

IRS Finalizes Affordable Care Act Reporting Forms

The Internal Revenue Service (IRS) recently finalized reporting forms for employers and insurers to report information required by Internal Revenue Code (Code) Sections 6055 and 6056. The information reported on the forms will be used by the IRS to monitor individual and employer compliance with various Patient Protection and Affordable Care Act (ACA) requirements, including the employer shared responsibility requirement (sometimes referred to as the “employer mandate” or “play or pay” requirement). Reporting is first required in early 2016 for the 2015 calendar year.

What are the New Forms? There are four total reporting forms. Two of the forms are information returns (Forms 1095-B and 1095-C) and two of the forms are transmittal forms (Forms 1094-B and 1094-C).

The “B Forms” (Forms 1094-B and 1095-B) are used to report information to the IRS and to taxpayers regarding minimal essential coverage provided to individuals. This information is used to assess whether an individual is liable for the individual shared responsibility payment (i.e., the payment required by taxpayers who fail to maintain minimum essential coverage). Taxpayers will use the information reported on Form 1095-B to report on their income tax return whether they had qualifying coverage.

The “C Forms” (Forms 1094-C and 1095-C) report information regarding offers of health coverage by large employers and employee health coverage enrollment information. Form 1094-C is used to report summary information to the IRS and to transmit Forms 1095-C to the IRS. Form 1095-C is used to report information about each employee. The forms also are used to determine whether an employer owes a payment under the Code’s employer shared responsibility requirements and to determine employee eligibility for the premium tax credit that can be utilized by eligible individuals who obtain coverage through a state-based health insurance marketplace or exchange.

Who Must File The Forms? An employer’s obligation to file one or more of the ACA reporting forms depends on the size of the employer and whether the group health plan maintained by the employer is insured or self-insured.

Employers with insured group health plans are not required to file the B Forms. The applicable insurer will file Form 1094-B and 1095-B with the IRS and send a copy of Form 1095-B to covered individuals. However, applicable large employers (ALEs) that sponsor insured group health plan coverage will need to report certain information on the C Forms. An ALE is an employer with 50 or more full-time employees, including full-time equivalent employees (collectively, FTEs), during the prior calendar year. For example, an employer with 75 FTEs in 2014 is considered an ALE in 2015. An ALE that sponsors an insured group health plan must file one or more Forms 1094-C and must file a Form 1095-C (or a substitute form) for each employee who was a full-time employee for any month in the calendar year reported (employers with insured plans do not complete Part III of Form 1095-C).

Small employers with self-insured group health plans must file Forms 1094-B and 1095-B with the IRS and provide a copy of the Form 1095-B to employees. ALEs who sponsor self-insured group health plans will use Forms 1094-C and 1095-C (or a substitute form) to report required information to the IRS and covered individuals.

It is important to note that, even though employers who employed fewer than 100 FTEs in 2014 are not subject to the employer shared responsibility requirements in 2015, such employers still must report information on the C Forms regarding coverage offered to full-time employees during 2015.

There are special reporting rules for related entities that are treated as a single employer under the Code. Among other things, these rules require each controlled group member to separately report its full-time employees.

What Information Is Included in the Forms?

In order to complete a Form 1094-C, an employer generally will need:

- information about whether the employer offered qualifying coverage to at least 70% of its full-time employees and their dependents in 2015;
- information about members of the aggregated large employer group, if applicable;
- full-time employee counts, by month;
- total employee counts, by month; and
- an understanding of whether the employer is eligible for certain transition relief, as described in the Form instructions.

In order to complete Form 1095-C, an employer generally will need:

- the name and address of full-time employees;
- information about the health coverage offered to full-time employees, if such coverage was offered;
- the employee's share of the monthly premium for the lowest cost self-only minimum value coverage;
- months the employee was enrolled in coverage;
- months the employer met an affordability safe harbor with respect to an employee; and
- for self-insured plans, information about the covered individuals enrolled in the plan, including social security numbers.

In certain circumstances, employers are permitted to utilize simplified methods of reporting by using a substitute form. Employers should review the instructions for Forms 1094-C and 1095-C to determine whether they are eligible for these simplified reporting methods.

Employers who are required to complete Forms 1094-B and 1095-B (i.e., small employers who sponsor a self-insured group health plan) will need identifying information regarding the employer and information about the covered individuals enrolled in the plan, including social security numbers, to complete the Forms.

When Are The Forms Due? Statements to employees must be furnished by January 31 of the year following the year reported. The statements may be furnished electronically only if prior consent is obtained from the employee. The reporting forms must be filed with the IRS by February 28 (March 31 if filing electronically) of the year following the calendar year reported.

Filers of 250 or more forms must file the forms electronically. The IRS is developing Publication 5165 to provide further details regarding electronic filing. Large employers who are subject to the electronic filing requirement should review Publication 5165 for further details once it is published.

Recommended Actions. The ACA reporting forms are complex and burdensome. Employers who maintain group health plans should take early steps to identify the extent of their reporting obligations and to determine whether proper systems are in place to track the necessary information to complete the forms (e.g., identification of full-time employees by month). An early "dry run" of preparing a draft form can be helpful in order to understand the various types of information needed to complete the forms. Employers also may wish to seek the assistance of third-party vendors to help compile and report the required information. Penalties for failing to comply with the reporting requirements are substantial; therefore, employers are advised to take action now in order to position themselves to complete the forms by the 2016 deadlines.

If you have any questions about this memorandum, please contact any member of our Employee Benefits and Executive Compensation Practice Group listed below.

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