

ACA COMPLIANCE BULLETIN

HIGHLIGHTS

- Final forms and instructions for reporting under Sections 6055 and 6056 are available.
- Two new “Offer of Coverage” codes are included on Form 1095-C, to indicate conditional offers to spouses.
- Other minor changes were made from the 2015 forms and clarifications have been added to the instructions on certain topics.

IMPORTANT DATES

January 31, 2017

Individual statements for 2016 must be furnished by Jan. 31, 2017.

February 28, 2017

IRS returns for 2016 must be filed by Feb. 28, 2017 (March 31, 2017, if filed electronically).

Provided By:

Touchstone Consulting Group

FINAL FORMS FOR ACA REPORTING RELEASED

The Internal Revenue Service (IRS) has released final **2016 forms** for reporting under Internal Revenue Code (Code) Sections 6055 and 6056.

- ✓ **Forms [1094-B](#) and [1095-B](#)** are used by entities reporting under Section 6055, including self-insured plan sponsors that are not applicable large employers (ALEs). Final 2016 versions of these forms and [final instructions](#) were released on Sept. 26, 2016.
- ✓ **Forms [1094-C](#) and [1095-C](#)** are used by ALEs to report under Section 6056, as well as for combined Section 6055 and 6056 reporting by ALEs who sponsor self-insured plans. Final 2016 versions of these forms and [final instructions](#) were released on Sept. 30, 2016.

Minor changes were made to the forms, including the addition of two new “Offer of Coverage” codes for use on Form 1095-C. The instructions also included some clarifications.

ACTION ITEMS

Employers should become familiar with the revisions to the forms. These final forms and instructions can be used for filing with the IRS in early 2017, for coverage in 2016.

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Background

The Affordable Care Act (ACA) created new reporting requirements under Code Sections 6055 and 6056. Under these rules, certain employers must provide information to the IRS about the health plan coverage they offer (or do not offer) or provide to their employees. Each reporting entity must annually file all of the following with the IRS:

- ✓ A separate **statement** (Form 1095-B or Form 1095-C) for each individual who is provided with minimum essential coverage (for providers reporting under Section 6055), or for each full-time employee (for ALEs reporting under Section 6056); and
- ✓ A **transmittal form** (Form 1094-B or Form 1094-C) for all of the returns filed for a given calendar year.

The 2016 forms are largely unchanged from the 2015 versions. However, some minor changes were included in the 2016 versions. The instructions also include some clarifications.

Entities must also furnish related statements (Forms 1095-B or 1095-C, or a substitute form) to individuals.

Forms must be filed with the IRS no later than February 28 (March 31, if filed electronically) of the year following the calendar year to which the return relates. For calendar year 2016, forms are required to be filed with the IRS by **Feb. 28, 2017** (or **March 31, 2017**, if filing electronically). The individual statements are due on or before January 31 of the year immediately following the calendar year to which the statements relate. Individual statements for the 2016 calendar year must be furnished by **Jan. 31, 2017**.

Key Changes

The 2016 forms and instructions are largely unchanged from 2015 versions. Most of the changes were made to provide additional clarification, rather than make substantive revisions. However, note the following items:

- ✓ *Waivers from Electronic Filing.* The 2016 instructions state that reporting entities are encouraged to file Form 8508 requesting a waiver at least 45 days before the due date of the return, but no later than the return's due date. The instructions also note that the IRS does not process waiver requests until January 1 of the calendar year that the returns are due. The 2015 instructions had indicated that waiver requests had to be filed at least 45 days before the due date of the returns.
- ✓ *Reporting Penalties.* The 2016 instructions include adjusted penalty amounts for failures to file returns and furnish statements. The adjusted penalty amount is \$260 per violation, with an annual maximum of \$3,193,000.00. Penalty amounts can be increased or decreased, depending on the situation. Lower annual maximums continue to apply for small businesses.
- ✓ *Taxpayer Identification Number (TIN).* Both Form 1095-B and Form 1095-C clarified that employers may report a Taxpayer Identification Number (TIN) instead of a Social Security number (SSN) for any covered individuals (except for employees listed in Part I of Form 1095-C).

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2016 Final Forms 1094-B/1095-B and Instructions

Form 1094-B was not revised. The following revisions were made to Form 1095-B:

- ✓ The language “Do not attach to your tax return. Keep for your records.” was added under the title of the form for the benefit of recipients.
- ✓ Parts I and IV were updated to reflect that a taxpayer identification number (TIN) may be entered.
- ✓ Line 9 (previously “Small Business Health Options Program (SHOP) Marketplace identifier, if applicable”) is now reserved and will be left blank. This field was previously included on Form 1095-B, but was not required to be completed for 2015.
- ✓ The heading to Part II was revised to read “Information about Certain Employer-Sponsored Coverage” to clarify that Part II will be blank for some individuals with employer-sponsored coverage.

The instructions were revised to more clearly state the rules for reporting in situations where an individual is covered by more than one minimum essential coverage plan or program, such as an employer’s major medical plan and a health reimbursement arrangement (HRA). Separate reporting is not required for the HRA if the employee is also enrolled in a medical plan of the same employer.

The IRS also released additional [proposed regulations](#) under Section 6055 to clarify certain aspects of this reporting. Specifically, the Section 6055 proposed regulations:

- ✓ Identify the entities that are responsible for reporting coverage under **catastrophic health plans** and the **Basic Health Program (BHP)**;
- ✓ Clarify the rules for reporting in situations where an individual is covered by more than one minimum essential coverage plan or program; and
- ✓ Provide additional guidance regarding the reporting of Social Security numbers (SSNs) or other taxpayer identification numbers (TINs), including when truncation is allowed as well as changes to the SSN or TIN solicitation process under Section 6055.

2016 Final Forms 1094-C/1095-C and Instructions

The following changes were made to Form 1094-C:

- ✓ On Line 22, Box B is designated as “Reserved.” For 2015, this box was used to indicate eligibility for the Qualifying Offer Method Transition Relief. This relief is not applicable for 2016.
- ✓ The language “Section 4980H” was inserted before “Full-Time Employee Count for ALE Member” in Part III, Column (b) to remind reporting entities that the Section 4980H definition of “full-time employee” applies for purposes of this column, not any other definition that an ALE may use for other purposes. The instructions contain clarification and an example illustrating this point.

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The following changes were made to Form 1095-C:

- ✓ New Codes 1J and 1K have been added for use on Line 14. The instructions contain information on using these codes:
 - Code 1J can be used if: (1) minimum essential coverage providing minimum value was offered to the employee; (2) minimum essential coverage was conditionally offered to the employee's spouse; and (3) minimum essential coverage was not offered to the employee's dependent(s).
 - Code 1K can be used if: (1) minimum essential coverage providing minimum value was offered to the employee; (2) minimum essential coverage was conditionally offered to the employee's spouse; and (3) minimum essential coverage was offered to the employee's dependent(s).
- ✓ The heading on Line 15 was revised to read "Employee Required Contribution (see instructions)." The instructions include a new definition of this term, as described below, which is intended to clarify the amount to be entered on this line.
- ✓ The 2015 Form 1095-C included a "Plan Start Month" box, which was optional for 2015, but was expected to be required for 2016 and beyond. The 2016 Form 1095-C provides that the "Plan Start Month" box will remain optional for 2016, but is expected to be mandatory for 2017.
- ✓ Language regarding Part III, *Covered Individuals*, has been added to clarify that employers should enter information for all individuals enrolled in the self-insured coverage, including the employee.
- ✓ Codes 1I and 2I are no longer applicable and have been reserved.
- ✓ The language "Do not attach to your tax return. Keep for your records." was inserted under the title of the form to inform the recipient that Form 1095-C should not be submitted with the return.
- ✓ The 2016 Form 1095-C noted that the affordability percentage for employer-sponsored coverage is adjusted each year. Initially set at 9.5 percent, the affordability percentage increased to 9.56 percent for 2015 plan years, and 9.66 percent for 2016 plan years. For more information, visit www.irs.gov.

The instructions for Forms 1094-C and 1095-C also contain the following clarifications or revisions:

- ✓ **Transition Relief.** Several forms of transition relief were available to ALEs for 2015 under Sections 4980H and 6056, but only limited transition relief continues to apply in 2016. References to transition relief that applied only in calendar year 2015 have been removed. Descriptions of the remaining forms of transition relief have been amended to clarify for which months in 2016 the transition relief applies.
- ✓ **Aggregated ALE Groups.** The instructions contain additional information on filing by ALEs that are part of an Aggregated ALE Group, including clarification that each member of the group must file regarding its own full-time employees. The instructions also include information and an example on filing related to employees who work for more than one member of an Aggregated ALE Group.

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- ✓ **Authoritative Transmittal.** ALEs must designate one Form 1094-C as the Authoritative Transmittal. The instructions include information and examples on the Authoritative Transmittal requirements.
- ✓ **Qualifying Offer Method.** The instructions clarify that ALEs using the Qualifying Offer Method may, but are not required to, enter a safe harbor code on Line 16 when Code 1A is entered on Line 14. A Qualifying Offer is, by definition, treated as an offer that falls within an affordability safe harbor even if no code is entered on Line 16.
- ✓ **COBRA and other Post-employment Coverage.** Clarifying language has been added on how to report offers of COBRA and other post-employment (non-COBRA) coverage. Offers of COBRA or other post-employment coverage to former employees (and their family members) should not be entered as offers of coverage on Line 14. However, an offer of COBRA coverage to an employee who remains employed should be entered as an offer of coverage.
- ✓ **Affordability.** The instructions state that references to 9.5 percent related to the coverage affordability calculation are applied as indexed for purposes of the premium tax credit. The percentage, as adjusted, is 9.56 percent for 2015, 9.66 percent for 2016 and 9.69 percent for 2017.
- ✓ **Employee Required Contribution.** The instructions include a new definition of this term, which is intended to clarify the amount to be entered on Line 15 of Form 1095-C. The “Employee Required Contribution” is the employee’s share of the monthly cost for the lowest-cost self-only minimum essential coverage providing minimum value that is offered to the employee by the ALE. The instructions clarify that the employee share is the portion of the monthly cost that would be paid by the employee for self-only coverage, whether paid through salary reduction or otherwise, and include information for calculating this amount.
- ✓ **Substitute Statements.** The instructions clarify that substitute statements furnished to individuals may be in portrait format. However, substitute returns filed with the IRS on paper must be printed in landscape format.
- ✓ **Code 1G.** The instructions clarify that Code 1G applies for the entire year or not at all. Therefore, if Code 1G applies, an ALE must enter Code 1G on Line 14 of Form 1095-C in the “All 12 Months” column, or in each separate monthly box (for all 12 months).
- ✓ **Code 2C.** The instructions clarify that Code 2C should not be entered on Line 16 of Form 1095-C for any month in which the employee enrolled in coverage that was not minimum essential coverage.
- ✓ **Affordability Safe Harbor Codes.** The instructions clarify that an affordability safe harbor code (Code 2F, 2G or 2H) should not be entered on Line 16 of Form 1095-C for any month that the ALE did not offer minimum essential coverage to at least 95 percent of its full-time employees and their dependents (that is, any month for which the ALE checked the “No” box in column (a), Minimum Essential Coverage Offer Indicator, on Form 1094-C, Part III).

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Additional Resources

The 2015 versions of these forms are also available on the IRS website:

- ✓ [Form 1094-B](#) and [Form 1095-B](#) (and related [instructions](#)); and
- ✓ [Form 1094-C](#) and [Form 1095-C](#) (and related [instructions](#)).

These forms must have been furnished to individuals no later than **March 31, 2016**. Reporting entities must have filed these forms with the IRS no later than **May 31, 2016** (or **June 30, 2016**, if filing electronically). The IRS [announced](#) that information returns under Sections 6055 and 6056 may continue to be filed after the filing deadline (both on paper and electronically). Employers that missed the June 30, 2016, deadline should continue to make efforts to file their returns as soon as possible.

The IRS will not assess penalties for late filing on reporting entities that have made legitimate efforts to file information returns, if they continue to make efforts and complete the process as soon as possible. In addition, penalties may be waived in some cases, for reasonable cause.

The IRS also previously released:

- ✓ [Q&As on Section 6055](#) and [Q&As on Section 6056](#); and
- ✓ A separate set of [Q&As on Employer Reporting using Form 1094-C and Form 1095-C](#).

More Information

Please contact Touchstone Consulting Group for more information on reporting under Code Sections 6055 and 6056.