

IRS Releases Final Forms and Instructions for 2016 ACA Information Reporting

October 11, 2016

SYNOPSIS

The IRS recently released final 2016 instructions and forms for completing Affordable Care Act information reporting in 2017.

Which IRS form is correct for your organization?

The 1094 and 1095 B Forms are generally filed by health insurers and small employers with self-insured health plans.

The 1094 and 1095 C Forms are generally filed by large employers with 50 or more full-time employees or full-time equivalents.

Most employers will file C Forms with the IRS.

The IRS uses the C Forms to determine if penalties should be assessed against employers under Pay or Play provisions of the ACA.

The IRS recently released final 2016 instructions and forms (“B Forms” and “C Forms”) to be used for completing Affordable Care Act (ACA) information reporting in early 2017 (for the 2016 calendar year’s reporting).

As background, the B Forms (1094-B and 1095-B) are generally filed by health insurers and small employers with self-insured health plans. The C Forms (1094-C and 1095-C) are generally filed by applicable large employers that employed 50 or more full-time employees and full-time equivalents in the prior calendar year (“ALEs”).

Most employers will be filing the C Forms with the IRS as well as providing Forms 1095-C to their full-time employees. The IRS uses the C Forms to determine if penalties should be assessed against employers under the Employer Shared Responsibility (“Pay or Play”) provisions of the ACA.

How are the 2016 Final Instructions for the C Forms Different from the Draft Instructions?

The new final instructions for the C Forms (“the Final Instructions”) do not make many changes to the draft instructions for the C Forms (“the Draft Instructions”) (see our eAlert on the Draft Instructions [here](#)).

The most noteworthy clarifications and additions contained in the Final Instructions include:

Full-Time Employee Count: The Final Instructions correct an omission in the Draft Instructions regarding the full-time employee count reported on Part III, column (b) of the Form 1094-C. The Draft Instructions only referred to the use of

the “monthly measurement method” for use in calculating the number of full-time employees which could have been interpreted to require ALEs to use only the monthly measurement method to count full-time employees.

The Final Instructions clarify that either the monthly or look-back measurement method may be used to calculate full-time employees. The Final Instructions also contain a reminder that employers should only use the definition of “full-time employee” contained in the Pay or Play rules under Code § 4980H, and not any other definition of full-time employee that may be used for other purposes.

Printing Format for Substitute Statements: Substitute Forms 1095-C furnished to employees can be printed in portrait format, but the Final Instructions now specify that those filed with the IRS must be in landscape format. It is unclear why this needed to be specified in the Final Instructions. Perhaps the IRS received many filings in unusual printing formats.

Proposed Regulations: The Final Instructions add a reference to IRS-proposed regulations issued in August of 2016 (see our eAlert on this topic [here](#)) as well as to [IRS Publication 1586](#). The proposed regulations discuss, among other new rules, rules for soliciting taxpayer identification numbers (TINs) and rules applicable to reporting for health reimbursement arrangements (HRAs).

IRS Publication 1586 explains how an organization can comply with the reporting requirements where it is missing or has incorrect TINs, as well as the requirements for “reasonable cause” penalty relief.

COBRA Reporting: The Final Instructions make a change to the note that follows the example of COBRA reporting for dependents of a terminated employee. The change emphasizes that dependent coverage offers are treated differently for purposes of ACA information reporting and the ACA's Pay or Play rules under Code § 4980H.

For Pay or Play purposes, an ALE is treated as having offered minimum essential coverage (MEC) to an employee's dependents for an entire plan year so long as the dependents had an effective opportunity to enroll. This is the case even if the dependent declined coverage. However, for information reporting purposes, if, following an employee's termination, the ALE does not offer COBRA coverage to dependents who declined enrollment, the ALE will report that it did not offer coverage to dependents for the period following termination.

Non-MEC Enrollment: The Final Instructions add a reminder not to use Code 2C (the code indicating that the employee enrolled in the health insurance coverage offered by the employer) on Line 16 of the Form 1095-C if the employee's coverage is not minimum essential coverage (MEC) (for example, coverage consisting solely of excepted benefits).

Enrollment by Non-Full-Time Employees: Both the 2015 and 2016 reporting rules for Form 1095-C require ALEs to use Code 1G to report enrollment of individuals other than full-time employees in a self-insured health plan. While there is no change in this requirement, a note has been added to the Final Instructions to emphasize that Code 1G applies for the entire year (*i.e.*, all 12-months) or not at all. If Code 1G is inserted into the "all 12 months" field on Line 14, then both lines 15 and 16 should be left blank.

Affordability Safe Harbors: The Final Instructions caution that ALEs should not enter an affordability safe harbor code on Line 16 of Form 1095-C for any month in which they offer MEC to less than 95% of full-time employees. (It should be noted that the MEC coverage offer is reported on Form 1094-C).

Clarification Regarding Penalties for Noncompliance: The Draft Instructions had used the word "generally" in explaining that the penalty for failure to file a correct information return "generally is \$260" per incorrect form. The Final Instructions make the penalty language more definitive by eliminating the word "generally." Specifically, the Final Instructions provide that the penalty for failure to file a correct information return is "\$260 for each return for which the failure occurs, with the total penalty for a calendar year

not to exceed \$3,193,000." The same penalty amounts apply for an employer's failure to furnish a correct form to employees.

Where Can I Download the Final Forms and Instructions?

Links to the new forms and instructions are set forth below:

2016 FINAL FORMS	2016 FINAL INSTRUCTIONS
Final Form 1094-C.	Final C Form Instructions.
Final Form 1095-C.	Final B Form Instructions.
Final Form 1094-B.	
Final Form 1095-B.	

When Do Employers Have to Distribute the Forms? When is Filing with the IRS Required?

Employers are required to furnish the 2016 Forms 1095-C to employees by January 31, 2017. Filing with the IRS is required by February 28, 2017, if filing on paper or March 31, 2017, if filing electronically.

What Should Employers Do Next?

There is not much time left for employers (and their Benefits, HR and Payroll Teams) to fully understand and comply with these requirements. Unlike last year, employers filing and furnishing the forms in early 2017 will not have the benefit of the extension provided for last year's filing.

The first deadline employers will face is January 31, 2017, which is the date employers must furnish the 2016 Forms 1095-C to their employees. Last year, employers had until March 31, 2016, to furnish the 2015 Forms 1095-C.

Employers that have been delaying understanding these requirements should begin that process now in order to prepare for these tighter deadlines. Corporate Synergies' benefits consultants and account managers are prepared to guide your organization through this process.

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.

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