

Health Care Reform Management Alert Series



Health Care Reform Reporting Is Coming: Is Your Company Prepared?

Issue 95

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This is the ninety-fifth issue in our series of alerts for employers on selected topics in health care reform. (Click [here](#) to access our general summary of health care reform and other issues in this series). This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

For months, large employers and health coverage issuers have been working to understand—and prepare for—their healthcare reporting duties under the Affordable Care Act (ACA). As we previously reported in **Issue 92** ([link](#)), in February the IRS released final instructions and Forms 1094-B, 1095-B, 1094-C, and 1095-C for *optional* ACA reporting on coverage offered in 2014, but even that guidance left many important questions unanswered, effectively stymying reporters' preparation efforts. Finally, just months before the reporting due dates, the IRS released final instructions and forms for *mandatory* ACA reporting on coverage offered in 2015.

This client alert presents a high-level, non-exhaustive checklist of action items for employers preparing to report, and briefly discusses notable changes in the final instructions for issuer reporting.

Form 1094-C and 1095-C Reporting

Applicable large employers (ALEs) must file annual ACA reports with the IRS providing information on offers of coverage made to full-time employees, using IRS Forms 1094-C and 1095-C.

Determine ALE Status

The ACA defines an ALE as having an average of at least 50 full-time or full-time equivalent employees. For employers with 50-99 full-time or full-time equivalent employees, there is transition relief available from the Employer Mandate for 2015, but such employers must still complete Forms 1094-C and 1095-C.¹

¹ Employers that are not ALEs but sponsor self-insured health plans would still have reporting obligations as health coverage issuers under Section 6055, as explained below.

Related employers within a controlled group need to be aggregated for determining the number of “full-time” or “full-time equivalent employees” employed by an ALE for the purpose of determining ALE status (for example, if a parent company has 80% or more ownership interest in a subsidiary). The final instructions refer to these corporate families as an Aggregated ALE Group and each ALE within the Aggregated ALE Group is an ALE Member.

Each employer with a separate employer identification number (EIN) that is an ALE or an ALE Member is responsible for reporting. In some cases, related employers with separate EINs participate in the same self-funded group health plan. Despite having a single self-funded group health plan providing the coverage, Form 1094-C and 1095-C will need to be completed for each employer EIN for the full-time employees of that employer. Each ALE will also need to report the names and EINs of other entities in the ALE’s controlled group (referred to as the Aggregated ALE Group) on Form 1094-C.

The final 2015 instructions clarify that, when an employer is determining whether it is subject to the employer shared responsibility rules (the “Employer Mandate”), it should disregard an employee for any month in which the employee is covered under TRICARE or Veterans Administration coverage, consistent with The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015.

Decide Whether to Outsource ACA Reporting

Employers need to collect a significant amount of data and information from payroll, employee benefits departments, benefit enrollment systems, and third party vendors. All this information will need to be compiled onto the Form 1094-C and Form 1095-C. Accordingly, Employers will need to decide if they have the resources internally to complete this undertaking or whether they need to engage a third party to prepare the ACA reports.

For those employers that intend to outsource the ACA reporting, third party vendors will need to be selected immediately and contracts finalized to allow enough time to load workforce data and test the program software for preparing Forms 1094-C and 1095-C, if needed.

Consult Advisors Regarding Reporting Questions

The rules for ACA reporting are quite detailed, and different reporters might be subject to different special rules (many of which are beyond the scope of this alert). ALEs would be wise to ramp up their reporting preparation efforts, if they have not already done so, and to review the following guidance with their advisors, staff, and vendors:

- 2015 Form 1094-C (<https://www.irs.gov/pub/irs-pdf/f1094c.pdf>)
- 2015 Form 1095-C (<https://www.irs.gov/pub/irs-pdf/f1095c.pdf>)
- 2015 Instructions for Forms 1094-C and 1095-C (<https://www.irs.gov/instructions/i109495c/ar01.html>)
- Section 6056 Regulations (<http://www.gpo.gov/fdsys/pkg/FR-2014-03-10/pdf/2014-05050.pdf>)
- IRS Publications 5164 and 5165, and the AIR Submission Composition and Reference Guide [all related to electronic filing] (<https://www.irs.gov/for-Tax-Pros/Software-Developers/Information>Returns/Affordable-Care-Act-Information-Return-AIR-Program>)
- IRS Publication 5223 [related to the use of substitute forms and statements] (<https://www.irs.gov/pub/irs-pdf/p5223.pdf>)

Develop a Plan for Filing IRS Reports and Furnishing Statements to Individuals

The Forms 1094-C and 1095-C for the 2015 calendar year need to be filed with the IRS by **February 29, 2016**, if filing on paper, or **March 31, 2016**, if filing electronically. Employers will need to furnish the Form 1095-C to each full-time employee by **February 1, 2016**.

Both sets of final 2015 instructions provide details on the procedures for obtaining extensions of the IRS filing deadline² or the deadline to furnish statements to individuals, obtaining waivers of the electronic filing requirement, filing substitute returns with the IRS or providing substitute statements to individuals, and filing corrected forms. Note that certain procedures (e.g., submitting the request for a waiver of the electronic filing requirement) would need to be completed, if at all, *before* the deadlines for furnishing statements to individuals or filing forms with the IRS.

Electronic filing is required if the employer files at least 250 returns. If an ALE must file electronically, we suggest that its software programmers and reporting staff consult and review IRS Publication 5165 (Guide for Electronically Filing Affordable Care Act Information Returns for Software Developers and Transmitters) (Early Look for Processing Year 2016); IRS Publication 5164 (Test Package for Electronic Filers of Affordable Care Act Information Returns); and various guidance on electronic filing and important software requirements, available online at <https://www.irs.gov/for-Tax-Pros/Software-Developers/Information-Returns/Affordable-Care-Act-Information-Return-AIR-Program>. It is important for reporters to review the instructions for registering for the AIR electronic filing system and applying for a “Transmitter Control Code,” which must be received in the mail before the reporter can file Forms 1094-C or 1095-C electronically; the same applies to health coverage issues required to file Forms 1094-B and 1095-B electronically.

Lastly, if the ALE is thinking about using substitute forms and statements, it should review IRS Publication 5223 with its vendors and advisors.

Decide Who was a Full-time Employee for at Least One Month of the Year

Each ALE member must file a Form 1095-C for (i) each employee who was a full-time employee for any month of the calendar year (see Issue 77 ([link](#))), and (ii) for any employee who enrolls in self-funded coverage, whether or not full-time for any month.

Generally, ALEs should work to identify full-time employees, using the ALE’s chosen method for determining full-time status under the ACA, in advance of the ACA reporting deadline. Doing so will confirm who must receive Form 1095-C and will enable the ALE to complete Form 1094-C. ALEs must report their total employee and total full-time employee counts for each month on Form 1094-C based on a consistent “snapshot” methodology (e.g., on the first day of the month, last day of the month, etc.). The methodology has been revised in the final 2015 instructions to allow employers to base their employee count on the number of employees as of the 12th day of each month.

This step does not apply if the employer is eligible for the 98 percent offer rule described in the instructions for Forms 1094-C and 1095-C.

Determine the Types of Coverage Offered and How Each Type Should be Reported

ALE with Employees Covered under a Self-Insured Plan. An ALE that offers medical coverage through a self-insured health plan sponsored by the employer must complete Form 1095-C, Parts I, II, and III, for any employee who enrolls in the health coverage, whether or not the employee is a full-time employee for any month of the calendar year. In addition, the Form 1095-C will need to be completed for each full-time employee.

ALE with Employee Covered under an Insured Medical Plan. An ALE that offers medical coverage through an insured group health plan sponsored by the employer will need to complete Form 1095-C, Parts I and II. The employer should not complete Part III.

ALE with Employees Covered under a Multiemployer Plan. Employers relying on the multiemployer plan interim rule relief for a given month complete Form 1095-C, Parts I and II and, in Part II, will enter 1H on line 14, skip line 15, and report

² Proposed regulations issued on August 13, 2015 potentially make the procedures for obtaining extensions of the deadlines to file Forms 1094-C, 1095-C, and 1095-B *stricter* than the procedures currently described in the draft 2015 instructions. The Treasury is soliciting comments on those proposed regulations until November 2015; once finalized, they would become effective no earlier than January 1, 2018.

2E on line 16, without regard to whether the employee was eligible to enroll or enrolled in coverage under the multiemployer plan. The instructions for line 16 create an exception to the 2C enrollment code for the 2E multiemployer interim rule relief code. While the IRS may change the requirements for reporting multiemployer plan coverage for 2016 and future years, the instructions for 2015 resolve much of the ambiguity that has been plaguing multiemployer plans about the need to exchange data with employers.

Nevertheless, it is important to note that the streamlined reporting scheme described above requires that the employer must be eligible for the multiemployer plan transition relief rule. Employers might still need to obtain offer and enrollment information from the multiemployer plan if there are full-time employees who receive offers of coverage but (a) the employer has no obligation to contribute on their behalf, (b) they are offered coverage that is not affordable, (c) they are offered coverage that does not provide minimum value, or (d) they are offered coverage that does not cover eligible individuals' dependent children. The IRS and HHS still have not provided any guidance on HIPAA issues that could arise if such a data exchange between multiemployer plans and contributing employers were required.

Individuals Eligible for COBRA

The final 2015 instructions state that, when a former employee terminates employment, an offer of COBRA coverage upon termination of employment should not be reported as an offer of coverage--regardless of enrollment. This is a change from prior IRS guidance that suggested that an offer of COBRA coverage upon termination should be reported as an offer of coverage if the employee actually enrolled in COBRA. However, the final instructions do not change prior IRS guidance regarding COBRA coverage offers due to a reduction in hours (such offers are reported in the same manner as an offer of that type of coverage to any other active employee).

Penalties

The instructions also reflect applicable tax reporting penalties effective for 2015 filings which, if assessed, apply in addition to the Employer Mandate penalties that would be assessed under the ACA. Note that ACA reporting penalties may be reduced or waived for failures that are due to reasonable cause or that are timely corrected.

Additionally, penalties will not be assessed for 2015 ACA reports as long as the entities responsible for reporting show they made good faith efforts to comply with the new ACA reporting requirement. Importantly, this short-term penalty relief is available only for incorrect or incomplete information provided on 2015 reports and statements, and not for a failure to timely file an information report or furnish a statement.

Form 1094-B and 1095-B Reporting

Issuers of minimum essential coverage (MEC), such as health insurance issuers, sponsors of self-insured health plans, governments, and other persons that provide MEC to individuals, must prepare annual ACA reports reflecting enrolled individuals' months of coverage.

Most issuers will fulfill their reporting obligations by using Forms 1094-B and 1095-B (though applicable large employers sponsoring self-insured coverage can use Forms 1094-C and 1095-C). The 2015 Forms 1094-B (<https://www.irs.gov/pub/irs-pdf/f1094b.pdf>) and 1095-B (<https://www.irs.gov/pub/irs-pdf/f1095b.pdf>) are largely unchanged from their 2014 counterparts. The 2015 instructions (<https://www.irs.gov/instructions/i109495b/index.html>) for those forms, however, address a few issues that were not clear in the 2014 instructions.

Coverage Under Multiple Types of MEC

Notably, the instructions to Forms 1094-B and 1095-B clarify certain special reporting rules that apply where an individual is covered by multiple types of MEC. There are two situations where only one type of MEC would need to be reported:

- the individual is covered by more than one type of MEC provided by the same provider (an example would be a self-insured employer-sponsored health reimbursement arrangement, or "HRA," and a self-insured group health plan sponsored by the same employer); or

- the individual is eligible for one type of MEC only if he or she is covered by other MEC for which reporting is required (as an example, an employer offers an HRA for which an individual is eligible only if he enrolled in the insured major medical plan; the employer does not need to report the HRA coverage for an individual covered by both arrangements).

Reporting Taxpayer Identification Numbers and Social Security Numbers

The final instructions to Forms 1094-B and 1095-B clarify that Form 1095-B furnished to recipients may truncate social security numbers (SSNs), taxpayer identification numbers (TINs), or the employer's employer identification number (EIN), but not the filer's EIN. Until final guidance is issued, a reporter will not be subject to penalties for failure to report a TIN if the reporter complies with the regulatory procedures for soliciting TINs, with certain modifications described in detail in IRS Notice 2015-68.

"Responsible Individual" Defined

The instructions, oddly, removed the relatively straightforward definition of a "responsible individual" that existed in the 2014 final instructions ("A responsible individual may be a primary insured employee, former employee, parent, uniformed services sponsor, or other person enrolling individuals in coverage") and replaced it with a circular one:

The "responsible individual" is the person who, based on a relationship to the covered individuals, the primary name on the coverage, or some other circumstances, should receive the statement. Generally, the statement recipient should be the taxpayer (tax filer) who would be liable for the individual shared responsibility payment for the covered individuals, if that person is known. . . .

Operationally, we do not believe this revised instruction significantly expands or contracts the universe of responsible individuals for whom the Plan must report, given that the preamble to the regulations under Section 6055 makes clear that "[a] responsible individual is a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage." 79 Fed. Reg. 13220 (March 10, 2014).

Summing It All Up

Though the final 2015 instructions for Forms 1094-B, 1095-B, 1094-C, and 1095-C have provided some welcome clarity, the reporting rules are still relatively new. As the deadlines to furnish statements and file reports are rapidly approaching, now is the time for employers and issuers alike to organize their data and plan for compliance.

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Seyfarth Shaw LLP Health Care Reform Alert | November 10, 2015

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