

## IRS Releases DRAFT 2017 ACA Forms and Instructions 1094-C and 1095-C

The Internal Revenue Service (“IRS”) has released the DRAFT 2017 version of the Affordable Care Act (“ACA”) Information Reporting forms, a.k.a. Forms 1094-C and 1095-C and instructions. While Congress this year attempted to “repeal and replace” the ACA, no legislative and/or regulatory action has eliminated the individual and employer mandates, therefore Applicable Large Employers (“ALEs”) are obligated to issue and file the 2017 ACA information returns. **Other than removal of transition relief information, there are no significant changes from the 2016 forms and instructions.**

The 2017 deadline to issue participant statements is January 31, 2018 and to file with the IRS is February 28, 2018 (paper filing) or April 2, 2018 (electronic filing required when filing 250+ Forms 1095-C to the IRS). Extensions of time to furnish statements to employees and file with the IRS are available, as is a waiver to file electronically.

DRAFT Forms 1094-B and 1095-B and instructions have also been released. These forms are used by insurance carriers and other health coverage providers to report Minimum Essential Coverage (“MEC”), including small employers with self-funded plans not subject to the ACA employer mandate.

Employers may wish to review 2016 processes and procedures, both internal and with a service vendor (if utilized) to assess how the process may run smoother or how required information may be more easily obtained for the 2017 filing year.

### Changes, Reminders, and Clarifications for 2017 ACA Reporting

For 2015 and 2016, the IRS indicated it would not impose penalties for incorrect distribution or filing of forms when a “good faith effort” to comply could be demonstrated. Unless the IRS makes a further announcement, **this good faith effort provision is NOT available for 2017**. Penalties of \$260 per statement (maximum penalty of \$3,218,500) may be imposed for failure to file a correct statement with the IRS and the same penalty amount may be imposed for failure to issue a correct statement to a full-time employee. A penalty of \$260 per return may also apply for failure to file electronically, unless an approved waiver has been granted or reasonable cause can be established.

**Form 1094-C.** Items related to 2015 and 2016 transition relief are no longer available and therefore; Line 22 (Boxes B and C) and Part III Column (e) are now marked “Reserved.”

**Form 1095-C.** There must be an entry on Line 14 (Employee Offer of Coverage) for every month in the calendar year. Line 16 safe harbor “2” codes are used to indicate no ACA penalty is assessable for the month, such as when an employee is enrolled in the coverage (2C), the employee is in a waiting period (2D), or the individual is not an employee for that month (2A). The IRS confirms there is no specific code to indicate an employee has declined or waived an offer of coverage from the employer. If an offer of coverage has been made and the employee declines to enroll, the employer will use one of the ACA affordability safe harbors, (code 2F, 2G or 2H) if applicable, to avoid being assessed an ACA penalty. However; if the coverage offer for the month does not satisfy an ACA affordability safe harbor allowance, Line 16 should be left blank for an employee who declines to enroll in the coverage. Finally, the Plan Start Month is optional again for 2017.

**Aggregated ALE Groups:** Employers that are part of a controlled group of companies or affiliated service groups (“Aggregated ALE Group”) must each report separately and file an Authoritative Transmittal Form 1094-C. The term “ALE Member<sup>1</sup>” refers to employers who are subject to the reporting requirements, which may include a single employer entity or an employer who is part of an Aggregated ALE Group. No Form 1094-C Authoritative Transmittal is required for the entire Aggregated ALE Group.

The instructions provide Authoritative Transmittal examples for (i) a single employer, (ii) a single employer with multiple divisions that wishes to file each division separately, and (iii) for ALE members of an Aggregated ALE Group.

**Conditional Offers to Spouses - Form 1095-C:** These codes (1J and 1K) in Part II Line 14 (Employee Offer of Coverage) are used when an ALE Member makes a “conditional” offer of coverage to a spouse that imposes one or more reasonable objective conditions on the offer of coverage. For example, an offer of coverage that is available to a spouse only if the spouse certifies he/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 will not affect the spouse’s eligibility for premium subsidy for Marketplace coverage if the spouse did not meet the condition and therefore did not have an actual offer of coverage.

**Employee Required Contribution (“ERC”):** This is 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 (i.e. a different benefit option and/or coverage tier was elected) and 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. **The draft instructions include a de minimis safe harbor when the ERC may be incorrect.** Employers will not need to file a corrected return for ERC dollar amount errors on Line 15 less than \$100, unless the employee wishes to receive a corrected statement. It would be helpful if the IRS clarifies in the final rules whether the \$100 threshold is a per month or annual safe harbor.

**COBRA:** When an employee terminates employment, the months following the termination should not reflect an offer of coverage from the ALE Member as the employee is no longer a full-time employee for whom the ALE Member is liable to make an ACA offer of coverage. Assume an employee terminates employment during the calendar year (March 15) and coverage ceases on that date. Form 1095-C Lines 14-16 should be coded as follows: January and February (1E, ERC, 2C); March (1H, blank, 2B) and April through December (1H, blank, 2A). This coding applies regardless of whether the employee elects to enroll in COBRA coverage.

The coding would be different when an employee experiences a reduction in hours (May 1) that causes a loss of coverage. Under this scenario, the coding would depend on who may become a qualified beneficiary at the time of the event. Assume the employee has a spouse and two dependent children however; the employee enrolled in single coverage at the time of the last open enrollment and is therefore, the only COBRA qualified beneficiary. Form 1095-C Lines 14-16 will be coded as follows: January through April (1E, ERC, 2C); May through December (1B: MEC offered to employee only, COBRA ERC, 2B (not enrolled) or 2C (enrolled)).

**Multiemployer Plan Transition Relief Continued for 2017:** An ALE Member is treated as offering coverage to an employee if the ALE Member is required by a collective bargaining agreement (or participation agreement) to make contributions for that employee to a multiemployer plan that offers, minimum value/affordable health coverage to eligible employees. The plan must also offer health coverage to dependents. The coding on Form 1095-C Lines 14-16 for this scenario would be 1H, blank, 2E.

### Miscellaneous

- Forms 1095-B and 1095-C again this year inform 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 offer of coverage for at least one month in 2017 is made to an individual who was not an employee for any month in 2017, or to an employee who was not a full-time employee for any month in 2017 (including months when the individual was not an employee) and who enrolled in self-insured coverage for one or more months in 2017. Code 1G will apply for the entire calendar year (i.e. must enter 1G in the “All 12 Months” column or in each separate month for 2017).
- 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 2017 who was not a full-time employee for the entire calendar year.

<sup>1</sup>An entity that does not have employees or only has employees with no hours of service (i.e. has hours of service outside the United States) is not an ALE Member.

### 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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