

## IRS Releases Draft Instructions for 2016 ACA Information Reporting

August 8, 2016

The IRS recently released [draft 2016 instructions](#) (“the Draft Instructions”) for Forms 1094-C and 1095-C, or the “C Forms.” These Draft Instructions come on the heels of the IRS’s recent release of both the draft “B” and “C” Forms (see our recent eAlert [here](#)), but notably, do not include instructions for how to complete the “B Forms,” which are generally filed by health insurers and small employers with self-insured plans.

Generally, employers with 50 or more full-time employees and full-time equivalents (“ALE Members”) will be required to file the “C Forms” when completing ACA information reporting in early 2017 (for the 2016 calendar year’s reporting).

### How Are the Draft 2016 Instructions Different from the 2015 Instructions?

The rules contained in the new Draft Instructions closely resemble the final 2015 instructions (“the 2015 Instructions”), but contain some important clarifications and additions. Below are some noteworthy changes:

- **New Definitions and Definition Clarifications:** A new definition is now included for “Employee Required Contribution,” which explains that additional rules apply ([IRS Notice 2015-87](#) and other regulations) when an ALE Member makes certain types of HRA contributions, cafeteria plan credits, wellness incentive payments, opt-out payments and other types of contributions and payments. Additionally, the definition for “full-time employee” now makes it clear that employer determinations of full-time status must be made based on the statutory definition of that term (“full-time employee”) that is set forth in the ACA under Code § 4980H, and not under any other employer-created definition of that term. Further, the revised definition emphasizes that an ALE member is required to report complete information *for all 12 months* for any employee, so long as the employee was a full-time employee for one or more months of the calendar year.
- **Aggregated ALE Groups and Authoritative Transmittals:** The Draft Instructions contain a more detailed explanation of how

filings should be made by ALE Members in “Aggregated ALE Groups,” which are groups of employers that are in a controlled group or affiliated service group under Code § 414. They also emphasize that authoritative transmittals should not be filed on behalf of an Aggregated ALE Group and that each ALE Member must file its own Form 1094-C transmittal, and the associated Forms 1095-C, under its own, separate EIN. The drafters have also added an example of how the rules work when an employee works for more than one ALE Member of the same Aggregated ALE Group in a given calendar month. The rule is that only the ALE Member for whom the employee worked the most hours of service in that month reports for that employee for that particular calendar month.

- **Multiemployer Plan Relief Extended for 2016:** The Draft Instructions for Part II, line 14 of the Form 1095-C, extend the 2015 interim relief for multiemployer plans for another year. This means that employers contributing to collectively-bargained multiemployer plans that qualified for this interim relief last year will not need to reach out to their multiemployer plan representative in 2016 to obtain offer

### SYNOPSIS

#### Draft Instructions cover:

- New definitions and definition clarifications
- Aggregated ALE groups and authoritative transmittals
- Multiemployer plan relief extension
- New codes for conditional offers of spousal coverage
- COBRA and other post-employment coverage
- 2015 transition relief

and eligibility information. However, the drafters caution that this interim relief may be modified in 2017 and subsequent years.

- **New Codes for Conditional Offers of Spousal Coverage:** The Draft Instructions explain the addition of two new codes available for Form 1095-C, Part II, line 14—Codes 1J and 1K. The new Codes are used to indicate conditional offers of coverage to an employee's spouse. Conditional offers are offers of coverage that are subject to one or more reasonable, objective conditions (e.g., where an employer offers to cover an employee's spouse only if the spouse is not eligible for coverage under any other employer's group health plan). The 2015 Instructions made no distinction between conditional and non-conditional offers to spouses.
- **COBRA and Other Post-Employment Coverage:** With respect to COBRA coverage, the Draft Instructions clarify: (i) how to report for the month in which an employee terminates with an ALE Member, and (ii) that an ALE Member is treated as having made an offer to the employee's dependents for an entire plan year if the ALE Member provided the employee an effective opportunity to enroll his or her dependents at least once annually, even if the employee declined to enroll the dependents, and as a result, the dependents did not receive any offer of COBRA coverage. Notably, the Draft Instructions did not change the simplified method of COBRA reporting offered in the 2015 Instructions. The Draft Instructions provide that offers of COBRA coverage after termination of employment should be coded with 1H (in Line 14) and 2A (in Line 16) on the Form 1095-C, regardless of whether or not the COBRA coverage is elected. The Draft Instructions also explain that employers can use this same coding sequence for other, non-COBRA post-employment health insurance coverage, such as retiree coverage, when the former employee was a full-time employee for at least one month of the year.
- **2015 Transition Relief:** Finally, it should be noted that several transition relief rules are no longer included in the Draft Instructions. This is because several forms of ACA transition relief were limited to the 2015 calendar year

(e.g., the "Qualifying Offer Method" transition relief), while others applied for the 2015 plan year (e.g., the "Non-calendar Year" transition relief), and therefore, extend into months in 2016. The Draft Instructions only contain rules pertaining to transition relief that continues to apply to calendar months in 2016 for qualifying non-calendar-year plans. Additional information about the 2015 transition relief available to employers is available on the [IRS.gov](http://IRS.gov) website [here](#).

A clear understanding of the new reporting requirements is important. The penalties are steep for incorrect reporting...up to a maximum of \$3 million.

#### What Should Employers Do Next?

Employers subject to the 2016 ACA information reporting requirements (and their Benefits, HR and Payroll Teams) should study these new rules now to gain an understanding of how reporting requirements will be different in the second year of mandatory compliance.

While there may still be additional clarifications and modifications made to these new rules once the Draft Instructions are finalized, a clear understanding of the new reporting requirements is particularly important given the steep penalties involved for incorrect reporting (\$250 per return, up to a maximum \$3 million penalty), and given that the "good faith" penalty relief for incorrect or incomplete returns or statements will no longer be available for this reporting process, since it was limited to the reporting for the 2015 calendar year.

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

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Page 2 of 2