

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

CC:PSI:B07:RSmith  
POSTN-127132-15

Third Party Communication: None  
Date of Communication: Not Applicable

UILC: 9999.92-00

date: August 19, 2015

to: Elizabeth Wagner  
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subject: Risk Adjustment and Net Premiums Written

This memorandum responds to your request for assistance dated August 12, 2015. This advice may not be used or cited as precedent.

**ISSUE**

For purposes of the health insurance providers fee under § 9010 of the Affordable Care Act (ACA), whether a covered entity's net premiums written include any permanent risk adjustment payments it received.

**CONCLUSION**

A covered entity's net premiums written include any permanent risk adjustment payments it received.

**BACKGROUND & LAW**

*Health Insurance Providers Fee*

Section 9010(a) imposes an annual fee on each covered entity engaged in the business of providing health insurance. The fee is due by the annual date specified by the Secretary, but in no event later than September 30th of each calendar year in which a fee must be paid (fee year).

Section 9010(b) requires the Secretary to determine the annual fee for each covered entity based on the ratio of the covered entity's net premiums written that are

taken into account during the calendar year immediately before the fee year (data year) to the aggregate net premiums written of all covered entities that are taken into account during the data year. In calculating the fee, the Secretary must determine each covered entity's net premiums written for United States health risks based on reports submitted to the Secretary by the covered entity and through the use of any other source of information available to the Secretary.

Section 57.2(k) of the Health Insurance Providers Fee regulations defines net premiums written as premiums written, including reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions and medical loss ratio (MLR) rebates with respect to the data year. For this purpose, MLR rebates are computed on an accrual basis in determining net premiums written. Because indemnity reinsurance within the meaning of § 57.2(h)(5)(i) is not health insurance under § 57.2(h)(1), the term net premiums written does not include premiums written for indemnity reinsurance and is not reduced by indemnity reinsurance ceded. However, in the case of assumption reinsurance within the meaning of § 57.2(h)(5)(ii), the term net premiums written does include premiums written for assumption reinsurance and is reduced by assumption reinsurance premiums ceded.

Section 57.4(b)(1) provides that the IRS will determine net premiums written for health insurance of United States health risks for each covered entity based on the Form 8963, "Report of Health Insurance Provider Information," submitted by each covered entity, together with any other source of information available to the IRS. Other sources of information that the IRS may use to determine net premiums written for each covered entity include the Supplemental Health Care Exhibit (SHCE), which supplements the annual statement filed with the National Association of Insurance Commissioners (NAIC) pursuant to State law, the annual statement itself or the Accident and Health Policy Experience filed with the NAIC, the Medical Loss Ratio (MLR) Annual Reporting Form filed with the Center for Medicare & Medicaid Services' Center for Consumer Information and Insurance Oversight of the U.S. Department of Health and Human Services, or any similar statements filed with the NAIC, with any State government, or with the Federal government pursuant to applicable State or Federal requirements.

Section 57.4(b)(2) provides that for any covered entity that files the SHCE with the NAIC, the entire amount reported on the SHCE as direct premiums written will be considered to be for health insurance of United States health risks as described in § 57.2(n) (subject to any applicable exclusions for amounts that are not health insurance as described in § 57.2(h)(2)) unless the covered entity can demonstrate otherwise.

The preamble to the Health Insurance Providers Fee regulations explains that, for covered entities that file the SHCE with the NAIC, net premiums written for health insurance generally will equal the amount reported on the SHCE as direct premiums written minus MLR rebates with respect to the data year, subject to any applicable exclusions under § 9010 such as exclusions from the term health insurance. T.D. 9643,

78 FR 71476, 71484 (Nov. 29, 2013). Form 8963 accordingly requires reporting of direct premiums written for purposes of determining net premiums written.

A covered entity reports its direct premiums written for health insurance of United States health risks on column (f) of Form 8963.

### *Risk Adjustment*

Section 1343 of the ACA provides for a permanent risk adjustment program to certain small individual and small group plans. In general, the program transfers risk adjustment funds from health insurance plans with relatively lower risk enrollees to issuers that disproportionately attract high-risk populations, such as individuals with chronic conditions.

Section 1343(a)(1) generally requires each State to assess a charge on health plans and health insurance issuers (with respect to health insurance coverage) if the actuarial risk of the enrollees of such plans or coverage for a year is less than the average actuarial risk of all enrollees in all plans or coverage in the State for the year that are not self-insured group health plans.

Section 1343(a)(2) generally requires each State to make a payment to health plans and health insurance issuers (with respect to health insurance coverage) if the actuarial risk of the enrollees of such plans or coverage for a year is greater than the average actuarial risk of all enrollees in all plans and coverage in the State for the year that are not self-insured group health plans.

### ANALYSIS

A covered entity might take the position that payments it received as part of the § 1343 risk adjustment program are not includable in net premiums written.

Section 57.2(k) defines net premiums written as premiums written net of certain specified amounts and describes specific reductions for reinsurance ceded, ceding commissions, and MLR rebates. This definition does not authorize an additional reduction to exclude risk adjustment payments received. Therefore, we conclude that, for purposes of § 9010, a covered entity's net premiums written include any § 1343 risk adjustment payments it received. If the covered entity included these amounts as direct premiums written on its SHCE, the covered entity must include these amounts in column (f) of Form 8963. If the covered entity did not include these amounts as direct premiums written on its SHCE or did not file an SHCE, these amounts are still part of net premiums written and must be reported as such on Form 8963. If the covered entity does not include these amounts on its Form 8963, § 9010(b)(3) authorizes the IRS to adjust the covered entity's net premiums written to include these amounts for purposes of calculating the fee.

Please call Rachel Smith at (202) 317-6855 if you have any further questions.