

July 15, 2011

VIA ELECTRONIC MAIL: Notice.comments@irscounsel.treas.gov

Commissioner Douglas Shulman
Internal Revenue Service
Attn: CC:PA:LPD:RU (Notice 2011-28)
1111 Constitution Avenue, NW
Room 5203
Washington, DC 20224

RE: Notice 2011-28 – Comments on the Interim Guidance on Informational Reporting to Employees of the Cost of Their Group Health Insurance Coverage

Dear Commissioner Shulman:

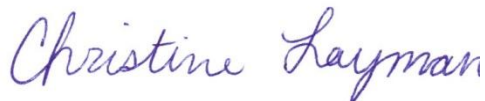
Thank you for the opportunity to submit comments on the Internal Revenue Service (IRS) Interim Guidance on Informational Reporting to Employees of the Cost of Their Group Health Insurance Coverage. I respectfully submit these comments on behalf of the College and University Professional Association for Human Resources (CUPA-HR).

CUPA-HR serves as the voice of human resources in higher education, representing more than 13,000 HR professionals at over 1,700 colleges and universities across the country, including 90 percent of all U.S. doctoral institutions, 70 percent of all master's institutions, more than half of all bachelor's institutions and 500 community colleges. Higher education employs 3.3 million workers nationwide, with colleges and universities in all 50 states.

One of our member institutions, the University of Missouri, submitted the below comments in response to the Interim Guidance. CUPA-HR believes that the issues raised by the University of Missouri will also impact our other member institutions, so we would like to echo these comments and encourage the IRS to address these issues in future guidance.

Please let us know if you have any questions and if we can provide any additional information.

Sincerely,



Christine Layman
Government Relations Manager
College and University Professional Association for Human Resources
Center Point Commons
1811 Common Points Drive
Knoxville, TN 37932
703.533.1099

COMMENTS ON THE INTERIM GUIDANCE

After reading the IRS Interim Guidance on W-2 Reporting for Employer-Sponsored Health Coverage, and reviewing information readily available in the University of Missouri's HR/Payroll system, we have identified several instances where readily available information on premiums charged may not comply with the interim guidance. Below, you will find a description of the information which is readily available that can still provide the Employee with a reasonable estimate of the cost of Health Care Coverage without creating the need for significant system enhancements. Assuming these issues are not unique to the University of Missouri, we ask that these be addressed in future guidance to reduce the burden that the guidance per Notice 2011-28 would place on employers to develop and maintain system enhancements.

General Background:

The University's Medical Plan provides coverage to Employees, Long Term Disability Claimants, Retirees, and COBRA participants. Premiums are due on or before the first of the month, for each month where the subscriber has coverage on the first of the month. Therefore, the subscriber's portion of premiums for Employees, LTD Claimants and Retirees are deducted from "pay" (where pay means Employee salary & wages, Long Term Disability benefits, and Retirement benefits, respectively), the month prior to the month of coverage. On that same payroll, the employer portion of the premium is also processed. In the case where there is no pay prior to the month of coverage (example: a new hire), premium adjustments are made to catch-up shortfalls as soon as possible. The HR/Payroll system tracks premium deduction activity by payroll. Calendar year balances of payroll deduction activity are maintained by the HR/Payroll system and readily available for reporting. The Plan Year is the Calendar Year, and therefore, premium rates typically change for coverage effective January 1. The simplest approach for the University to report Health Care Costs would be to report the total of premiums processed on payrolls for the Employee during the calendar year.

Issues:

(1) Premiums Collected in Advance: Based on the practice to deduct premiums a month in advance, the readily available calendar-year-balance for premiums (both the portion deducted from the Employee's pay, and the portion funded by the Employer) would not match exactly with the cost of healthcare for the calendar year. The Interim Guidance would require the University report the premiums charged the Employee and the Employer for coverage during January YY through December YY; however, the information that would be readily available from the HR/Payroll system would in most cases equate to the cost of health care during February YY through January YY+1. Would it be acceptable to report the later which equates to amounts processed during the calendar year? NOTE: the approach would be consistent for all and due to the adjustments alluded to in the General Background, there would be some cases (the minority) where the system's calendar-year-balance may include some premium adjustments. Or, must the Employer report Health Care Costs based on the sum of the regular monthly premiums for the months covered?

(2) Academic Appointments: Based on the practice to hire some faculty for nine-month (or academic year) appointments, and to provide coverage for 12 months, the readily available calendar-year-balance for premiums (both the portion deducted from the Employee's pay, and the portion funded by the Employer) would not match exactly with the cost of healthcare for the calendar year. Specifically, the amounts processed on the September YY through May YY+1 payrolls pay for coverage during October YY through September YY+1; the rates used during September YY through November YY equal the regular monthly rate for Plan Year YY times 12 (twelve) divided by 9 (nine); and the rates processed during December YY through May YY+1 equal the regular monthly rate for Plan Year YY times 12

(twelve) divided by 9 (nine) plus an adjustment. The adjustment equals the difference in the regular monthly rate for Plan Years YY and YY+1 times 9 (nine) divided by 6 (six). Therefore, the calendar-year-balance, which would be readily available, pays for most, but not all, of the coverage during Plan Year YY and pays for some of the coverage during YY+1. Would it be acceptable to report the readily available calendar-year-balance which equates to amounts processed during the calendar year? NOTE: the approach would be consistent for all and due to the adjustments alluded to in the General Background, there would be some cases (the minority) where the system's calendar-year-balance may include some premium adjustments. Or, must the Employer report Health Care Costs based on the sum of the regular monthly premiums for the months covered?

(3) Partial Months: As noted under General Background, the University charges premiums (both the Employee and the Employer portions for those months where the Employee is covered on the first of the month). In other words, if coverage commences on the second through the last day of the month, then no premium is charged. Therefore, the University does not pro-rate premiums for partial months, nor does it use a cut-off date such as the 15th of the month, nor does it use a number of days covered rule (such as ≥ 15 days/month) to charge the full rate. If the employer is consistent between its practice for charging premiums and its computation of the Health Care Cost it reports, then no premiums would be reported for any month where coverage commences on or after the second day of the month. None of the Interim regulations' examples illustrated the case where \$0.00 would be acceptable as the Health Care Cost for a partial month. Is it acceptable to report \$0.00 for a partial month? NOTE: the approach could be applied consistently for all Employees. Or, must the Employer report some Health Care Costs for partial months (either a pro-rated premium amount or a full monthly premium)?

(4) Layoff leaves and COBRA: In cases where Employees are laid off due to a staff reduction (or placed on a "Layoff Leave"), they remain in a leave status for a specified period of time (either 3 or 12 months) and are eligible to continue their health care coverage as a COBRA participant during the Layoff Leave. In other words, the Employee's leave runs concurrent with the first (3 or 12, as appropriate) months of COBRA. The individual is not considered a terminated Employee until the leave expires, but the access to Medical Coverage as an Employee ceased on the first of the month coincident with or immediately following the start of the Layoff Leave. Premiums for coverage (both the portion funded by the Employee on leave and the portion funded by the Employer) during the Layoff Leave are not processed through the HR/Payroll system. Therefore, the Health Care Costs for all COBRA participants (whether the qualified beneficiary is an Employee on a Layoff Leave, a terminated Employee, or an ineligible Dependent) are not readily available in the HR/Payroll system. Is it acceptable to exclude the Health Care Cost for all COBRA participants, including those on a Layoff Leave? NOTE: the exclusion would be applied consistently, whether or not the leave took place during a calendar year for which there was pay to the Employee and a W-2 was issued. Or, must the Employer report Health Care Costs for coverage under COBRA during a Layoff Leave, which occurs during a year when the individual has other reportable taxable wages?

(5) Non-Employees: In cases where a Long Term Disability Claimant receives LTD benefits, the University issues a W-2 to report those benefits whether or not there were also Employee wages to report. Also, in cases where imputed income for Life Insurance is generated for Retirees with Life Insurance in excess of \$50,000, the University issues a W-2 to report that taxable income, whether or not there were also Employee wages to report. Would it be acceptable to preclude the premiums associated with periods of coverage when the subscriber is a non-employee (when covered as either an LTD Claimant or as a Retiree), even if there were some taxable wages to report (for example: if this were the year during which the LTD Claimant became disabled or the year during which the Retiree had retired, and therefore a period when wages were paid to the individual as an Employee and the individual were covered as an Employee for part of the year)? NOTE: the approach could be applied consistently for all LTD Claimants and Retirees. Or, must the Employer report Health Care Costs for coverage as a Non-Employee as long

as a W-2 had to be issued, regardless of whether or not the individual were covered as an Employee for any portion of the year?

(6) Timeliness: A newly benefit eligible Employee is provided with 30-day (calendar days) window to enroll in benefits, and an existing Employee is provided with a 31-day (calendar day) window to enroll a new born under a Family Status Change. Coverage in either case is retroactive to the date of eligibility.

In situations where the event occurs in December, what are the expectations regarding the accurate reporting of Health Care Costs for the month of December? For example, is it expected that corrected W-2s will be prepared when the corresponding election is known after the compilation of data for the normal issuance of W-2s? Do any (not just the December dated event driven correction) corrections or updates to an Employee's data that changes the Health Care Cost amount necessitate the issuance of a corrected W-2?

(7) Completeness: Based on the practice to collect the Employee's portion of the premium directly from the Employee and process the corresponding Employer portion outside of the HR/Payroll system when an Employee is on a leave without pay, those premium amounts would not be captured by the HR/Payroll system. Would it be acceptable to preclude the corresponding Health Care Costs from the amount reported? NOTE: this approach would be consistent for all (typically, about 200 out of the 19,000 Employees eligible for the University Medical plan are on a leave without pay, and not all of those eligible are enrolled). Or, must the Employer report Health Care Costs based on the sum of the regular monthly premiums for the months covered, regardless of how the premium is processed?