

What's Changing For Employers as IRS Issues Final 2016 ACA Forms and Instructions?

The final 2016 Affordable Care Act ("ACA") "B" and "C" Series Information Reporting forms and instructions (AKA Forms 1094 and 1095) have been released by the Internal Revenue Service ("IRS").

Applicable Large Employers ("ALEs")¹ are required to complete these forms with healthcare coverage information, issue copies to full-time employees and any other eligible plan participants, and file the forms with the IRS. There are no significant changes to the final 2016 forms and instructions since our [August UPDATE](#), when the 2016 drafts were released, although the IRS did further clarify certain provisions in the final instructions.

The 2016 deadline to issue participant statements is **January 31, 2017 – less than four months away**. That makes **now a great time to review your health coverage data** and your ACA reporting system status to make sure accurate data is being collected. That way, there hopefully won't be any hold-ups or surprises preventing you from issuing your Forms 1095 on time to full-time employees and plan participants.

The IRS expects these forms to go out on paper. Employers may only issue forms electronically if plan participants have given affirmative consent and actively choose to receive their statements electronically. The forms must be filed with the IRS no later than **February 28, 2017**, when filing by paper or **March 31, 2017**, when filing electronically (which is required when filing more than 250 forms to the IRS). You can request an extension if you need more time to furnish statements to employees and file with the IRS. A waiver to file electronically is available, too.

No Good-Faith-Effort-to-Comply Provision for 2016

For the initial filing year 2015, the IRS indicated it would not impose penalties if forms were distributed wrong or filed incorrectly if employers could demonstrate a "good faith effort" to comply. **This good-faith-effort provision is NOT available for 2016**. Penalties of \$260 per statement (up to a maximum penalty of \$3,193,000) may be imposed for if you fail to file with the IRS and/or issue participant statements on time. These same dollar **penalties may also be imposed if you:**

- File an incorrect statement with the IRS.
- Issue an incorrect statement to a full-time employee or participant in a self-funded plan.
- Don't file electronically when you're required to, unless a waiver has been granted.

One of the best ways to avoid hefty penalties is to validate the employee data being used to populate Forms 1095-C. Also make sure you're following the IRS instructions for properly coding the required information.

Another best practice for employers is to confirm that offers of coverage are in effect for 95% of full-time employees each month, because that number is reported on Form 1094-C. If you don't hit that threshold, the employer mandate "a" penalty kicks in. You could end up paying \$2,160 times the number of full-time employees you have in excess of 30. Transition rules may apply for the months prior to the start of the 2016 plan year for employers with non-calendar year plans.

Employers with self-funded plans must report the months in which employees and family members were enrolled in the employer's healthcare plan, proving they provided minimum essential coverage ("MEC") as laid out in the ACA. They also have to obtain and report the Tax Identification Numbers ("TINs") for plan members. The IRS outlines the steps employers must take to get each employee's and participant's TIN, including reaching out to them at least three times in an effort to get this information. Small employers that are not ALEs who offer a self-funded plan will complete Forms 1094-B and 1095-B to report MEC for employees who are enrolled in the self-funded plan.

The Forms and Instructions

Need links to the final 2016 forms and instructions? Check out these links to the [forms you need on the IRS website](#):

- [Form 1094-C](#)
- [Form 1095-C](#)
- [Instructions for Forms 1094-C and 1095-C](#)
- [Form 1094-B](#)
- [Form 1095-B](#)
- [Instructions for Forms 1094-B and 1095-B](#)

Substitute Returns

Employers who elect to file paper returns must follow the specifications outlined in [Publication 5223](#) for private printing of substitute forms. The forms filed with the IRS must be printed in landscape format.

Changes and Clarifications

This quick summary of the final forms and instructions will help you know **what to be on the lookout** for as you **prepare for your ACA tax filing in the coming months**:

- No Form 1094-C Authoritative Transmittal is required for an entire Aggregated ALE Group. Each separate ALE Member Company in an Aggregated ALE Group separately files information returns on behalf of their own workforce.
- For non-calendar year plans, limited transition relief from employer mandate penalties may be available only for the months in 2016 prior to the start of the 2016 plan year.
- None of the safe harbor codes on Form 1095-C, line 16 (2F, 2G, or 2H), can be used if the employer did not offer MEC meeting the minimum value (MV) standards to at least 95% of full-time employees.
- Two new codes (1J and 1K) are to be used when an ALE Member makes a conditional offer of coverage to a spouse. A conditional offer is a healthcare coverage offer that imposes one or more reasonable objective conditions on the offer of coverage (Part II, line 14, on Form 1095-C).
- The Employee Required Contribution ("ERC") is the amount that should be entered on Form 1095-C, Part II, line 15. The amount may include certain HRA contributions, cafeteria plan contributions, wellness program incentives, and opt-out payments.
- For COBRA, the months following an employee's termination should not reflect an offer of coverage. The coding is different when an employee loses coverage because of a reduction in hours.
- Multiemployer Plan Transition Relief continues for 2016.
- Forms 1095-B and 1095-C direct taxpayers, "Do not attach to your tax return. Keep for your records."
- Code 1G on Form 1095-C, Part II, line 14, should only be used when an employer with a self-funded plan has an individual who is enrolled in the plan and who is not a full-time employee for all 12 months in the calendar year. Code 1G should only be entered in the "All 12 Months" box on Form 1095-C Part II, line 14.
- Employers with self-funded plans may use either Forms 1094-B and 1094-C or 1095-B and 1095-C to report MEC for anyone who was enrolled in the plan during 2016 and who was not a full-time employee for all of 2016.

Extension to File with the IRS

An **automatic 30-day extension of time will be available** by filing Form 8809, "Application for Extension of Time to File Information Returns." You can file this form after January 1, 2017, but no later than the due date for IRS filing (February 28 or March 31, 2017, depending on if you are filing by paper or electronically, respectively).

The application may be filed online by completing a fill-in Form 8809 through the IRS FIRE system or by completing a paper application and mailing it to the IRS. Under certain hardship conditions, employers may apply for an additional 30-day extension, although those are not automatically granted.

Extension to Issue Individual Statements

Employers who may need more time to issue individual statements may request an extension by sending a letter to the IRS that includes the following information:

- Filer (employer) name, address and TIN
- Type of return that will be delayed (i.e., Form 1095-C)
- Indicate that the extension request is for providing statements to recipients
- Reason for the delay
- Signature of an authorized agent of the employer

The request must be postmarked by the date when the statements are due (January 31, 2017). A maximum 30-day extension to issue individual statements must be **granted** by the IRS.

Electronic Filing Waiver

Employers who are required to file electronically and are unprepared to do so may file a waiver from this requirement by completing Form 8508, "Request for Waiver From Filing Information Returns Electronically," **at least 45 days before the due date** of the returns. The waiver requests will be processed beginning January 1, 2017, and must be submitted by mail or by fax.

¹A single employer or group of employers treated as an Aggregated ALE Group (an entity treated as a single employer under section 414(b), 414(c), 414(m) or 414(o)) that employed an average of 50 or more full-time and full-time equivalent employees on business days during 2015 (preceding calendar year)

ADDITIONAL INFORMATION

Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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