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Employer's Guide to ACA Reporting:

A Review of the Forms and Instructions for 2016

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Introduction

The Internal Revenue Service ("IRS") has released the final versions of its employer and provider reporting forms and instructions for 2016. Links to the forms and instructions are below:

- Form 1094-C: www.irs.gov/pub/irs-pdf/f1094c.pdf
- Form 1095-C: www.irs.gov/pub/irs-pdf/f1095c.pdf
- Form 1094-C / 1095-C Instructions: www.irs.gov/pub/irs-pdf/i109495c.pdf
- Form 1094-B: www.irs.gov/pub/irs-pdf/f1094b.pdf
- Form 1095-B: www.irs.gov/pub/irs-pdf/f1095b.pdf
- Form 1094-B / 1095-B Instructions: www.irs.gov/pub/irs-pdf/i109495b.pdf

This guide reviews the 2016 forms and instructions and notes relevant changes from 2015. It also addresses IRS guidance on the solicitation of social security numbers ("SSNs") or taxpayer identification numbers ("TINs") and the treatment of cash "opt-out" payments for reporting purposes.

The reporting requirements are complex, due in part to how the health care reform law was drafted. The Affordable Care Act added two new sections to the Internal Revenue Code: Sections 6055 and 6056. The sections are found next to each other in the Code; however, they apply to different types of entities. Section 6055 applies to providers of health insurance, such as health insurance carriers and employers that sponsor self-insured plans. Section 6056 applies to "applicable large employers" or "ALEs", which are employers with 50 or more full-time equivalent employees in the prior calendar year.

To further complicate things, the reporting forms come in two different "series" – the B-Series and the C-Series forms. Employers may use either or both sets depending on their company size and whether their group health plan is self-insured or fully insured. Our goal with this guide is to provide some clarity and best practices for employers.

Background

The Affordable Care Act ("ACA") added Sections 6055 and 6056 to the Internal Revenue Code (the "Code"). These sections were first effective for calendar year 2015 and require employers and providers of health insurance coverage to report certain information to the IRS, full-time employees, and other plan participants each year. The Section 6055 reporting requirements apply to providers of health insurance coverage, such as insurance companies, employers that sponsor self-insured group health plans, and other entities that provide coverage, such as multiemployer plans. The Section 6056 reporting requirements apply to "applicable large employers" or "ALEs" and require reporting of health care coverage offered to the employer's full-time employees (an ALE is an employer that employed 50 or more full-time equivalent employees on average in the prior calendar year).

Moreover, Section 6056 reporting applies at the "ALE Member" level, meaning that each member company of a controlled group of corporations files its own "authoritative" transmittal (Form 1094-C) and is responsible for reporting on its full-time employees. In other words, parent companies do not report on employees of their subsidiaries or affiliates, although each ALE Member will list the other ALE Members on Part IV of Form 1094-C as being a part of the same "Aggregated ALE Group."

Reporting under Sections 6055 and 6056 involves one or both of two sets of forms: the "B-Series" forms (Forms 1094-B and 1095-B) and the "C-Series" forms (Forms 1094-C and 1095-C). Each set of forms includes a transmittal form (Forms 1094-B and 1094-C), which serves as a cover page to the individualized forms (Forms 1095-B and 1095-C), which are prepared for each employee for whom the employer is required to report. The B-Series forms are used to report whether individuals have minimum essential coverage ("MEC") and, therefore, are not liable for the individual shared responsibility payment. The C-Series forms are used to report information about offers of health coverage and enrollment in health coverage for employees, to determine whether an employer owes an employer shared responsibility payment, and to determine the eligibility of employees for the premium tax credit. However, ALEs that sponsor self-insured plans will perform their Section 6055 and 6056 reporting using only the C-Series forms when reporting on full-time employees.

The forms that must be filed and distributed depend on whether the employer is an ALE and the type of coverage provided. The following chart summarizes the filing and distribution requirements for the relevant reporting entities:

	Fully-Insured Plan	Self-Insured Plan
Non-ALE	Not required to file.	Forms 1094-B and 1095-B.
ALE	Forms 1094-C and 1095-C (Part III will not be completed).	Forms 1094-C and 1095-C for employees. Either B-Series or C-Series forms for non-employees.
Insurance Provider	Forms 1094-B and 1095-B.	Not applicable.

There is also Form 1095-A, which is provided by the Marketplace and is used by individuals who receive Marketplace coverage to reconcile premium tax credits. A general overview of the filing deadlines and other requirements relevant to the B-Series and C-Series forms is provided below.

2016 Filing Deadlines and Extensions

Forms 1095-C for the 2016 calendar year must be furnished to individuals by January 31, 2017. Forms 1094-C and 1095-C must be filed with the IRS by February 28, 2017, or March 31, 2017, if filing electronically. An automatic 30-day extension of time to file is available by completing Form 8809. The form may be submitted on paper, or through the FIRE System either as a fill-in form or an electronic file. No signature or explanation is required for the extension. However, it must be filed on or before the due date of the returns to get the 30-day extension. Under certain hardship conditions an additional 30-day extension may apply; however, requests for additional extensions of time to file information returns are not automatically granted and the automatic extension of time to file and any approved requests for additional time will only extend the due date for filing the information returns with the IRS. It does not extend the due date for furnishing statements to recipients.

Employers may request a 30-day extension of time to furnish the statements to recipients by sending a letter to the IRS that includes identifying information about the employer and which states the reason for delay. Requests for an extension of time to furnish employee statements are not automatically approved.

Electronic Filing

Electronic filing under the AIR system is required by entities that are required to file 250 or more information returns. The threshold applies separately to each type of form filed and separately for original and corrected returns. For example, if an entity has 500 Forms 1095-B and 100 Forms 1095-C, it must file Forms 1095-B electronically, but is not required to file Forms 1095-C electronically. If the entity has 150 Forms 1095-C to correct, it may file on paper because the corrected returns fall under the threshold. However, if there are 300 Forms 1095-C to correct, they must be filed electronically. The IRS encourages electronic filing by employers of all sizes. The electronic filing requirement does not apply if the entity applies for and receives a hardship waiver (Form 8508). Also, entities that are required to file electronically can file up to 250 returns on paper; those returns will not be subject to a penalty for failure to file electronically.

Furnishing Forms to Participants

Statements to participants must be furnished on paper by mail (or hand delivered), unless the recipient affirmatively consents to receive the statement in an electronic format. Note that the consent must relate specifically to receiving the Form 1095-C electronically. Consent may be provided on paper or electronically; however, if consent is on paper, the recipient must confirm the consent electronically. Statements reporting expatriate coverage, however, may be furnished electronically unless the recipient explicitly refuses to consent to receive the statement in an electronic format.

Reporting Penalties

The IRS granted short-term relief from accuracy-related penalties for reports filed and furnished in 2016 (for 2015 coverage) for reporting entities that can show a good faith effort to comply. However, in 2016 and beyond, penalties may be waived only if the failure was due to reasonable cause and not willful neglect. In general, for 2016 reporting, the penalty for failure to file a correct information return or payee statement is $260 for each return or statement for which the failure occurs, with the total penalty for a calendar year not to exceed $3,193,000 (lower limits apply for entities with gross receipts not exceeding $5,000,000). For example, a failure to provide a single Form 1095-C to an employee and the IRS may result in two penalties of $260 (doubled for willful failures, with no cap on the penalty). Reduced penalties apply for failures corrected on or before 30 days after the required filing date ($50 per return) or after the 30th day but on or before August 1 ($100 per return). The instructions also make clear that each employer is responsible for satisfying its reporting obligation, regardless of its use of third parties to assist with the reporting process.

Employer Shared Responsibility Penalties, Affordability

As discussed, the C-Series forms are used to determine whether employers owe a shared responsibility payment and whether employees are eligible for the premium tax credit (i.e., whether the employees were offered "affordable" coverage. Both the employer shared responsibility penalties and the 9.5% affordability factor are indexed to inflation.

Code Section	4980H(a)	4980H(b)	36B(b)(3)(A)(i)
Description	Coverage not offered to 95% of full-time employees.	Coverage offered, but unaffordable or is not minimum value.	Premium credits and affordability safe harbors.
2017	$2,260	$3,390	9.69%
2016	$2,160	$3,240	9.66%
2015	$2,080	$3,120	9.56%
2014*	$2,000	$3,000	9.50%

*No employer shared responsibility penalties were assessed for 2014.

Although the deadlines for 2015 reporting have passed, the IRS has not yet begun enforcement of the employer shared responsibility provision, nor have they indicated a likely timeframe for when they may begin.

Guidance on Error Messages, SSN/TIN Solicitation

In general, employers that report under Section 6055 (i.e., those that sponsor self-insured plans) and insurance carriers must obtain SSNs or TINs for their covered participants. Under Section 6055, the requirement to obtain an SSN or TIN may be satisfied by making an initial solicitation when the individual first enrolls. If an SSN or TIN is not provided at the time of initial enrollment, a second solicitation (the first annual solicitation) must be made at a reasonable time thereafter (generally within 75 days). If the second solicitation is unsuccessful, a third solicitation (the second annual solicitation) must be made by December 31 of the year following the initial solicitation.

Employers reporting on full-time employees under Section 6056 have an existing requirement to collect an employee's SSN at time of hire (a discussion of which exceeds the scope of this client alert). Therefore, the guidance above regarding when to make an SSN or TIN solicitation applies in the context of obtaining an SSN or TIN from an enrollee in a group health plan.

That said, the following IRS guidance on soliciting SSNs or TINs based on the AIRTN500 error message, which indicates that an SSN or TIN provided on the return do not match IRS

records, applies regardless of whether the employer is reporting under Section 6055 and/or Section 6056. In these situations, a filing status of "accepted with errors" due to an AIRTN500 message does not trigger an additional SSN or TIN solicitation requirement. An AIRTN error message is neither a Notice 972CG (Notice of Proposed Civil Penalty), nor a requirement that the employer must solicit an SSN or TIN in response to the error message.[1] Therefore, an employer is not required to make additional SSN or TIN solicitations if the previous solicitation produced an AIRTN500 message, unless the employer receives Notice 972CG from the IRS.

B-Series Forms and Instructions

In general, most employers will not file the B-Series forms for their employees. Employers that will file the B-Series forms are those who have self-insured plans but are not ALEs, or ALEs that provide self-insured coverage to non-employees (e.g., retirees or COBRA participants in the years following termination) and prefer to use the B-Series forms over the C-Series forms to report on those non-employees who are covered under the self-insured plan (the instructions allow self-insured ALEs the option of using the B-Series or C-Series forms to report coverage for individuals who were not employees at any point during the year).

The B-Series forms are typically used by insurance companies to report months of "minimum essential coverage" or "MEC" to covered individuals. For example, all employees who are enrolled in a fully insured group health plan will receive a Form 1095-B from the insurance company. If the employees work full-time for an ALE, they will also receive a Form 1095-C from their employer. Any government coverage through the Children's Health Insurance Program (CHIP), Medicaid, or Medicare (including Medicare Advantage) is reported by the government sponsors of those programs.

B-Series Forms – Detail

As noted above, only certain non-ALEs and self-insured employers might use Form 1095-B to report MEC for certain covered individuals. For example, a non-ALE will report self-insured coverage for employees on Form 1095-B, and a self-insured ALE has the option of reporting coverage for any individual who was not a full-time employee for any month of the year on Form 1095-B or Form 1095-C (see below for reporting of non-full-time employees on the C-Series forms).

Non-ALEs reporting self-insured coverage on Form 1095-B use code B on line 8, leave Part II blank, and enter their relevant company information in Part III as the "provider" of self-insured coverage. Part I contains the participant's information and Part IV reports the months of coverage for the participant and any covered family members. Only insurance companies entering codes A or B on line 8 will complete Part II.

[1] 81 FR 50671 at 50676, footnote 2 (https://www.federalregister.gov/d/2016-18100).

When completing Part IV, employers may enter a date of birth in column (c) only if an SSN or other TIN isn't entered in column (b). When checking the box in column (d) or boxes in column (e), an individual is treated as being covered in a month if the individual was covered on at least one day in that month.

B-Series Forms – Corrections

In general, employers should file corrected returns as soon as possible after an error is discovered. Errors on Form 1095-B that require correction include mistakes regarding the responsible individual's name, origin of coverage (line 8), SSN or TIN, employer information (Part II), coverage provider information (Part III), and covered individuals (Part IV).

When correcting a Form 1095-B that was previously filed with the IRS, complete the form and enter an "X" in the CORRECTED checkbox when furnishing to the participant. When correcting a Form 1095-B that was previously furnished to a participant, but not the IRS, write, print or type CORRECTED on the new Form 1095-B furnished to the recipient (enter an "X" in the CORRECTED checkbox only when correcting a Form 1095-B previously filed with the IRS). Then, file a Form 1094-B with the IRS along with the corrected Form(s) 1095-B (do not file a corrected Form 1094-B).

Guidance for Employers with HRAs

The instructions for the B-Series forms contain guidance on an employer's obligation to report when an employee is covered under more than one form of MEC. If, for any month, an individual is covered by more than one form of MEC that is provided by the same employer, the employer is required to report only one of the coverages for that month. For example, an insurance company offering a Medicare or TRICARE supplement for which only individuals enrolled in Medicare or TRICARE are eligible is not required to report coverage under the Medicare or TRICARE supplement.

However, for this rule to apply to employer-sponsored coverage, the employer must sponsor both types of coverage. For example, if an employer offers an HRA that is only available to employees who enroll in its fully insured group health plan, the employer is not required to report the employee's coverage under the HRA for the months in which the employee is enrolled in both plans. If, however, an employer offers an HRA to employees who enroll in coverage sponsored by another employer (such as spousal coverage), the employer sponsoring the HRA must report that coverage.

Considering the application of this rule to employers, it is not clear whether employers must report under Section 6055 if they offer retiree health reimbursement arrangements ("HRAs") that require the retiree to be entitled to Medicare to participate. Further guidance from the IRS on this issue would be welcome.

C-Series Forms and Instructions

As mentioned, applicable large employers or "ALEs" (i.e., employers with 50 or more full-time equivalent employees in the previous year) use Forms 1094-C and 1095-C to report information about offers of health coverage. Form 1094-C is used to report summary information to the IRS and Form 1095-C is used to report information about each full-time employee to the IRS and to the employee. ALE Members that offer self-insured coverage also use Form 1095-C to report information to the IRS and to employees about covered individuals.

Form 1094-C – Detail

Form 1094-C provides a summary of aggregate, employer-level data to the IRS. It's essentially a "cover page" for the Forms 1095-C that are sent to the IRS. Information required on Form 1094-C includes:

- employer information and information on the ALE Member's controlled group;
- whether the employer is using simplified reporting methods (discussed below) or certain transition relief that is based on employer size;
- information about whether an offer of coverage was made to 95% of full-time employees and their dependents (70% for 2015 plan years);
- total number of Forms 1095-C issued to employees;
- full-time employee count by month; and
- total employee count by month.

Form 1094-C, Part I

The first 16 lines of Form 1094-C request standard employer information. Line 17 is reserved, and Line 18 requests the total number of Forms 1095-C that will be transmitted along with the Form 1094-C being completed. Line 19, however, can be a source of confusion for employers. As noted above, Form 1094-C is prepared at the ALE Member level, meaning that each member of a controlled group of corporations files its own "authoritative" Form 1094-C by checking the box on line 19. An ALE Member may file multiple Forms 1094-C, although they must mark one (and only one) as the authoritative transmittal. Many employers will file one Form 1094-C, which will be their authoritative transmittal.

> **Note**: Each ALE Member must file its own Forms 1094-C and 1095-C under its own separate Employer Identification Number ("EIN"), even if the ALE Member is part of an Aggregated ALE Group. No Authoritative Transmittal should be filed for an Aggregated ALE Group.

Form 1094-C, Part II

Lines 20-22 are completed only on the authoritative transmittal. Line 20 requests the total number of Forms 1095-C that will be filed by the ALE Member. Employers filing one Form 1094-C will have the same number in both lines 18 and 20. Line 21 (Aggregate ALE Group) should be checked by employers that are part of a controlled group of corporations during any month of the reporting year. If line 21 is checked, the employer must also complete the "Aggregated Group Indicator" in Part III, column (d), and then complete Part IV to list the other members of the Aggregated ALE Group.

Line 22 – Certifications of Eligibility – can also be confusing for employers. There are three possible choices on line 22 (down from four in 2015), and an employer may select all, some, or none, depending on the facts. Each of the three Certifications of Eligibility is discussed below.

Line 22, Box A – Qualifying Offer Method

An employer will check this box if they are making a "Qualifying Offer" and are using code 1A in line 14 of Form 1095-C to report that offer, or they are using an alternative method to furnish Form 1095-C to employees.

To be eligible to use the Qualifying Offer Method, the employer must have made a Qualifying Offer to at least one full-time employee for all months during the year in which the employee was a full-time employee for whom an employer shared responsibility payment could apply. A Qualifying Offer is an offer of MEC providing minimum value to a full-time employee, with a required employee contribution that does not exceed 9.5 % (as adjusted) of the mainland single federal poverty line ("FPL") divided by 12, provided that the offer includes an offer of MEC to the employee's spouse and dependents (if any). For 2016 reporting, the required employee contribution percentage is 9.66% (9.69% in 2017), which limits the monthly employee contribution to $95.63 ($11,880 mainland FPL ÷ 12 × 9.66%) if an employer wishes to make a Qualifying Offer.

When an employer uses the Qualifying Offer Method, it must not complete Form 1095-C, line 15 (Employee Required Contribution), for any month for which a Qualifying Offer is made. Instead, it enters code 1A on Form 1095-C, line 14, for any month for which the employee received a Qualifying Offer (or in the "all 12 months" box, if applicable). The 2016 instructions clarify that employers making a Qualifying Offer need not complete Form 1095-C, line 16 (safe harbor codes) because a Qualifying Offer is, by definition, affordable and therefore no penalty could apply. Note that use of the Qualifying Offer method is not mandatory for employers who qualify; they instead may complete Part II of Form 1095-C with the applicable offer code and required employee contribution.

In addition, an employer that is eligible to use the Qualifying Offer Method may use an alternative method of furnishing Form 1095-C for certain employees. The alternative

method is available only for a full-time employee who: (1) received a Qualifying Offer for all 12 months of the calendar year, and (2) did not enroll in employer-sponsored self-insured coverage. In lieu of furnishing Form 1095-C for these employees, the employer may provide a statement that contains the following information:

- Employer/ALE Member name, address, and EIN.
- Contact name and telephone number at which the employee may receive information about the offer of coverage and the information on the Form 1095-C filed with the IRS for that employee.
- Notification that, for all 12 months of the calendar year, the employee and his or her spouse and dependents, if any, received a Qualifying Offer and therefore are not eligible for a premium tax credit.
- Information directing the employee to see Pub. 974, Premium Tax Credit (PTC), for more information on eligibility for the premium tax credit.

The alternative method of furnishing Form 1095-C may be of limited usefulness to employers, as the employer is still required to prepare a Form 1095-C for transmission to the IRS.

Line 22, Box B – Reserved

Box B on Line 22 of Form 1094-C is no longer applicable after 2015 and thus has been reserved.

Line 22, Box C – Section 4980H Transition Relief

For 2016, box C is applicable only to non-calendar year plans, and only until the start of the 2016 plan year. This relief is available to qualifying employers that are seeking penalty relief based on size. Employers that had 50-99 full-time equivalents ("FTEs") on average in 2014 generally have until the start of their 2016 plan year to offer affordable, minimum value coverage to full-time employees if they did not eliminate or materially reduce coverage after February 9, 2014 through the end of the 2015 plan year.

Employers that had 100+ FTEs on average in 2014 could reduce their exposure to the Section 4980H(a) penalty (the "no offer" penalty) by 80 employees for their 2015 plan year. For example, an employer with 100 full-time employees in each month of its 2015 plan year that failed to offer MEC to at least 95% of full-time employees and their dependents would calculate their exposure to a penalty by taking the indexed penalty amount ($2,080 for 2015), multiplied by their 100 full-time employees minus 80, which results in maximum penalty exposure of $41,600. After the end of the 2015 plan year, the 80-employee reduction returns to 30 employees.

Line 22, Box D – 98% Offer Method

To be eligible to check box D and use the 98% Offer Method, the employer must have offered affordable, minimum value coverage to at least 98% of its employees for whom it is required to file a Form 1095-C, and offered MEC to those employees' dependents. For these purposes, coverage may be affordable under any of the three affordability safe harbors (W-2, Rate of Pay, and Federal Poverty Line). Under this method, the employer is not required to complete the "full-time employee count" in Part III, column (b) of Form 1094-C.

This method provides limited relief to most employers, although for certain employers it can be very helpful. Employers that only offer coverage to full-time employees will obviously know how many employees were full-time each month, so the 98% Offer Method is of limited use to them. Likewise, employers with fully insured plans will only need to report on full-time employees. However, employers with self-insured plans must report on full-time employees as well as any other individual who are covered under the self-insured plan. A self-insured employer that offers coverage to part-time employees may not bother to track which employees are full-time for ACA purposes, because they offer part-time employees affordable coverage as well. Therefore, this method may be of interest to those employers because it allows them to forgo completing the "full-time employee count" in Part III, column (b) of Form 1094-C.

> **Note**: If an ALE member uses the 98% offer method, it is not required to complete the "full-time employee count" in Part III, column (b) of Form 1094-C.

Form 1094-C, Part III

Part III of Form 1094-C, lines 23-35, reports monthly information for the ALE Member. Column (a) reports whether the employer offered MEC to at least 95% of its full-time employees and their dependents for the entire calendar year (70% through the end of the 2015 plan year). For purposes of column (a), an employee in a limited non-assessment period ("LNAP") such as a waiting period or initial measurement period is not counted in determining whether MEC was offered to at least 95% (or 70%) of the employer's full-time employees and their dependents.

> **Note**: As mentioned in the LNAP section below, an employee in an LNAP is not a full-time employee those months, even if coverage is offered before the end of the LNAP.

Column (b) reports the employer's *full-time* employee count by month, excluding employers in an LNAP. The final 2016 instructions clarify that an employee should be counted as full-time for a month was full-time under the monthly measurement method or the look-back measurement method, as applicable, on any day of the month.

Column (c) reports the employer's *total* employee count, including full- and part-time employees and employees in an LNAP. The total employees count may be determined by choosing one of the following days of the month: (1) the first day of each month; (2) the last day of each month; (3) the 12th day of each month; (4) the first day of the first payroll period that starts during each month; or (5) the last day of the first payroll period that starts during each month (provided that for each month that last day falls within the calendar month in which the payroll period starts).

Column (d) is completed only if the employer checked "Yes" on line 21, indicating that it was a member of an Aggregated ALE Group. If an ALE Member enters an "X" in one or more months in column (d), it must also complete Part IV.

Column (e) is completed only if the employer has selected box C on line 22. Employers eligible for the 50-99 relief should enter code A, and employers eligible for the 100 or more relief should enter code B, for each month to which the transition relief applies. An ALE Member will not be eligible for both types of relief. This transition relief is available in 2016 only for employers with non-calendar year plans, and only for the months in 2016 that fall within the 2015 plan year.

Form 1094-C, Part IV

An employer must complete this section if it checks "Yes" on line 21. If the employer was a member of an Aggregated ALE Group (a tax controlled group) for any month of the calendar year, it will enter the names and EINs of the other members (other than itself). Special rules apply when listing more than 30 controlled group members in Part IV. ALE Members with no full-time employees are not required to prepare the C-Series forms.

Form 1095-C – Detail

Form 1095-C is the individual, employee-specific return to be filed with the IRS and distributed to employees. This form reports information about the employer's offer of coverage, if any, to full-time employees and whether a safe harbor for employer shared responsibility penalties applies.

Each full-time employee must receive only one Form 1095-C from his or her employer. However, an employee who works for more than one ALE Member that is a member of the same Aggregated ALE Group must receive a separate Form 1095-C from each ALE Member. When an employee works for more than one ALE Member in the same month, only one ALE Member is treated as the employer of that employee for reporting purposes that month (generally, the ALE Member for whom the employee worked the greatest number of hours of service).

The operative portion of Form 1095-C is Part II, which requires employers to insert specified codes describing the type of offer, if any, made to an employee, and other information about the coverage. Information required on Form 1095-C includes:

- whether the employee received an offer of MEC providing minimum value, and whether that offer was also extended to his or her spouse and/or dependents, if any;
- the required employee contribution each month for lowest-cost self-only minimum value coverage;
- any affordability safe harbor used by the employer; and
- whether other relief from the employer mandate applies for an employee.

Note that if the employer sponsors a self-insured plan, Form 1095-C, Part III must be completed to report information that would otherwise be reported on the B-Series forms.

Part I of Form 1095-C contains standard employer and employee information. A new field added at the end of 2015 – Plan Start Month – remains optional for 2016 reporting, as it was in 2015. Employers choosing to enter a date in this field would enter the two-digit number indicating the month in which their plan year began.

Form 1095-C, Line 14

Employers use line 14 to enter one or more of the "offer of coverage" codes, as described below. If the same code applies for all 12 calendar months, the employer may enter the applicable code in the "All 12 Months" box.

> **Note**: Do not leave line 14 blank for any month, including months when the individual was not an employee.

Offer of Coverage – Code Series 1	
1A	Qualifying Offer: MEC providing minimum value is offered to the employee at a cost that does not exceed the FPL safe harbor ($95.63/month in 2016), and at least MEC is offered to spouses and dependents. Code 1A may be used for certain months even if the employee did not receive a Qualifying Offer the entire year.
1B	Offer of MEC providing minimum value to employee only.
1C	Offer of MEC providing minimum value to employee and at least MEC offered to dependent children (not spouse).
1D	Offer of MEC providing minimum value to employee and at least MEC offered to spouse (not dependent children).
1E	Offer of MEC providing minimum value to employee and at least MEC offered to spouse and dependent children.
1F	Offer of MEC **NOT** providing minimum value offered to employee, regardless of whether coverage is also offered to spouse and dependent children.
1G	Used for an individual who was not an employee for any month of the calendar year and who enrolled in **self-insured coverage** for one or more months. Code 1G must be used for the entire year if it applies (i.e., the employer must enter it on line 14 in the "All 12 Months" column or in each separate monthly box).
1H	No offer of coverage (use this code unless the employee was offered MEC that would have been in effect for every day of the month).
1I	Reserved (not applicable after 2015).
1J	MEC providing minimum value offered to employee and at least MEC **conditionally** offered to spouse (coverage not offered to dependent children).
1K	MEC providing minimum value offered to employee; at least MEC offered to dependent children; and at least MEC **conditionally** offered to spouse.

If the type of coverage, if any, offered to an employee was the same for all 12 months in the calendar year, enter the Code Series 1 indicator code corresponding to the type of coverage offered either in the "All 12 Months" box or in each of the 12 boxes for the calendar months.

Codes 1J and 1K are new for 2016 and represent a conditional offer of coverage to a spouse. A conditional offer is an offer of coverage that is subject to one or more reasonable, objective conditions (for example, an offer to cover an employee's spouse only if the spouse is not eligible for coverage under his or her own employer's plan). An

employer may use these codes to report a conditional offer to a spouse, regardless of whether the spouse meets the condition. In other words, an employer may use codes 1J or 1K to report a conditional offer to a spouse even if the spouse has access to other coverage and is not eligible to enroll.

Form 1095-C, Line 15

An employer will complete line 15 only if code 1B, 1C, 1D, 1E, 1J, or 1K is entered on line 14 either in the "All 12 Months" box or in any of the monthly boxes. The employer will enter the employee share of the monthly cost for the lowest-cost self-only minimum value coverage that is offered to the employee, which should include any cents. If the employee is offered coverage but the required contribution is zero, enter "0.00" (do not leave blank). Note that the amount entered in line 15 will not reflect the amount the employee is paying for coverage if the employee enrolls in any option other than employee-only coverage under the lowest cost minimum value plan.

Form 1095-C, Line 16

An employer will use line 16 to report to the IRS the reason, if any, why it should not be subject to an employer shared responsibility penalty with respect to the employee on whom it's reporting. Reasons an employer would not be subject to a penalty with respect to an employee include:

- The employee was not employed or was not a full-time employee;
- The employee enrolled in the MEC offered;
- The employee was in a "limited non-assessment period" or "LNAP" such as a waiting period or initial measurement period;
- The employer met one of the three affordability safe harbors with respect to the employee; or
- The employer was eligible for multiemployer interim rule relief for this employee (i.e., the employer was contributing to a multiemployer plan on behalf of the employee).

For each month, an employer should enter the applicable code, if any, from Code Series 2 (described below). If the same code applies for all 12 calendar months, the employer may enter the code in the "All 12 Months" box and not complete the monthly boxes.

> **Note**: If none of the codes apply for a month, leave line 16 blank for that month.

In some circumstances, more than one indicator code could apply to the same employee in the same month. For any month in which an employee enrolled in MEC, in general, code 2C is used instead of any other code that could also apply (certain exceptions apply for reporting coverage under a multiemployer plan or post-employment coverage such as

COBRA or retiree medical). Special ordering rules apply for employees who did not enroll in health coverage, as described below.

Safe Harbor and Other Relief – Code Series 2	
2A	Employee not employed on any day of the calendar month.
2B	Employee not a full-time employee that month. Also use for employees who terminates mid-month if they were offered coverage that would have continued through the end of the month, had they remained employed.
2C	Employee enrolled in health coverage offered for each day of the month, regardless of whether any other code might also apply. Do not enter code 2C when using: multiemployer plan relief (enter code 2E); code 1G in line 14 (leave blank); or any month in which a terminated employee is enrolled in COBRA or other post-employment coverage (enter code 2A).
2D	Employee in a limited non-assessment period ("LNAP"), such as an initial measurement period or waiting period.
2E	Multiemployer interim rule relief applies. Use this code over any other for any month in which it applies.
2F	W-2 affordability safe harbor applies for this employee for the year. If used, it must be used for all months of the year for which the employee is offered health coverage.
2G	Federal poverty line ("FPL") safe harbor applies for any month(s).
2H	Rate of pay safe harbor applies for this employee for any month(s).
2I	Reserved (not applicable after 2015).

> **Note**: Do not enter an affordability safe harbor code (2F, 2G or 2H) for any month in which the employer did not offer MCE to at least 95% of its full-time employees and their dependents.

Reporting COBRA and Post-Employment Coverage

The 2016 instructions for the C-Series forms contain new guidance regarding COBRA coverage. The instructions clarify that an offer of COBRA is reported differently depending on whether the offer is made to a former employee (i.e., due to an employee's termination of employment) or to an active employee (i.e., due to a reduction in hours).

In the months following termination of employment, an employer should report offers of COBRA to a former employee (or to a former employee's spouse or dependents) due to termination of employment using code 1H (no offer of coverage) on line 14 and code 2A

(employee not employed) in line 16, without regard to whether COBRA is elected. In the month of termination, the employer may use code 2B if the offer of coverage would have continued through the end of the month, had the employee remained employed. The employer may use code 2C if the employee remains enrolled in coverage through the end of the month of termination.

Like COBRA, other post-employment coverage such as retiree medical should not be reported as an offer of coverage on line 14. Instead, the employer would use codes 1H/2A in lines 14 and 16, respectively (1H/2B in the month of termination, unless the employee has remained enrolled through the end of the month, in which case code 2C is used).

However, when an offer of COBRA is made to an employee who remains employed, it is reported as an offer of coverage, but only to those individuals offered COBRA.

> **Example**: An employer offers employees the opportunity to enroll in family coverage. An employee enrolls in employee-only coverage effective January 1. On July 1, the employee experiences a reduction in hours that results in loss of eligibility under the terms of the plan. The employer terminates coverage and offers COBRA to the employee, but not any spouse or dependents because they were not enrolled in the plan on the day before the qualifying event.
>
> In this example, the employer should enter code 1E (offer of family coverage) on line 14 for January – June, and should enter code 1B (offer of employee-only coverage) on line 14 for July – December.

For purposes of the employer share responsibility provision, an employer is still treated as having made an offer to the employee's dependents for an entire plan year as long as they had an opportunity to enroll at least once for the plan year, even if the employee declined to enroll the dependents in the coverage and, as a result, the dependents later did not receive an offer of COBRA.

Form 1095-C, Lines 17-22

Part III of Form 1095-C spans lines 17-22, and is completed only by employers that sponsors self-insured coverage. If the employee for whom the employer is preparing the Form 1095-C has enrolled in self-insured coverage offered by the employer, the employer will enter "X" in the check box in Part III and will list the employee on line 17 (if enrolled in self-insured coverage) and any other family members who enrolled in coverage offered to the employee should be listed on subsequent lines.

> **Note**: For purposes of completing Part III, an individual is considered covered for a month if the individual was covered on at least one day.

All employee family members that are covered individuals through the employee's enrollment must be included on the same form as the employee. If two or more

employees employed by the same employer are spouses or an employee and his or her dependent, and one employee enrolled the spouse or dependent in coverage, the enrollment information should be reflected only on Form 1095-C for the employee who enrolled in the coverage and would list the other employee family members as covered individuals.

Employers reporting coverage under a self-insured plan may use the B-Series or the C-Series forms to report coverage for individuals who were not employees for any month of the year, such as non-employee directors, employees who retired in a previous year, employees receiving COBRA (or any other form of post-employment coverage) who terminated employment during a previous year, and a non-employee COBRA beneficiary who independently elected COBRA. In these situations, Part II must be completed by using code 1G in the "All 12 Months" box or the separate monthly boxes for all 12 calendar months. The employer must complete Form 1095-B if it chooses not to use Form 1095-C to report non-employee coverage under a self-insured health plan.

Part III should be completed for each individual enrolled in the plan, including the employee reported on line 1. Employers may disregard the continuation sheet if reporting fewer than seven covered individuals.

Transition Relief

Several forms of transition relief were available to employers for 2015 reporting. Limited transition relief continues to be available for 2016 reporting, but only for certain employers and for certain periods of time. References to transition relief that only applied in 2015 have been removed, and the instructions clarify the months in 2016 for which the relief applies.

> **Note**: The transition relief for 2016 is solely for purposes of the employer shared responsibility provision and does not affect the employee's potential eligibility for the premium tax credit. Accordingly, regardless of whether transition relief applies with respect to an employee for one or more months, the Form 1095-C for that employee must accurately report the health coverage offered to that employee (if any) during that period, including, if applicable, the employee required contribution.

Two types of transition relief that apply based on employer size are discussed earlier (see *Line 22, Box C – Section 4980H Transition Relief*). There are two additional types of transitional relief that apply: relief for employers that made an offer to at least 70% of full-time employees; and employers who do not yet offer dependent coverage

Relief for employers that offered coverage to 70% of full-time employees in 2015

This relief applies to the months in 2016 that fell within the employer's non-calendar year plan beginning in 2015. An employer that offers health coverage to at least 70% of its full-

time employees (and their dependents) may enter "X" in lines 23–34, column (a), of Form 1094-C for any months during which it met that 70% threshold, as applicable. If the employer offers coverage under more than one health plan with different plan years, the transition relief applies through the last day of the latest of those plan years.

Relief for employers that do not offer coverage to dependent children

This relief also applies to the months in 2016 that fell within the employer's non-calendar year plan beginning in 2015. Under this relief, an employer may enter "X" in lines 23–34, column (a), of Form 1094-C. This relief is available to employers with non-calendar year plans that took steps during the 2015 plan year to extend coverage under the plan to dependents not offered coverage during the 2013 or 2014 plan years (or both) and only if the employee was not offered dependent health coverage during the 2013 or 2014 plan year. An employer using this transition relief for any month in 2016 is not eligible to report using the Qualifying Offer Method for 2016.

Reporting Opt-Out Payments for 2016

The IRS has provided guidance on opt-out payments for 2016 reporting, and proposed regulations that will apply for plan years beginning in 2017. In Notice 2015-87, the IRS clarifies several issues regarding the "affordability" of employer-sponsored health coverage, including how to treat various cash opt-out payments for purposes of ACA reporting. Under that guidance, "unconditional" opt-out payments will be treated as increasing an employee's cost of coverage for purposes of line 15 of Form 1095-C. However, see below for transition relief for 2016 reporting for arrangements that were in effect prior to December 16, 2015.

Unconditional Opt-Out Payments

A cash opt-out payment is "unconditional" when employees may receive it without having to show proof of other coverage, such as enrollment in a spouse's plan. Unconditional opt-out payments are treated as increasing an employee's cost of coverage, although see below for transition relief for 2015 and 2016. With unconditional opt-out payments, an employee must make the regular employee contribution and forgo the opt-out payment to enroll in coverage. Therefore, unconditional opt-out payments are added to the employee's cost of coverage for ACA reporting purposes.

> **Example**: An employer offers employee-only coverage for $125 per month but pays employees $25 each month if they decline coverage. The opt-out payment is treated as increasing the required employee contribution because the employee must forgo the opt-out benefit in addition to making the regular contribution to obtain coverage (line 15 of Form 1095-C would be $150).

Conditional Opt-Out Payments

A cash opt-out payment is "conditional" when made only to employees who show proof of enrollment in other coverage, such as that of a spouse's employer. It does not increase the employee's cost of coverage. In these situations, the opt-out payment is conditioned on an employee satisfying a meaningful requirement related to the provision of health care to employees. In other words, an employee is not entitled to the opt-out benefit simply by declining the employer's health coverage.

> **Example**: An employer offers employee-only coverage for $125 per month but pays employees $25 per month if they opt-out in favor of a spouse's plan. The opt-out is not treated as increasing the required employee contribution because it is subject to a meaningful condition related to the provision of health care to employees (line 15 of Form 1095-C would be $125).

Transition Relief for Opt-Out Arrangements in Effect Prior to December 16, 2015

For cafeteria plan years beginning in 2016, employers may treat unconditional opt-out payments as employer contributions for ACA reporting purposes as long as they were adopted or in effect prior to December 16, 2015 and were not substantially increased thereafter. In other words, for 2016 reporting, eligible employers are not required to treat an unconditional opt-out payment as increasing an employee's cost of coverage. For example, if an employer charges $100 per month for coverage and offers a $50 per month unconditional opt-out payment, the employer may report the employee's cost of coverage as $100 instead of $150. However, the IRS has encouraged employers to report the cost of coverage as including the opt-out payment (i.e., $150 in this example) and claim relief under Notice 2015-87 if assessed a shared responsibility penalty. The IRS prefers this approach as it's more likely an employee will obtain a premium credit if the higher cost is reported, and the true cost to the employee is $150 in this example when the opt-out payment is not conditioned on enrollment in other coverage.

Service Contract Act and Davis Bacon Act Employees

Until further IRS guidance is provided, such employers may treat "cash-in-lieu" payments as employer contributions toward the cost of health coverage, to the extent the amount of the payment does not exceed the amount required to satisfy the requirement to provide fringe benefit payments under the Service Contract Act ("SCA") or Davis Bacon Act ("DBA").

> **Example**: An employer offers SCA or DBA employees the choice of coverage under a group health plan or $500 per month. For the employee, $500 per month does not exceed the amount required to satisfy the employer's fringe benefit requirements. The required employee contribution is $0 per month, although the employee may consider the required employee contribution to be $500 per month for purposes of the premium tax credit.

The IRS encourages employers not to reduce the amount of an SCA or DBA employee's required contribution by the amount of the fringe benefit payment and claim relief under Notice 2015-87 if contacted by the IRS regarding an assessable payment.

Proposed Rules for Reporting Opt-Out Payments in 2017

The IRS released proposed regulations in July 2016 addressing cash opt-out incentives. These latest regulations are proposed to become effective for plan years beginning on or after January 1, 2017 and place additional restrictions on conditional opt-out payments.

Unconditional Opt-out Payments Added to Required Employee Contribution

After transition relief expires at the end of the 2016 plan year, employers offering unconditional opt-out payments to employees who decline coverage under the employer's group health plan must add the opt-out payment to the required employee contribution for purposes of line 15 of Form 1095-C, regardless of whether the employee actually enrolls in the plan or receives the opt-out payment.

Conditional Opt-out Payments Excluded from Required Employee Contribution

The proposed regulations continue to allow conditional opt-out payments to be excluded from the required employee contribution if:

- The employee declines employer-sponsored major medical coverage; and
- The employee provides reasonable evidence that they and their expected tax dependents have, or will have during the plan year, minimum essential coverage (other than individual market coverage, whether or not through the Marketplace).

For the exclusion to apply, evidence of alternative coverage must be provided every plan year for which the eligible opt-out arrangement applies. For these purposes, an employee's attestation is considered reasonable evidence unless the employer knows or has reason to know that the employee or a family member is not enrolled in, or soon will be enrolled in, alternative coverage. The attestation must be obtained at a reasonable time before the coverage period begins (e.g., during open enrollment) or after the plan year starts. There is also an administrative convenience rule for employers, which allows them to exclude a conditional opt-out payment for the entire plan year even if the employee or family members drop the alternative coverage mid-year.

Medicare Part A, TRICARE, Medicaid, CHIP, and other employer-sponsored coverage are considered "acceptable alternative coverage." While the Medicare and Tricare secondary payer rules generally allow employers to accept Medicare and Tricare as alternative coverage when the opt-out payment is offered to all eligible employees through a nondiscriminatory cafeteria plan, we recommend employers consult directly with ERISA counsel before accepting Medicare or Tricare as alternative coverage.

Special Rule for Cafeteria Plans

The proposed regulations clarify that employer contributions towards flex credits under a cafeteria plan that are available to purchase MEC in addition to other cafeteria plan benefits are not treated as an opt-out payment, even if employees waiving health coverage may collect the credit as taxable cash compensation. However, unless the flex credit is a "health flex credit," meaning that it can only be used to pay for medical care or the employer's group health plan premiums, it will not reduce the employee's required contribution.

Example: An employer offers employees the choice of a $480 health FSA contribution or $480 toward the cost of medical, dental or vision coverage under the employer's plan. The $480 is a health flex credit and is treated as reducing the required employee contribution (line 15 of Form 1095-C would be reduced by $40 per month reflecting the $480 health flex credit). If the employee could take the $480 as cash or spend it on any non-health benefit it would not qualify as a health flex credit.

C-Series Forms – Corrections

In general, employers should file corrected returns as soon as possible after an error is discovered. Errors on Form 1094-C that require correction include a mistake in the name or EIN of the employer, information about the employer's Aggregated ALE group membership, offer of MEC indicator, full-time employee count, and transition relief indicator. Employers correcting Form 1094-C should prepare a new authoritative Form 1094-C, enter an "X" in the "CORRECTED" box at the top of the form, and submit the standalone corrected Form 1094-C (no Forms 1095-C).

Errors on Form 1095-C that require correction include name, SSN, company EIN, offer of coverage, employee required contribution, Section 4980H Safe Harbor and other relief codes, and information regarding covered individuals.

When correcting a Form 1095-C that was previously filed with the IRS, complete the form and enter an "X" in the CORRECTED checkbox when furnishing to the participant. When correcting a Form 1095-C that was previously furnished to a participant, but not the IRS, write, print or type CORRECTED on the new Form 1095-C furnished to the recipient (enter an "X" in the CORRECTED checkbox only when correcting a Form 1095-C previously filed with the IRS). Then, file a Form 1094-C with the IRS along with the corrected Form(s) 1095-C (do not file a corrected Form 1094-C).

If an employer eligible to use the Qualifying Offer Method had furnished the employee an alternative statement, the employer must furnish the employee a corrected statement if it filed a corrected Form 1095-C correcting the employer's name, EIN, address or contact name and telephone number. If the employer is no longer eligible to use an alternative furnishing method for the employee, it must furnish a Form 1095-C to the employee and advise the employee that the Form 1095-C replaces the statement it had previously furnished.

Tips and Tricks

Employers should be aware of certain approaches that may control costs (offering COBA to employees in a stability period) or ease the administrative burden associated with reporting (by using limited non-assessment periods).

Offers of COBRA to employees in a stability period

Employers are reminded that an offer of COBRA coverage to an active employee who has experienced a reduction in hours is still an "offer of coverage" for purposes of line 14 of Form 1095-C – it's just likely to be unaffordable. What this means is that employers have a choice as to how they structure their group health plan to handle situations where employees move to part-time status while being treated as full-time in a stability period. They can either continue coverage through the end of the applicable stability period after which the employee is no longer treated as full-time, or they can terminate coverage immediately, offer COBRA, and have exposure to 1/12th of the $3,000 "unaffordable coverage" penalty for each month in which the employee is required to be treated as full-time and receives subsidized coverage through the Marketplace. In many cases, the potential employer shared responsibility penalty will be less than the cost of continuing "affordable" coverage for an employee who is no longer working full-time.

Also, the months of exposure to an unaffordable coverage penalty will be limited to three months in certain situations. There is a special rule (known as the "three-month rule") that allows employers to terminate coverage during a stability period for full-time employees who make a move to part-time employment that is intended to be permanent, and who have been offered minimum value coverage continuously by the end of their third full calendar month of employment (i.e., it is unavailable for employees who experienced an initial measurement period of greater than 3 months). Under these conditions, an employee who is in a stability period as full-time and who works less than 130 hours for the three consecutive months following a change to part-time may be measured using the monthly measurement method after the end of the third calendar month until the end of the next standard measurement period (and associated stability period) to begin following the change to part-time. This effectively allows the employee to be treated as part-time after the end of the third full calendar month following the change to part-time. Employers who terminated coverage immediately upon the change to part-time will have exposure to only three months of the unaffordable coverage penalty, for any employee who qualifies under the three-month rule. This rule allows the employer to use the monthly method to determine full-time status for the employee even though other employees in that classification (e.g., hourly) are measured using the look-back method.

Using Limited Non-Assessment Periods ("LNAP")

Employers should not overlook the limited non-assessment period, or LNAP. The LNAP generally refers to a period during which an ALE Member will not be subject to an assessable payment for a full-time employee, regardless of whether that employee is offered health coverage during that period. The LNAPs are described in detail in the instructions, and generally include periods such as the employer's waiting period or initial measurement period.

With respect to new, full-time employees, the LNAP generally extends through the end of the third full calendar month of employment, regardless of the length of the waiting period. Moreover, employers may use the entire LNAP even if coverage is offered before the end of the LNAP.

> **Example**: An employer offers minimum value coverage effective on the date of hire if the employee timely enrolls. An employee is hired September 2, 2016 and enrolls in coverage. Form 1095-C is not required for the employee in 2016 because for every month of the year the employee is either not employed (January through August) or in an LNAP (September through December).
>
> Note that if the employee enrolled in self-insured coverage during his months of employment in 2016, reporting under Section 6055 would apply and the employee could receive either Form 1095-C or 1095-B.

A new part-time, seasonal or variable hour employee who reaches the end of the year before the end of their initial measurement period will not be considered a full-time employee that year and is not required to be provided a Form 1095-C (assuming the employee hasn't enrolled in self-insured coverage during that time. Likewise, an employee who terminates employment during their initial measurement period (and associated administrative period) is not a full-time employee and is not required to be provided a Form 1095-C.

Next Steps for 2016 Reporting

Now that the final instructions have been released, employer should begin to assess whether any changes in their reporting procedures should be adjusted. For example, employers who make conditional offers of coverage to spouses, provide incentives for employees to waive coverage, or who make offers of COBRA coverage to active employees due to a reduction in hours will want to carefully review the relevant guidance. Employers should engage in the SSN/TIN solicitation process as required, and employers working with vendors should review the completed forms for accuracy. With only a couple of months remaining in the year, employers should have a process in place for their ACA reporting. There's no indication that the deadline extensions that were available for 2015 reporting will be afforded again for 2016.

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