.6724-1(f)(1)(iv)(regarding incorrect TINs).