



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

The IRS recently issued draft versions of the new Forms [1094-B](#), [1094-C](#), [1095-B](#) and [1095-C](#) (the “Forms”) along with related [draft Instructions](#).

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 1094-C with the IRS reporting aggregate employee data and coverage information and applicable transition relief. In addition, ALEs will also be required to file Forms 1095-C annually with the IRS reporting (among other things) the employer’s full-time employees and their eligibility for health coverage for each month of the year involved as well as details regarding that coverage and any applicable safe harbors. Copies of the Forms 1095-C must also be provided to employees.

Self-insured health plan sponsors that are ALEs can fulfill both requirements by completing all applicable sections of Forms 1095-C and 1094-C. ALEs that sponsor insured plans will report their coverage in only certain designated parts of Forms 1095-C and 1094-C, and health insurers will separately report on Forms 1094-B and 1095-B.

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, an indication as to whether coverage was offered to the employee and his/her spouse and/or dependents; whether the employee coverage provided “minimum value,” or if transition relief applies; the monthly employee cost for the least expensive self-only coverage option offered by the employer (unless certain exceptions apply); and a notation regarding the status of the coverage for purposes of the penalties under Code section 4980H.
- 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 must be reported for any employee who enrolled in coverage, regardless of whether the employee was full-time.

In general, each employer in a controlled group (“ALE group”) is responsible for separately preparing/issuing/filing the foregoing for its employees. It is permissible, though, to use a third-party agent for this purpose.

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. Form 1094-C includes, among other information, the following:

- A notation as to whether the employer provided minimum essential coverage 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);
- The employer's total employee count 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 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 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.

Filing/Furnishing Requirements

A Form 1095-C must be provided to each "full-time" employee (*i.e.*, an employee who averaged 30 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.

A Form 1094-C must be attached to any Form 1095-C filed by an employer. 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.)

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 draft 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 an offer for all months during the year in which the employee was a full-time employee and which are not within a limited non-assessment period, if the offer is for (a) minimum essential coverage providing minimum value at an employee cost for employee-only coverage not exceeding 9.5% of the mainland single federal poverty line (about \$1,100), and (b) minimum essential coverage to the employee’s spouse and dependents.

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.

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 receive a copy of 1095-C (and not the alternative statement).

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 do receive a qualifying offer for all 12 months, use of the alternative furnishing approach under “qualifying offer method” is permitted. For employees who do not receive a qualifying offer for all 12 months (or who receive no offer), the employer can either furnish the employee a copy of the Form 1095-C as filed with the IRS, or an 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.

3. *98% Offer Method* – The employer must certify that it offered, for all months of the calendar year, affordable health coverage providing minimum value to at least 98% of its employees and their dependents for whom it reports for purposes of Section 6056, regardless of whether the employee was a full-time employee. 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, which includes the following for employers with 100 or more employees:

- 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 ALE group members);

Both the Forms and Instructions are in draft format and subject to change.