



Employer Reporting – 2016 FINAL Forms and Instructions

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The IRS has released the 2016 final forms and instructions for the ACA employer reporting requirement. The final forms are almost identical to the draft forms released in August, with only minor clarifying language in the instructions. While final forms and instructions have been released for both the “B” and the “C” forms, this summary focuses primarily on the updates to the “C” forms required to be used by applicable large employers.

Background

Under §6056, all applicable large employers (ALEs) – those averaging 50 or more full-time equivalents (FTEs) in the previous calendar year – must report to the IRS information about the healthcare coverage offered to full-time employees using Forms 1094-C and 1095-C.

Under §6055, all employers offering a self-funded group health plan considered to be minimum essential coverage (MEC) must report to the IRS information about the individuals actually covered under the plan. If an ALE offers a self-funded group health plan, all information required will generally be reported using Forms 1094-C and 1095-C. If a small employer (fewer than 50 FTEs) offers a self-funded group health plan, coverage information will be reported using Forms 1094-B and 1095-B.

Clarification of Existing Requirements

TIN (SSN) Solicitation Process for Self-Funded Plans

Guidance in regard to collecting/soliciting TINs (SSNs) for purposes of §6055 coverage reporting was provided by the IRS in August, and a reference to the proposed rules was added in the final reporting instructions. To show “reasonable cause” and thereby avoid potential penalties for not providing a TIN, or for providing an incorrect TIN, the employer is required to follow a specific TIN solicitation process for each individual enrolled under a self-funded plan offered by the employer. The proposed rules are available at https://www.irs.gov/irb/2016-33_IRB/ar10.html.

In the case of an *incorrect TIN*, the employer is required to make three reasonable attempts to correct the information using the following steps:

1. Make an initial solicitation at the individual’s first enrollment (i.e. application for coverage submitted);
2. If the first solicitation is unsuccessful, make a second solicitation by December 31 of the year in which the relationship with the taxpayer begins (January 31 of the following year if the relationship begins in December); and
3. If the second solicitation is unsuccessful, make a third solicitation by December 31 of the following year.

In the case of a *missing TIN*, the employer is required to make three reasonable attempts to obtain the missing information using the following steps:

1. Make an initial solicitation at the individual’s first enrollment (i.e. application for coverage submitted) or, if the individual is already enrolled on September 17, 2015, the next open enrollment season;

2. If the first solicitation is unsuccessful, make a second solicitation at a reasonable time thereafter (i.e. within 75 days); and
3. If the second solicitation is unsuccessful, make a third solicitation by December 31 of the year following the initial solicitation.

Enrollment in Minimum Essential Coverage (MEC)

On Form 1095-C, the employer is instructed to use code 2C on line 16 for any month in which the employee enrolls in the coverage offered. This is generally true even if another of the code 2 series might apply for the month (e.g. code 2F if the offer meets the Form W-2 safe harbor requirements). However, the final instructions clarify that code 2C on line 16 is appropriate only if the coverage offered is considered minimum essential coverage (MEC), although most employer-sponsored group health plans will meet the definition of MEC.

Affordability Safe Harbors

On Form 1095-C, upon a waiver of coverage, employers may enter the applicable affordability safe harbor code (i.e. code 2F, 2G, or 2H), if any, on line 16. The final instructions clarify that codes 2F, 2G, or 2H may be used only if the employer met §4980H(a) requirements and marked “yes” for the month in Part III, column (a) on Form 1094-C. In other words, if the employer is potentially subject to a penalty under §4980H(a) for any particular month for failing to offer coverage to 95% or more of full-time employees and their dependents, use of any of the affordability safe harbor codes on line 16 of Form 1095-C is inappropriate for that month.

Summary

Without any further promises from the IRS in regard to penalty leniency for a good faith effort or extended reporting deadlines for 2016, most employers and vendors will find it something of a relief to have finalized forms and instructions in hand without significant changes so that preparations for 2016 reporting may begin. Although it is likely things will go a bit smoother this year with most employers and vendors now at least familiar with the process, we recommend that employers who have not already begun preparing necessary reporting data and coordinating such efforts with reporting vendors do so soon. This will ensure that statements are prepared for individuals by the end of January and will provide additional time to handle any potential errors that may occur when filing with the IRS (by the end of February if filing by paper or by the end of March if filing electronically).

Final forms and instructions:

- Form 1095-C - <https://www.irs.gov/pub/irs-pdf/f1095c.pdf>
- Form 1094-C – <https://www.irs.gov/pub/irs-pdf/f1094c.pdf>
- Instructions for the “C” forms - <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>

Our detailed employer reporting guide, updated to accommodate the 2016 instructions, is available by clicking [here](#).

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