

Plan Sponsors Gear Up for Required ACA Reporting of Coverage

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As mid-2015 is fast approaching, employers and plan sponsors that have not yet contemplated their reporting obligations under the Affordable Care Act may wish to consider starting now. In early 2016, insurers, plan sponsors of self-funded plans and employers with 50 or more full-time equivalent employees will need to collect and report voluminous and detailed participant and employee data, including names, Social Security Numbers, full-time employee status, and months during which coverage was offered and provided in 2015. On February 8, 2015, the Internal Revenue Service ("IRS") released updated draft forms for the reporting required by the Affordable Care Act under Sections 6055 and 6056 of the Internal Revenue Code (the "Code"), to assist the IRS in determining the following:

- An employer's liability for an assessment under the employer shared responsibility or "Pay or Play" provision under Section 4980H of the Code;
- An individual taxpayer's assessment liability for failing to maintain individual coverage under Section 5000A of the Code; and
- An individual taxpayer's eligibility for the premium tax credit for purchasing individual Exchange/Marketplace coverage under Section 36B of the Code.

While reporting in 2015 for coverage offered in 2014 is voluntary, reporting under Code Sections 6055 and 6056 is mandatory beginning in 2016 for coverage offered in calendar year 2015, and for years thereafter for coverage offered during the preceding calendar year. [The IRS previously issued draft forms in July 2014 and draft instructions in August 2014 (see our [July 2014 newsletter article](#) for a brief description of the reporting forms, and our [May 2013](#) and [March 2014](#) newsletters for detailed discussions of these reporting requirements).]

Section 6055 requires providers of "minimum essential coverage" (including insurers and plan sponsors of self-insured group health plans, such as employers or sponsors of multi-employer plans) to report the coverage provided in the prior calendar year using Forms [1094-B](#) (transmittal) and [1095-B](#) (information return) and furnish related statements to covered individuals. The reported information will assist the IRS in its administration of the individual shared responsibility requirement under Section 5000A of the Code. Section 6056 requires employers with the equivalent of more than 50 full-time employees ("applicable large employers" or "ALEs") to report coverage offered to full-time employees in the prior calendar year using Forms [1094-C](#) (transmittal) and [1095-C](#) (information return) and furnish related statements to covered employees, to

assist the IRS with administering the employer shared responsibility provision under Section 4980H of the Code and determining individual eligibility for the premium tax credit under Section 36B of the Code.

Forms 1094-B and 1095-B (Reporting by Providers of Minimum Essential Coverage)

The [final instructions](#) for the Forms 1094-B and 1095-B are substantively identical to the draft instructions for those forms, as described below. (Note: ALEs that sponsor self-insured health plans will instead report the information required by Code Section 6055 on the Forms 1094-C and 1095-C.)

Form 1094-B (Transmittal of Health Coverage Information Returns)

Insurers and non-ALE sponsors of self-insured group health plans will use the Form 1094-B to transmit the individual Form 1095-B information returns. Note: While multi-employer plan sponsors of self-insured group health plans must complete the Form 1094-B and related Form 1095-B, each contributing employer that is an ALE has a separate obligation to complete the Form 1094-C and Form 1095-C for all of its full-time employees, including those who are covered by the multi-employer plan. The multi-employer plan should provide the contributing employer with the necessary coverage information for that group of employees.

Form 1095-B (Health Coverage)

The Form 1095-B is the individual return used by health coverage providers to report minimum essential coverage provided to covered individuals, as follows:

- **Part I: Responsible Individual.** Part I is used to report information about the “Responsible Individual,” *i.e.*, the primary insured employee, former employee or other person enrolling individuals in coverage. (The Responsible Individual is not the named health coverage policy holder for its employees.)
- **Part II: Employer Sponsored Coverage.** Part II is used to report information about the employer sponsoring the group health coverage and will be completed by the insurance company if the coverage is insured. If the employer-sponsored coverage is self-insured, Part II will be left blank.
- **Part III: Issuer or Other Coverage Provider.** Part III is used to report information about the coverage provider (*e.g.*, insurance company, employer providing self-insured coverage, government agency sponsoring coverage under a government program such as Medicaid or Medicare, or other coverage sponsor).
- **Part IV: Covered Individuals.** Part IV is used to report the name, Social Security Number (“SSN”), and coverage information for each individual covered by the plan, including non-employees (such as retirees, dependents, and COBRA participants). (A reporting entity may use a date of birth in lieu of a SSN if it is unable to obtain a SSN after using “reasonable efforts.”) If there are more than six covered individuals, the reporting entity will use additional Forms 1095-B to report the required information in Part IV.

Form 1095-B filers must furnish a copy of the form to the person identified as the Responsible Individual on the form or provide a “substitute statement.” Truncation of SSNs and the Employer Identification Number (“EIN”) is permitted on statements provided to the Responsible Individual.

Forms 1094-C and 1095-C (Reporting by Applicable Large Employers)

The [final instructions](#) for the Forms 1094-C and 1095-C include a number of substantive changes and clarifications to the draft forms, as described below.

Combined Reporting for ALEs That Sponsor Self-Insured Group Health Plans

ALEs that sponsor self-insured group health plans must report under both Code Sections 6055 and 6056, which would normally require separate reporting on Forms 1094-B/1095-B and 1094-C/1095-C. (If the ALE sponsors fully-insured group health coverage, then the insurer will prepare the Forms 1094-B and 1095-B to report the Code Section 6055 information.) The draft instructions, however, permitted those ALEs to instead use Forms 1094-C and 1095-C (Part III) to report the information required by Code Section 6055 with respect to employees enrolled in the self-insured health plan. The final instructions clarify that ALEs may also use this combined reporting method to report self-insured health coverage of non-employees (e.g., retirees, non-employee directors, and COBRA participants).

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

Similar to the Form 1094-B, the Form 1094-C is a transmittal form that ALEs will use to transmit the individual Forms 1095-C, as follows:

- **Part I: Applicable Large Employer Member (ALE Member).** Part I is used to report the identifying information of the ALE Member. An ALE Member is an ALE or, if applicable, an ALE that is a member of a controlled group of other ALEs (referred to as an “Aggregated ALE Group”).
- **Part II: ALE Member Information.** Part II is used to report the total number of Forms 1095-C filed, whether the ALE Member was a member of an Aggregated ALE Group during any month of the calendar year, and whether the ALE used a particular coverage offer method (e.g., the “Qualifying Offer Method”), or is requesting transition relief. Part II is also used to identify whether the Form 1094-C is an “Authoritative Transmittal.” The draft instructions allowed an ALE to file more than one Form 1094-C (e.g., one for each operating division), provided that one of the Forms 1094-C is designated as the “Authoritative Transmittal.” The final instructions clarify that if an ALE uses multiple Forms 1094-C, only the Authoritative Transmittal is used to report the aggregate employer-level data for the employer’s full-time employees (that information is left blank for the Forms 1094-C that are not designated as the authoritative transmittal).
- **Part III: ALE Member Information – Monthly.**
An ALE Member will use Part III to report whether it offered minimum essential coverage, the number of its full-time employees and its total employees for each month during the

prior calendar year.

- For ALE Members that contribute to a multiemployer plan, the multiemployer interim relief rule provides that the ALE Member is treated as offering health coverage to an employee if the ALE Member is required by a collective bargaining agreement or related participation agreement to make contributions for that employee to a multiemployer plan, and that plan offers affordable health coverage that provides minimum value to eligible individuals and to those individuals' dependents (or is eligible for Code Section 4980H transition relief regarding offers of coverage to dependents). Accordingly, on Part III an ALE Member will treat its full-time employees for whom it contributes to a multiemployer plan as having been offered minimum essential coverage (regardless of whether coverage was actually offered) for the months in which the ALE Member is eligible to rely on the multiemployer interim relief rule.
- An ALE Member must also identify whether it was part of an Aggregated ALE Group during any part of the prior calendar year, and whether the ALE Member is eligible for Code Section 4980H transition relief. Such transition relief is available for (1) ALEs with fewer than 100 full-time employees and (2) ALEs with greater than 100 full-time employees that owe a penalty under Code Section 4980H(a), which may receive an 80 employee reduction in the penalty, rather than the 30 employee reduction.
- **Part IV: Other ALE Members of Aggregated ALE Group.** Part IV is used if the ALE Member was part of an Aggregated ALE Group for any months during the prior calendar year. If Part IV applies, the ALE Member will enter the names and EINs of up to 30 other ALE Members in the Aggregated ALE Group in descending order, starting with the ALE Member with the highest average number of full time employees per month.

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

The Form 1095-C is the individual return used to report employer-sponsored coverage provided by ALEs, as follows:

- **Part I: Employee, Applicable Large Employer Member.** Part I is used to report the identifying information of the employee and the ALE Member.
- **Part II: Employee Offer of Coverage.** Line 14 is used to report the offer of coverage to the employee (and the employee's spouse and dependents, if applicable) through indicator codes from Code Series 1. For example, the code 1A is used to report that a "Qualifying Offer" was made, *i.e.*, an offer of minimum essential coverage providing minimum value with the employee contribution for self-only coverage equal to or less than 9.5% of the mainland single federal poverty line, and at least minimum essential coverage offered to spouse and dependents. A code must be entered for each calendar month, even if the employee was not a full-time employee for one or more months. The ALE Member will also report on Line 15 the amount of the employee share of the lowest-cost monthly premium for self-only minimum essential coverage that provides minimum value (if the Member offered such coverage). Last, ALE Members will use Line 16 to report the Code Section 4980H safe harbor or other relief, if applicable, for each month through the use

of indicator codes from Code Series 2. For example, if the employee was not employed with the ALE Member for a particular month (and therefore the ALE Member did not incur an employer shared responsibility payment for that month), the ALE Member will enter the code 2A in line 16 for that month.

Note: ALE Members relying on the multiemployer interim relief rules for a full-time employee will generally enter code 2E on Line 16 of the employee's Form 1095-C. If the employee enrolled in the offered coverage, the ALE Member will enter code 2C.

- **Part III: Covered Individuals.** Part III is used by ALE Members sponsoring self-insured group health plans to report the information required by Code Section 6055, rather than on the Form 1095-B. The information reported in Part III is substantively identical to the information reported in Part IV of the Form 1095-B. Note: As explained above, ALE Members may also use Part III to report the information required by Code Section 6055 with respect to non-employees. However, employer-sponsored self-insured health coverage does not include multi-employer plan coverage, which is reported on the Form 1095-B.

As with the Form 1095-B, Form 1095-C filers must furnish a copy of the form to the covered employee or, in certain cases, may provide a substitute statement in lieu of a Form 1095-C copy. Truncation of SSNs and EINs is permitted on employee statements, but not on the forms filed with the IRS.

Other significant changes and clarifications made by the final instructions include:

- **One Form 1095-C for Each Employee of Each Employer, Including Each Member of a Controlled Group.** The draft instructions provided that, if an employee works for more than one ALE Member of a controlled group, then the 1095-C must be completed by each ALE Member. The final instructions clarify that, if an employee works for more than one ALE Member *in the same month*, only the ALE Member for which the employee has the greatest number of hours for the month will report on the Form 1095-C for the coverage provided to that employee for that month.
- **Determining the Total Number of Full-Time Employees.** The draft instructions required an ALE to determine the number of its full-time employees using the first or last day of the month and to use the same day for all months during the year. The final instructions expand these choices to include the first or last day of the first payroll period that starts during each month.
- **Offers of Coverage to Dependents.** The final regulations provide that an offer of coverage is treated as made to an employee's dependents only if the offer of coverage is made to an unlimited number of dependents, regardless of the actual number of dependents, if any, an employee has during a calendar month.
- **Additional Requirements and Restrictions for Simplified Employee Statements.** The draft instructions permitted ALEs that use the "Qualifying Offer Method" and the "Qualifying Offer Method Transition Relief for 2015" to provide employees with simplified employee statements, rather than a copy of the Form 1095-C. The final instructions require these

statements must also include language directing the employee to IRS Publication 974, Premium Tax Credit (PTC). Simplified statements cannot be provided to employees enrolled in self-insured health coverage. Those employees must instead receive a copy of the Form 1095-C.

Use of Third Parties to Prepare and File the IRS Forms and Employee Statements

The IRS has stated in its [FAQ for Code Section 6055 reporting](#) and [FAQ for Code Section 6056 reporting](#) that health coverage providers (e.g., employers that sponsor self-insured group health coverage) and ALE Members may contract with third parties to file and furnish the required IRS returns and employee statements, but plan sponsors should take caution with this approach. The IRS FAQs state that entering into a reporting arrangement with a third party does not transfer a health care provider's reporting liability under Code Section 6055, an ALE Member's reporting liability under Code Section 6056 (except where a governmental unit employer properly designates a related entity to perform its Code Section 6056 reporting), or an ALE Member's potential pay-or-play liability under Code Section 4980H. For Code Section 6056 reporting, the FAQ also explains that, if an ALE Member uses more than one third party to prepare the required IRS returns and employee statements, there must still be only one Code Section 6056 authoritative transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the ALE Member, and only one employee statement for each full-time employee with respect to employment with that ALE Member.

Neither the final instructions to the Forms 1094-B and 1095-B nor the final instructions to the Forms 1094-C and 1095-C expand on the IRS FAQ regarding the use of third parties for Code Section 6055 or 6056 reporting. For example, the final instructions do not indicate whether the use of a third-party preparer will affect the content of the IRS returns, or whether a third-party preparer may sign the Form 1094-B transmittal on behalf of the health coverage provider or the Form 1094-C information return on behalf of a reporting ALE Member.

Penalties for Noncompliance

An entity that fails to comply with the reporting requirements under Code Section 6055 or 6056 (i.e., by filing late, incomplete, or incorrect IRS returns or employee statements) is generally subject to penalties under Code Sections 6721 (incorrect IRS returns) and 6722 (incorrect individual statements) of \$100 per failure (\$250 for intentional failures), up to \$1,500,000 for one calendar year. The IRS has indicated that for the first mandatory year of reporting in 2016, it will not impose such penalties if the reporting entity "can show that they have made good faith efforts to comply with the information reporting requirements," for failures where the entity reported incorrect or incomplete information on the return or statement (i.e., the special 2016 transition relief does not apply to late returns or employee statements). The IRS also noted that entities that fail to timely file and furnish the IRS returns and employee statements may still be eligible for penalty relief if "the IRS determines that the standards for reasonable cause under [Code Section] 6724 are satisfied."

Next Steps for Plan Sponsors

Because reporting under Code Sections 6055 and 6056 will be required beginning in 2016 (for coverage offered this year), employers and other entities subject to those requirements should familiarize themselves with the reporting instructions and ensure that a system is in place for collecting the data required in the IRS forms and employee statements. If you have any questions, please contact the author of this article or the Trucker ♦ Huss attorney with whom you normally work.

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