

WHAT YOU NEED TO KNOW



Compliance Recap July 2018

July was a quiet month in the employee benefits world. The Internal Revenue Service (IRS) released draft Forms 1094-B, 1095-B, 1094-C, and 1095-C. The IRS also released an information letter on the employer shared responsibility provisions.

UBA Updates

UBA released two new advisors:

- [COBRA Liability in Mergers and Acquisitions](#)
- [Federal Requirements for Fully Insured and Self-Funded Plans](#)

UBA updated existing guidance:

- [Health Savings Accounts: What You Need to Know](#)
- [Option for Some to Renew Policies That Do Not Fully Meet ACA Standards](#)
- [Extension of Maximum COBRA Coverage Period](#)
- [Frequently Asked Questions about the Patient-Centered Outcomes / Comparative Effectiveness \(PCORI\) Fee](#)
- [What Group Plan Sponsors Need to Know about ERISA](#)

IRS Releases Draft Forms 1094-B, 1095-B, 1094-C, and 1095-C

The Internal Revenue Service (IRS) released draft Forms [1094-B](#), [1095-B](#), [1094-C](#), and [1095-C](#). Employers will use the final version of these forms to report on offers of health coverage to full-time employees and their family members, and enrollment in health coverage by employees and their family members (for employers that sponsor self-insured health plans).

There are no substantive changes to draft Forms 1094-B, 1095-B, or 1094-C for 2018. There is a minor formatting change to draft Form 1095-C for 2018. There are dividers for the entry of an individual's first name, middle name, and last name.

Employers will have more information about any additional changes to these forms when the IRS releases its draft instructions for these forms.

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IRS Releases Information Letter on Employer Shared Responsibility

The Internal Revenue Service (IRS) released its [Information Letter 2018-0013](#) to reiterate how the employer shared responsibility provisions would apply to an applicable large employer. Specifically, the IRS explained how the Service Contract Act (SCA) interacts with the Patient Protection and Affordable Care Act (ACA).

As background, the SCA requires workers who are employed on certain federal contracts to be paid prevailing wages and fringe benefits. An employer generally can satisfy its fringe benefit obligation by providing the cash equivalent of benefits or a combination of cash and benefits. Alternatively, an employer may permit employees to choose among various benefits, or various benefits and cash. An employer may choose to provide fringe benefits under the SCA by offering an employee the option to enroll in health coverage provided by the employer (including an option to decline that coverage). If the employee declines the coverage, that employer would then generally be required by the SCA to provide the employee with cash or other benefits of an equivalent value.

This Information Letter refers to IRS [Notice 2015-87](#) which describes how the ACA and the SCA may be coordinated for plan years beginning before January 1, 2017, and until further guidance is issued and applicable. Notice 2015-87 clarifies that, for employees under the SCA, the choice of a cash-out payment will generally not require an employer to pay a greater share of the cost of the health coverage for the coverage to be considered affordable.

Question of the Month

Q. What if a plan sponsor fails to file or pay the PCORI fee?

A. Although the PCORI statute and its regulations do not include a specific penalty for failure to report or pay the PCORI fee, the plan sponsor may be subject to [penalties](#) for failure to file a tax return because the PCORI fee is an excise tax.

The plan sponsor should consult with its attorney on how to proceed with a late filing or late payment of the PCORI fee. The PCORI [regulations](#) note that the penalties related to late filing of Form 720 or late payment of the fee may be waived or abated if the plan sponsor has reasonable cause and the failure was not due to willful neglect.

If a plan sponsor already filed Form 720 (for example, for a different excise tax), then the plan sponsor can make a correction to a previously filed Form 720 by using [Form 720X](#).

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