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November 3, 2014

Stacey Becker
Internal Revenue Service, Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

**Re: Request for Comments Concerning Form 1094-B, Form 1095-B, Form 1094-C,
Form 1095-C, and Instructions Thereto: Information Reporting on Health
Insurance Coverage Offered Under Multiemployer Plans**

Dear Ms. Becker:

We submit the following on behalf of UNITE HERE HEALTH (the "Fund"), a large national Taft-Hartley multiemployer health and welfare trust. The Fund appreciates the opportunity to offer comments on the draft Forms 1094-B, 1095-B, 1094-C, and 1095-C and the draft instructions thereto (the "Reporting Forms and Instructions"), which implement the final annual information reporting regulations under Internal Revenue Code Section 6055 and Section 6056 (published in Volume 79 of the Federal Register, on March 10, 2014). While these various resources provide helpful guidance on reporting obligations under the Affordable Care Act ("ACA"), several challenges remain in the multiemployer plan context. This comment letter describes the reporting challenges and burdens facing multiemployer plans like the Fund and contributing employers, raises issues for clarification, and suggests approaches for minimizing the burdens of compliance.

Through its health and welfare plan, the Fund has provided medical and other benefits to tens of thousands of workers and dependents in the hospitality, gaming, restaurant, and food service industries across the country for over 40 years.

The ACA will require two types of annual reports: the first requires plans providing minimum essential coverage ("MEC") to report on that coverage under Internal Revenue Code Section 6055, and the second requires large employers subject to the ACA to report on compliance with the employer shared responsibility ("ESR") rules under Internal Revenue Code Section 6056. Beginning with the 2015 calendar year, the Fund will be legally responsible for preparing MEC reports under Section 6055, and most of its contributing employers will be legally responsible for preparing ESR reports under Section 6056.

We support the Internal Revenue Service's efforts to streamline ACA reporting for multiemployer plans and for contributing employers, such as the use of a time-saving indicator code on Form 1095-C that helps minimize the amount of information that employers contributing to multiemployer plans must track for ESR reporting.

I. ***Summary of Comments and Requested Clarifications***

We request the following modifications to the draft Reporting Forms and Instructions:

- A. **Operational Issues in the Multiemployer Context.** As described in this letter, significant operational issues and hurdles exist in the multiemployer plan context. Please include an estimate of the expected manhours and/or paperwork burden required by employers and health plans to complete these reports. Currently the regulations assume this burden to be nonexistent. A realistic estimate will allow our plans and employers to better plan the needed resources for compliance.
- B. **Clarify Alternative Reporting Options for Multiemployer Plan Coverage.** Please clarify that the four optional ESR alternative reporting methods are available to employers contributing to multiemployer plans. Consider expanding any one of the alternative reporting methods (such as the "Qualifying Offer" reporting method) to include coverage offered under the multiemployer interim rule relief.
- C. **Please Resolve Current Ambiguity Regarding the Use of Indicator Codes in the Multiemployer Plan Context.** Please provide additional direction regarding lines 14 and 16 of Form 1095-C.

II. ***Anticipated Operational Issues in the Multiemployer Plan Context***

- A. **Existing Guidance Recognizes That the Unique Structure of Multiemployer Plans Warrants Rules for Compliance that are Administratively Feasible.**

A transition rule under the ACA known as the "multiemployer plan transition rule" or "multiemployer interim rule relief" applies when an employer contributes on behalf of its full-time employees to a multiemployer plan that meets affordability and minimum value requirements and provides coverage to such employees who meet the plan's eligibility conditions and to their dependents. 79 Fed. Reg. 8544, 8576 (Feb. 12, 2014). Those employers are deemed to automatically satisfy their employer shared responsibility (ESR) obligations with respect to the full-time employees on whose behalf the employer contributes. This transition rule was adopted "in view of [multiemployer] plans' unique operating structures," and was intended "to provide an administratively feasible means for employers that contribute to multiemployer plans to comply with section 4980H." *Id.*

Unions and employers bargain the terms of multiemployer plan coverage with the intent of providing comprehensive benefit coverage to covered employees and their dependents. The plan eligibility terms typically result from an arm's length bargaining process between two sophisticated parties. Though coverage provided under multiemployer plans may not directly align with the specific elements of the ESR rules, the individual mandate, and requirements for premium tax credit eligibility, multiemployer plans will quite often provide coverage that is more comprehensive than what is required by the law (including extending coverage to part-time employees). Further, multiemployer plans are directly subject to various other complex rules under the ACA, including the 90 day waiting period limitation, which ensures that coverage will be extended to covered employees within a reasonable period of time.

We are mindful of prior comments on the proposed ACA reporting regulations that suggested a rule that would have required a contributing employer to report only information needed for the IRS to confirm that the employer met the conditions for this multiemployer plan transition rule. The IRS rejected this suggested approach, reasoning that the suggested level of reporting "would not provide all the relevant information needed to administer the premium tax credit" (such as the employee's share of the lowest-cost self-only coverage providing minimum value). 79 Fed. Reg. 13245. The final ACA reporting regulations and draft Reporting Forms and Instructions, however, raise many operational questions.

B. The Coordination and Exchange of Information Between Multiemployer Plans and Contributing Employers for ESR Reporting Will Be Time Consuming.

We expect it is highly unlikely that any employer contributing to a multiemployer plan would have all the information necessary to complete the Code Section 6056 reports as required by the ACA reporting regulations. As the IRS recognized in the preamble to the final ESR reporting regulations:

[T]he unique structure of many multiemployer plans means that some of the information relevant to the [ESR report], such as the employee contribution (if any) for the lowest-cost self-only coverage providing minimum value, is held by the multiemployer arrangement. On the other hand, some of the information relevant to the [ESR report], such as whether a participant is a full-time employee for a particular month, is held by the [contributing employer]. As noted by commenters, this may make the preparation, filing, and furnishing of the [ESR] returns challenging.

79 Fed. Reg. 13245. Contributing employers and multiemployer plans like the Fund, which are working to ensure that appropriate data systems are in place for 2015 to capture and consolidate the information needed for ACA reporting, are tasked with determining what data is employer-held and what data is plan-held.

The Fund, for example, does not have the necessary information to determine whether each contributing employer is an "applicable large employer" subject to the ESR reporting rules, and only has information regarding a contributing employer's employees reported by the employer—not all employees. Further, the Fund does not have data regarding a particular participant's classification by the contributing employer as a "full-time" employee for a given month. The contributing employer often would not have information needed to confirm who was offered coverage, which employees elected coverage, whether dependents were offered and/or enrolled coverage, and which plan options provide minimum value. Regarding line 15 of Form 1095-C, the employer would be best suited to track the employee premium imposed by the employer or collective bargaining agreement (if any), while the Fund would expect to have information on any potential self-payment or multiemployer plan required premium.

The IRS expressly acknowledged that presently there is no legal mechanism obligating multiemployer plans to provide any information to contributing employers for ESR reporting purposes. 79 Fed. Reg. 13231, 13245 (Mar. 10, 2014). Further, the IRS and Treasury do not have statutory authority to transfer reporting obligations from the contributing employer to the multiemployer plan. *Id.*

Nevertheless, as a practical matter, we anticipate that many or most Taft-Hartley welfare plans would voluntarily provide contributing employers with reasonably requested information that employers need in order to satisfy their ACA reporting obligations. The Fund, for its part, expects to coordinate an appropriate information exchange with its own contributing employers and is in the process of planning for compliance with the ACA reporting rules.

Coordinating this exchange of information between multiemployer plans and contributing employers so that the latter may comply with ESR reporting obligations imposes unprecedented administrative burdens on plans and employers, which are not present in the single-employer context. Moreover, there is often a lag time between the date that an employer makes contributions to the Fund and when those contributions are processed (and, ultimately, when coverage relating to those contributions becomes effective). For example, contributions for December hours typically are not due, and would not be received by the plan, until January 20.

This leaves very little, if any, time after the close of the year for multiemployer plans and contributing employers to process this data and aggregate it with employee hours, and for the entity handling ESR reporting to provide reports to collectively bargained employees by the proposed deadline. Practically speaking, multiemployer plans will face great difficulty providing complete and accurate prior-year information to employers by January 31 to enable employers to issue the required ESR information statements. (As discussed below, a similarly burdensome exchange of different information must occur where employers have delegated ESR reporting to multiemployer plans).

C. The Delegated Reporting Option under Current Guidance Does Not Significantly Ease Administrative Burdens for Contributing Employers and Multiemployer Plans.

The final regulations allow, but do not require, a contributing employer to engage a multiemployer plan to prepare ESR reports and/or statements on the employer's behalf (a "Delegation Election"). This option raises the following issues, however:

1. The primary administrative burden caused by the coordination and exchange of information would still remain. While the default reporting arrangement would, as a practical matter, require the multiemployer plan to send coverage-related information to contributing employers, the delegated reporting option would require the multiemployer plan to obtain employment-related information from the relevant contributing employer.
2. The employer, not the plan, would prepare the employer's "authoritative" ESR transmittal form (Form 1094-C). An employer could submit multiple packets of ESR information statements for different groups of employees, each packet with a separate ESR transmittal form, or could submit all ESR information statements at once with one ESR transmittal form. In all cases the employer will need to file an "authoritative" ESR transmittal form that reports **aggregate** employer-level data for all of the employer's full-time employees. As such, some sections of the ESR transmittal form (Form 1094-C), such as controlled group information, will be completed on the authoritative ESR transmittal form only. Existing guidance suggests that, as a

practical matter, each contributing employer always would prepare its own authoritative ESR transmittal form and a multiemployer plan could not do so on its behalf. In any event, multiemployer plans will need to provide information to contributing employers in advance so they can timely prepare their authoritative ESR transmittal forms.

These issues suggest that, under current guidance, there is no significant upside for contributing employers that elect to delegate reporting to multiemployer plans, and there is no significant upside for multiemployer plans to agree to assume such reporting responsibilities. In any event, the contributing employer remains responsible for any penalties for failure to timely and accurately issue statements and file reports under Section 6056, and many employers will need to fill out ESR reports on behalf of employees not covered by the multiemployer plan. It is important to note that a Delegation Election is distinct from the voluntary exchange of information between plans and contributing employers that is expected to occur in connection with ESR reporting (which is described in Part II.B above).

D. Estimated Annual Burden Hours under Current Guidance.

We request an estimate of the total annual paperwork/manhour requirements these regulations will add to existing operations for both the employer and the multiemployer health plan based on existing guidance. This is usually a component of regulation setting and can be used as a proxy for the employer and the Fund in resource planning. Additional staff and systems must be factored in by the Fund and then negotiated into the CBA to ensure this requirement can be met. A sample breakout is provided.

Reporting Requirement	Entity Handling Reporting	Estimated Total Annual Burden Hours for Relevant Entities
Section 6055 (MEC Reports)	Multiemployer plan	Plan: ____ Each Contributing Employer: ____
Section 6056 (ESR Reports)	Contributing Employer	Plan: ____ Each Contributing Employer: ____
Section 6056 (ESR Reports)	Multiemployer Plan (under delegated reporting, explained below)	Plan: ____ Each Contributing Employer: ____

III. Requested Guidance and Proposals for Minimizing Burdens on Respondents

A. Clarify Alternative Reporting Options for Employers Contributing to Multiemployer Plans.

The ESR rules provide for a standard reporting method and four optional alternative reporting methods: the "Qualifying Offer Method," the "2015 Qualifying Offer Method Transition Relief," the "Section 4980H Transition Relief," and the "98% Offer Method," all defined on pages 4-5 of the draft ESR form instructions. 2014 Instructions for Forms 1094-C and 1095-C (draft issued August 28, 2014), pages 4-5. The instructions describe in detail how required information must be reported under the alternatives and the requirements for each.

It is not clear at this juncture whether one particular alternative will be most appropriate in the multiemployer plan context. The criteria for the alternatives appear to be fact specific and best assessed on a case-by-case basis. The 2015 Qualifying Offer Method Transition Relief, the Section 4980H Transition Relief, and the 98% Offer Method incorporate criteria that relate to the coverage provided to a particular portion of an applicable large employer's aggregate workforce, or relate to the size of an applicable large employer's aggregate workforce. As such, it appears applicable large employers will need to determine whether any of these three alternative reporting options may be available.

The fourth alternative reporting method, the Qualifying Offer Method, does not map perfectly onto the requirements of the multiemployer interim rule relief, which applies when an employer contributes on behalf of its full-time union employees to a multiemployer plan that meets affordability and minimum value requirements and provides coverage to dependents. 79 Fed. Reg. 8544, 8576 (Feb. 12, 2014).

The Qualifying Offer Method requires the employer to certify that "for all months during the year in which the employee was a full-time employee for whom a section 4980H employer shared responsibility payment could apply, the employer made a Qualifying Offer," which is defined as "an offer of MEC providing minimum value to one or more full-time employees for all calendar months during the calendar year for which the employee was a full-time employee for whom a section 4980H assessable payment could apply, at an employee cost for employee-only coverage for each month not exceeding 9.5 percent of the mainland federal poverty line divided by 12, provided that the offer includes an offer of MEC to the employee's spouse and dependents (if any)." 2014 Instructions for Forms 1094-C and 1095-C (draft issued August 28, 2014), pages 4, 11.

Contributing employers eligible for multiemployer interim rule relief may be in plans applying the same or different affordability tests (79 Fed. Reg. 8544, 8576 (Feb. 12, 2014)). Further, contributing employers do not know (and, due to HIPAA privacy concerns, may not be able to determine) which months their employees had coverage.

We request that the IRS consider expanding the alternative reporting rules under the Qualifying Offer Method to include, categorically, contributing employers eligible for multiemployer interim rule relief. This would effectively exempt such employers from detailed reporting on lines 14-16 of Form 1095-C, and would significantly ease the burden on multiemployer plans and contributing employers of reporting and exchanging information required for reporting.

B. Resolve Ambiguity Regarding the Use of Indicator Codes in the Multiemployer Plan Context.¹

1. Line 14 on Form 1095-C.

We believe that further guidance regarding line 14 on Form 1095-C is needed. It is not clear how a contributing employer should report on line 14 with respect to employees on whose behalf the

¹ While presumably not central to the issues facing multiemployer plans and their contributing employers, we would request that the IRS specify the purpose of line 17 (currently designated as "Reserved") on Form 1094-C.

employer contributes to a multiemployer plan and who (a) actually have coverage, or (b) do not have coverage.

With respect to employees in group (a), it appears employers will use the code that describes the multiemployer plan coverage offered. It also appears that the possible Line 14 codes for employees of an employer eligible for the multiemployer plan transition rule are: 1A ("Qualifying Offer"), 1C (MEC providing minimum value to employee and at least MEC offered to dependents), 1E (MEC providing minimum value and at least MEC offered to dependents and spouse), 1I (Qualified Offer Transition Relief 2015).

The rest of the codes are of limited relevance for employers contributing to multiemployer plans. For instance:

Indicator Code	Description of Information Communicated by the Code	This Is Incompatible with the Multiemployer Plan Transition Rule Because the Indicator Code:
1B	Offered MEC providing minimum value to the employee only	Indicates dependent coverage was not offered
1D	Offered MEC providing minimum value to employee and at least MEC offered to spouse (not dependents)	Indicates dependent coverage was not offered
1F	Offered MEC not providing minimum value to employee, or employee and spouse or dependents, or employee, spouse, and dependents	Indicates coverage did not provide minimum value
1G	Offered coverage to employee who was not full-time employee for any month of the year and enrolled in self-insured coverage for one or more months of the year	Relates to non-full-time employees. As we understand, the multiemployer plan transition rule only applies with respect to full-time employees. Also, the instructions expressly provide that "employer-sponsored self-insured health coverage does not include coverage under a multiemployer plan."
1H	No offer of coverage (employee not offered any health coverage, or employee offered coverage that is not MEC)	Indicates no coverage offered

The ESR Form Instructions for line 14 state: "Enter the code identifying the type of health coverage actually offered by the employer (or on behalf of the employer) to the employee. Do not enter a code for any other type of health coverage the employer is treated as having offered under the . . . multiemployer arrangement interim guidance (if the employer is contributing on behalf of an employee but the employee is not eligible for coverage under the multiemployer plan) under Form 1094-C, Part III, column (a)."

These instructions leave many unanswered questions. The IRS should clarify that employers using the multiemployer plan transition relief code of 2E should have the option of (a) leaving line 14 blank, or (b) using an alternative reporting code (such as the "Qualifying Offer" code), regardless of whether the employee is actually covered.

2. Line 15 on Form 1095-C.

Presumably, employers may rely on the multiemployer plan transition relief as long as they have verified that the multiemployer plan to which they contribute meets the various factors outlined above, including that coverage is affordable. We assume employers would be permitted to verify coverage affordability without requiring the multiemployer plan to specify plan premiums (if any). As such, we request that the IRS consider adopting a rule that employers using code 2E on line 16 are permitted to leave line 15 blank.

3. Line 16 on Form 1095-C.

The IRS provides for indicator codes that generally describe facts that would excuse the employer from paying an employer shared responsibility penalty with respect to a certain employee. The draft ESR form instructions provide additional details regarding the indicator codes and address which code to use for a month if multiple codes could apply. 2014 Instructions for Forms 1094-C and 1095-C (draft issued August 28, 2014), pages 6-8.

One specific indicator code for Line 16, indicator code 2E (for the multiemployer interim rule relief), saves ESR reporters some time on Form 1095-C. Generally, ESR reporters reporting on coverage offered to an employee under a multiemployer plan generally will use indicator code 2E on Form 1095-C, Line 16, for any month in which the multiemployer transition relief applies for that employee.

The draft ESR form instructions also provide that, for any month in which the multiemployer transition relief applies with respect to an employee, indicator code 2E will trump over indicator codes related to Section 4980H safe harbors for a limited non-assessment period, the Form W-2 affordability safe harbor, the federal poverty line affordability safe harbor, and the rate of pay safe harbor. Therefore, we anticipate that contributing employers eligible for the multiemployer plan transition relief will not need to track or report the alternate information contained in those trumped indicator codes.

The draft ESR form instructions should be clarified as suggested below to state which indicator code trumps where indicator code 2E and 2A, 2B, 2C or 2I (defined below) could apply for a month:

- Indicator code 2A indicates that an employee was not employed during the month. The IRS should clarify that wherever indicator code 2A applies for a month, indicator code 2E could not apply for a month.
- Indicator code 2B indicates that an employee was not a full-time employee for a month and did not enroll in MEC offered for the month. There is no requirement to cover employees who are not full-time. But, there is no requirement to determine full-time status if the employer qualifies for multiemployer plan transition relief. So, the IRS should clarify that Code 2E should trump Code 2B.

- Indicator code 2C indicates that the employee enrolled in the health coverage offered by the employer. Currently, the draft instructions indicate that Code 2C trumps Code 2E; contributing employers, however, do not know in which months their employees had coverage. Moreover, this information will be reported on the multiemployer plan's Form 1095-B. Accordingly, the IRS should clarify that Code 2E trumps Code 2C.
- Indicator code 2I indicates that non-calendar year transition relief applies to the employee. It is not clear that indicator codes 2I and 2E are necessarily mutually exclusive. In our view, it appears reasonable to report indicator code 2E (indicating the multiemployer plan transition relief) over indicator code 2I.

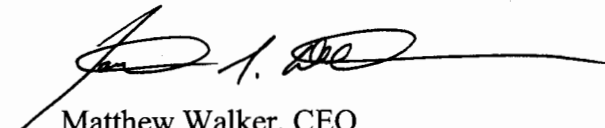
Please revise the 2014 Instructions for Forms 1094-C and 1095-C to clarify whether the multiemployer plan indicator code hierarchy described above is correct.

IV. ***Conclusion***

The Fund values the opportunity to provide comments on the implementation of the new reporting requirements in draft Forms 1094-B, 1095-B, 1094-C, 1095-C, and the instructions thereto, and how the reporting rules may impact large multiemployer plans serving the workforces of many contributing employers. We hope the IRS will provide greater flexibility with regard to the reporting, taking into consideration the unique challenges and extensive costs facing the Fund and similarly situated multiemployer plans and their contributing employers. Please do not hesitate to contact us if you have any questions about our comments or need additional information.

Very truly yours,

UNITE HERE HEALTH



Matthew Walker, CEO