



June 9, 2015

Submitted electronically to Christie.A.Preston@irs.gov

Stacey Becker
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, D.C. 10224

Re: Form 1095-C and Instructions for Multiemployer Health Plans

Dear Ms. Becker:

The Associated General Contractors of America (AGC) and Food Marketing Institute (FMI) submit this letter as a request for clarification of Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, and its instructions with respect to the reporting obligations of employers that contribute to multiemployer health plans.

AGC is the leading association for the construction industry, representing more than 26,000 employers, including over 6,500 of America's leading general contractors and nearly 9,000 specialty-contracting firms. AGC chapters and members negotiate health care benefits for employees participating in single-employer and multiemployer health plans.

FMI proudly advocates on behalf of the food retail and wholesaler industry who operate nearly 40,000 retail food stores and 25,000 pharmacies, employ 3.4 million people throughout the United States, and offer valued, affordable health care coverage, including through contributions to multiemployer plans.

Under Internal Revenue Code Section 6056, applicable large employers are required to report information about offers of health coverage and enrollment in health coverage for employees via Form 1094-C and Form 1095-C. Specifically, an employer uses Form 1095-C to report whether the employer made an offer of minimum essential coverage to each employee and lists each employee covered thereunder. Each employer has its own 1095-C reporting obligation.

As the IRS noted in the preamble to the regulations under Section 6056, in the multiemployer plan context, the plan administrator may have access to certain information required to be reported on Form 1095-C which the employer does not have access to, although the reporting obligation remains with the employer. The preamble to the regulations states:

Treasury and the IRS understand that the plan administrator of a multiemployer plan may have better access than a participating employer to certain information on participating employees required to be included as part of section 6056 reporting.

In a multiemployer plan, the eligibility requirements for coverage are set by the plan trustees. An employer participating in the plan submits work reports and corresponding contributions to the plan for each employee working in employment governed by the collective bargaining agreement pursuant to which the plan is maintained. The plan administrator then uses the work reports submitted by the employer to determine the eligibility of each employee on whose behalf contributions were received. Information regarding each employee's eligibility for coverage under the plan is not distributed to the employers by the plan administrator.

In light of the information gap between multiemployer plans and contributing employers, the IRS adopted multiemployer arrangement interim guidance which is described in the instructions to Form 1095-C as follows:

An employer is treated as offering health coverage to an employee if the employer is required by a collective bargaining agreement or related participation agreement to make contributions for that employee to a multiemployer plan that offers, to individuals who satisfy the plan's eligibility conditions, health coverage that is affordable and provides minimum value, and that also offers health coverage to those individuals' dependents or is eligible for Section 4980H transition relief regarding offers of coverage to dependents.

The multiemployer arrangement interim guidance is designed to resolve the information gap by deeming an employer's periodic contributions to a multiemployer plan as an offer of coverage for purposes of 4980H and 6056.

We are writing to advise the IRS that Lines 14 and 16 on Form 1095-C and the instructions thereto operate in contravention to the above-described relationship between multiemployer plans and contributing employers.

Line 14 on Form 1095-C instructs the employer to certify, by entering a certain code, whether and for which months the employer offered minimum essential coverage to its employees. The instructions to Line 14 provide:

*Enter the code identifying the type of health coverage actually offered by the employer (or on behalf of the employer) to the employee, if any. Do not enter a code for any other type of health coverage the employer is treated as having offered (but did not actually offer) under the...multiemployer arrangement interim guidance (if the employer is contributing on behalf of an employee **but the employee is not eligible for coverage under the multiemployer plan**)..."*
[Emphasis added.]

Unfortunately, the language in the parenthetical requires an employer to distinguish between employees who are eligible for multiemployer coverage and those who are ineligible for purposes of Line 14. The instructions permit an employer to skip Line 14 only for those employees who are ineligible for multiemployer coverage. This is problematic for employers contributing to a multiemployer plan because, as explained above, the employer does not have information relating to employee eligibility for coverage. **To alleviate this confusion, we suggest that the language “if the employer is contributing on behalf of an employee but the employee is not eligible for coverage under the multiemployer plan” be deleted from the instruction to Line 14.**

The parenthetical language in the instructions to Line 14 also increases confusion with respect to instructions for Line 16. Line 16 on Form 1095-C instructs an employer to enter a code corresponding to an applicable Section 4980H Safe Harbor. The instructions to Line 16 list the various applicable codes and state in part:

For any month in which an employee enrolled in minimum essential coverage, indicator code 2C reporting enrollment is used instead of any other indicator code that could also apply...

*2C. Employee enrolled in coverage offered. Enter code 2C for any month in which the employee enrolled in health coverage offered by the employer for each day of the month, **regardless of whether any other code in Code Series 2 might also apply** (for example, the code for a section 4980H affordability safe harbor)...*

2E. Multiemployer interim rule relief. Enter Code 2E for any month in which the multiemployer interim guidance applies for that employee. This relief is described under Offer of Health Coverage in the Definitions section of these instructions...

The instructions appear to grant code 2C precedence over all other codes in series 2, including code 2E. The instructions provide no express exception to code 2C.¹ This is problematic because an employer has no enrollment information on which to determine whether code 2C is applicable to an employee participating in the multiemployer plan. Therefore, such an employer will be uncertain as to whether to enter code 2C and may be dissuaded from entering code 2E, which is the applicable code.

¹ The note under code 2H may also serve to perplex employers who contribute to multiemployer plans because it provides an exception from codes 2F through 2H if code 2E applies. The note states:

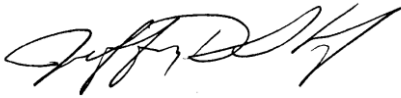
*Codes 2F through 2H: Although employers may use the section 4980H affordability safe harbors to determine affordability for purposes of the multiemployer interim guidance, **an employer eligible for the relief provided in the multiemployer interim guidance for a month for an employee should enter code 2E (multiemployer interim rule relief), and not a code for the section 4980H affordability safe harbors (codes 2F, 2G or 2H).** [Emphasis added.]*

Because there is no similar exception explaining the interaction of 2E and 2C, and given the language in the instructions for code 2C indicating that it takes precedence over all safe harbors, an employer could conclude that Code 2C is intended to supersede Code 2E.

We suggest simplifying the instructions to Line 16 (especially in light of the erroneous parenthetical contained in the instructions to Line 14) to make it unambiguously clear to employers that if Code 2E applies, the employer should enter Code 2E instead of any other Codes (including Code 2C) and to specifically state that Code 2C does *not* apply to (and should not be entered by) any employer eligible for the relief provided in the multiemployer interim guidance.

On behalf of our member employers, many of whom contribute to multiemployer health plans, we appreciate your consideration of our suggestions to Form 1095-C. Please do not hesitate to contact us if you wish to discuss this matter further.

Sincerely,



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Government Affairs
Associated General Contractors of America



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