

# Compliance for Health & Welfare Plans

**Presented by**

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# AGENDA

- Overview of ERISA
- ERISA's Written Plan Document Requirement
- ERISA's Disclosure Requirements
- ERISA's Reporting Requirements
- Common ERISA Mistakes to Avoid
- ERISA Compliance Checklist
- New Reporting Requirements under ACA (6055 & 6056)
- ACA and Cafeteria Plans and HRAs
- Questions

# Overview of ERISA



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# What is ERISA?

Comprehensive federal law that regulates pensions and other employee benefits

Largely preempts state law

Imposes strict fiduciary code of conduct on Plan Sponsors and Plan Administrators

Parts of Title I apply to Employee Welfare Benefit Plans

- Part 1 – Reporting and Disclosure
- Part 4 – Fiduciary Responsibility
- Part 5 – Administration and Enforcement
- Part 6 - (COBRA) Continuation Coverage and Additional Standards for Group Health Plans.
- Part 7 – Group Health Requirements (HIPAA, Newborns' and Mothers' Health Protection Act, Mental Health Parity Act, and Women's Health and Cancer Rights Act)

# How is ERISA enforced?

## ■ US Department of Labor (DOL)

- Enforces Title I of ERISA through its Employee Benefits Security Administration (EBSA)
- Failure to comply with ERISA can be costly to Employers
  - DOL enforcement actions
  - Penalty assessments
  - Employee lawsuits
  - Criminal action

# Important terms defined by ERISA

## Employee Welfare Benefit Plan

- A plan, fund or program;
- Established or maintained by an Employer;
- Providing specific benefits through the purchase of insurance or otherwise to participants and beneficiaries

## Plan Administrator

- The Plan Sponsor (Employer); or
- Person designated in the plan document

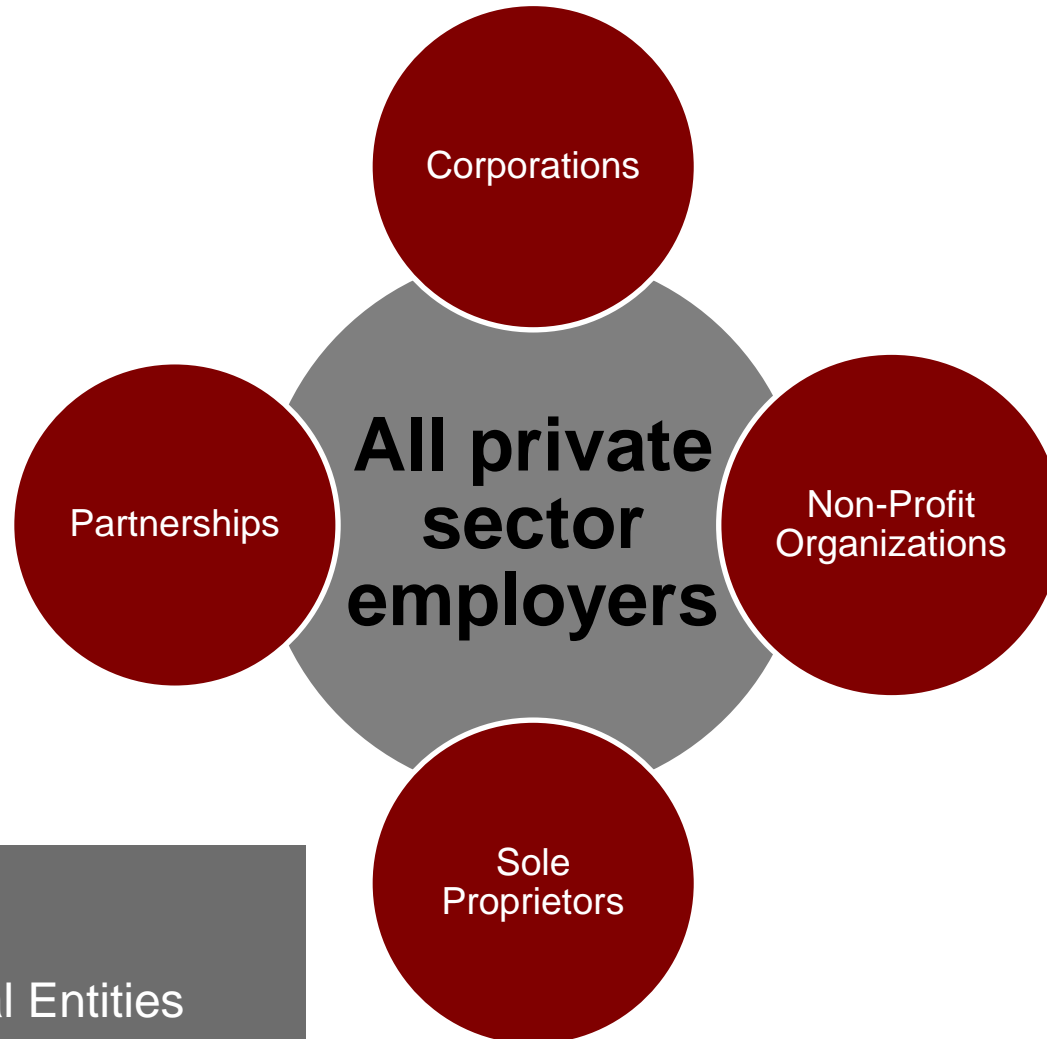
## Participant

- Any employee or former employee who is or may become eligible to receive a benefit from a “plan” sponsored by an Employer

## Beneficiary

- Any person designated by a participant (or by the terms of the ERISA plan) who is or may become entitled to a benefit from a “plan” sponsored by an Employer

# Employers subject to ERISA



## Exemptions:

- Churches
- Governmental Entities

# Employee Welfare Benefit Plan

Benefits subject  
to ERISA:

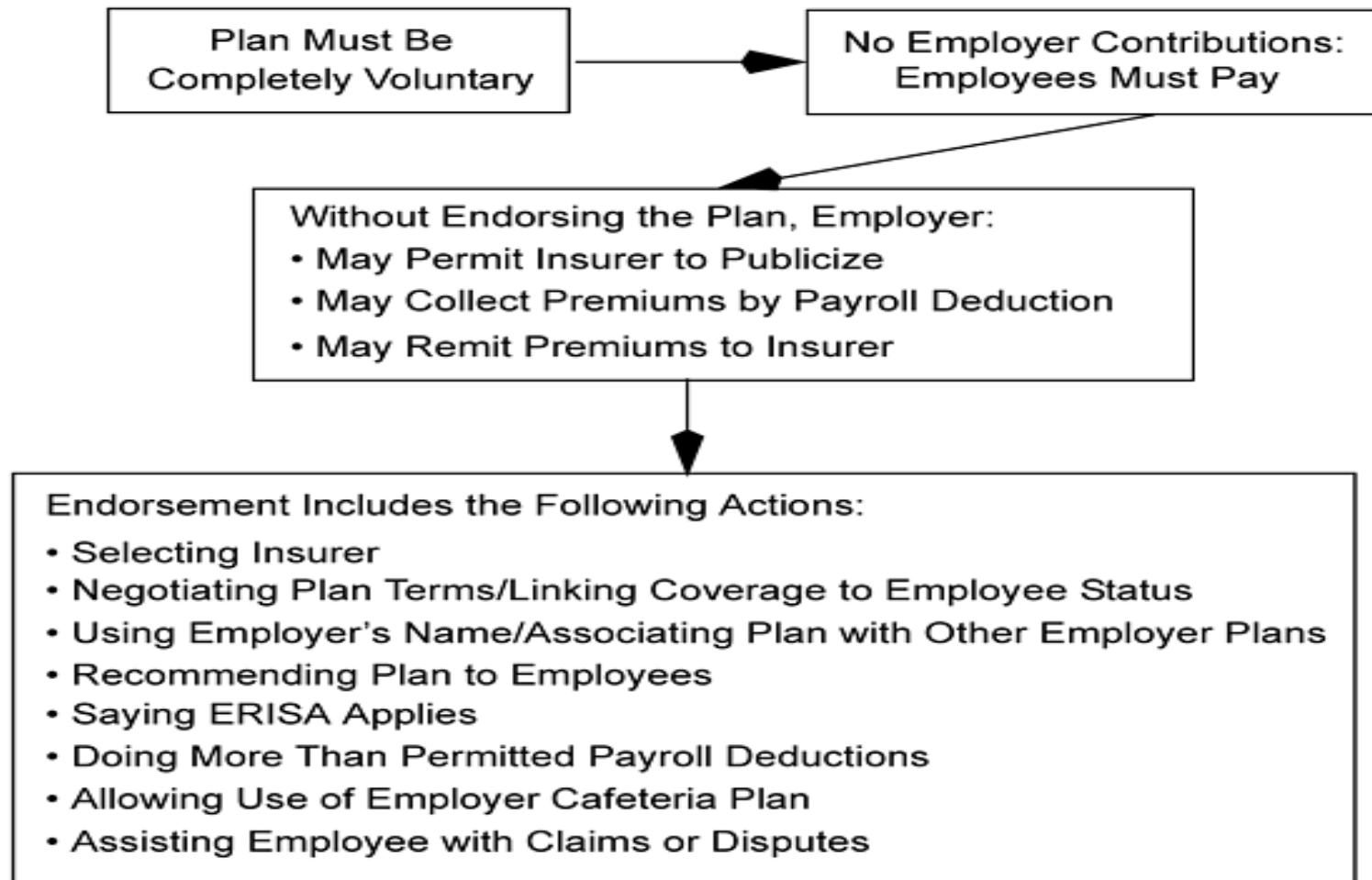
- Medical, dental and/or vision coverage
- Healthcare flexible spending accounts (Health FSA)
- Health reimbursement arrangements (HRA)
- Accidental death & dismemberment coverage
- Group term life insurance
- Disability coverage
- Certain wellness and EAP programs
- Certain voluntary benefits that **do not meet** the Safe Harbor exception

# Employee Welfare Benefit Plan

## Safe Harbor exception for voluntary plans

- Applies to **VOLUNTARY 100% employee** paid benefits that meet the following criteria:
  - No contributions made by the Employer
  - Participation in the program is completely voluntary for employees
  - Employer permits the insurer to publicize the program to employees, ***without endorsing the program***
  - Employer is allowed to collect premiums through payroll deductions and remit to the insurer
  - Employer receives no consideration in the form of cash or otherwise in connection with the program

# Employee Welfare Benefit Plan



# ERISA's Written Plan Document Requirements

# ERISA Written Plan Document Requirement

## Key ERISA Requirements

- **Plan Document** for *each* benefit Plan
  - Benefits must be provided through a written document
  - ERISA does not dictate format
- Plan terms must be followed and strict fiduciary standards met
- An ERISA Plan can exist without a written plan document
- Failure to have a written plan document does not relieve the plan, plan sponsor and fiduciaries from ERISA's compliance obligations

# ERISA Written Plan Document Requirement

## ERISA required plan provisions:

- Named Fiduciary
- Eligibility provisions
- Allocation of responsibilities
- Funding policy
- How payments are made
- Claims procedures
- Amendment procedure
- Distribution of assets on plan termination (if applicable)
- ERISA appeals rights

# ERISA Written Plan Document Requirement

## ERISA required plan provisions continued:

- COBRA and USERRA rules
- HIPAA portability provisions
- HIPAA privacy and security provisions
- Minimum hospital stay after childbirth
- QMCSO rules
- Disclosures regarding mental health parity and substance abuse benefits, coverage of reconstructive surgery following mastectomy, coverage regarding adopted children, and various mandates under health care reform

# Carrier Documents Lack Most ERISA Requirements

Plan Administrator is responsible for ERISA compliance

Insurance companies do not provide the ERISA plan document or the SPD

Master contract, certificate of coverage and summary of benefits contain some but not all of the required provisions under ERISA

TPAs for self-funded medical plans often do not provide a plan document or SPD

# How many Plan Documents?

Employers may choose to “bundle” or “wrap” all of the benefits into a single ERISA Plan

- “Wrap” document wraps itself around a set of other documents (i.e., insurance documents) to combine into one legal document
- Fills in required provisions the insurance documents do not contain
- Insurance documents, such as the Certificate of Coverage, should be incorporated by reference and attached
- One (1) SPD for distribution
- One (1) Form 5500 Filing (when required)

# Plan Document: Consequences of Noncompliance

Inability to respond to written participant requests

- **\$110 per day penalty** if not provided within 30 days

Lawsuits brought by employees or former employees based on past practices or “extrinsic” evidence that is less favorable to the employer

- If written plan document exists, extrinsic evidence is not typically allowed

Limited ability to amend or terminate plan

# ERISA's Disclosure Requirements

# ERISA Disclosure Requirements

## Disclosures required of welfare benefit plans:

- **Summary Plan Description (SPD)**
- **Summary of Material Modifications (SMM)**
- Claims procedure notice
- Summary Annual Report (if 5500 is required)
- Summary of Benefits of Coverage (SBC) for group health plans subject to health care reform
- COBRA Notices (if employer is subject to COBRA)
- HIPAA Special Enrollment Notice
- HC Reform Notices
- Other disclosures (QMCSO receipt and determination letters, WHCRA, NMHPA)

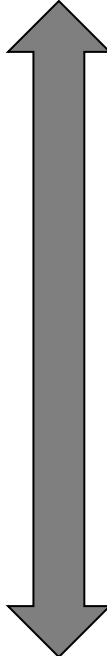
# Summary Plan Description (SPD)

ERISA requires every employee benefit plan to have an SPD:

- **NO SMALL PLAN EXCEPTION!**
- Content requirements from both ERISA and DOL regulations
- Primary vehicle for informing participants and beneficiaries of their rights and the benefits available
- When a Plan is amended, ERISA requires a **Summary of Material Modifications (SMM)** to be included in the SPD
- Plan Administrator, *not Insurer or TPA*, is responsible for the SPD and any related SMMs
- Must be sufficiently accurate and comprehensive
- Must be written in a manner to be understood by the average plan participant

# Summary Plan Description (SPD)

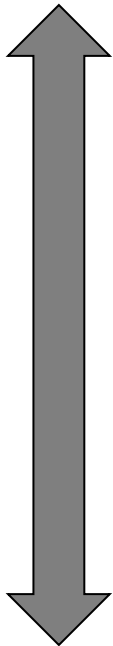
## SPD content requirements:

- 
- The name of the Plan
  - Plan Sponsor information, including EIN
  - ERISA plan number
  - Type of Plan
  - Type of administration (i.e., contract administration, insurer administration, sponsor administration)
  - Plan Administrator information (typically same as Plan Sponsor)
  - Trust information (if applicable)
  - Information for person or entity designated as agent for legal process
  - Collective bargaining information (if applicable)
  - Plan year information

# Summary Plan Description (SPD)

## SPD content requirements continued:

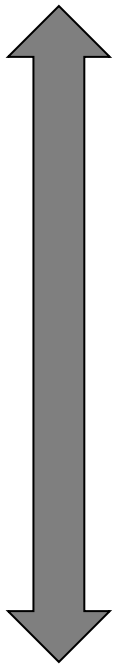
- Description of Plan eligibility provisions
- Description of Plan benefits
- Description of circumstances causing loss or denial of Plan benefits
- Description of Plan amendment and termination provisions
- Plan subrogation or reimbursement provisions (typically applicable to self-funded Plans)
- Plan contribution and funding information
- ERISA claims procedures
- DOL information where ERISA rights can be obtained
- Disclosures regarding discretionary authority
- Disclosure of participant and beneficiary rights under ERISA



# Summary Plan Description (SPD)

## SPD content requirements continued:

- Offer of assistance in non-English languages (applicable to Plans that cover certain number of non-English speaking individuals)
- Plan's policy regarding recovery of overpaid benefits
- MLR rebate information and method for allocating refunds
- Description of health insurers role
- Must also include the following disclosures:
  - COBRA
  - USERRA
  - HIPAA
  - Newborn's and Mothers' Health Protection Act (NMHPA)
  - Qualified Medical Child Support Orders (QMCSOs)
  - Michelle's Law
  - Women's Health and Cancer Rights Act (WHCRA)
  - Certain Health Care Reform Disclosures



# Summary Plan Description (SPD)

## Who must be furnished with an SPD?

- Participants covered under the Plan
- COBRA qualified beneficiaries
- Parent or guardian under QMSCO
- Spouse or dependent of deceased employee who remains entitled to benefits

## When must the SPD be furnished?

- Within 90 days for newly covered participants
- If new plan, within 120 days of effective date
- SPD must be updated every 5 years if material changes have been made
- SPD must be updated every 10 years if no material changes have been made

# Summary of Material Modifications (SMM)

## When is an SMM required?

- A “material modification” in the terms of the Plan
- A “material reduction” in covered services or benefits
- Any change in information required in SPD
- No guidance regarding a “material modification”; determination based on facts-and-circumstances

## When must the SMM be furnished?

- Within 210 days after end of plan year in which material change is adopted
- Within 60 days of effective date of material reduction in services or benefits

# SPDs and SMMs

Delivery method must be calculated to ensure actual receipt and full distribution

Approved DOL distribution methods:

First class  
mail

Special  
inserts to  
company  
publications

Second and  
third-class  
mail

In-hand  
delivery at  
worksite

Electronic  
(certain  
requirements  
must be met)

# SPDs and SMMs: Failure of Noncompliance

Inability to respond to written participant requests

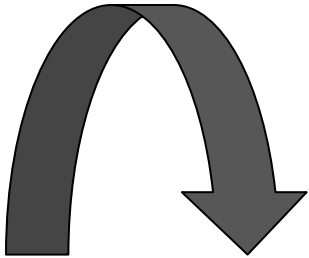
- **\$110 per day penalty** if not provided within 30 days

Possible criminal penalties for willful failures

Possible enforcement of informal summaries

Failure to furnish SMM might affect validity of plan amendment

Various notice/disclosure/administration violations can lead to excise tax/penalties



# Why is compliance so important now?

Increased audit activity around employee welfare benefit plans

- Plan Document and SPD are at the top of the list
- Estimated 95% of employers are not compliant

Particular focus on compliance with the Affordable Care Act (ACA)

Heightened participant expectations and awareness

# ERISA's Reporting Requirements

# Reporting: Annual Form 5500 Filing

Reporting obligation imposed by Title I of ERISA

Reports specific plan information to DOL



Generally, the Plan Administrator is responsible for filing the Form 5500

Electronic filing is required



Form 5500 is due seven (7) months after the end of the plan year

2 ½ month extension with Form 5558

Automatic extension to due date of Employer income tax return

# Annual Form 5500 Filing: Who must file?

## Exemption for small unfunded and/or insured plans

- Unfunded plans must have “no assets”
- To qualify, a Plan must cover “fewer than 100 participants at the beginning of the plan year”
- Only “covered” participants must be counted
  - A “participant” is any “employee or former employee” of an employer
  - Do not count covered spouses or children

# Annual Form 5500 Filing: Who must file?

## What Health & Welfare Plans Must File a Form 5500?

### Must File:

- Large funded plans
- Large unfunded plans\* (or deemed unfunded by Tech. Rel. 92-01)
- Large insured plans
- Large combination unfunded/insured plans
- Small funded plans (unless deemed unfunded by Tech. Rel. 92-01)

### Completely Exempt:

- Small unfunded plans (or deemed unfunded by Tech. Rel. 92-01)
- Small insured plans
- Small combination unfunded/insured plans
- Plans for certain select employees
- Day-care centers
- Certain apprenticeship and training plans
- Certain employee organization plans
- Plans not subject to ERISA

# Annual Form 5500 Filing: Penalties for Noncompliance

- Under ERISA §502, the DOL may assess a civil penalty of up to **\$1,100 per day**
- Penalties are cumulative and penalty is per day for each Form 5500 that is not filed on time
- DOL has taken the position that filings are not subject to a statute of limitations
- DOL offers reduced penalties under program for voluntary correction of Form 5500 filings (DFVC)

# Common ERISA Compliance Mistakes to Avoid

- Failure to identify benefits subject to ERISA
- Plan document failures
- Failure to provide adequate SPD
- Form 5500 filing failures

# ERISA Compliance Checklist

1-49 Employees	50-99 Employees	99+ Employees
Plan Document	Plan Document	Plan Document
SPD/SMM	SPD/SMM	SPD/SMM
SBC	SBC	SBC
Marketplace (Exchange) Notice	Marketplace (Exchange) Notice	Marketplace (Exchange) Notice
COBRA (20+)	COBRA	COBRA
HIPAA Notice Special Enrollment Rights	HIPAA Notice Special Enrollment Rights	HIPAA Notice Special Enrollment Rights
HIPAA Notice of Privacy Practices (3yrs)	HIPAA Notice of Privacy Practices (3yrs)	HIPAA Notice of Privacy Practices (3yrs)
Medicare Part D Notice*	Medicare Part D Notice*	Medicare Part D Notice*
Newborn's and Mother's Health Protection Act Notice	Newborn's and Mother's Health Protection Act Notice	Newborn's and Mother's Health Protection Act Notice
WHCRA Notice*	WHCRA Notice*	WHCRA Notice*
CHIP Notice*	CHIP Notice*	CHIP Notice*
	FMLA	FMLA
		5500*
		SAR*

# Section 6056 Reporting

# Section 6056 Reporting

- ACA added Section 6056 to the Internal Revenue Code
  - Requires **applicable large employers** (ALEs) and **small employers** that sponsor self-insured plans to report information about the health insurance coverage they offered (or did not offer) by:
    - Filing informational returns with the IRS
    - Providing statements to full-time employees
- Informational returns and statements must be provided beginning in 2016
  - To report coverage in 2015

# Section 6056: Who is Required to Report?

- ALEs that are subject to the employer shared responsibility provisions under IRC 4980H
  - An employer that employed an average of 50 or more full-time employees (including equivalents) on business days during the preceding calendar year
  - **Controlled group rules apply for determining ALE status**
- Small employers that sponsor self-insured plans are also required to report

# Rules for Self-Insured Plans

ALEs that sponsor self-insured group health plans must also report information under IRC §6055

Information required under Sections 6055 and 6056 will be reported on a single form

# Section 6056: ALE Status

Each month  
throughout 2014:

- Identify the number of full-time employees;
- Determine the number of full-time equivalents (FTEs) by aggregating hours of service for anyone not full-time and then divide aggregate hours of service by 120;
- Add the number of full-time employees to the number of FTEs to determine the number of employees to count;
- Add up the numbers for each month for an aggregate total for the year and then divide by 12 to get an average. If less than 50, the employer is **NOT** an ALE for 2015. If more than 50, the employer **IS** an ALE for 2015

# Section 6056: ALE Status

## ■ Example:

□ January 2014

- 45 full-time employees
- 15 part-time employees who worked 1,200 total hours
- $1,200 \text{ aggregate hours} / 120 = 10 \text{ FTEs}$
- 45 full-time employees + 10 FTEs = 55 counted employees

# Purpose of Section 6056 Reporting

## IRS:

Administer the employer shared responsibility provisions of IRC §4980H (pay or play)


## IRS and ALE's:

Help determine whether an employee is eligible for a premium tax credit for Exchange coverage

# Forms for 6056 Reporting

Form #	Form Name	Purpose:
1094-C	Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return	<ul style="list-style-type: none"> <li>• Report summary information for each employer to the IRS</li> <li>• Certify eligibility for medium-sized employer delay (if applicable)</li> <li>• Transmit Forms 1095-C to the IRS</li> </ul>
1095-C	Employer-Provided Health Insurance Offer and Coverage	<ul style="list-style-type: none"> <li>• Report information about each employee</li> <li>• Satisfy combined 6055 and 6056 requirements (for ALEs with self-funded plans)</li> </ul>

# Section 6056: Methods of Reporting

 **General Method** may be used by all ALEs for reporting to the IRS and furnishing statements to full-time employees

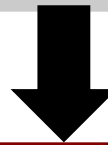
 **Alternative Methods** may be used by eligible ALEs for certain employees

- ALEs that are not eligible to use an alternative reporting method for certain employees must use the general method for those employees

# Section 6056: General Method Form 1094-C

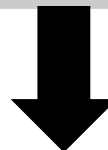
**ALEs must report information about the health coverage, if any, offered to its full-time employees, including whether an offer of health coverage was (or was not) made:**

Applies to all ALEs, regardless of whether they offered health coverage to all, none or some of their full-time employees



**For each full-time employee, regardless of whether coverage was offered to the employee or not, the ALE must report:**

Whether an offer of health coverage was or was not made to the employee AND if an offer was made, the required information about the offer



**Therefore, even if an ALE does not offer coverage to any full-time employees, it must file returns with the IRS and furnish statements to each full-time employee**

# Section 6056: General Method Form 1094-C

- ✓ Employer name, address and EIN
- ✓ Contact person's name and telephone number
- ✓ The calendar year for which information is reported
- ✓ Whether MEC was offered to full-time employees (and their dependents) each month
- ✓ Each full-time employee's share of the lowest cost monthly premium for self-only coverage providing MV
- ✓ The number of full-time employees for each month
- ✓ The name, address and SSN of each full-time employee and the months the employee was covered under the employer sponsored plan

# Section 6056: General Method Form 1095-C (Info to FT Employees)

**ALE must furnish to each FT employee a written statement:**

- ALEs name, address and EIN
- Must show information reflected on Form 1095-C filed with the IRS with respect to that full-time employee (and his/her spouse and dependents)

**Format of written statement may be:**

- Copy of the Form 1095-C; or
- A substitute form that includes all of the pertinent information reflected on 1095-C

# Section 6056: Alternative Methods of Reporting

Available for specific groups of employees:

- Intended to minimize costs and administrative tasks
- Allows employers to provide less detailed information

Two alternative methods:

- Qualifying Offer Method
- 98% Offer Method

# Section 6056: Qualifying Offer Method

- The ALE must certify on its transmittal form that, for all months during the year in which the employee was a full-time employee for whom a IRC 4980H penalty could apply, the employer made a **“Qualifying Offer”**:
  - Offered MEC providing MV at an employee cost for self-only coverage of less than 9.5% of the FPL **AND** offered MEC to the employee’s spouse and dependents (if any)
- ALE must use the **general reporting method** for employees who received a Qualifying Offer for fewer than 12 months
  - *Transition relief available for 2015*

# Section 6056: Qualifying Offer Method

## IRS Returns – File with IRS

- **Form 1094-C**: Certify the ALE is eligible to use the Qualifying Offer Method
- **Form 1095-C**:
  - **Do not** provide the employee contribution for the lowest-cost self-only coverage providing minimum value
  - Use the **Qualifying Offer code 1A** to indicate that the employee received a Qualifying Offer for all 12 months

## Employee Statements – Provide each full-time employee who received a Qualifying Offer with:

- A **copy of Form 1095-C** as filed with the IRS; or
- A **simplified employee statement** containing the following information:
  - Employer name, address and EIN
  - Contact name and telephone number
  - A statement indicating that for all 12 months of the calendar year, the employee and his/her spouse and dependents (if any) received a Qualifying Offer and therefore are not eligible for a premium tax credit

# Qualifying Offer: Transition Relief for 2015

Transition Relief available in 2015 for ALEs that certify that they have made a Qualifying Offer to at least 95% of their full-time employees (and spouses and dependents)

## File with the IRS:

- **Form 1094-C**: Certify that the ALE is eligible for the Transition Relief
- **Form 1095-C**:
  - Do not provide the employee contribution
  - Use **code 1A** for the months the employee received a Qualifying Offer
  - Use **code 1I** for the months the ALE is eligible for the Transition Relief

## Employee Statements to full-time employees:

- A **copy of Form 1095-C**; or
- A **simplified statement** containing:
  - Employer name, address and EIN
  - Contact name and telephone number
  - Statement that the employee (spouse/dependents) received a Qualifying Offer for all 12 months and are not eligible for a premium tax credit
  - The employee (spouse/dependents) may be eligible for a premium tax credit for one or more months of 2015

# 6056 Reporting: 98% Offer Method

- The ALE must certify on its transmittal form that it offered affordable, MV coverage to at least **98% of the employees reported** on its Section 6056 return
  - Affordability is measured based on pay or play safe harbor method
  - Allows ALE to report without specifying the number of full-time employees or identifying which employees were full-time
  - ALE must still file Forms 1095-C on behalf of all full-time employees

# 6056 Reporting: 98% Offer Method

## IRS Returns – File with IRS

- **Form 1094-C**:
  - Certify the ALE is eligible to use the 98% Offer Method
  - Do not identify the ALEs full-time employee count
- **Form 1095-C**: For all full-time employees

## Employee Statements – Provide each full-time employee:

- A **copy of Form 1095-C** as filed with the IRS; or
- A **simplified employee statement** containing all of the required

# 6056 Reporting: Medium Sized ALEs

## Pay or Play Final Rules:

- Included a one-year delay for ALEs with fewer than 100 full-time employees (including FTEs) on business days during 2014
- **ALEs eligible for one-year delay will still report under Section 6056 for 2015**

## The ALE must certify on its Section 6056 transmittal that:

**It Employs a limited workforce**

**Did not reduce its workforce size or overall hours of service to satisfy the workforce size condition**

**Did not eliminate or materially reduce the health coverage, if any, it offered as of 2/9/2014**

**ALEs with non-calendar year plans will also certify with regard to the months of their 2015 plan year**

# Section 6055 Reporting

# Section 6055: Who is Required to Report?

Any person/entity that provides minimum essential coverage to an individual:

- **Insured Plans:** The health insurance issuer (not the employer)
- **Self-Insured Group Health Plans:** The Plan Sponsor
- **Government-Sponsored Programs:** The executive department or agency of a governmental unit that provides coverage under the government-sponsored program

# Section 6055: Self-Insured Plan Sponsors

If the Plan is...	The Plan Sponsor is...
Maintained by a single employer	The employer
Maintained by more than one employer (but not a multiemployer plan under ERISA)	Each participating employer (without application of aggregation rules)
A multiemployer plan (as defined under ERISA)	The board of trustees, or other similar group of representatives of the parties who establish or maintain the Plan
Maintained solely by an employee organization	Employee organization
Sponsored by some other entity	The person designated by plan terms, or, if no person is designated, each entity that maintains the Plan

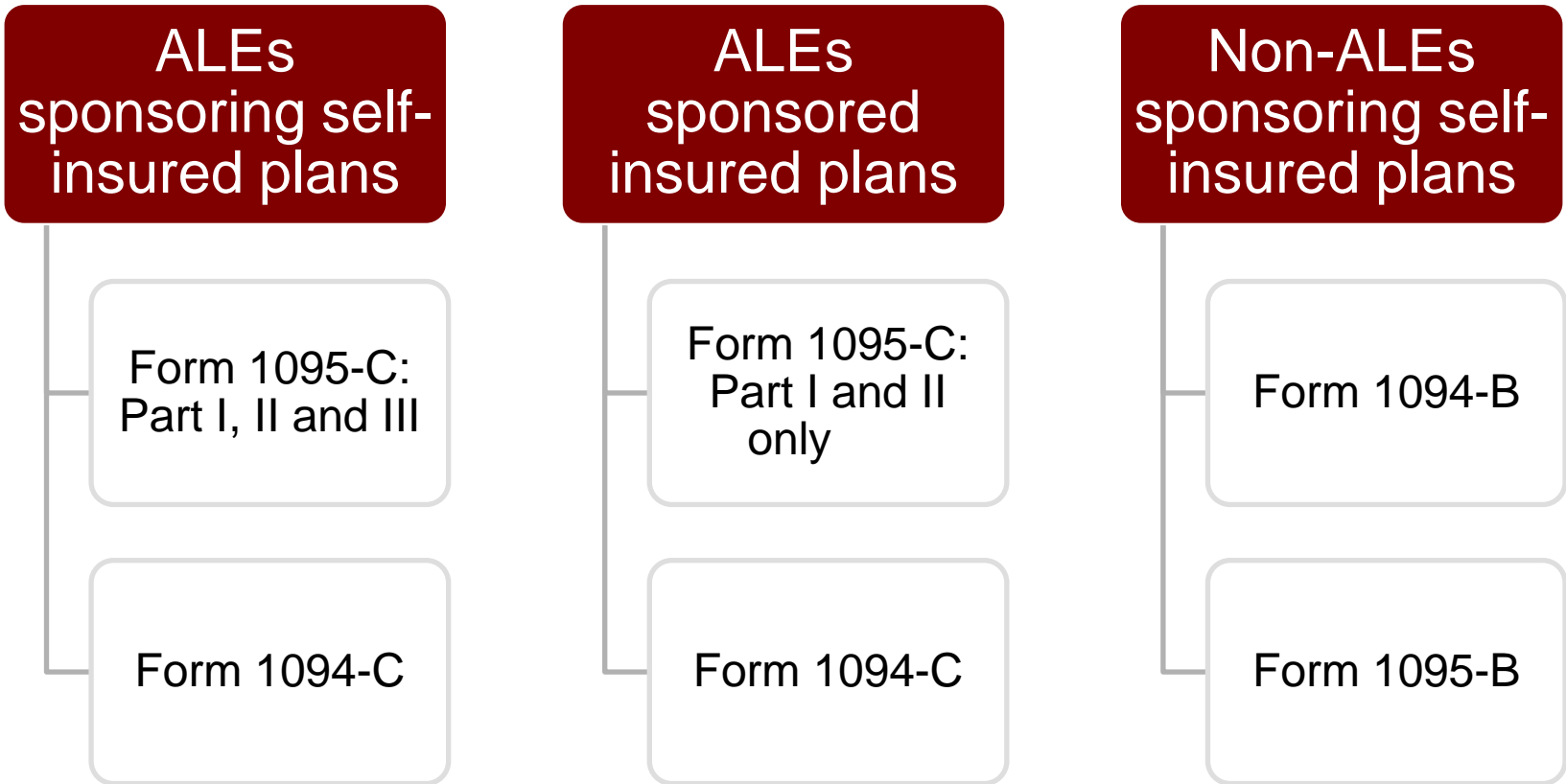
# Self-Insured Plan Sponsors: Combined Reporting

- ALEs that sponsor self-insured GHPs must report under **both** Section 6055 AND Section 6056

- Combined Reporting:
  - Report information required under both Sections 6055 & 6056 on a **single form**
  - Intended to reduce administrative costs and burdens
  - Form 1095-C has separate sections to satisfy both Sections 6055 & 6056

- ALEs will provide only a **single** employee statement

# 6055 & 6056 Reporting



**Non-ALEs that sponsor insured plans are not required to report under either Section 6055 or Section 6056**

# Reporting Deadlines: IRS Returns

**Electronic filing is REQUIRED if filing 250+ returns**

## Annual Deadline:

- Returns due on or before February 28 (March 31, if filed electronically)

## 2015 Return Deadline:

- February 29, 2016 (28<sup>th</sup> is a Sunday)
- March 31, 2016, if filed electronically

# Reporting Deadlines: Individual Statements

**Employers MAY furnish statements electronically if certain requirements are met**

## Annual Deadline:

- Statements due on or before January 31

## 2015 Return Deadline:

- February 1, 2016 (31<sup>st</sup> is a Sunday)

# Providing Individual Statements

## General Rule

- Provide statements on paper by mail to last known address

## Electronic Statements

- Statements MAY be furnished electronically
- Notice, consent and hardware and software requirements apply

## Employee Consent

- May consent on paper or electronically (i.e. by email)
- Consent on paper must be confirmed electronically by the individual
- Statement may be furnished electronically by email or by informing the individual how to access the statement on the employer's website

# 6055 & 6056: Penalties for Noncompliance

## ■ Information Returns

- Failure to file timely or include all required information
- Including incorrect information

## ■ Individual Statements

- Failure to timely furnish or include all required information
- Including incorrect information on statement

# 6055 & 6056: Penalties for Noncompliance

Penalty Type	Per Violation	Annual Maximum	Annual Maximum for Small Employers
General	\$100	\$1.5 million	\$500,000
Corrected within 30 days	\$30	\$250,000	\$75,000
Corrected after 30 days and before Aug 1 <sup>st</sup>	\$60	\$500,000	\$200,000
Intentional Disregard (no reductions apply)	\$250 (or more)	None	N/A

# Short-Term Relief from Penalties

**Penalties will not be imposed on reporting entities that can show good faith efforts to comply**

## Relief Available

- Incomplete/incorrect information reported in 2016 related to 2015 coverage
- Failure due to reasonable cause (IRS discretion)

## Relief NOT Available

- No good faith effort to comply
- Failure to timely file information return or furnish statement

# ACA: Cafeteria Plans & HRAs

# Reimbursing Premiums for Individual Policies

- IRS Notice 2013-54 and DOL Tech. Rel. 2013-3 prohibits the reimbursement of premiums for individual health insurance premiums by an employer pre-tax (“Employer Payment Plans”)
  - Includes PRAs under a Section 125 Cafeteria Plan; and
  - HRAs
- Premiums for coverages of “excepted benefit” can still be reimbursed
- Rules are effective for plan years beginning in 2014

Employers can choose to assist employees with individual premiums by increasing their taxable income. **CAUTION:** Increase in taxable income must be available to all employees and cannot be conditioned on the purchase of health insurance.

# Reimbursing Premiums for Individual Policies

## Penalties for Noncompliance

- **\$100 per day per applicable employee**
- **Potential \$36,500 per employee per year**

# Temporary Transitional Relief for Non-ALEs

Employers who did not qualify as an ALE for all of 2014



Employers who do not qualify as an ALE from January 1 through June 30, 2015

- Will **NOT** be subject to excise taxes under IRC 4980H solely because the employer maintained an “employer payment plan”

The IRS expects employers with 50 or more FTEs to either discontinue its “employer payment plan” or self-report violation and pay excise taxes

# New Guidance for HRAs

An HRA cannot be integrated with individual market coverage or an individual policy

HRAs must be integrated with a group health plan to satisfy ACA mandates

Stand-alone HRAs are no longer allowed (**Exceptions:** Retiree only HRAs and HRAs the reimburse only excepted benefits)

HRA can be integrated with “other” employer’s GHP

# “Integrated” HRAs

Two approved integration methods for HRAs:

## Limited Reimbursement Method

Reimburses only medical care within the meaning of IRC 213(d) that does **NOT** constitute essential health benefits

## Minimum Value Method

Must be “integrated” with a GHP that meets the minimum value requirements  
Can reimburse expenses within the meaning of IRC 213(d)

# “Integrated” HRAs

Both integration methods require:

Integration with a GHP  
(from employer or  
another source)

Only employees actually  
enrolled in a GHP can  
receive the HRA benefit

HRA must include “opt-  
out” feature

# New Requirements for HCFSA's

General Purpose Healthcare FSAs must now meet HIPAA definition of “excepted benefit” to be compliant with ACA.

## Maximum Benefit Condition

- The maximum benefit payable cannot exceed the GREATER of two times the participant’s salary reduction amount or \$500; and

## Availability Condition

- Other nonexcepted GHP coverage must be made available for the year to the same participants

*\*A limited purpose Healthcare FSA is considered an “excepted benefit” under HIPAA because it limits reimbursement to dental and vision only.*

# New Requirements for HCFSA's

Health FSA must meet requirements as an "excepted benefit" for plan years beginning on or after January 1, 2014

Employers that do not offer GHP can no longer offer the Health FSA benefit unless it is limited to dental and vision expenses only.

Failure to timely convert a nonexcepted Health FSA can result in excise taxes

Be aware of Health FSAs with employer contributions and/or credits

Make sure to coordinate eligibility for Health FSA with eligibility for GHP

# Questions?





**THANK YOU!**