



## LEGISLATIVE BRIEF

# Health Care Reform: IRS Further Delays Form W-2 Requirement for Small Employers, Issues Additional Guidance on Reporting

### Reporting Requirement Delayed

The Patient Protection and Affordable Care Act (PPACA) requires employers to report the aggregate cost of employer-sponsored group health coverage on an employee's Form W-2. Although the information must be disclosed, the cost of the coverage remains tax-free to the employee.

This requirement was initially set to take effect beginning with the 2011 tax year. Employers would have had to include the additional information on the forms required for the calendar year 2011 that they are required to furnish in January 2012.

However, on Oct. 12, 2010, the Internal Revenue Service (IRS) issued [Notice 2010-69](#), which delayed the compliance date for this requirement by making compliance **optional for the 2011 tax year**. Under this extension, employers could expect to include this information for the first time on the 2012 Form W-2s instead, which are not issued until 2013.

On March 29, 2011, the IRS further delayed compliance with this requirement for small employers (those filing fewer than 250 W-2 Forms) in [Notice 2011-28](#). The new guidance makes the W-2 reporting requirement **optional for small employers with respect to the 2012 W-2 Forms**, which would be furnished to employees in January 2013. This optional treatment for small employers will be continued until **further guidance is issued**.

### Interim Guidance

Notice 2011-28 also contains interim guidance for employers that must include group health coverage information on the 2012 W-2 Forms and those that voluntarily choose to comply for 2011 or 2012. Written in question-and-answer format, the guidance provides information on the following issues:

- Employers subject to the reporting requirement;
- Method of reporting on the Form W-2;
- Aggregate cost of employer-sponsored coverage;
- Cost of coverage required to be included in the aggregate reportable cost; and
- Methods of calculating the cost of coverage.

Notably, this guidance clarifies that the cost of coverage under certain plans is not required to be included on an employee's Form W-2. These plans include multiemployer plans, health reimbursement arrangements (HRAs), dental or vision plans that are not integrated into a group health plan providing health care coverage, self-insured group health plans that are not subject to federal continuation coverage requirements (such as church plans), and government plans maintained primarily for members of the military or their families.

To read the full interim guidance, see Notice 2011-28 at <http://www.irs.gov/pub/irs-drop/n-11-28.pdf>.

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## Compliance Steps for Employers

Although the requirement has been delayed, employers subject to the reporting requirement should use the additional time to ensure that they (or their payroll provider) are prepared to gather this information in advance of having to complete the Forms W-2.

In doing so, these employers should make sure they can identify the applicable employer-sponsored coverage that was provided to each employee and be prepared to calculate the aggregate cost of that coverage. The aggregate cost of the coverage is to be calculated similarly to how the COBRA applicable premium is determined.

Employers may also have to address questions from employees regarding whether their health benefits are taxable under this new requirement. They can assure employees that the rule is a reporting requirement only, and does not mean they will incur additional tax obligations. The IRS stated in Notice 2011-28 that this reporting to employees is for their information only to inform them of the cost of their health care coverage and it does not cause excludable employer-provided health care coverage to become taxable.

SullivanCurtisMonroe Insurance Services, LLC will continue to update you as additional information becomes available with respect to this requirement.