



*December 8th, 2016 - In This Issue:*

COMPLIANCE RECAP

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UBA UPDATES

---

IRS DELAY IN 6055 AND 6056 REPORTING FOR 2017

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ADVANCE INFORMATIONAL COPIES OF 2016 FORM 5500  
ANNUAL RETURN/REPORT

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2017 ANNUAL BENEFIT PLAN CARD

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IRS INFORMATION LETTERS

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IRS HEALTH CARE TAX TIP

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WHAT YOU NEED TO KNOW



## COMPLIANCE RECAP

November was a busy month for administrative rulemaking in the employee benefits world. The Department of Labor's Employee Benefits Security Administration (EBSA), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) released advance informational copies of 2016 Form 5500 Annual Return/Report. The government released annual benefit plan amounts for 2017. The IRS released several information letters and a health care tax tip. Also, the IRS delayed 6055 and 6056 reporting for 2017.



## UBA Updates

UBA released six new advisors in November:

- [Advance Informational Copies of 2016 Form 5500 Annual Return/Report](#)
- [FAQs on Tobacco Cessation Coverage and Mental Health / Substance Use Disorder Parity](#)
- [2016 Election Results: The Potential Impact on Health and Welfare Benefits](#)
- [2017 Annual Benefit Plan Card](#)
- [Nondiscrimination Regulations Relating to Sex, Gender, Age, and More - for Health Care Providers](#)
- [IRS Delay in 6055 and 6056 Reporting for 2017](#)

UBA updated existing guidance:

- [FAQs about Grandfathered Plans](#)
- [FAQ about the PCORI Fee](#)
- [Highlights of the PCORI Fee](#)
- [An Overview of the PCORI Fee, Transitional Reinsurance Fee \(TRF\) and Health Insurance Providers \(HIP\) Fee](#)
- [Comparison of the TRF and the PCORI Fees](#)
- [COBRA and the ACA](#)
- [Agencies Provide Guidance on Single Benefit Products and Excepted Benefits](#)
- [FAQ about the W-2 Reporting Requirements](#)
- [IRS Provides Additional Details on Premium Payment Arrangements](#)
- [Wraparound Excepted Benefits Pilot Programs](#)
- [HRAs, HSAs, and HRSAs under the ACA](#)
- [What You Need to Know about Medicare Secondary Payer Rules](#)
- [Potential Employer Penalties under the ACA](#)

## IRS Delay in 6055 and 6056 Reporting for 2017

On November 18, 2016, the IRS issued [Notice 2016-70](#) to extend the due date for furnishing to individuals the 2016 Form 1095-B, Health Coverage, and the 2016 Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, from January 31, 2017, to March 2, 2017. The IRS reiterated that, for 2016 reporting, relief is available to employers who make a good faith effort to comply with the information reporting requirements and they will not be subject to penalties for failure to correctly or completely file. This does not apply to employers that fail to timely file or furnish a statement.

[Read more about the delays.](#)

## Advance Informational Copies of 2016 Form 5500 Annual Return/Report

On November 1, 2016, The U.S. Department of Labor's Employee Benefits Security Administration (EBSA), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) released [advance informational copies of the 2016 Form 5500 annual return/report](#) and [related instructions](#).

Specifically, the instructions highlight the following modifications to the forms, schedules, and instructions:

- Filers should not enter the "Preparer's Information" at the bottom of the first page of Form 5500 for the 2016 plan year, should not answer the IRS questions at Lines 4o and 6a through 6d of Schedules H and I and the "Part VII - IRS Compliance Questions" of the Schedule R. Further, for filers who are using the Form 5500-SF, they should not enter "Preparer's Information" at the bottom of the first page, "Part VIII-Trust Information," and "Part IX-IRS Compliance Questions."
- The instructions reflect updated civil monetary penalties. The maximum penalty is \$2,063 per day for a plan administrator who fails or refuses to file a complete or accurate Form 5500 report. The increased penalty is applicable for civil penalties assessed after August 1, 2016, whose associated violation occurred after November 2, 2015.

Be aware that the advance copies of the 2016 Form 5500 are for informational purposes only and cannot be used to file a 2016 Form 5500 annual return/report.

[Read more about the Form 5500 changes.](#)

## 2017 Annual Benefit Plan Card

The government recently released annual benefit plan amounts for 2017. UBA released a [2017 Annual Benefit Plan Card](#) that reflects these updated figures.

### IRS Information Letters

In November 2016, the IRS released one information letter regarding HSAs and four information letters that confirm cafeteria plan design and administration principles. These letters are customarily released to the general public within a few months of being provided to the initial addressee.

[Letter 2016-0048](#). In this letter, the IRS confirms that a health flexible spending arrangement (FSA) must satisfy certain substantiation requirements before paying or reimbursing medical expenses to ensure that the reimbursement qualifies for the exclusion from income and wages. The rules require information from a third party (such as the provider of the medical services) describing the medical service or product, the date the service or product was provided, and the amount of the expense. Self-substantiation or self-certification of an expense by an employee does not satisfy this requirement. In addition, the employee must certify that any expense being reimbursed has not already been reimbursed and the employee will not seek reimbursement from any other health benefit plan.

[Letter 2016-0050](#). In this letter, the IRS confirms that the maximum amount of reimbursement from the health FSA must be available at all times during the period of coverage and may not relate to the amount an employee has contributed to the health FSA at any particular time prior to the end of the plan year. A health FSA generally may not reimburse medical expenses an employee gets after he or she stops participating in the health FSA. This includes, for example, termination of employment (unless the health FSA is subject to COBRA continuation requirements and the participant elects COBRA continuation). Moreover, a health FSA may include a deadline for submitting a claim for reimbursement for the plan year; any deadline must be applied in a uniform and consistent manner with respect to all participants.

[Letter 2016-0058](#). In this letter, the IRS confirms that the dependent care flexible spending arrangement (DCFSA) contribution limit is \$5,000, and that only Congress (not the IRS) can increase the limitation on the DCFSA contribution amount.

[Letter 2016-0060](#). In this letter, the IRS confirms that, although the IRS requires a plan to reimburse only those expenses incurred during a coverage period, the IRS does not restrict the period for claim submissions. The time for submitting claims after the plan year has ended (often referred to as the "run-out" period) is strictly a matter of plan design. The employer decides, in the plan document, the deadline by which employees must submit claims following the end of the plan year. Plans may require that employees submit claims within a "reasonable time" after the close of the plan year; plans may also establish a strict period after which they will not accept claims.

[Letter 2016-0056](#). In this letter, the IRS confirms generally that an employer who contributes to the HSA of any employee during a calendar year must make comparable contributions to the HSAs of all comparable participating employees. To the extent an employer's contributions are subject to the comparability rules, employees are classified into specific categories for purposes of comparability testing. The exclusive categories for comparability testing includes "former employees," which includes retired employees; thus, the comparability rules allow employers to make HSA contributions in different amounts (or not at all) to former employees than the contribution amounts the employer makes to the HSAs of full-time or part-time employees.

## IRS Health Care Tax Tip

On November 22, 2016, the IRS issued [Health Care Tax Tip 2016-77](#) "Employers that Hire Holiday Help: Understand the Health Care Law's Rules Around Seasonal Workers." Under the Affordable Care Act, if you have at least 50 full-time employees, including full-time equivalent employees, on average during the prior year, you are an applicable large employer (ALE) for the current calendar year. However, there is an exception for [seasonal workers](#); if your workforce exceeds 50 full-time employees for 120 days or fewer during a calendar year, and the employees in excess of 50 during that period were seasonal workers, your organization is not considered an ALE. For this purpose, a seasonal worker is an employee who performs labor or services on a seasonal basis.

### Question of the Month

**Q:** When the plan changes, when should I give notice to participants?

**A:** Depending on the change that is made, an employer must provide notice within one of three time frames:

- 60 days prior to the change
- No later than 60 days after the change (or, within 60 days of the change)
- Within 210 days after the end of the plan year



For modifications to the SPD that constitute a material reduction in covered services or benefits, notice is required within 60 days of adoption of the material reduction in group health plan services or benefits. For example, a decrease in employer contribution would be a material reduction in covered services or benefits so notice should be provided within 60 days of the change in employer contribution. As a best practice, an employer should give advance notice of the change. For practical purposes, employees should be told prior to the first increased withholding; angering them so they feel inclined to complain to the DOL is never a great situation.

If a plan makes a material modification in any of the plan terms that would affect the content of the SBC (that is not reflected in the most recently provided SBC), then notice must be provided no later than 60 days prior to the date on which the modification will become effective. However, if the change is part of open enrollment, assuming you communicate the change during open enrollment, the open enrollment communication is considered acceptable notice, regardless of whether the SBC or the SPD, or both, are changing. Open enrollment is essentially a safe harbor for the 60-day prior/60-day post notice requirements. Finally, changes that do not require more immediate notifications, because they do not affect the SBC and are not a material reduction in benefits, must be communicated through a summary of material modifications or an updated summary plan description within 210 days after the end of the plan year.

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