

Box 12 of W-2 Will Be More Crowded

By Rich Glass, JD



Rich Glass is chief compliance officer for Infinisource, Inc. He is a licensed attorney and brings more than 18 years of legal expertise, specializing in benefits, human resources and related regulatory compliance. He has testified before the IRS and has provided comments on regulations issued by several

governmental authorities. He is a member of the Health Plan Advisory Panel at Thompson Publishing Group and contributing editor of Thompson's Flex Plan Handbook. He is a frequent speaker and author on various benefits, employment law and compliance issues.

Box 12 takes up only 1.5 inches square on Form W-2, but does some heavy lifting. The health care reform law known as the Affordable Care Act (ACA) simply added to Box 12's tasks, and the IRS recently clarified how it will work. IRS Notice 2011-28 consists of 31 questions and answers related to W-2 reporting and Box 12, and delays the overall reporting requirement for an additional year for many small employers. (For more on the Form W-2, see ¶813 of the *Handbook*.)

To review, Section 9002 of the ACA originally required W-2 reporting of employer-sponsored health coverage

for the 2011 tax year. Notice 2010-69 had delayed the enforcement of that requirement until the 2012 tax year, making this year an optional reporting year. Specifically, the requirement is to report the cost of group health coverage in Box 12 as Code DD. Currently, more than 30 codes can be used to populate Box 12, which is why the health coverage code is two characters. The paper W-2 has space for only four entries.

Section 9002 applies to employers of all sizes. It applies to federal, state and local governments, churches and religious organizations.

Notice 2011-28 provides plenty of good news for flexible benefit plan professionals. Here are some highlights of the good news, primarily based on what does not need to be reported:

- **Health FSAs are generally exempt.** The amount of the FSA salary reduction is not reportable. Notice 2011-28 consists of 31 questions and answers related to W-2 reporting. If the amount available in the FSA exceeds the salary reduction amount, then the difference is reportable. The two most common situations in which this will arise are with employer flex credits and employer matching FSA contributions.
- **Health reimbursement arrangements (HRAs, see ¶311) are fully exempt.** The IRS provided a blanket exemption for HRAs. Thus, if the HRA is the only health coverage provided by the employer, there is nothing to report.
- **Health savings accounts (HSAs, see ¶292) are exempt.** Likewise, HSA contributions (both from the employer and employee) get a full pass, even if the contributions are made through a cafeteria plan.
- **Other types of plans are exempt.** These other plans are also not reportable under Section 9002:
 - 1) Stand-alone dental coverage
 - 2) Stand-alone vision coverage
 - 3) Long-term care coverage
 - 4) Hospital indemnity and disease-specific coverage offered as a discrete non-coordinated benefit
 - 5) Archer MSAs
 - 6) Self-insured plans not subject to COBRA (for example, self-insured church plans and self-insured small employer plans)

Flex Plan Handbook

CONTRIBUTING EDITOR: **RICH GLASS**
INFINISOURCE, DALLAS, TEXAS

DIRECTOR OF PUBLISHING: **LUIS HERNANDEZ**

ASSOCIATE PUBLISHER: **GWEN M. COFIELD**

SENIOR MANAGING EDITOR: **JOHN F. IEKEL**

DESKTOP PUBLISHING SPECIALIST: **SHAWNE HICKS**

The *Flex Plan Handbook* (USPS 009-522) is published quarterly by Thompson Publishing Group, 805 15th St. NW, 3rd Floor, Washington, DC 20005. Periodicals Postage Paid at Washington, D.C., and at additional mailing offices.

POSTMASTER: Send address changes to: *Flex Plan Handbook*, Thompson Publishing Group, 5201 W. Kennedy Blvd., Suite 215, Tampa, FL 33609-1823.

This newsletter for the *Flex Plan Handbook* includes a looseleaf update to the *Guide*. For subscription service, call 800 677-3789. For editorial information, call 202 872-4000. Please allow four to six weeks for all address changes.

This information is designed to be accurate and authoritative, but the publisher is not rendering legal, accounting or other professional services. If legal or other expert advice is desired, retain the services of an appropriate professional.

Copyright ©2011 by Thompson Publishing Group

 **THOMPSON**
Insight you trust.

See *Form W-2*, p. 3

7) Governmental plans primarily for military personnel

- **Indian tribal governments are exempt.** The Notice exempts these organizations.
- **If no W-2 is required, no W-2 is required.** This may sound like a strange statement, but here is the bottom line. Some former employees, including retirees, with no compensation for the tax year do not have the right to a W-2 simply so they can see the cost of their health coverage. These individuals might still be receiving group health coverage in the form of COBRA or a retiree medical plan. In other words, employers don't have to create a W-2 where Box 1 shows \$0 in wages, tips and other compensation.
- **No additional W-3 reporting is required.** Typically, what goes on the W-2 is totaled up on the W-3. That is not the case here.
- **Special requests in 2012 are exempt.** Recall that under Notice 2010-69, the earliest that employers must report the cost of health coverage is January 2013 for the 2012 tax year. Therefore, if an employee terminated in 2012 requests a W-2 earlier than January 2, 2013; the W-2 need not contain the required information in Box 12.
- **Small employer delay.** Employers that are required to file fewer than 250 W-2s in the 2011 tax year are excused from the reporting requirement until the 2013 tax year. Any corrected W-2s (that is, Forms W-2C) are not included in the count.

The questions you may be asking are, "What is left? What actually needs to be reported?" Here is a partial list:

- fully insured medical plans;
- self-insured medical plans subject to COBRA;
- on-site medical clinics; and
- the cost of coverage for those who are covered on a post-tax basis (for example, children over age 27 and non-dependent domestic partners)


Employers must report the aggregate cost of coverage, both the employer and employee portions, even if some of it is paid on a post-tax basis.

Three methods are permissible for calculating the cost:

- 1) what is charged for the COBRA premium (less the two percent administrative fee);
- 2) the total premium charged for fully insured policies; and
- 3) a modified COBRA premium where an employer subsidizes the cost of coverage or determines cost by applying the cost of coverage in a prior plan year.

A special rule applies for employees terminated during the applicable tax year. An employer may apply any reasonable method as long as it uses that method consistently over the course of the year. For example, an employee who terminates on April 30 and takes six months of COBRA presents the employer with two reasonable reporting options:

- 1) report only the four months of active employee coverage; and
- 2) report both the four months of active employee coverage and six months of COBRA.

Notice 2011-28 should play favorably before an employer audience. In many respects, it makes the best of a bad situation of adding to employers' administrative burdens without adding any apparent value (it is not immediately known what will be done with the data from Code DD in Box 12). The notice delays the effective date for many employers by another year. It also exempts some coverage (for example, HRAs and the salary reduction portion of health FSAs) that would be challenging to calculate. The IRS stated that more guidance would be forthcoming and requested comments. 

Editorial Advisory Board

MARIANNA G. DYSON, ESQ.

Miller & Chevalier Chartered
Washington, D.C.

RICHARD F. FEDERICO

Managing Partner, Workplace Innovation
Trumbull, Conn.

DAVID R. FULLER, ESQ.

Morgan, Lewis & Bockius, LLP
Washington, D.C.

RODNEY D. GARCIA

The Collins Firm
McLean, Va.

JERRY E. HOLMES, ESQ.

Morgan, Lewis & Bockius, LLP
Washington, D.C.

KAREN KIRKPATRICK

Infinisource, Inc.
Coldwater, Mich.

SUSAN NASH, ESQ.

McDermott Will & Emery
Chicago, Ill.

SUSAN SEITEL

WFC Resources, Inc..
Minnetonka, Minn.

ANDREW SHERMAN

The Segal Company
Boston, Mass.

VALERI STEVENS,

APM, FLMI, CEBS, APA, EA
Main Street Benefits
Torrance, Calif.