

Very Hard Facts: 2015 Reporting Requirements Under the Affordable Care Act (“ACA”)

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Internal Revenue Code section 6056 requires *applicable large employers* (“ALEs”) to report certain details about the group health plan coverage they offer to full-time employees annually in a similar manner as wages are reported on Forms W-2. Very recently, the IRS issued the final versions of Forms 1094-C (the ALE’s summary report of health plan coverage to the IRS) and 1095-C (the ALE’s reports to full-time employees and persons enrolled in health plan coverage), along with instructions to these Forms. The IRS also published final Form 1094-B and 1095-B, the Forms for reporting by health insurance carriers and self-funded plans required under Code section 6055. The forms and instructions contain several requirements that ALEs and certain other employers will find surprising and often difficult to administer.

As an initial matter, it is extremely important that ALEs both recognize the circumstances under which they are required to comply with the ACA’s reporting requirements and put into place the operational measures to assure their Forms 1094-C and 1095-C are filled out correctly and completely. It is the ALE who is responsible for the Form 1094-C and 1095-C reports, not the health insurance carrier or plan administrator. It is the ALE who will be liable for tax penalties if the Forms are either not submitted to the IRS and employees or are erroneous.

All employers who have 50 or more full-time plus full-time equivalent employees must report on Forms 1094-C and 1095-C for 2015, whether or not they have below 100 employees and are entitled to the transition relief that renders them ineligible for ACA penalties until 2016. The information an ALE must put together in order to complete the required forms includes the identities of employees who were offered coverage; the identities of individuals covered by the ALE’s health plan *by month*; the type of coverage chosen; the price of coverage; and the affordability safe harbor relied upon by the ALE. ALEs who wait until the end of the year to commence gathering and organizing the data needed for reporting will find themselves scrambling to get Forms out to full-time employees and plan participants by the February 1, 2016 deadline.

Penalties for failing to submit correct reports to the IRS and to covered individuals are \$250 per report, per year, up to a \$3 million cap. If the IRS determines an ALE intentionally disregarded ACA reporting requirements, the penalty is \$500 per report, per year, with no monetary cap. This means, for example, that an ALE with 200 full-time employees who mistakenly fails to report, or submits erroneous reports, may be penalized \$50,000 in 2016. The same ALE who intentionally disregards

the reporting requirements will be penalized \$100,000. These penalties *are in addition to* the assessable penalties under Code section 4980H that an ALE may incur if it fails to offer full-time employees minimum essential coverage that is affordable and has minimum value.

An ALE may be granted relief from the reporting penalties if it can demonstrate it attempted in good faith to comply with the reporting requirements. There is no “good faith” defense available to an ALE who is found to have acted with intentional disregard of Code section 6056’s reporting obligations.

One “surprise” contained in the 2015 ACA reporting instructions impacts non-ALE employers: Non-ALEs must submit Form 1094-B to the IRS and Form 1095-B to covered individuals if they sponsor a group health plan that is self-funded. Essentially, the IRS requires these employers to comply with the same reporting requirements as group health insurance carriers.

Another potential 2015 ACA reporting “surprise” concerns supplemental health plans. In mid-September, the IRS published Notice 2015-68, stating that a forthcoming Proposed Regulation will provide that reporting will *not* be required for minimum essential coverage that supplements and provides benefits to participants with other minimum essential coverage, so long as the primary and supplemental coverage have the same plan sponsor or the coverage supplements government-sponsored coverage, like Medicare. Following the guidance proposed by Notice 2015-68, the final Instructions to Form 1094-B and 1095-B provide the following rules with regard to supplemental minimum essential coverage:

- A health plan provider is only required to report one type of minimum essential coverage with respect to an individual who is covered by more than one type of minimum essential coverage.
- If an individual is covered by two group health plans sponsored by the same employer, a provider of minimum essential coverage will not need to report such coverage with regard to that individual; so long as a report is required to be filed with respect to the individual’s other minimum essential coverage plan.

Thus, an ALE who sponsors both a self-funded major medical health plan and an HRA that covers an employee will be required to report on Form 1095-C for the employee on either the major medical plan or the HRA, but not both.

Good news may be found, consistent with the draft IRS Instructions: the final Instructions for Forms 1094-C and 1095-C allow ALEs who make payments to a union for minimum essential coverage for full-time employees are, this year, permitted to indicate on Form 2019-C (via a Code series 2 indicator on line 16) that they make such payments and, thereby, avoid providing the more detailed coverage information required by the Form. This likely provides some solace to those ALEs who voiced concerns that they may not possess the information necessary to complete the Forms.

Employers who are members of an Aggregated ALE Group (i.e., a controlled or affiliated service group under Code § 414) must each report and file with the IRS one “Authoritative Transmittal” Form 1094-C. On this Form, the employer member will not only report the Forms 1095-C that it has distributed to full-time employees and covered persons, but will also identify the other ALEs that are part of the Aggregated ALE Group.

For employees who work for more than one member of an Aggregated ALE Group there are two

different reporting requirements for the two types of arrangements that may exist. For full-time employees who work for more than one member of the Aggregated ALE group each month, each employer member must issue a Form 1095-C for the employee for each month of coverage. For full-time employees who work for one employer member for some months of the year and another employer member for the remainder of the year, the employer member need report *only* for those months the employee work for *that* member.

Finally, perhaps in an effort to simplify reporting (whether or not it accomplishes that goal) the IRS has permitted certain eligible ALEs to rely upon a “Qualifying Offer Method” of ACA-required reporting. This method relieves the ALE from having to complete Part II, line 15 of Form 1095-C for each month for which the employee received a “Qualifying Offer.”

To be eligible to use the “Qualifying Offer Method,” the ALE must certify that it made a “Qualifying Offer” to one or more of its full-time employees for each month of the year in which the employee was “full-time” and thus may expose the ALE to a Code section 4980H penalty. A “Qualifying Offer” is defined in the instructions as “an offer of MEC [minimum essential coverage] providing minimum value made to one or more full-time employees for all calendar months during the year in which the employee was a full-time employee for whom a section 4980H assessable payment could apply, at an employee cost for employee-only coverage for each month not exceeding 9.5% of the mainland single federal poverty line, divided by 12, provided that the offer includes an offer of MEC to the employee’s spouse and dependents.” Various additional requirements may also apply under this method, depending upon whether the ALE is relying upon transition relief for 2015.

ALEs should make arrangements for completing and submitting their Forms 1094-C and 1095-Cs *now*, as the deadlines for February 1, 2016 for delivery of the Forms 1095-C to employees and March 31, 2016 for electronic submission of the Form 1094-C and attachments to the IRS. Hopefully, the Form 1095-Bs that employees receive from the insurance carriers will conform to the information provided by their ALEs on the Form 1095-Cs. The IRS has issued no guidance concerning correction if an employee receives conflicting Forms, or which of the Forms it will rely upon (*i.e.*, the Form 1095-B from the carrier, or the employer’s Form 1095-C) in the event of any inconsistency.

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