



Nonprofit Issues Newsletter | Summer 2015

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Reporting Health Plan Coverage to Employees and the IRS

Beginning with the calendar year 2015, many employers are now required to provide employees with significantly more information about their health plan coverage. The actual reports won't be due until January 31, 2016, but employers need to begin planning now to accurately collect, organize, and send the detailed information to employees on time. This article describes which employers will have additional reporting obligations, and the types of information they will need to provide.

The new filing obligations apply to two types of employers:

- Employers with self-insured health plans that are not large employers will issue Form 1095-B to every covered employee, and file copies with the IRS.
- Large employers (over 50 full-time equivalent employees) will be required to issue a Form 1095-C to every employee and file copies with the IRS. This reporting applies even if the large employer qualifies for transition relief, as described below. Large employers with a self-insured health plan will complete an additional part of Form 1095-C to pick up the information that would have been reported on Form 1095-B.

The chart below describes the reporting obligation. Insured plans have less employer reporting, because the coverage information provided on Form 1095-B and Part III of Form 1095-C is reported by the insurance company.

	Not Large Employer	Large Employer
Insured Plan	Neither Form 1095-B or Form 1095-C	Form 1095-C, Parts I & II
Self-insured Plan	Form 1095-B	Form 1095-C, Parts I, II, & III

Note that:

- Self-insured and large employers are subject to reporting on Form 1095-B or Form 1095-C, even if they qualify for an exemption from reporting medical expense on Form W-2.
- These forms report on a calendar year, even if the plan or employer is on a fiscal year.

Large Employer Reporting (whether or not self-insured)

Each employee will receive a Form 1095-C. The employer will be required to report the following for each employee, for each month:

1. The health care coverage the employer offered, or did not offer, the employee. Reported coverage is described by codes for various coverage options. For instance, code 1A identifies a "Qualifying Offer" as: "Minimum essential coverage providing minimum value offered to full-time employee with employee contribution for self-only coverage equal to or less than 9.5% mainland single federal poverty line and at least minimum essential coverage offered to spouse and dependent(s)." Other codes apply to other benefit options provided to employees.
2. In some cases, the amount the employee paid for the employee's share of the lowest-cost monthly premium for self-only minimum value coverage.
3. The safe harbor that protects the employer from penalties for not offering coverage. For instance, for a specific month, the employer might enter "2A," meaning the individual was not employed in that month. Commonly used codes will be 2A, not employed and 2B, part-time.

Employers should investigate the form requirements and list of codes to assure that they are collecting the necessary information during the year. The Form 1095-C instructions and codes are available at www.irs.gov/instructions/i109495c/index.html.

Self-insured Employer Reporting (whether or not a Large Employer)

An employer with a self-insured health plan must provide the following information. If the employer is not a Large Employer, this will be reported on Form 1095-B. For Large Employers, it can be reported on Form 1095-C, Part III.

1. Name of each individual who was covered for at least one month during the year. This includes the employee, spouse, dependents, or others who were covered under the employer's plan.
2. Social Security number or date of birth of each covered person. The employer is required to try to collect this information. It is in the employee's interest to provide the information, since if the IRS can't connect a person with a health plan, it will seek to collect the penalty from the individual for not being insured.
3. Each month for which the person was covered.

Employers should investigate the form requirements to ensure they are collecting the correct information. The Form 1095-B instructions are available at www.irs.gov/instructions/i109495b/index.html.

Large Employer Transition Relief in 2015

The IRS has provided transitional relief for several types of employer and plan situations. Each of the transitional relief options has very specific requirements, and these necessitate detailed assessment of an employer's plan before relying upon any relief option. The following summaries do not include all the required elements, but may be useful in considering options for your plan.

- *Non-calendar year plans* - Plans which were not on a calendar year as of December 27, 2012, and have not modified their plan years to begin at a later calendar date since then, may qualify for relief for the first calendar months of 2015, provided they offer affordable coverage that provides minimum benefits by the first day of their plan year beginning in 2015.
- *Close, but not sure of having 50 FTE* - Employers may use a six-consecutive-month measuring period in 2014 to assess whether they are a Large Employer, subject to the requirement to provide coverage.
- *Just missed the January 1 offer date* - While the general requirement is that an employer must offer coverage for all days in a month, for January 2015 only an employer that offers coverage by the first payday will be treated as offering coverage on January 1, 2015.
- *Inadequate dependent coverage* - An employer that did not offer dependent coverage in 2013 or 2014 will not be subject to shared responsibility liability in 2015, provided it is taking steps to offer dependent coverage.
- *50 but fewer than 100 full-time equivalent employees* - For 2015, an employer will not be liable for the shared responsibility payment, provided it (a) has fewer than 100 full-time-equivalent employees; (b) has not reduced its hours of service or workforce between 2/9/2014 and 12/31/14; and (c) has maintained its previously offered coverage. Certification of meeting these requirements will be required on Forms 1094-C and 1095-C.
- *Over 99 full-time-equivalent employees and 70% offer of coverage* - If an employer with over 99 full-time-equivalent employees offers affordable minimum coverage to 70% or more of its employees, it will have a smaller penalty payment if any employee obtains a premium tax credit to purchase coverage on a Marketplace.

A Caution

Long-range planning for compliance with Affordable Care Act requirements has been difficult. Many issues have been discovered, and many requirement changes have been made.

The requirements for these reports, however, seem to be clear. The reports to the IRS and the employees are instrumental in overall compliance processes, and we anticipate that they likely will be required substantially as described in this article.

As tax counsel at CapinCrouse, author [John Butler](#) focuses on serving exempt organizations. He provides a range of services, including consulting on tax and employee benefit related matters, representation before state and federal tax authorities, and assistance with firm audit or advisory engagements to formulate counsel and opinions on important operating and tax issues.

Cyber Security - Everyone Is At Risk

Misfortune Cookie, Poodle, Shellshock, Heartbleed, Freak - these are not the names of rock bands, but rather the names used to identify recent computer vulnerabilities that millions of computer users are exposed to.

Misfortune Cookie refers to a recently discovered flaw present in an estimated 12 million routers in homes, small businesses, and corporate environments, some of which have been in place for years. The vulnerability could allow a remote attacker to take control of the device and subsequently steal credentials, personal or business data, and/or infect any system on your network with malware. A vendor-supplied update or patch is necessary to eliminate the risk.

So when was the last time your home or office router was updated? Only technology professionals are likely to know the answer to that. You may be confident that your organization is secure because you have a top-notch "IT guy" and your systems work on a daily basis. But does he or she have time to focus on IT security? Is security an ongoing priority for your IT department or contracted support personnel?

IT professionals serve as firefighters, going from one blazing issue to the next. Too often, there are more outstanding support and implementation issues than resources within the IT area, so security gets put on the back burner. Not to mention that new vulnerabilities are reported and breaches are exposed on a daily basis, and keeping up is quite difficult.

So the real question is whether someone knows when the router was last updated. Is someone responsible for the task of monitoring each and every piece of hardware and software in use to ensure that it is up to date? This is one of a multitude of tasks necessary to maintain a secure IT environment.

The cyber risks are so great these days that management must get involved to ensure appropriate mitigation strategies are in place. We all know the first step to treating addiction is admitting there is a problem. Similarly, the first step toward cyber security is acknowledging that you are at risk.

Sure, you may know the Target CEO lost his job because of a breach, but that was at a huge company and could never happen to you, right? Of course it could, no matter how large or small your organization is. Every organization and individual is at risk of a breach incident. The examples of the \$1.5 million heist against a California escrow firm that forced the company to close and lay off the entire staff or the New York marketing agency forced to merge because of a corporate account takeover loss may hit closer to home.

Without knowledge of the risks and security environment, and proper employee training, nonprofit organizations remain extremely vulnerable. It is imperative that all organizations -- no matter how large or small -- take a proactive approach to ensuring data security.

That approach must include a few basic elements:

1. Maintaining some knowledge of current cyber security issues
2. Providing mandatory information security training for all employees
3. Implementing strong IT controls
4. Updating all systems at all times
5. Performing periodic assessments of your organization's security and your vendors' security

It's vital for nonprofit leaders to take ownership of this major risk area to protect their organization and employees.

Author Lisa Traina is president of [Traina & Associates](#), an IT security audit firm. Lisa uses her more than 30 years of experience as a CPA, Certified Information Technology Professional (CITP), and Chartered Global Management Accountant (CGMA) to assist financial institutions, hospitals, CPA firms, and their clients in implementing measures to secure data and manage risks.

What Nonprofits Need to Know About Corporate Sponsorships

In 2002, the IRS released final regulations concerning "qualified corporate sponsorships." Several rulings and

court cases prompted these rules, which are enumerated in Treasury Regulation 1.513-4.

Ultimately, the requirements boil down to whether payments by "sponsors" are corporate sponsorships (excluded from unrelated business income) or advertising (subject to unrelated business income tax). The final regulations consider advertising to be a "substantial return benefit."

Basically, corporate sponsorships represent an IRS-granted exception to the unrelated business income tax (UBIT) in the federal tax code. Exempt organizations must pay UBIT on income-producing activities that are:

1. a trade or business;
2. regularly carried on; and
3. unrelated to their exempt purposes.

There are numerous exclusions from UBIT, including "corporate sponsorships."

The corporate sponsorship rules provide a closely defined safe harbor of activities or actions on which no tax will be due. The 2002 final regulations provide six acceptable actions, or corporate sponsorship elements, that would avoid the "substantial return benefits" realm:

1. Listing the name, logo, or product line of the sponsor;
2. Awarding exclusive sponsorship (for example, only one airline would be a sponsor, only one hotel would be a sponsor, etc.);
3. Providing logos or slogans that do not contain any qualitative language or comparative description of the products;
4. Listing the payor's locations, addresses, phone numbers, and Internet addresses;
5. Providing value-neutral descriptions of the sponsor's product display; and
6. Listing the sponsor's brands or trade names.

Conversely, the regulations list four things that are deemed substantial return benefits, including "advertising." These actions (e.g. "what you can't do") are:

1. Advertising;
2. Designating a sponsor as an exclusive provider;
3. Providing facilities, services, or other privileges to the sponsor unless they are of "insubstantial value;" and
4. Granting either exclusive or nonexclusive rights to use the sponsor's intangible asset (e.g., name or logo).

Example 1:

Calvary College, a private college that is exempt under I.R.C. section 501(c)(3), receives \$5,000 from a local auto dealer to hang a banner in the college's basketball/volleyball arena. The only content on the banner is the name of the auto dealer, the logo of its national brand, and a web address.

Because the banner contains only the type of information that is included in the qualified sponsorship rules -- and not any qualified language or inducement to buy -- the \$5,000 sponsorship would be excluded from unrelated business income.

Beyond the lists of activities, let's look at three areas of the rules that can cause issues:

1. Substantial return benefits
2. Services provided
3. Internet issues

Substantial Return Benefits

Note that number three on the list of four "advertising" activities concerns "insubstantial benefits." By rule, anything the sponsor receives in return for their sponsorship (greens fees, facilities use, tickets, goods or services, etc.) must have a fair market value of 2% or less of the sponsorship payment. If the value is more than 2%, the entire value of the return benefit is subject to UBIT. While 2% does not sound "substantial," the rules are the rules.

Example 2:

The same Calvary College situation as in Example 1 but in addition, the college gives the sponsor two season tickets to all basketball and volleyball games. The fair market value of these tickets is \$400.

Because the value of the season tickets is more than 2% of the \$5,000 payment, the entire \$400 "return benefit" is considered the value of the advertising and subject to UBIT.

Services Provided

A subset of the substantial return benefit rules concerns the value of services that may be provided by the tax-exempt organization to a given sponsor. If services are required, the fair market value of those services would generally be considered unrelated business income. It can be a particularly interesting project to reasonably value such services.

Example 3:

The same Calvary College situation as in Example 1 but in addition, the sponsorship contract requires the college's

basketball coach to make three appearances at events for the sponsor -- wearing the sponsor's logo on his clothing and speaking about the sponsor's "great service." The fair market value of these appearances is \$1,000.

Because services are required as part of the sponsorship agreement, the \$1,000 fair market value of the coach's appearances is considered unrelated business income.

Internet Issues

If a sponsorship payment also includes a hyperlink to the sponsor's website placed on the tax-exempt organization's website (maybe as part of the sponsor's name or logo), care should be taken to ensure that unrelated business income is not generated. Rulings have stated that a "clickable" link to a sponsor's website will not result in unrelated business income -- even if there is advertising verbiage on the linked website -- as long as the tax-exempt organization does not "endorse" the sponsor's products. However, the IRS has not released guidance in this area. We cannot be sure that such guidance, when it is issued, will be in accordance with what we've seen historically.

Example 4:

The same Calvary College situation as in Example 1, except that the college also includes the sponsor's logo on its athletics website, along with a clickable link to the sponsor's website.

Because only the sponsor's logo and a link to its website are provided on the college's website, without endorsement or advertising language, no unrelated business income should be generated from this logo and link.

Recent Tax Reform

In early 2014, the House Ways and Means committee released a draft paper enumerating many proposed changes to the tax code. The draft makes significant changes to the treatment of corporate sponsorships for UBIT purposes. As proposed, if an organization uses or acknowledges the name or logo of a sponsor's product line, the sponsor's payment will be treated as per se unrelated trade or business income. Additionally, if an organization receives more than \$25,000 of qualified sponsorship payments for any one event, the use or acknowledgement of the sponsor's name or logo must appear with the names of a "significant portion" of the other donors to the event.

We expect to hear much more about these potential changes throughout the year.

Author [Dave Moja](#) serves as partner and National Director of Not-for-Profit Tax Services at CapinCrouse. He has 28 years of accounting experience and serves several industry committees, including the IRS Advisory Committee

on Tax Exempt and Government Entities (ACT), Exempt Organizations subcommittee and the AICPA Not For Profit Advisory Committee.

CapinCrouse Announces Retirement of Robert H. Taylor

Robert H. Taylor has retired as a partner of the firm, effective June 1.

Rob had been a partner in the New York office since 2013, when his former practice and team members joined with CapinCrouse. He served a broad range of not-for-profit organizations for more than 40 years, and we sincerely appreciate the professional expertise, insight, and dedication Rob has provided to the firm and our clients.

Rob worked proactively with clients and the firm to ensure a smooth transition. If you have any questions, please contact James Oberle, Northeast Regional Director, at joberle@capincrouse.com or 212.653.0681.

Newsbits

Community foundations embrace impact investing

A report from the Democracy Collaborative concludes that community foundations, which traditionally have focused on a passive approach to making grants, are now experimenting with impact investing -- making investments that seek both financial return and social impact.

The Greater Cincinnati Foundation, for example, has found wide donor interest in the approach. It made its first impact investment (a \$1 million loan) in 2001 and, to date, has committed \$10 million to impact investing. Notably, the foundation has found that impact investing is attractive to a wide spectrum of donors, including corporate, individual, and donor-advised funds.

IRS rarely audits nonprofits for political activity

Information obtained by the Center for Public Integrity indicates that the IRS almost never audits social welfare

organizations to determine if they're spending too much on politics. The IRS told the Center that it has only begun auditing 26 organizations specifically for political activity since 2010 -- a small percentage of the more than 1 million not-for-profits under the agency's purview.

A Center investigation published in July 2014 found that "Congress has systematically weakened the IRS's exempt organizations division in recent years, leading to the IRS all but quitting its regulation of politically active nonprofit groups."

Congress considers making charitable tax extenders permanent

A number of charity-related "tax extenders" have been introduced in Congress, including several in bills which have passed the House of Representatives and await Senate action. Among other things, these bills would reinstate and make permanent the tax deduction for charitable contributions of food inventory and land conservation easements. They also would make permanent the IRA charitable rollover, which allows the exclusion of distributions from IRAs from gross income when they're transferred directly to a charitable organization.

The introduction of the legislation suggests a renewed interest in such matters in Congress.

Mining social media helps identify likely donors

The *New York Times* reports that some technology startups are now using social media analytics to target and engage likely donors to nonprofits. For example, EverTrue and Graduway are working with institutions of higher learning to evaluate alumni interactions with an institution's Facebook page to identify those alumni with the greatest propensity to donate. They also distinguish those individuals likely to donate to a capital campaign from those more interested in a specific athletic or academic cause. Similarly, LinkedIn profiles can be mined to find people in certain industries or companies with a historically higher likelihood of giving.

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