



## End-of-Year Guidance Clarifies the Treatment of Opt-Out Payments and Extends Reporting Deadlines

January 6, 2016

Although many employers have already taken steps to satisfy their reporting obligations under the Affordable Care Act (“ACA”), the IRS recently announced several important changes that delay the ACA reporting deadlines and also answer some questions that affect employers that offer employees cash for opting out of health care coverage. As explained below, employers that adopted opt-out arrangements before December 16, 2015, will not be required to include opt-out payments as part of the employee’s cost of coverage. For employers that adopt opt-out payments after December 16, 2015, the cost of the opt-out payment should be treated as part of the employee’s cost of coverage.

### 1095 Reporting

The ACA requires large employers to report certain information relating to the employer’s offer of health insurance coverage to its full-time employees. As part of this information, provided to the IRS on Form 1095-C, the employer must report the employee’s cost of the health insurance coverage. The IRS uses the information regarding the employee’s cost of coverage to determine whether the employer’s coverage is affordable.

### Affordability

Under the ACA, employers with 50 or more full-time employees must offer “affordable” coverage to their full-time employees or potentially be subject to a tax penalty. Generally, coverage will be “affordable” if the employee cost for the lowest level of single coverage is less than 9.5% of that employee’s total household income. Employers who fail to offer affordable coverage may be subject to a \$3,000 excise tax for each full-time employee who enrolls on a state-run health exchange.

### Effect of Opt-Out Payments on Affordability

Amounts that employees contribute towards their coverage count as an employee cost, including contributions made to health coverage offered under a § 125 cafeteria plan. As part of a § 125 cafeteria plan, many employers also offer a cash payment to otherwise eligible employees who elect not to enroll in the employer’s coverage (“opt-out payment”). Recent IRS guidance clarifies the treatment of opt-out payments for purposes of calculating the employee’s cost of coverage.

IRS Notice 2015-87 provides that the IRS will treat opt-out payments as part of the employee cost if they are available to any employee who declines employer-sponsored coverage (“unconditional opt-out arrangement”). For example, if an employer requires employees to contribute \$200 per month towards health coverage, and an employee can receive \$100 per month for declining coverage, the employee cost of coverage is \$300 per month.

IRS Notice 2015-87 also provides relief to unconditional opt-out arrangements that were offered before December 16, 2015. Unconditional opt-out arrangements will qualify for this relief if: (1) the opt-out arrangement (or a substantially similar opt-out arrangement) was offered for a plan year including December 16, 2015; (2) a board, committee, or an authorized officer of the employer adopted the opt-out arrangement before December 16, 2015; or (3) the employer provided written communications to employees on or before December 16, 2015, indicating that the opt-out arrangement would be provided in the future. Employers are not required to include the opt-out payments in the employee's cost of coverage until at least January 1, 2017, for opt-out arrangements that meet the above criteria. This means that, for the time being, these employers will not include the opt-out payments when calculating and reporting affordability under the ACA. Employers adopting opt-out arrangements after December 16, 2015, will include the opt-out payment as part of the employee's cost of coverage.

This latest guidance from the IRS will be an important consideration for Wisconsin's local government employers that offer health insurance through the Department of Employee Trust Funds ("DETF"). Previously, public employers that offer health insurance through the DETF were not permitted to offer employees opt-out payments. The DETF recently changed course and now allows local government employers to offer opt-out payments. Based on IRS Notice 2015-87, local government employers offering insurance through the DETF who have not yet adopted an opt-out arrangement and were contemplating such an arrangement will have to carefully consider the effect of such payments on the affordability of the employer's coverage.

### ACA Reporting

The IRS also released a separate notice that extended the deadline for furnishing and filing IRS Forms 1094-B, 1094-C, 1095-B, and 1095-C. The IRS extended the deadlines as follows:

The date by which an employer must furnish to its employees Forms 1095-B and 1095-C changed from February 1, 2016 to March 31, 2016; and

The deadline for filing Forms 1094-B, 1094-C, 1095-B, and 1095-C electronically with the IRS changed from March 31, 2016, to June 30, 2016. If filing such forms by paper, the deadline changed from February 29, 2016, to May 31, 2016.

If you have any questions about this, ACA reporting, or any other employee benefit questions, please contact Matt Flanary at [mflanary@buelowvetter.com](mailto:mflanary@buelowvetter.com) or (262) 364-0253 or Brett Schnepfer at [bschnepfer@buelowvetter.com](mailto:bschnepfer@buelowvetter.com) or (262) 364-0262, or your Buelow Vetter attorney.

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