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Circular Letter

April 6, 2017

TO: **CalPERS Public Agencies, Schools, Individual School Districts, and California State Universities**

SUBJECT: **Affordable Care Act Rule Regarding Health Plan Opt-Out Arrangements**

Purpose

The purpose of this Circular Letter is to provide additional, generalized opt-out arrangement[1] information to Health Benefit Officers and other personnel staff. On December 19, 2016, the Treasury Department and Internal Revenue Service (IRS) issued the final rule, "Premium Tax Credit NPRM VI," that provides guidance regarding the treatment of opt-out arrangements and their impact on an employee's required contribution for purposes of determining affordability of health coverage.

ACA Requirements

Under the ACA, applicable large employers (ALEs) are required to offer affordable coverage that provides minimum value to their full-time employees or potentially pay penalties.[2] An employer-sponsored health plan is generally considered affordable if the employee's contribution does not exceed a certain percentage of that employee's income.[3] Annually, ALEs are required to file IRS Form 1095-C, which includes a section on health plan affordability.

Guidance Background

In the proposed rule, the Treasury and IRS indicated they expected to issue final opt-out regulations before the end of 2016; however, in the preamble to the "Premium Tax Credit NPRM VI" final rule, the Treasury and IRS now state they expect to finalize regulations at a later time. The preamble goes on to say that until those final regulations are applicable, individuals and employers can continue to rely on the guidance provided in Notice 2015-87 and the proposed rule, issued July 8, 2016.

[1] An opt-out arrangement is an arrangement under which a payment (called an opt-out payment) is made available to an employee by an employer only if the employee declines coverage under an eligible employer-sponsored plan offered by the employer.
[2] See the Shared Responsibility for Employers Regarding Health Coverage Final Rule for information regarding large employer penalties. https://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf
[3] See Title 26 U.S. Code 36B(c)(2)(C) and 26 C.F.R. 1.36B-2(c)(3)(v)(A)(1) and (2)

Guidance Background (continued)

In July and October, 2016, CalPERS issued Circular Letters 600-038-16 and 600-045-16, respectively, which provided information related to Notice 2015-87 and the July 8, 2016, proposed rule with regard to the treatment of opt-out arrangements.

IRS Form 1095-C Reporting Impacts

The preamble to the "Premium Tax Credit NPRM VI" final rule reiterates that until the applicability date of final regulations on opt-out arrangements, employers are not required to increase an employee's required contribution (on line 15 of Form 1095-C) by the amount of an unconditional opt-out payment established on or before December 16, 2015, for the purposes of ALE reporting under Internal Revenue Code § 6056. In addition, such payments will not be treated as increasing an employee's required contribution for purposes of any potential consequences under § 4980H (employer penalties for not offering affordable coverage).

An unconditional opt-out arrangement is an arrangement under which an employee's right to receive an opt-out payment is solely conditioned on the employee declining coverage under an employer-sponsored plan.[4]

Summary

CalPERS' Employers that offer opt-out arrangements to employees should carefully review Notice 2015-87, the proposed rule, and the final rule described in this Circular Letter to determine how to correctly report employee opt-out payments on Form 1095-C, regardless of whether their opt-out arrangement was established prior to December 16, 2015. Correctly reporting opt-out payment information to the IRS will help ALEs minimize, or avoid, employer penalties for failure to offer affordable health coverage.

CalPERS continues to assess laws and regulations related to the Affordable Care Act (ACA), which may affect CalPERS' Employers. While we make every effort to assist CalPERS' Employers, this Circular Letter should not be acted upon without specific legal advice. CalPERS encourages each CalPERS Employer to thoroughly review the Circular Letter, and the federal regulations and corresponding guidance discussed within, with its own legal counsel to understand how it might specifically apply to them.

[4] See Notice 2015-87, No. 9.

Questions

If you have any questions, please contact our Employer Contact Center at **888 CalPERS** (or **888**-225-7377).

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