Society of Professional Benefit Administrators

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Internal Revenue Service
CC:PA:LPD:PR (Notice 2015-52)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

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IRS Notice 2015-52
4980I – Excise Tax on High Cost Employer-Sponsored Health Coverage

Dear Ladies and Gentlemen,

These comments on IRS Notice 2015-52 ("Notice") are submitted on behalf of the Society of Professional Benefit Administrators ("SPBA"). SPBA is a national trade association of Third Party Administration firms ("TPAs") that are hired by employers and employee benefit plans to provide contract-based services to plans. SPBA member TPA firms operate in a similar way to CPA or law firms who are engaged for periods of time to provide specific services to a plan. Clients of TPA firms include every size and form of employment, including small and large employers, state and local governments, unions, collectively bargained multiemployer plans (Taft-Hartley), association-sponsored plans, and religious groups. The majority of these clients are ERISA self-funded plans and sponsors, and represent all types of industries. It is estimated that 55% of US workers and their dependents in non-federal health coverage are in plans administered by SPBA member TPAs.

Person that Administers the Plan Benefits

We applaud the Treasury and IRS for considering the "person that administers the plan benefits" to be the person that has the ultimate authority or responsibility under the plan or arrangement with respect to the administration of the plan benefits.

Identifying the person with ultimate administrative authority or responsibility would be easily identifiable based on the terms of the plan documents. ERISA requires that the summary plan description state the plan administrator's name, business address, and telephone number (DOL reg § 2520.102-3(f)).

Under ERISA §3(16)(A), the plan administrator is the person designated by the terms of the plan document. If an administrator is not so designated, the administrator is the plan sponsor. Where the plan document does not designate a different plan administrator, the plan administrator is the employer in the case of a single employer plan, and the Board of Trustees in the case of a collectively bargained multiemployer plan.

The ERISA plan administrator has numerous statutory responsibilities and is liable for the statutory penalties that may be imposed for failure to properly discharge those responsibilities (e.g., Form 5500 violations). The ERISA plan administrator is responsible for the plan's administrative functions (e.g., benefit claims determinations and hiring plan professionals). Although the ERISA plan administrator may delegate certain responsibilities to others, it generally cannot avoid ultimate legal responsibility. Multiple parties do not have ultimate legal authority for the varying administrative tasks with respect to a plan of benefits.

In the case of a collectively bargained multiemployer health plan, the person that administers the plan benefits is also easily identifiable. The ERISA summary plan description document requirements for collectively bargained plans require that the name and address of the joint Board of Trustees are included.

Non-ERISA plans generally follow similar plan document conventions with respect to identifying the entity with ultimate legal responsibility.

As noted in our comments on IRS Notice 2015-16, many employee benefit plan service providers assist plan sponsors in operating a plan. These service providers have limited knowledge of the coverage that is made available to employees other than the coverage for which they provide services. Identifying all the various plan service providers and their subcontractors would be problematic.

Collectively Bargained Multiemployer Plans

We offer this explanation (example) of a collectively bargained multiemployer plan to assist the IRS and Treasury in understanding the structure of these plans and the role of the Board of Trustees.

A group of employers have collective bargaining agreements (CBAs) with the Union that represents the employees for purposes of providing health benefits. The CBA will generally state the amount of money the employers will contribute to the Trust to provide certain health benefits for their employees. The Board of Trustees determines the actual plan of benefits based on the monies available to cover benefits and the cost of running the Trust (accounting and audit costs, fiduciary liability insurance, legal costs, etc.).

The collective bargaining agreement will also require the employers to adhere to the terms of a Trust Agreement, which includes language that determines how the Board of Trustees (the governing body of the Trust) is to be determined. The Board of Trustees represents equally both the employer side and the Union side. Generally, there is an Employer Association that appoints the employer side of the Trustees and the Union appoints the Union trustees.

The Board of Trustees (representing the Union and all the contributing employers) makes the decisions for the Trust and has the ultimate responsibility for the administration of the plan. The Board of Trustees that stands in the shoes of the employers handles legal requirements and fees imposed on employers who contribute to a multiemployer plan.

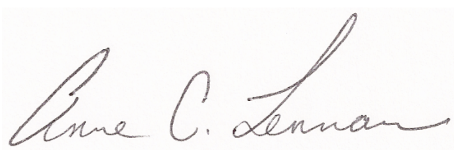
ERISA Plan Administrator

The IRS and Treasury are familiar with the ERISA plan administrator approach and are currently using this approach to implement the fees imposed by the Patient Protection and Affordable Care Act to fund the Patient-Centered Outcomes Research Trust Fund. Section 4376(b)(2) defines a plan sponsor as the employer in the case of a plan established or maintained by a single employer, or the employee organization in the case of a plan established or maintained by an employee organization. Section 4376(b)(2) also provides that, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the plan sponsor is the association, committee, joint Board of Trustees, or other similar group of representatives of the parties who establish or maintain the plan. This approach is working well and has not resulted in confusion for the entities liable for the fees.

We encourage the IRS to issue a proposed rule that designates the ERISA plan administrator as the entity that "shall pay" the excise tax in any case other than when coverage is provided under a fully insured plan.

Thank you for considering these comments. We look forward to answering your questions or concerns. Please contact us at (301) 718-7722.

Respectfully submitted,



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