IRS Offers a Glimpse of New 2016 ACA Forms and Instructions

The Internal Revenue Service ("IRS") just released a draft of the instructions employers will need in order to report health coverage information under the Affordable Care Act ("ACA") for 2016, plus drafts of the forms to use: Form 1094-C and its partner Form 1095-C.

On the surface, the 2016 version of Forms 1094-C and 1095-C will look pretty familiar to applicable large employers ("ALEs") that were required to complete and file these forms and issue copies to full-time employees for 2015. Drafts of Forms 1094-B and 1095-B and their instructions have also been released with minimal changes. These forms are used by insurance carriers and other health coverage providers to report Minimum Essential Coverage ("MEC") plans.

However, looking more closely, the **changes are significant enough that employers will benefit from looking over the drafts** in order to prepare. This alert highlights some of the biggest changes that may be coming. When the final instructions are released, look for an **update from us to help you stay on top of any further changes or modifications** to the 2016 ACA reporting requirements.

Important Deadines

Employers have until January 31, 2017, to issue statements to employees about their health insurance coverage for 2016. The 2016 deadline for employers to file by paper with the IRS is February 28, 2017. The electronic filing deadline is March 31, 2017. (Electronic filing is required for employers that file 250 or more Forms 1095-C to the IRS.) Employers can file for an extension if they need more time to file or furnish employees with statements. Waivers are also available for those employers who can't or don't want to file electronically.

Clarifications and Changes for 2016 ACA Reporting

The first year the IRS required filing back in 2015, the agency indicated it would not impose penalties for incorrect distribution or filing of forms when employers could demonstrate a "good faith effort" to comply with the requirements of the ACA. **This good faith effort provision is NOT available for 2016**. Employers could be hit with penalties of as much as $260 per statement (up to a maximum penalty of $3,193,000) for failing to file a correct statement with the IRS. The same penalty amount may be imposed for failing to issue a correct statement to a full-time employee. A penalty of $260 per return may also apply if an employer fails to file electronically, unless an approved waiver has been granted or reasonable cause can be established.

Definitions and Sections Affected by the Changes

Aggregated ALE Groups: These most recent instructions clarify how employers that are part of a controlled group of companies or affiliated service groups, known collectively as an "Aggregated ALE Group," must each report separately by filing an Authoritative Transmittal Form 1094-C. The term "ALE Member" is generally used throughout the 2016 draft instructions to refer to employers that are subject to the reporting requirements. This definition may include a single-employer entity or an employer that is part of an Aggregated ALE Group. (For the record, an entity that does not have employees or only has employees with no hours of service, i.e., hours of service outside the United States, cannot be an ALE Member.) Form 1094-C Authoritative Transmittal isn't required for the entire Aggregated ALE Group.

The instructions provide Authoritative Transmittal examples for:

- A single employer
- A single employer with multiple divisions that wishes to file each division separately
- ALE members of an Aggregated ALE Group

Transition Relief: When the ACA first became law, some employers could apply for relief from the employer mandate that said employers with over 50 employees had to provide health insurance or pay a penalty. This feature was known as Qualifying Offer Transition Relief (1094-C, Line 22, Box B). This feature is no longer available. For non-calendar year plans, and only for the months prior to the start of the 2016 plan year, the "A" penalty of the employer mandate will be determined the same way as it was in 2015 (which means with 1094-C, Line 22, Box C).

ALE Members will be subject to a monthly penalty. The penalty is calculated by taking $180 (or as the IRS puts it, $2,160 divided by 12) times the number of full-time employees in excess of **80** when the employer fails to offer coverage to **70%** of full-time employees in the month. ALE Members will be subject to a penalty of $180 times the number of full-time employees in excess of **30** when failing to offer coverage to **95%** of full-time employees beginning with the start of the 2016 plan year. Transition relief from the employer mandate penalties for small non-calendar year plans (50-99 full-time and full-time equivalent employees in 2014 meeting certain criteria) is also available up to the start of the 2016 plan year.

If ALE Members offer group health coverage with one or more plans that have different plan years, then the transition relief outlined in the draft instructions is available through the last day of the latest plan year.

New Codes on Form 1095-C: For 2016, the IRS is introducing two new codes for employers to apply to the Employee Offer of Coverage section (Part II Line 14). ALE Members should use these codes, 1J and 1K, when they make a conditional offer of coverage to spouses of employees. A conditional offer of coverage means one or more reasonable objective conditions have been imposed on the offer.

For example, an offer of coverage that's available to a spouse only if that spouse certifies that he or she does not have access to health coverage from another employer is treated as an offer of coverage to the spouse for reporting purposes only. In general, this offer of coverage doesn't affect the spouse's eligibility to receive a premium subsidy if he or she decides to get coverage through the Marketplace. The reasoning is that if the spouse doesn't meet the condition (i.e., doesn't certify if they have access to another employer's health coverage), then that individual doesn't have an actual offer of coverage.

Employee Required Contribution ("ERC"): This new term is introduced in the draft instructions to better explain the amount that should be entered on Form 1095-C, Part II, Line 15. The ERC is the employee's share of the monthly cost for the lowest-cost self-only MEC plan providing Minimum Value offered to the employee by the ALE Member, whether paid through salary reduction or otherwise. The ERC may not be the amount the employee pays for coverage, since the ERC may include certain HRA contributions, cafeteria plan contributions, wellness program incentives, and opt-out payments. An ALE Member may determine the employee's share of the monthly cost by dividing the total cost to the employee for the plan year by the number of months in the plan year.

COBRA: After all the confusion of the initial 2015 reporting year surrounding how to report COBRA beneficiaries, the draft instructions provide a more comprehensive analysis of various COBRA scenarios and how ALE Members should code Form 1095-C, Lines 14-16, in these circumstances.

When an employee terminates employment, the months following the termination should not reflect an offer of coverage from the ALE Member, since the employee is no longer a full-time employee and the ALE Member is no longer liable for making an ACA offer of coverage to them.

For example, let's assume an employee terminates employment during the calendar year on March 15 and coverage ceases at the end of that month. Form 1095-C Lines 14-16 should be coded as follows:

<u>January and February:</u>

Line 14 = 1E

Line 15 = ERC

Line 15 = 2C

<u>March:</u>

Line 14 = 1H

Line 15 = blank

Line 16 = 2B

<u>April through December:</u>

Line 14 = 1H

Line 15 = blank

Line 16 = 2A

This coding would apply regardless of whether the employee elects to enroll in coverage.

The coding is different when an employee experiences a reduction in hours that causes a loss of coverage. The coding would depend on who may become a qualified beneficiary at the time of the event. In this scenario, assume the employee has a spouse and two dependent children. However, the employee was enrolled in single coverage at the time of the last open enrollment. Therefore, that employee is the only COBRA qualified beneficiary. Form 1095-C Lines 14-16 most likely will be coded as follows:

<u>January through April:</u>

Line 14 = 1E

Line 15 = ERC

Line 15 = 2C

<u>May through December:</u>

Line 14 = 1B: MEC offered to employee only

Line 15 = COBRA ERC

Line 16 = 2B (not enrolled) or 2C (enrolled)

Multiemployer Plan Transition Relief Continued for 2016: An ALE Member is expected to offer coverage to employees if the ALE Member is required by a collective bargaining agreement (or participation agreement) to make contributions for employees to a multiemployer plan that offers minimum value/affordable health coverage to eligible employees. The plan must also offer health coverage to dependents.

Bonus Info to Know

- Forms 1095-B and 1095-C inform taxpayers, “Do not attach to your tax return. Keep for your records.”
- The instructions clarify that code 1G on Form 1095-C Part II, Line 14, should only be used when an ALE Member with a self-funded plan has an individual enrolled in the plan who is not a full-time employee for the entire calendar year.
- ALE Members with self-funded plans may use either Forms 1094-B/1095-B or 1094-C/1095-C to report MEC for anyone enrolled in the plan during 2016 who was not a full-time employee for the entire calendar year.
- Filing extensions and waivers from electronic filing will be available for 2016.

Employer Action Items

ALE Members may wish to:

- Review 2015 processes and procedures, both internally and with a service vendor (if you use one), to assess how the process could run more smoothly or how required information may be more easily obtained for the 2016 filing year
- Become familiar with the proposed changes for 2016
- Begin the search for a new vendor for the 2016 filing year, if needed and desired

The draft instructions the IRS released give employers a great starting point for what to expect when they're making their ACA filings for 2016. Stay tuned for the updates when the final instructions and forms are released.

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