



## CLIENT BULLETIN

### ***IRS Publishes Final Regulation on Effectiveness Fee Fee Applies to Multiemployer Health Plans***

The IRS has released final regulations that provide guidance on the effectiveness fees imposed by the *Affordable Care Act* (ACA) to fund the Patient-Centered Outcomes Research Trust Fund (PCORTF) which funds the Patient-Centered Outcomes Research Institute (PCORI). The final regulations generally apply to health insurance policies and self-insured health plans, including retiree-only policies and plans. This includes self-insured multiemployer health plans. The regulations are available by "[clicking here](#)." (See [Client Bulletin 2012-21](#) for a discussion of the proposed regulations.) This fee is different from the reinsurance fee discussed in [Client Bulletin 2012-65](#).

#### **When is the Fee Due?**

These final regulations apply to policy and plan years ending on or after October 1, 2012, and before October 1, 2019. The fee imposed for a plan year by Code Section 4376 on self-insured group health plans, including multiemployer health plans, must be filed by July 31 of the calendar year immediately following the last day of the plan year.

Thus, for a calendar year plan ending December 31, 2012, the fee would be due July 1, 2013. If a plan year ended January 31, 2013, the fee would be due by July 1, 2014. See the Final Regulation at Section 40.6071(a)-1(c)(2) and Section 46.4376-1(c)(4) for examples) and the discussion below regarding the use of IRS Form 720 to pay the fee.

#### **Who Must Pay the Fee – the Plan or the Plan Sponsor (Trustees)?**

According to the *Preamble* to the regulations the plan sponsor must pay the fee:

The Department of Labor has advised that, because the fee is imposed on the plan sponsor under Section 4376 (instead of the plan), **paying the PCORI fee generally does not constitute a permissible expense of the plan** for purposes of Title I of the Employee Retirement Income Security Act (ERISA), although special circumstances may exist in limited situations. The Department of Labor will provide guidance in the near future on PCORI fee payments under Title I of ERISA on its Web site, [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

77 FR 72721, 72722, footnote 1

Thus, the plan sponsor (Board of Trustees) is liable for the fee and it cannot be paid from plan assets, unlike the “reinsurance fee” which the DOL has opined is a permissible plan expense. See [Client Bulletin 2012-65](#) for more information on the reinsurance fees.

### **How Much is the Fee?**

By way of background, the *Preamble* to the regulation notes Sections 4375 and 4376 of the Code impose fees on issuers of specified health insurance policies and plan sponsors of applicable self-insured health plans, and Code Section 4377 contains special rules that apply to these issuers and plan sponsors with respect to these fees under the *PPACA*. A multiemployer group health plan that is self-insured is an “applicable self-insured health plan” under Code Section 4376.

In particular, Code Section 4375(a) imposes a fee on an issuer of a specified health insurance policy for each policy year ending on or after October 1, 2012, and before October 1, 2019. The fee is two dollars (one dollar in the case of policy years ending before October 1, 2013) multiplied by the average number of lives covered under the policy. For policy years ending on or after October 1, 2014, the fee is increased based on increases in the projected per capita amount of National Health Expenditures. The fee imposed shall be paid by the issuer of the policy.

Similarly, Code Section 4376 imposes a fee on a plan sponsor of an applicable self-insured health plan (including multiemployer plans) for each plan year ending on or after October 1, 2012, and before October 1, 2019. For the plan year ending prior to October 1, 2013, the fee is one dollar multiplied by the average number of lives covered under the plan for the plan year. For the plan year ending on or after October 1, 2013 and before October 1, 2014, the fee is two dollars multiplied by the average number of lives covered under the plan for the plan year. For plan years ending on or after October 1, 2014, the fee is increased based on increases in the projected per capita amount of National Health Expenditures. These increased fees will be announced at future dates.

### **Counting Covered Lives**

These final regulations state explicitly that COBRA continuation coverage must be taken into account in determining the PCORI fee, unless the arrangement is otherwise excluded. See the Final Regulation at Section 46.4377–1(a)(1) for additional information.

There are three methods that plan sponsors may use to determine the average number of lives covered under a plan for purposes of the fee imposed by Section 4376. Although this is a different and separate fee than the reinsurance fee, the allowed methods mirror the methods permitted to group health plans under the *Premium Stabilization Rule*.

The three methods are the (1) *Actual Count Method*, (2) *Snapshot Method*; and (3) *Form 5500 Method*.

*Transition Rule*

These final regulations also permit a plan sponsor to use any reasonable method to determine the average number of lives covered under an applicable self-insured health plan for a plan year beginning before July 11, 2012 (90 days after the date that the proposed regulations were published in the *Federal Register*), and ending on or after October 1, 2012. See the Final Regulation at Section 46.4376–1(c)(2)(viii) for additional information.

**Paying the Fee Using IRS Form 720**

Consistent with the proposed regulations, these final regulations require an issuer of a specified health insurance policy and plan sponsor of an applicable self-insured health plan to report and pay the PCORI fee for a policy year or plan year no later than July 31 of the year following the last day of the policy or plan year. The regulations adopt usage of IRS Form 720 for payment of the fee. Form 720 may be filed electronically. See [www.irs.gov/efile](http://www.irs.gov/efile) for more information on e-filing the Form 720.

Although electronic filing of the Form 720 is not required, the IRS *encourages filers to file the Form 720 electronically*. A responsible party wishing to file the Form 720 electronically must submit it through an approved transmitter software developer.

To electronically file the Form 720, the filer will incur the cost of the required service fee for online submission.

Calendar year plans ending December 31, 2012 must file their Form 720 by July 31, 2013. Plans with plan years ending in 2013 must file their Form by July 31, 2014.

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