

## IRS Releases Additional Guidance on ACA Reporting, Including Electronic Filing

The IRS recently released new and updated guidance for employers that will be filing Forms 1094-C and 1095-C. It also issued draft guidance on the communication procedures, transmission formats and other technical requirements for filing ACA information returns electronically. Employers that intend to file Form 1095-Cs electronically on their own (rather than using a third party) should carefully review this IRS guidance on electronic filing to ensure that they will be able to submit the required forms for 2015 in the mandated format.

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### Background

The ACA added two significant reporting requirements to the Internal Revenue Code (Code):

- Code Section 6055 reporting: Intended to support IRS enforcement of the individual shared responsibility provisions (“individual mandate”).
- Code Section 6056 reporting: Intended to support IRS enforcement of the employer shared responsibility provisions (“employer mandate”) and the low-income subsidies for coverage purchased in the public marketplace.

The IRS has developed two sets of forms that entities must use to satisfy their ACA reporting obligations. Generally, insurers and employers that are not ALEs (see sidebar at right) with self-insured plans will complete a Form 1095-B return for each “responsible individual” provided minimum essential coverage during a calendar year. In the context of employer-sponsored coverage, the responsible individual would typically be the employee or former employee with coverage. Information about other individuals who have coverage through the responsible individual is also reported on the return. The insurer or employer will furnish each responsible individual with his or her Form 1095-B and submit copies of all Forms 1095-B to the IRS using a Form 1094-B transmittal.

#### ALE: Applicable Large Employer

An applicable large employer (ALE) is an employer with at least 50 full-time employees (including full-time equivalent employees) during the preceding calendar year. Status as an ALE is determined on a controlled group basis.

An employer that is an ALE must complete a Form 1095-C return for each of its full-time employees to report whether the employee was offered medical coverage for each month of the year. If the plan is self-insured, the ALE will also complete a Form 1095-C for each of its non-full-time employees enrolled in medical coverage. Other individuals who have coverage under the employer's medical plans are also reported. The employer will furnish each employee with his or her Form 1095-C and submit copies of all Forms 1095-C to the IRS using a Form 1094-C transmittal.

Both reporting requirements are effective for medical coverage provided on or after January 1, 2015. Individuals must be furnished Forms 1095-B and 1095-C by February 1, 2016 (actual deadline of January 31; 2016 falls on a Sunday). Entities submitting 250 or more Form 1095-Bs or 250 or more Form 1095-Cs with the IRS are required to do so electronically. The deadline for electronic submissions to the IRS is March 31, 2016.

## Updated Guidance on Employer Information Reporting

The IRS recently updated its Affordable Care Act website with additional information about employers' ACA reporting obligations. In addition to making minor changes to its [Q&As](#) on Section 6055 reporting, the IRS made more substantive changes to previously posted questions and answers on Section 6056 reporting and added a new document that provides employers with more specific information on completing Form 1094-C and Form 1095-C.

### Questions and Answers on Reporting of Offers of Health Insurance Coverage by Employers (Section 6056)

This [document](#) includes updated information in the following areas:

**Who is Required to Report.** The Q&A states that although an ALE member (see sidebar) without any full-time employees of its own is generally not subject to Code Section 6056 reporting requirements, if it sponsors a self-insured plan, it must file Forms 1094-C and 1095-C with respect to any employee or former employee covered by that plan during the year. However, the employer may file Form 1095-B for any individual who was not an employee in any month of the year (such as an ex-spouse who elects COBRA).

**Methods of Reporting.** The Q&A clarifies that although an employer sponsoring a self-insured plan may use the Qualifying Offer Method of reporting coverage offered to its full-time employees, it cannot furnish employees enrolled in that plan with the simplified statement permitted under that method. Instead, the employer must provide employees enrolled in a self-insured plan with the Form 1095-C. The Q&A also provides some additional information on using the "98 Percent Offer Method" of reporting.

**How and When to Report.** The Q&A provides additional information on how the Form 1095-C may be provided to employees. It states that the form generally may be delivered to employees in any manner permitted for delivery of a Form W-2, including hand and electronic delivery, if specific requirements are met. However, unlike a Form W-2, an employer is not required to furnish a Form 1095-C within 30 days of request if the employee terminates employment and requests the statement.

#### ALE Member

An applicable large employer member (ALE member) is any entity that is an ALE or that is a member of an aggregated group (such as a controlled group of corporations) determined to be an ALE. Each ALE member has its own independent Code Section 6056 reporting obligation.

The document also clarifies that each ALE member must file a Form 1094-C with the IRS and furnish Form 1095-C to its full-time employees under its own EIN. An ALE member must file and furnish only one Form 1095-C with respect to a full-time employee who worked in different divisions of the same ALE member during the year. In contrast, if a full-time employee worked some months during the year for one ALE member and other months for an ALE member with a different EIN, the employee would receive a Form 1095-C from each ALE member.

### **Questions and Answers about Employer Information Reporting on Form 1094-C and Form 1095-C**

This [document](#) provides employers with more specific information on how to complete Form 1094-C and Form 1095-C under various circumstances.

**Basics of Employer Reporting.** Unless the employee or the employee's family members were enrolled in a self-insured plan option, an ALE member does not have to file a Form 1095-C for any employee who: (1) was not a full-time employee in any month of the year, or (2) was in a limited non-assessment period (e.g., a variable hour employee still in an initial measurement period). An ALE member that sponsors a self-insured health plan option must complete Part III of the Form 1095-C for all employees and family members enrolled in that option; it does not complete Part III for employees and family members enrolled in an insured coverage option. (The insurer will provide this information on the Form 1095-B.)

**Reporting Offers of Coverage and other Enrollment Information.** The Q&A provides guidance on how to report information in Parts II and III of Form 1095-C for the month in which an employee is hired or terminated. It also explains how an employer sponsoring a self-insured plan would complete the Form 1095-C to report enrollment information for non-employees who have coverage independent of an employee (e.g., an employee's former spouse who is continuing coverage under COBRA, a retired employee who terminated employment in prior year, a member of the board of directors). The guidance notes that because line 2 of the Form 1095-C requires the recipient's Social Security Number (SSN), Form 1095-C cannot be used for individuals who do not provide their SSN to the employer, regardless of whether employer has requested it. The Q&A also explains how ALE members should complete Form 1094-C and 1095-C when using one of the alternative reporting methods (i.e., Qualifying Offer Method, 98% Offer Method or Qualifying Offer Method Transition Relief).

**Reporting for Governmental Units.** The Q&A sets out in detail how a governmental entity designated to report on behalf of another governmental unit that is an ALE member should complete Form 1094-C and Form 1095-C. It also discusses when the designated governmental entity should use Form 1094-B and Form 1095-B.

**Reporting of COBRA Coverage.** The Q&A discusses the codes that should be used in completing Part II of Form 1095-C when a full-time employee is offered COBRA coverage after terminating employment or losing eligibility for coverage after a reduction in hours. It also discusses how an employer sponsoring a self-insured plan should report enrollment information of an employee's spouse or dependents when they elect COBRA independently of the employee or have coverage when the employee elects COBRA coverage for the family unit.

**Comment.** Although not addressed, it appears that an employer would use the same code for a full-time employee who enrolls in retiree coverage during the year as it does for a full-time employee who elects COBRA immediately following a qualifying event.

## Guidance on Electronic Filing Requirements

Entities required to file 250 or more Form 1095-Bs or 250 or more Form 1095-Cs with the IRS must do so electronically. In addition, entities not required to submit forms electronically may do so voluntarily. The IRS has developed the Affordable Care Act Information Return System or “AIR” for this purpose — electronic submitters must use the AIR system for filing Form 1094-B, Form 1095-B, Form 1094-C and Form 1095-C. Materials recently released by the IRS provide some guidance on what that will entail.

### Publications 5165 and 5164

The IRS released an “Early Look” draft of [Publication 5165](#) *Guide for Electronically Filing Affordable Care Act (ACA) Information Returns (AIR) for Software Developers and Transmitters*. The publication sets out the communication procedures, transmission formats, business rules and validation procedures for returns transmitted electronically through the AIR system.

The IRS has also issued an “Early Look” draft of [Publication 5164](#) *Test Package for Electronic Filers of Affordable Care Act (ACA) Information Returns (AIR)*. This publication contains general and program-specific information on the process and the system for testing software and electronic transmissions prior to accepting software designers and entities submitting information returns into the AIR system.

Both publications include a link to the IRS’s AIR [webpage](#), which includes additional information on electronic filing of ACA information returns.

## In Closing

Employers with reporting obligations under Code Sections 6056 should review the new guidance to ensure that their Forms 1094-C and 1095-C are properly completed. In addition, employers who may be considering handling the electronic transmissions of those forms “in house,” rather than engaging a third party to complete and submit them, should carefully review Publications 5164 and 5165 and other information on the IRS’ AIR webpage.

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