

Employer Reporting Obligations Under Patient Protection and Affordable Care Act (PPACA)

Background

On September 16, 2015, the Internal Revenue Service (IRS) published final 2015 reporting forms and instructions under PPACA (commonly known as the Affordable Care Act or ACA). These forms include the following:

- 2015 Form 1095-C
- 2015 Form 1094-C
- 2015 Form 1095-B
- 2015 Form 1094-B

- 2015 Instructions for Forms 1094-C and 1095-C
- 2015 Instructions for Forms 1094-B and 1095-B

Under the PPACA employer mandate, applicable large employers (ALEs) must offer minimum essential coverage (MEC) to their full-time employees (average 30 hours or more per week), and the coverage must be affordable and provide minimum value, or pay a corresponding penalty tax.

Employer Shared Responsibility Requirement – In order for the federal government to monitor ALE compliance with this coverage obligation, the law requires that ALEs meet certain reporting obligations to the IRS and to employees. ALEs were directed to use Form 1094-C (transmittal form that also summarizes employer shared responsibility compliance) and Form 1095-C (addressing each employee's coverage) (collectively, the "C Forms") to report how they are meeting their shared responsibility (i.e., employer pay or play) obligations.

Individual Shared Responsibility Requirement – PPACA also requires individuals to secure minimum essential coverage or pay a corresponding penalty under the individual mandate. Employers, insurance companies and other entities that provide health coverage to individuals are required to meet certain reporting obligations to the IRS and to covered individuals that support that individual mandate requirement, by using the C Forms if the reporting entity is an ALE sponsor of a self-insured plan, or Form 1094-B (transmittal form) and Form 1095-B (listing the covered individuals) (collectively, the "B Forms") if the reporting entity is an insurance company or a non-ALE that is the source of health coverage for the individual.

The regulations previously issued by the IRS (after a one year delay in the reporting obligation) had very limited extensions available. For the 1095 forms any extension would have been for a maximum of 30 days. Moreover, although the extension for IRS filings was automatic, the extension for the 1095 forms sent to employees as employee statements required special IRS approval, including a reasonable explanation for the delay, and even then there was no guarantee that the extension would be permitted. Many employer groups were stunned by the short time frames. That was particularly true given the state of

readiness of the vendor community and the fact that the final instructions were not even available until this past summer. Those circumstances gave employers very little time to actually prepare for this year's filing.

IRS Extends 2015 Reporting Due Dates

In an effort to help employers meet their reporting requirements under PPACA, the Treasury Department and Internal Revenue Service (IRS) announced in Notice 2016-4 on December 28, 2015, that they are extending the 2015 deadlines. Employers and other ACA reporting entities (including insurance companies filing "B" forms) will now have until March 31, 2016 to provide individuals with the 1095 form employee statements. They will also have until May 31, 2016 to file, by mail, their forms with the IRS. If filing electronically, the new due date is June 30, 2016.

While employers will certainly appreciate being given the additional time to complete the reporting, they should continue in their efforts to collect the necessary data to complete the forms and file in a timely manner. Notice 2016-4 makes it clear that the provisions regarding automatic and permissive extensions of time for filing information returns and permissive extensions of time for furnishing statements will not apply to the extended due dates. Failure to file a timely, correct or complete information return with the IRS or to send a timely, correct or complete statement to an employee (or other individual, as applicable) can result in substantial penalties, although the IRS has indicated that for 2015 it will not impose penalties for incorrect or incomplete filings if the reporting entity can show that it made a good faith effort to comply with the reporting requirements. Moreover, the Notice also makes clear that taking responsible steps toward completion will be considered in the event the deadlines are missed.

Clearly, the efforts of the industry were worthwhile as the IRS determined that the time frames as originally proposed were going to be too difficult for many employers to meet given the complexity of the issues and the late start that the circumstances forced on many employers.

Extended Deadlines

The required IRS information returns and employee statements due dates for 2015 are summarized below:

- Employee statements (1095s) —the due date for the 2015 Forms 1095-B and 1095-C is extended from February 1, 2016 for both electronic and paper delivery to March 31, 2016 (note that the official due date was January 31, but January 31, 2016 fell on a Sunday).
- IRS information returns (1094s):
 - o Mail filing (permitted if fewer than 250 Forms 1095-B or 1095-C)— the due date for the 2015 Forms 1094-B and 1094-C is extended from February 29, 2016 to May 31, 2016 (note that the official due date was February 28, but February 28, 2016 fell on a Sunday); and

- o Electronic filing (required if 250 or more Forms 1095-B or 1095-C)—the due date for the 2015 Forms 1094-B and 1094-C is extended from March 31, 2016 to June 30, 2016.

Key Changes Adopted in the Final 2015 PPACA Reporting Forms

The IRS maintained most of the changes that it previously announced in connection with the issuance of the 2015 draft forms and instructions. The following information addresses some of those key changes adopted in the final reporting forms.

Reporting Exception for HRAs and other Supplemental Coverage (Forms 1094-B, 1095-B, 1094-C and 1095-C)

The IRS modified both the C Form and the B Form instructions to simplify reporting for ALEs who provide coverage under a major medical plan and a health reimbursement arrangement (HRA) that is integrated with the major medical plan. This is consistent with the recent guidance that the IRS provided in Notice 2015-68, where the IRS indicated it intended to eliminate duplicate reporting when an individual is covered by two or more forms of MEC. An integrated HRA is basically an HRA that is tied to a major medical plan in which an employee is required to be enrolled in order to receive the HRA benefits, although to be considered an integrated HRA the employee could be enrolled in a major medical plan sponsored by the employee's employer (who also sponsors that HRA) or by another employer (like the employer of the employee's spouse).

- Under the instructions the focus of ACA reporting for an employer who sponsors a major medical plan and an integrated HRA is whether the HRA coverage needs to be reported in Form 1095-C, Part III, which lists the covered individuals.
- If an ALE sponsors a self-insured major medical plan and an integrated HRA and a full-time employee enrolls in both coverages, the employer would report only the major medical plan coverage in Form 1095-C and can disregard reporting the HRA.
- If an ALE sponsors an insured major medical plan and an integrated HRA and a full-time employee enrolls in both coverages, again the employer would report only the major medical plan coverage in Form 1095-C and would disregard the HRA. Since the insurance company reports the covered individuals in that situation, the employer would leave Part III of the Form 1095-C blank.
- In the event a full-time employee enrolls in an ALE's integrated HRA but does not enroll in the employer's major medical plan (whether self-insured or insured) and instead enrolls in another employer's major medical plan (like the major medical plan of the employer of the employee's spouse), the employee's employer would be required to report the employee's HRA coverage on Form 1095-C. Although it is not clear from the instructions, presumably the employee's employer would be preparing Parts I and II based on the employee being full-time and waiving the employer's major medical plan coverage, and then filling out Part III (Covered Individuals) based on the employee having coverage under the employer's HRA.

This Form 1095-C would be in addition to the Form 1095-C that the employer of the employee's spouse would prepare (if the employer was an ALE) in order to report the spouse's (and the employee's) coverage under the major medical plan of the spouse's employer (as well as the Form 1095-B that the insurer for the spouse's employer would prepare if that employer coverage was insured).

As a practical matter, however, it is recognized that very few employers will permit an employee to participate in the employer's HRA without also enrolling in the employer's major medical plan.

Similar directions are provided in the Form 1095-B instructions for employers who are not ALEs and are providing self-insured HRA along with major medical plan coverage to their employees.

This change is a reversal from the position taken by the IRS in the 2015 draft instructions, where the IRS previously indicated that an employer with an insured major medical plan and a self-insured HRA would be required to report the HRA coverage separate from and in addition to the insurance company reporting of the major medical plan coverage.

Offer of COBRA Coverage (Form 1095-C)

When an employee is offered COBRA coverage upon termination of employment, the offer of COBRA coverage is not treated as an offer of coverage in Form 1095-C. Instead the employer reports the employee's situation in the following manner in Form 1095-C, Part II:

- Line 14—use Code 1H (“No offer of coverage”) for each month (including the initial partial month, if applicable) that the offer of COBRA coverage is made, beginning with the month of termination and for the rest of the calendar year being reported. This indicates that the employee officially received no offer of coverage in connection with the employee's termination of employment.

- Line 15—leave blank, thereby reporting nothing for the employee's lowest cost contribution.

- Line 16

- Use Code 2B (“Employee not a full-time employee”) for the month of termination if the employee terminated in the middle of the month (and the employee's employer-provided coverage ended with the employee's termination), because the employee is viewed as not being a full-time employee for the entire month.

- Use Code 2A (“Employee not employed during the month”), indicating that the employee was not an employee for the entire month.

The above is a change from the IRS's draft instructions, which directed an employer to report the terminated employee's situation based on whether the employee elected COBRA (thereby treating the employee like an active employee) or declined COBRA (and treating the employee in the same manner as outlined above). Aside from simplifying and providing

consistency in reporting terminated employees, it appears this coding is used in order to avoid interfering with the former employee qualifying for the premium tax credit if the former employee purchases coverage on an exchange.

As previously reported, when an employee has a reduction in hours but remains on the payroll, is no longer eligible for employer paid coverage and is offered COBRA, the employee is reported in the same manner and using the same codes as if the employee was any other active employee who was eligible for and being offered coverage (except that the coverage being offered is COBRA coverage). Please note that because the employee continues to be on the ALE's payroll at the time the employee qualifies for COBRA coverage, the employer should determine the employee's eligibility for employer-provided health coverage in light of whether the employee is in a stability period at that time and the employer's Pay or Play obligations.

Smoothing of Employee Contributions (Form 1095-C)

For purposes of reporting employee self-only coverage contributions in Line 15 of Form 1095-C, ALEs may, but are not required to, determine the amount of the employee's contribution by smoothing the employee contribution over the plan year(s) that fall within the 12 calendar months in the reporting period. This is done by averaging the employee's contributions over each plan year that overlaps the calendar year being reported, and then reporting that average for the months in the plan year that fall within the ACA calendar reporting year. ALEs with non-calendar plan years will be averaging employee contributions over two separate plan years, whereas ALEs with calendar plan years will be averaging employee contributions over one plan year, which is the same calendar year being reported for ACA purposes.

This option is useful for those ALEs who had varying employee contributions during the applicable plan year(s), especially if those contributions spiked in certain months and potentially exceeded the affordability standard in those months.

Multiemployer Plan Reporting (Form 1095-C)

Because of the limited role that employers have in conjunction with the administration of Taft-Hartley multiemployer plans in which they participate pursuant to a collective bargaining agreement with a union, ACA reporting puts those employers in the difficult position of having to obtain information from sources that the employer has little or no control over or contact with. Under the transition relief provided in the Preamble to the final Pay or Play regulations, an ALE who participates in a multiemployer plan that meets Pay or Play affordability and minimum value requirements is treated as offering coverage to a bargained employee if the ALE is required by a collective bargaining agreement to contribute to that multiemployer plan. Consistent with that guidance, the final instructions allow an ALE making multiemployer plan contributions for an employee to receive that transition relief regardless of whether the employee is eligible for or enrolled in that multiemployer plan coverage.

The final instructions address this multiemployer plan transition relief by directing the ALE to report the following in Form 1095-C, Part II:

- Enter Code 1H (“No offer of coverage”) on Line 14—regardless of whether the ALE knows that the bargained employee is eligible for the coverage, received an offer of coverage or is actually covered by the multiemployer plan;
- Leave Line 15 blank; and
- Enter Code 2E on Line 16, which invokes the “multiemployer plan interim rule relief.”

In addition, the ALE should leave Part III (Covered Individuals) blank, because the reporting rules direct the multiemployer plan to report this information on Form 1095-B.

This guidance relieves an ALE participating in a multiemployer plan from having to gather information about the coverage status of its bargained employees or their spouses or dependents. As long as the ALE is making contributions to a multiemployer plan on behalf of its bargained employees and that plan provides affordable minimum value coverage, the ALE can rely on this simplified reporting approach without having to do anything further to support the information it is reporting.

There was some confusion in the draft instructions about whether Code 2C (“Employee enrolled in coverage offered”) would apply to Line 16, based on the standing rule that if both Code 2C and other code applies, use Code 2C. The final instructions made it clear that only Code 2E applies to ALEs participating in multiemployer plans that meet the above requirements.

The IRS has indicated that for 2016 and future years, reporting of multiemployer offers of coverage may be done in a different manner.

Determination of 98% Offer Method (Form 1094-C)

When an ALE meets the requirements for the “98% Offer Method” by offering affordable health coverage that provides minimum value to at least 98% of the ALE’s employees (full-time and non-full-time) and their dependents, the ALE is not required to report in the Form 1094-C how many of its employees were full-time (although the ALE is still required to report its total number of employees). There was some confusion as to whether an ALE should count employees in a “limited non-assessment period” (i.e., a period during which an ALE is not required to provide coverage to a full-time employee due to the employee being in a new hire waiting period, an initial measurement period, the period following a change in employment to full-time status, etc.). The final instructions make it clear that employees in a limited non-assessment period do not count towards the ALE meeting the 98% coverage requirement under the 98% Offer Method.

Total Employee Count (Form 1094-C)

The 2015 final ACA reporting instructions adopted one additional method that an ALE can use to determine the total employee count in Form 1094-C, Part II, Colum (c)—the total employee count as of the 12th day of the month. As a result, an ALE has five snapshot methods to choose from in reporting monthly total employee count, provided the employer uses the same method throughout the calendar year reporting period:

- First day of each month;
- Last day of each month;

- 12th day of each month;
- First day of the first payroll period that starts during each month; or
- Last day of the first payroll period that starts during each month.

ALE Determination (Forms 1094-C and 1095-C)

Consistent with the directions provided in the Preamble to the final Pay or Play regulations, the final instructions state that for 2015 an employer can determine its status as an ALE based on averaging at least 50 full-time employees and full-time employee equivalents on business days during a period that is at least 6 consecutive months during 2014, rather than having to make the determination over the entire 2014 calendar year. As indicated, this special rule is limited to ALE determination for 2015 only.

In addition, the final instructions state that an employer can disregard any employee covered under TRICARE or Veterans Administration coverage for purposes of determining whether the employer is an ALE, consistent with the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015. As provided by that statute, such an employee is not counted as a full-time employee or full-time employee equivalent when calculating whether the employer meets the 50 employee threshold for ALE status.

Break in Service and Leaves of Absence (Forms 1094-C and 1095-C)

Under the definition of “Employee,” the final instructions make it clear that when an employee has a termination of employment and then returns to work, if the break in service is not at least 13 consecutive weeks (or 26 weeks for educational organizations), the employee “must be treated as a continuing employee rather than a new hire” for purposes of applying the Pay or Play rules—but that “continuing employee” treatment does not apply for any other purpose. If an employee stops earning hours of service while on a leave of absence, the employee would continue to be treated as an employee for reporting purposes during the leave of absence if the employee remained an employee during the leave period.

Reporting Coverage of Non-Full-Time Employees and Non-Employees (Forms 1094-B, 1095-B, 1094-C and 1095-C)

The “B” Form instructions state that filers have a choice of using Form 1095-B or Form 1095-C to report coverage of “individuals who aren’t full-time employees,” which appears to authorize an ALE that provides self-insured coverage to use Form 1095-B in lieu of Form 1095-C to report coverage provided to part-time employees as well as other non-full-time employees. The “C” Form instructions, however, address this topic by saying that ALEs sponsoring self-insured coverage can use Form 1095-B in place of Form 1095-C to report coverage provided to “non-employees,” which appears to limit use of the “B” Form option to individuals who are not employees and therefore, precludes use of the Form 1095-B to report self-insured coverage provided to a part-time or other non-full-time employee. The IRS did not address this inconsistency when it released the final version of the 2015 instructions, and in the absence of further guidance it is recommended that ALEs with self-insured plans limit use of Form 1095-B to reporting coverage of non-employees and

continue to report covered part-time and other non-full-time employees only on Form 1095-C.

Reporting Employer EIN (Form 1095-B)

When an employer sends a copy of the Form 1095-B to a responsible individual, the 2015 final ACA reporting instructions permit the employer to truncate the employer's EIN when reported in Part II of the Form 1095-B by showing only the last four digits of the EIN and replacing the other digits with asterisks (*s) or Xs—in the same manner as the instructions permit for reporting SSNs in the Form 1095-B or Form 1095-C sent to a recipient. Please note that this rule only applies to the Form 1095-B, and the final instructions do not permit the use of a truncated EIN in the Form 1095-B or Form 1094-B filed with the IRS. Nor do the final instructions permit the use of a truncated EIN in the Form 1095-C or Form 1094-C, regardless of whether the form is sent to an employee or the IRS.

Conclusion

With the issuance of the final 2015 ACA reporting forms and instructions, the IRS has put all of the puzzle pieces in place for employers to do ACA reporting during the first quarter of 2016. What continues to be most noteworthy about those final forms and instructions, however, is the fact that the IRS did not change the Form 1095-C Codes for Lines 14 and 16. Although clarification of at least some of those codes would have been helpful to employers, those codes have remained the same from the 2014 ACA reporting process that was voluntary for employers.

Despite the finalization of the 2015 ACA reporting forms and instructions, there continues to be a number of questions about how to prepare those forms, and it is evident that a great deal of uncertainty remains about the proper way to prepare the forms. Add to this the fact that the volume of reporting and level of detail required by the ACA reporting rules is unprecedented. The IRS fully expects, however, that mistakes in preparing the 2015 forms will be made, and for this reason the IRS has indicated in the instructions and elsewhere that employers will not be penalized if they make a good faith effort to comply with the ACA reporting requirements for 2015. For this reason, employers should familiarize themselves as much as possible with the final 2015 ACA reporting forms and instructions, especially those employers who are planning to do their reporting in house.