ACA UPDATE: IRS ISSUES FINAL FORMS AND INSTRUCTIONS FOR EMPLOYER COVERAGE REPORTING

The IRS recently issued final versions of the new Forms 1094-B, 1095-B, 1094-C and 1095-C, along with related final Instructions. These forms are for reporting of coverage for 2014 (which is not required), but are expected to be similar for reporting of coverage for 2015.

Beginning in 2016 (for coverage provided in 2015), employers with 50 or more “full-time” employees (called “applicable large employers” (ALEs)) will generally be required to file forms with the IRS reporting health care coverage for full-time employees and other employees who receive employer-sponsored health care coverage. Self-insured health plan sponsors that are ALEs generally will fulfill these requirements by completing all applicable sections of Forms 1095-C and 1094-C. ALEs that sponsor insured plans will generally report their coverage in only certain designated parts of Forms 1095-C and 1094-C, and their health insurers will separately report on Forms 1094-B and 1095-B.

This update provides an overview of Forms 1094-C and 1095-C reporting obligations for ALEs.

Form 1095-C (Employer-Provided Health Insurance Offer and Coverage)

Form 1095-C requires that the following information be provided to the IRS and to employees on an employee-by-employee basis:

- Employer and employee data (e.g., name, tax identification number).

- For each month of the year during which the employee is employed, (i) an indication as to whether coverage was offered to the employee and his/her spouse and/or dependents; (ii) an indication as to whether the employee coverage provided “minimum value,” or if transition relief applies; (iii) unless certain exceptions apply, the monthly employee cost for the least expensive self-only coverage option offered by the employer (which may not be the actual cost paid by the employee); and (iv) a notation regarding the status of the coverage for purposes of the employer coverage mandate penalties.

- Sponsors of self-insured health plans must also list the employee and each covered spouse/dependent, his or her social security number (or, if not available, his or her date of birth) and notation as to which months in the year the individual had coverage for at least one day.

This information generally must be reported for any full-time employee (generally, an employee who works an average of 30 or more hours per week) and any other employee who is enrolled in coverage regardless of whether the employee was full-time (but note that special rules apply for reporting of non-full-time employees). The Instructions specify reporting codes to be used on the forms and, if multiple reporting codes apply, provide ordering rules to determine which code to report.
In general, each employer in a controlled group (an “aggregated ALE group”) is responsible for separately preparing, issuing, and filing the Form 1095-C for its employees. It is permissible, though, to use a third-party agent for this purpose.

Where an employee works for more than one member of an aggregated ALE group during the year, the final Instructions specify that the employee generally should receive a separate Form 1095-C from each such employer. However, if the employee works for two or more employers within the same month, only the one for which the employee works the most hours should be treated as the employer for that month.

**Form 1094-C (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns)**

This Form serves as the transmittal form for Forms 1095-C. An employer may file multiple Forms 1094-C (with different Forms 1095-C), but if the employer does so, it must designate one of them as the employer’s “authoritative” transmittal, which must include aggregate employer-level data. Form 1094-C includes, among other information, the following:

- A “check the box” notation as to whether the employer offered coverage (called “minimum essential coverage” in the Instructions) to 95% of its full-time employees and their dependents for the whole year or for certain calendar months (or is entitled to transition relief, which is treated as “minimum essential coverage” for reporting purposes);

- The employer’s total employee count (including full-time employees, part-time employees and employees in a limited non-assessment period) and total full-time employee count (excluding employees in a limited non-assessment period) for each month of the prior calendar year;

- An indication as to whether the employer is part of an aggregated ALE group, and if so, a list of the name and employer identification number (EIN) of all (or the 30 largest, if more than 30) other members of the aggregated ALE group for the year; and

- An indication as to whether the employer is using one of the alternative reporting methods or eligible for certain transition relief (described below).

Each employer in the aggregated ALE group is required to report separately. A governmental employer, however, may designate another entity that is part of the same governmental unit to file on its behalf for some or all of its employees.

**Filing/Furnishing Requirements**

A Form 1095-C must be provided to each full-time employee (i.e., an employee who averaged 30 or more hours per week), and any other employee who had employer coverage during the year. The deadline for providing this statement to employees and
filing with the IRS is the same as required for the Form W-2, as it must be provided to individuals no later than January 31 of the year following the year to which the return relates (February 1 in 2016, as January 31 in that year is a Sunday).

A Form 1094-C must be attached to any Form 1095-C filed with the IRS. Forms 1094-C and 1095-C must be filed with the IRS no later than March 31 of the following year if filed electronically or February 28 if filed on paper. (Note that an employer must file electronically if it has 250 or more Forms 1095-C.)

The final Instructions note that if an employer provides coverage to individuals who are not employees for any part of the year (such as retirees, COBRA beneficiaries, or non-employee directors), the employer may report coverage for these individuals on either a Form 1095-C or Forms 1094-B and 1095-B.

Failure to timely and correctly file may result in penalties of $200 per error, up to $3 million per year. No penalty applies for incorrect or incomplete filings for 2015, however, if a good faith effort is made to comply.

**Alternative Reporting Options and Transition Relief**

In addition to the regular reporting options, the Forms (as explained in the Instructions) offer the following alternative reporting methods for employers that qualify.

1. **Qualifying Offer Method** – An employer can use this method if it makes a qualifying offer to one or more full-time employees. A “qualifying offer” is generally an offer for all months during the year in which the employee was a full-time employee and not within a limited non-assessment period, if the offer is for (a) coverage providing minimum value at an employee cost for employee-only coverage not exceeding 9.5% of the mainland single federal poverty line ($11,670 in 2014, 9.5% of which is about $1,100), and (b) coverage to the employee’s spouse and dependents.

   For employees who did not enroll in coverage, the employer can either furnish the applicable employee a copy of the Form 1095-C as filed with the IRS, or an alternative statement that for all 12 months of the calendar year, the employee and his/her spouse and dependents, if any, received a qualifying offer and are not eligible for a premium tax credit. The final rules specify that an employee who enrolled in coverage must be provided the Form 1095-C.

   An employer can also use this option for any month in which it made a qualifying offer to an employee, even if the employee didn’t receive a qualifying offer for all 12 months of the year. In this case, the employee must be provided a copy of Form 1095-C.

2. **Qualifying Offer Method Transition Relief** – For 2015, simplified notice is permitted if the employer can certify that it made a qualifying offer to at least 95% of its full-time employees for one or more months. For employees who received a qualifying offer for all 12 months but did not enroll in coverage, use of the alternative statement under “qualifying offer method” is permitted. For employees who did not receive a
qualifying offer for all 12 months and who did not enroll in coverage (or who received no offer), the employer can either furnish the employee a copy of the Form 1095-C as filed with the IRS, or the alternative statement that the employee and his/her spouse and dependents, if any, may be eligible for a premium tax credit for one or more months of 2015. Employees who enrolled in coverage, whether or not the coverage was a qualifying offer, must be provided the Form 1095-C.

3. **98% Offer Method** – The employer must certify that it offered, for all months of the calendar year, (A) affordable health coverage providing minimum value to at least 98% of its employees for whom it files a Form 1095-C, regardless of whether the employee was a full-time employee, and (B) coverage to those employees’ dependents. The employer is not required to identify which employees are full-time or specify on Form 1094-C how many full-time employees it has, but is still required to file Form 1095-C on behalf of all full-time employees and can still be subject to penalties for failure to report with respect to any employee who was full-time for at least one month of the year. (However, if the employer claims a premium tax credit for exchange coverage, the employer may later be required to determine whether the employee was full-time.)

4. **4980H Transition Relief** – Form 1094-C also includes an option to indicate applicable transition relief, including the following:

- Exemption from penalty for failure to offer coverage based on an offer of affordable coverage with minimum value to at least 70% of full-time employees and dependents, rather than 95%;

- Exemption from penalty for failure to offer coverage based on an offer of affordable coverage with minimum value to employees but not dependents, as long as the employer is taking steps to extend coverage to dependents;

- For non-calendar year plans, transition relief for the portion of 2015 before the beginning of the 2015 plan year;

- For an employer that offers coverage no later than the first day of the payroll period that begins in January 2015, treatment as offering coverage for all of January 2015; and

- Calculation of the penalty for failure to offer coverage by reducing the number of employees by 80, rather than 30 (applied pro-rata to aggregated ALE group members).

The Instructions also note that ALEs with between 50 and 99 employees are not subject to a penalty for failure to offer coverage in 2015, but are subject to the reporting requirements.

Note that final forms and Instructions are for optional reporting of coverage offered in 2014, and new forms and Instructions will be issued for reporting of 2015 coverage.