

IRS Releases Draft Instructions for 2017 ACA Information Reporting

September 8, 2017

The IRS recently released [draft 2017 instructions](#) (“the Draft Instructions”) for the “C Forms” (i.e., Forms 1094-C and 1095-C). These Draft Instructions come on the heels of the IRS’s recent release of the draft “C Forms” (see our recent eAlert [here](#)).

Background on ACA Information Reporting

As explained in earlier e-Alerts, generally employers sponsoring self-insured health plans and employers with 50 or more full-time employees and full-time equivalents (“ALE Members”) will be required to complete ACA information reporting and will need to file the “C Forms” with the IRS (and furnish them to employees) in early 2018 for the 2017 calendar year.

The Form 1094-C is referred to as the “transmittal form.” It summarizes the information contained in the Forms 1095-C, much like an executive summary section of a report. The Form 1095-C is referred to as the “employee statement.” It gives information to the employee about the cost of the coverage that the employer offered, among other relevant information. While both the Form 1094-C and Forms 1095-C are filed with the IRS, only the Forms 1095-C are furnished to employees.

How are the Draft 2017 Instructions Different from the 2016 Instructions?

The rules contained in the new Draft Instructions closely resemble those in the final 2016 instructions, but contain a few noteworthy changes and clarifications. These are:

Eliminates References to 2015 Transition Relief: The Draft Instructions do not contain any references to certain ACA transition relief (under Code § 4980H) that was available for plan years beginning on or after January 1, 2015.

The De Minimis Error Safe Harbor: In the section on “Corrected Returns,” the IRS states that Forms 1095-C filed with incorrect dollar amounts in Line 15 (the line showing the employee’s required contribution to the cost of self-only coverage) may fall under the “de minimis error” safe harbor, which applies if no single dollar amount in error differs from the correct amount by

more than \$100. If the safe harbor applies, then the ALE Member is not required to correct the Form 1095-C to avoid penalties. However, an employee can elect that the safe harbor not apply to him/her. If that’s the case, then the ALE Member would have to issue the employee a corrected form to avoid penalties. It should be noted that the application of this safe harbor is still not very clear. For example, it’s not clear whether the \$100 limit applies to the sum of Line 15 for the entire calendar year or each of the 12 months of the calendar year. However, the IRS has stated that it will issue additional regulations

explaining how this safe harbor should be applied. Specifically, in [IRS Notice 2017-09](#) (issued on January 23, 2017), the IRS stated that it will issue regulations to implement the de minimis error safe harbor, including details on how employers should notify employees about the safe harbor, and their right to elect to receive a corrected Form 1095-C.

Clarification on Enrollment and Waiver: The Draft Instructions clarify that there is no specific code to enter on Line 16 of the Form 1095-C that indicates whether a full-time employee offered coverage either: (i) did not enroll in the coverage that was offered or (ii) waived that coverage. This is an important clarification because this has confused employers since the first year of reporting. The key thing to remember is that the Forms 1095-C were designed to report on *offers* of coverage, not on *enrollment* in coverage, since the offer is the central obligation

SYNOPSIS

- The rules contained in the new Draft Instructions closely resemble those in the final 2016 instructions, but contain a few noteworthy changes and clarifications.
- It’s important to understand how reporting will be different in the third year of mandatory compliance given the potential for steep penalties for errors.

of the ACA's Pay or Play provisions. This new language seems designed to make it more clear that if an employer does not qualify for one of the affordability safe harbor codes (codes 2F, 2G and 2H), and the employee doesn't enroll in coverage or waives coverage, then Line 16 should be left blank. While this is how the rules have always worked, it's never a good thing for an employer to leave Line 16 blank, as this leaves the employer subject to a penalty under Code § 4980H(b). Accordingly, an employer should try to see if one of the other Line 16 codes would be appropriate before leaving that line blank.

Plan Start Month: The box on the Form 1095-C entitled, "Plan Start Month," which was designed to indicate when the ERISA plan year begins, will continue to be optional for 2017, but it may be required for 2018 reporting.

Reporting Relief for Multiemployer Plans: The interim relief that was available in prior years to simplify reporting for ALE Members contributing to multiemployer health plans (commonly referred to as "union plans") will continue for the 2017 reporting year.

No Indication of Good Faith Penalty Relief: Unlike previous years, one of the most significant changes for 2017 will be that an employer will no longer be able to use the "good faith effort" penalty relief standard to protect itself from filing forms with inaccurate or incorrect information. While this could still change if the IRS issues subsequent guidance that allows for the relief (as it did in 2016), no good faith effort standard has been communicated by the IRS as of the time of this writing.

Links to Additional Resources: The Draft Instructions now refer ALE Members to additional resources available on the IRS [ACA Tax Provisions Questions and Answers website](#). The website includes examples of how to report offers of COBRA coverage and discusses filing and furnishing requirements applicable to terminated employees.

What are the Deadlines for Filing and Furnishing the 2017 Forms 1094-C and 1095-C?

The 2017 Forms 1095-C must be furnished to employees by January 31, 2018, and must be filed with the IRS by February 28, 2018, if filed on paper, and by April 2, 2018, if filed electronically (the filing deadline is normally on March 31, but that day is a Saturday in 2018). Electronic filing is required for parties filing 250 or more forms.

What Should Employers Do Next?

While there may be additional clarifications and modifications made to these new rules once the Draft Instructions are finalized, employers subject to the 2017 ACA information reporting requirements, and their Benefits, HR and Payroll Teams, should still review them, and be familiar with them, in order to begin the process of understanding how reporting will be different in the third year of mandatory compliance. This is particularly important given the steep penalties involved in getting this wrong - a \$250 (indexed) penalty for each incorrectly filed or furnished return, up to a maximum \$3 million (indexed) penalty.

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

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