



## **Basic Duties of a Vendor Fiscal/Employer Agent in Consumer-Directed Financial Management Services**

*Participant-directed programs provide Financial Management Services as an information and assistance support to enrolled participants. This document outlines the primary and basic responsibilities of the Vendor Fiscal/Employer Agent model of Financial Management Services. These duties may be customized depending on program requirements and state rules and regulations. Other duties may also be required.*

*Vendor Fiscal/Employer Agent providers perform these tasks for participants who hire their own workers and as such serve as the common law employer of workers. The Vendor Fiscal/Employer Agent performs these tasks as the agent of the participant employer. The Vendor Fiscal/Employer agent is not considered the common law employer of the support workers hired by the participant.*

### **Policies and Procedures**

- Have a policy and procedure manual that outlines each duty the F/EA performs, internal controls for performing the duty and regular and back-up staff responsible for the duty

### **Participant Enrollment**

- Support enrollment of participants with the F/EA
- If participant will hire workers, support participant to become an employer and delegate certain responsibilities to the agent. This includes completion of the following forms:
  - IRS Form SS-4, Application for Employer Identification Number
  - IRS Form 2678, Employer Appointment of Agent (executed by both participant employer and F/EA)
  - IRS Form 8821, Tax Information Authorization
  - Application for State Income Tax Withholding Account Number
  - Application for State Unemployment Tax Account Number
  - State Forms Power of Attorney for State Unemployment and Income Tax (as applicable)
  - Any agreements between F/EA and participant
- Obtain an individual Federal Employer Identification Number for each participant employer
- Submit above authorization forms to applicable tax agencies and obtain individual state tax account number for each participant employer
- If participant will hire workers, support procurement of a workers' compensation policy per state regulations and program rules
- If participant will hire workers, obtain and manage participant State Unemployment experience rate

### **Worker and Goods/Services Vendor Enrollment**

- Support participants to hire workers. This includes completion of the following forms:
  - IRS Form W-4, Employee's Withholding Allowance Certificate
  - USCIS Form I-9, Employment Eligibility Verification
  - State version of Form W-4, as applicable
  - Local tax employee forms

- Collect information on worker's family relationship with employer to correctly manage FICA, FUTA and State Unemployment Insurance tax exemptions (see IRS Publication 15, Circular E, Section on Family Employees)
- Provide participants with employer skills training to support them to hire, train, manage, and discharge workers
- Conduct or assist with criminal background checks on workers, as required by program
- Support participants to procure non-employee goods and services. This includes completion of the following forms:
  - IRS Form W-9, Request for Taxpayer Identification Number and Certification
  - Agreement for Goods and/or Services
- Report workers per state's New Hire Reporting requirements
- Verify workers' Social Security Numbers with the Social Security Administration's Social Security Verification Service (this is important for W-2 filing)

### **Individual Budget Management**

- Receive information on participant individual budgets, including dollar allocations, planned services, designated providers and workers
- Ensure budgets have been properly authorized
- Ensure budgets include all costs, including applicable employer tax and insurance costs
- Receive and track participant's budget funds
- Manage participant service expenditures in accordance with individual budgets
- Monitor over and under expenditures
- If participant under-spends budget, support participant to bank savings, per program rules
- Collaborate with support brokers, case managers, contracting entity etc. to process changes/adjustments to budgets

### **Reporting**

- Provide regular reports to participants, support brokers, care managers, others showing participant expenditures
- Report fraud and suspected fraud to appropriate program contacts
- Submit expenditure reports to contracting entity
  - Expenditure reports may also be required for the F/EA to be reimbursed for payments the F/EA has issued on participants' behalf using F/EA funds
- Variety of other reports may be required

### **Engaging with a Reporting Agent to Perform Certain Payroll Duties (Optional)**

*A Vendor F/EA may choose to contract with a reporting agent (basic payroll company) to perform certain payroll duties, such as payment and tax processing. Note that even contracting with a reporting agent, the F/EA maintains joint liability for Federal employer taxes with the participant. This joint liability cannot be transferred from the Vendor F/EA. Therefore, even using a Reporting Agent, the Vendor F/EA should closely monitor activities and stay up-to-date with applicable rules and regulations.*

- Execute an IRS Form 8655, Reporting Agent Authorization, between the F/EA and reporting agent
- Include the reporting agent on the IRS Form 8821 executed by the participant employer
- Obtain informed consent from participant employer that the F/EA will utilize a reporting agent to perform certain agent duties

## **Payment Processing**

- Collect timesheets and vendor invoices
- Adjudicate timesheets and vendor invoices per participant individual budgets
- Follow up with participant, worker, support broker or care manager to resolve any issues with timesheets and vendor invoices
- Pay timesheets and vendor invoices that meet all program requirements and are covered by the participant's budget
- Withhold Federal (Income Tax, Social Security and Medicare), State (Income Tax) and Local employment taxes per worker allowances and tax regulations
  - Appropriately withhold taxes per worker family employee status. Certain family employees are exempt from Social Security, Medicare and FUTA taxes (see IRS Publication 15, Circular E, Family Employees) and may also be exempt from state unemployment taxes
- Compute Federal (Employer Social Security and Medicare, Unemployment Tax), State (State Unemployment and Disability Insurance) and Local employer taxes per rules and regulations
  - Appropriately withhold taxes per worker family employee status. Certain family employees are exempt from Social Security, Medicare and FUTA taxes (see IRS Publication 15, Circular E, Family Employees)
- Process applicable worker garnishments, liens, levies, union deductions in accordance with state and federal garnishment rules
  - Submit payments and applicable reports to garnishing agencies per garnishment instructions
- Process Advanced Earned Income Credit payments per worker Forms W-5, as applicable

## **Tax and Insurance Reporting and Payment**

- Vendor F/EA must operate per Section 3504 of the Internal Revenue Code, per Revenue Procedure 70-6 and Section 3504 Agent Employment Tax Liability proposed regulations ( REG-137036-08) issued by the IRS on January 13, 2010
- Vendor F/EA should have a separate Federal Employer Identification Number (FEIN) that is used only for purposes of representing participant employers
  - This FEIN should not be used to file or pay taxes for the F/EA's own employees
  - This separate FEIN supports to establish that the F/EA is an agent of participant employers and that participants' employees are not employees of the F/EA
- Deposit employee Federal Income Tax, Social Security and Medicare and employer Federal Social Security and Medicare (FICA) taxes in the aggregate per deposit frequency required by F/EA (see <http://www.irs.gov/businesses/small/article/0,,id=98818,00.html>)
  - Deposit frequency for Vendor F/EA is determined using the F/EA's total, aggregate tax liability across all employers. It is not determined using each participant's individual tax liability.
- Deposit employer Federal Unemployment Tax (FUTA) in the aggregate per F/EA deposit frequency (see <http://www.irs.gov/businesses/small/article/0,,id=98818,00.html>)
  - Deposit frequency for Vendor F/EA is determined using the F/EA's total, aggregate tax liability across all employers. It is not determined using each participant's individual tax liability.
  - Manage when participant employer becomes liable for FUTA tax (after paying \$1000 or more in gross wages in a single calendar quarter).
    - Participant employer is liable for FUTA tax for all previous calendar quarters once employer becomes liable and is liable for all future quarters and years

- If participant employer never pays gross wages of \$1000 or more in a single calendar quarter, participant employer is never liable for FUTA
- File a single IRS Form 941, Employer's Quarterly Tax Return in the aggregate on behalf of all participants represented by the F/EA
  - Form 941 is completed using F/EA's separate FEIN
  - Wages and taxes reported represent total, aggregate wages and taxes for all participants represented by the F/EA
  - Schedule B should be completed per rules
  - Beginning with Q1 2010, F/EAs must also complete and submit Schedule R with Form 941
    - Schedule R disaggregates each participant employer's wages and federal tax liability
- File a single IRS Form 940, Employer's Annual Federal Unemployment Tax Return in the aggregate on behalf of all participants represented by the F/EA
  - Form 940 is completed using F/EA's separate FEIN
  - Wages and FUTA tax reported represent total, aggregate wages and taxes for all participants represented by the F/EA
  - Note: Even F/EA incorporated with a nonprofit 501c3 status MUST file and pay FUTA on behalf of participant employers. In the past, the IRS has issued erroneous notices to 501c3 F/EA providers stating that FUTA is not due. That is not correct. 501c3 status does not impact FUTA for F/EA purposes.
- Deposit and file employee State Income Tax per state rules
  - In most cases, the F/EA will deposit State Income Tax on behalf of each individual employer, but some states permit F/EAs to deposit State Income Tax in the aggregate, as with Federal Income Tax
- Deposit and file employee State Unemployment Tax per state rules
  - The F/EA will deposit State Income Tax on behalf of each individual employer
  - As of February 2010, NRCPDS is not aware of any states that permit F/EAs to file or deposit State Unemployment Tax in the aggregate, as with Federal Unemployment Tax
- Adjust Forms 941 as applicable by completing and filing IRS Form 941-X
- Refund over-collected FICA for workers who earn less than the Federal FICA threshold for the calendar year (See IRS Publication 15, Circular E for threshold information)
- Issue IRS Forms W-2 per rules and regulations for IRS Section 3504 Agents. Forms W-2 are usually submitted to the following:
  - Participants' workers
  - IRS/SSA (Form W-3 or electronic Forms W-2 are also required)
  - State tax agencies (Form W-3 may be required)
  - Participant employers
- Issue Forms 1099-Misc to qualifying non-employee goods and services vendors. Forms 1099-Misc are usually submitted to the following:
  - Qualifying non-employee goods and services vendors
  - IRS (Form 1096 or electronic Forms 1099 are also required)
  - State tax agencies (Form 1096 may be required)

### **Revoke or Retire Employer Account Numbers and Agent Authorization**

- If a participant fully stops using the program, retire the following with the IRS and State Tax Agencies as applicable:
  - Employer Identification Number
  - State Income Tax Withholding Account Number

- State Unemployment Tax Account Number
- Any Local Employment Tax Account Numbers
- If a participant fully stops using the program OR continues to use the program, but transfers to a different F/EA, revoke the following with the IRS and State Tax Agencies as applicable:
  - IRS Form 2678, Employer Appointment of Agent
  - IRS Form 8821, Tax Information Authorization
  - State Forms Power of Attorney for State Unemployment and Income Tax (as applicable)

### **Recordkeeping**

- Maintain records in compliance with the Health Insurance Portability and Protection Act (HIPAA)
- Maintain records in compliance with Fair Labor Standards Act requirements for employers
- Maintain records in compliance with state, local and program rules and regulations
- Make records available for review by contracting entity

### **Customer Service**

- Provide Customer Service to stakeholders per program requirements
- Stakeholders may include, but are not limited to:
  - Participants
  - Workers
  - Non-Employee goods and services vendors
  - Representatives
  - Guardians
  - Family Members
  - Support Brokers
  - Care Managers
- Customer Service requirements and standards may include:
  - Provision of a toll-free phone line
  - Communication in a variety of accessible formats
  - Specific and published Customer Service hours of operation
  - Timeliness requirements for responding to inquiries
  - Timeliness requirements for responding to complaints

### **Miscellaneous**

- Maintain compliance with State Unclaimed/Abandoned Property Laws. Process uncashed checks and other Unclaimed Property per state rules.
- Stay current with Federal, State and Local Program, Tax, Labor, Immigration and Workers Compensation rules and regulations
- Support participants to comply with Workers' Compensation audits as applicable
- Support participants to prepare for Unemployment Claim hearings as applicable
- Respond to requests for worker employment verification
- Support transfer of participants from one F/EA to another as needed
  - The above is critical and labor intensive
  - Contact the National Resource Center for Participant-Directed Services for specific information on these processes