

A banner image showing a stethoscope resting on an American flag. The text "What Employers Need to Know Right Now About Health Care Reform" is overlaid on the image.

## What Employers Need to Know Right Now About Health Care Reform

### **IRS Issues Drafts of Instructions for Employer and Individual Responsibility Reporting Forms**

*The following is a summary of draft instructions.*

*Some of this information may change when the final forms and instructions are released.*

In order for the Internal Revenue Service (IRS) to verify that individuals have the required minimum essential coverage, individuals who request premium tax credits are entitled to them, and large employers are meeting their shared responsibility (play or pay) obligations, employers and insurers will be required to report the health coverage they offer. Reporting will first be due early in 2016, based on coverage in 2015.

The reporting requirements are in Sections 6055 and 6056 of the Patient Protection and Affordable Care Act (PPACA); IRS Form 1095-B is basically used to meet the Section 6055 minimum essential coverage requirement and IRS Form 1095-C is basically used to meet the Section 6056 large employer play or pay requirement and to help determine if an individual is eligible for a premium tax credit.

On August 28, 2014, the IRS issued [draft instructions](#) for completing the forms; drafts of the forms were issued on July 24, 2014. The IRS has said that the final forms and instructions will be available by the end of 2014. While there will probably be a few changes between the draft and final versions of the requirements, the reporting requirements are becoming clear enough for employers to begin planning to meet this requirement. The IRS has also issued a [Q and A on Section 6055 Reporting](#) and a [Q and A on Section 6056 Reporting](#). Both the instructions and Q and A documents contain detailed information that employers may find very helpful.

Although reporting will not begin until 2016, the reporting will reflect coverage offered and elected during the 2015 calendar year (regardless of whether the plan is a calendar year or non-calendar year plan). Employers with 50 or more employees should soon begin assessing their data gathering and systems to be sure they will be able to access and report the needed information when reporting begins. An employer's reporting obligation varies by its size, its funding method (self-funded or fully insured), and whether it is part of a controlled group.

### **Employer with Fully Insured Plans and Fewer than 50 Full-Time and Full-Time Equivalent Employees in its Controlled Group**

An employer will not have any reporting requirement if it had fewer than 50 full-time and full-time equivalent employees in its controlled group during the prior calendar year and it sponsors a fully insured medical plan. The insurer will provide reporting to each covered employee using IRS Form 1095-B – this form will report which months the employee and any dependents had minimum essential (basic medical) coverage. If an employer sponsors the plan, that also will be reported on the form.

### **Employer with Self-Funded Plan and Fewer than 50 Full-Time and Full-Time Equivalent Employees in Controlled Group; Self-Funded Multiemployer Plans of All Sizes**

An employer with fewer than 50 full-time and full-time equivalent employees in its controlled group and which sponsors a self-funded medical plan will provide reporting to each covered employee using IRS Form 1095-B. Likewise, the plan sponsor of a self-funded multiemployer plan (such as its board of trustees or committee) will be responsible for providing a completed Form 1095-B to each covered member, regardless of how large the multiemployer plan is. This form describes which months the employee or member and any dependents had minimum essential (basic medical) coverage. See Appendix A for details.

The plan sponsor also will file a Form 1094-B transmittal form with a copy of each Form 1095-B it provided to a participant.

### **Employer with Fully Insured Plan and 50 or More Full-Time and Full-Time Equivalent Employees in its Controlled Group**

An employer that had 50 or more full-time and full-time equivalent employees in its controlled group during the prior calendar year and that sponsors a fully insured medical plan will be required to complete several parts of IRS Forms 1095-C and 1094-C to report its compliance with the play or pay requirements. *Although the play or pay requirements do not apply to many employers with 50 to 99 employees for 2015, reporting is still required for 2015 to help the IRS administer the individual requirements and premium tax credit eligibility.* A series of codes will be used by the mid-size employer to alert the IRS to its status as an employer in the 50 to 99 employee group, and that penalties therefore are not due for 2015.

Form 1095-C will be used to determine whether an employee, spouse and children were offered minimum essential coverage, and if so, whether the coverage offered to the employee was affordable and met minimum value. This information will be used to help determine whether the employee or dependent is eligible for a premium tax credit, and whether penalties apply to the employer. Extensive information must be reported, generally by calendar month. See Appendix B for details on the information that likely will need to be provided. Form 1095-C must be provided to any employee who worked full-time for the employer at any time during the year – even if the person only worked for one month, or was never eligible for coverage. Therefore, the form will need to be provided to an individual who retired during the year.

Note: The insurer will provide reporting to each covered employee using IRS Form 1095-B. This form will describe which months the employee and any dependents actually had minimum essential (basic medical) coverage that satisfies the individual mandate. As a result, employees will receive forms from both the employer and the insurer.

### **Employer with a Self-Funded Plan and 50 or More Full-Time and Full-Time Equivalent Employees in its Controlled Group**

An employer with 50 or more full-time or full-time equivalent employees in its controlled group during the prior calendar year and which offers a self-funded plan is responsible for completing all parts of Form 1095-C and much of Form 1094-C. Extensive reporting will be needed, by employee by calendar month, as to whether minimum essential coverage was offered, whether minimum essential coverage was actually in effect, and whether affordable, minimum value coverage was offered. See Appendices B and C for details on what must be reported.

Form 1095-C must be provided to any employee who worked full-time for the employer at any time during the year – even if the person only worked for one month, or was never eligible for coverage. The form will need to be provided to an individual who retired during the year. The employer also must provide a Form 1095-C to any employee who received coverage during the year, even if the employee is not full-time.

An employer may only file one Form 1095-C per employee, which means, for example, that if different divisions have different benefits, and an employee moves between divisions during the year, the employer will need to consolidate data onto one 1095-C form.

The employer also will file a Form 1094-C transmittal form with a copy of each Form 1095-C. Form 1094-C also requires information about the employer's workforce. Multiple Form 1094-Cs may be filed if that is easier, but one must be designated as the "authoritative transmittal."

### **Employer in a Controlled Group with 50 or More Full-Time and Full-Time Equivalent Employees**

An employer that is in a controlled group (basically, a situation in which an individual, group of individuals or company owns a significant part of more than one entity) must list all of the employers in its controlled group (or the 30 largest if there are more than 30 employers in the controlled group) on Form 1094-C. Each employer within the controlled group must file its own Forms 1095-C and 1094-C, although one entity can prepare all of the forms for the group. See Appendix D for details on the information that will be needed.

### **Due Dates and Privacy**

The individual's Form 1095 will first be due on February 1, 2016. The employer's "roll-up" and other reporting using an IRS Form 1094 will first be due on February 29, 2016, if filing with paper and by March 31, 2016, if filing electronically.

An employer that is concerned about maintaining and transmitting Social Security numbers may use truncated numbers (XXX-XX-1234) on Form 1095-C it provides to the employee, but not on the version it provides to the IRS. Substitute forms will be permitted.

An employer must make three attempts to obtain the Social Security number of the individual. One attempt must be made when the person first becomes covered, with additional attempts the following calendar years.

In summary, the reporting requirements are:

	Fully Insured < 50 FTEs	Fully Insured 50+ FTEs	Self-Funded < 50 FTEs	Self-Funded 50+ FTEs	Marketplace Coverage
<b>Forms to employee</b>	1095-B	1095-B / 1095-C (Parts I and II only)	1095-B	1095-C (all Parts)	1095-A
<b>Filed by</b>	Insurer	Insurer / Employer	Plan Sponsor (generally the employer)	Plan Sponsor (generally the employer)	Marketplace
<b>Forms to IRS</b>	1094-B	1094-B (with copies of all 1095-Bs) / 1094-C (with copies of all 1095-Cs)	1094-C (with copies of all 1095-Cs)	1094-C (with copies of all 1095-Cs)	1094-A
<b>Filed by</b>	Insurer	Insurer / Employer	Plan Sponsor	Plan Sponsor	Marketplace

Employees who receive a premium tax credit/subsidy through the Marketplace will file an IRS Form 8962 with their federal income tax return, using information provided on Form 1095-A. Employees who claim an exemption from the individual-shared responsibility requirement will use Form 8965 to claim the exemption.

The IRS will match information provided on the various forms to determine whether the employer or individual owes a penalty and if premium tax credits were made in the correct amount. Employer penalties are expected to be assessed during the summer of the year in which reporting occurred. Individual penalties will be applied to any refund due the employee. Any needed adjustment to a premium tax credit will be made as an additional income tax refund or amount due from the employee when the employee files his federal income tax return.

## Appendix A

---

Based on the draft reporting forms and instructions, the following information will be needed to complete Forms 1095-B and transmittal Form 1094-B. Form 1095-B will be completed by insurers, employers with fewer than 50 full-time and full-time equivalent employees in their controlled group that sponsor self-funded plans, and plan sponsors of self-funded multiemployer plans.

Form 1095-B will be used to report that individuals had minimum essential coverage in effect and will include:

- The name, address, and Social Security number of the "responsible individual" (typically the employee, union member, or primary insured (date of birth may be used if a Social Security number is not available))
- The name and Social Security number (or date of birth if a Social Security number is not available) of each covered spouse and dependent
- The calendar months each employee, spouse, or dependent child was covered (if the person was covered for the whole year, that must be reported by year rather than month by month)
- The origin of the policy (whether coverage is through the SHOP Marketplace, an employer, the government, individual insurance, a multiemployer plan, or miscellaneous minimum essential coverage)
- The name, address, and Employer Identification Number (EIN) of an employer sponsoring the plan
- The Small Business Health Options Program (SHOP) Marketplace unique identifier if coverage is provided through the SHOP

Each responsible individual will receive a Form 1095-B describing the person's own coverage. In addition, the employer must file the Form 1094-B transmittal form with a copy of each completed Form 1095-B. To complete the Form 1094-B this information is expected to be needed:

- The insurer's or plan sponsor's complete name, address, and EIN and the name and phone number of a contact person (who does not need to be an employee)
- The total number of 1095-B forms submitted with that particular transmittal form.

## Appendix B

---

Based on the draft reporting forms and instructions, this information will be needed by all large employers (those that averaged 50 or more full-time or full-time equivalent employees in their controlled group during the prior calendar year), regardless of whether the plan is fully insured or self-funded, in order to complete Parts I and II of Forms 1095-C:

- The name, address, and Social Security number of the employee
- The name, address, federal Employer Identification Number (EIN) and a contact telephone number for the employer (it appears that the contact telephone number can be that of a third party)

- Information on the coverage offered to the employee, using a series of codes. If coverage did not vary during the calendar year, the employer must use one code to report all 12 months. If coverage varied during the year, a code is needed for each month. The reporting will be made on a calendar year basis, even if the employer has a non-calendar year plan. All months must be completed even if the employee only worked for the employer for part of the year. Coverage is measured as of either the first day or the last day of the month (this is the employer's choice, but the same date must be used consistently). The proposed codes are:
  - Offered minimum value coverage to the employee with an employee contribution for self-only coverage less than or equal to 9.5% of the federal poverty level (FPL) for the 48 contiguous states and offered minimum essential coverage to the spouse and dependent children (a “qualifying offer”)
  - Offered minimum value coverage to the employee only
  - Offered minimum value coverage to the employee and at least minimum essential coverage to the employee's dependent children (but not to the spouse)
  - Offered minimum value coverage to the employee and at least minimum essential coverage to the spouse (but not to the employee's dependent children)
  - Offered minimum value coverage to the employee and at least minimum essential coverage to both the dependent children and the spouse
  - Offered coverage that is minimum essential coverage but does not provide minimum value to the employee, or to the employee and the employee's spouse or dependents, or to the employee the employee's spouse and dependents
  - No medical coverage offered at all, or the coverage that is offered is not minimum essential coverage
  - Offered self-funded coverage to an employee who works less than full-time
  - 2015 qualifying offer transition relief (employee, spouse or dependents received no offer of coverage, or received an offer of coverage that is not a “qualifying offer,” or received a “qualifying offer” for less than all 12 months but 95% of the employees did receive such an offer; see Appendix E for details)
- If the offered coverage meets minimum value, the employee share (to the nearest cent) of the lowest cost monthly premium for self-only minimum value coverage for which the employee is eligible for each month (not the premium for the coverage the employee has elected)
- Employee status codes, which in some cases will be used by the IRS to determine whether a penalty is owed. The status codes are:
  - Employee was not employed during the month
  - Employee was not a full-time employee
  - Employee was enrolled in the coverage offered
  - Employee was in a “limited non assessment period” (for example, a new employee was within the first three full calendar months of employment)
  - Multiemployer interim rule relief applies (essentially, the employer is credited with its contribution for coverage under a multiemployer plan)

- Coverage is affordable using the W-2 safe harbor (the cost of single coverage for the least expensive option that provides minimum value did not exceed 9.5% of the employee's Form W-2, Box 1 income for the year that is being reported)
- Coverage is affordable using the federal poverty line safe harbor (the cost of single coverage for the least expensive option that provides minimum value did not exceed 9.5% of the FPL for the 48 contiguous states for the year that is being reported)
- Coverage is affordable using the rate of pay safe harbor (generally, the cost of single coverage for the least expensive option that provides minimum value did not exceed 9.5% of the employee's rate of pay at the beginning of the coverage year that is being reported)
- Non-calendar year transition relief applies (i.e., the employer is using a plan year other than a calendar year and qualifies under the transition rules to delay compliance with the play or pay requirement until the start of the 2015 plan year)

If an employee qualifies for more than one code, there are rules as to which one to use.

Each full-time employee will receive a Form 1095-C describing the employee's own offer. In addition, the employer must file the Form 1094-C transmittal form with a copy of each completed Form 1095-C. To complete the Form 1094-C this information is expected to be needed:

- The employer's name, address, and EIN and the name and phone number of a contact person (who does not need to be an employee)
- The total number of 1095-C forms submitted with that particular transmittal form. (An employer may file more than one Form 1094-C if that simplifies reporting. However, one of the forms must then be designated as the "authoritative transmittal.")

One Form 1094-C must be designated as the "authoritative transmittal" and include:

- The total number of 1095-C forms submitted by the employer
- Whether the employer is part of an ALE Aggregated Group (i.e., a controlled or affiliated service group) with 50 or more full-time or full-time equivalent employees
- Whether the employer is exempt from some or all reporting or penalties because of its size, 2015 transition rules, or offering coverage to a very high percentage of individuals (see Appendix E for details)
- On a month by month basis (or for the full year if nothing changes):
  - Whether minimum essential coverage was offered to at least 95% of full-time employees and dependents (excluding those in a waiting period)
  - The total number of full-time employees of that employer for the calendar month *excluding those in a waiting period* (the count may be made as of the first day or the last day of the month, but a consistent date must be used; an employer that offers affordable minimum value coverage to 98% of its full-time employees and their spouse and dependent children does not need to report the employee count)
  - The total employee count, including part-time employees, for the calendar month (the count may be made as of the first day or the last day of the month, but a consistent date must be used)

- Whether the employer is part of a controlled or affiliated service group for a calendar month, or the full year
- Whether the employer qualifies for transition relief for 2015 either because it had 50 to 99 employees or because of the "free 80 employees" rule

"Minimum essential" coverage is basic medical coverage. Coverage does not need to include the 10 essential health benefits to be considered minimum essential coverage. "Minimum value" coverage is medical coverage that has an actuarial value of at least 60%.

## Appendix C

---

Based on the draft reporting forms and instructions, large employers (those that averaged 50 or more full-time or full-time equivalent employees in their controlled group during the prior calendar year) and that sponsor a self-funded plan will need this information to complete Part III of Form 1095-C. These employers will also need to complete Parts I and II of Form 1095-C (see Appendix B for details) and Transmittal Form 1094-C.

To complete Part III the employer will need:

- The name and Social Security number (or date of birth if a Social Security number is not available) of each covered person
- The calendar months each person was covered (if the person was covered for the whole year, that must be reported annually rather than month by month)

## Appendix D

---

Based on the draft reporting forms and instructions, large employers that were part of a controlled or affiliated service group also must complete Part IV of Form 1094-C.

Each employer must enter the name and EIN of all other employers that were part of the group during all or part of the calendar year. If there are more than 30 employers in the group, only the 30 largest will be reported. The other employers must be listed in descending order with the employer with the largest average number of full-time employees listed first.

The employer will report which months it was part of the controlled group in column (d) of Part III of Form 1094-C.

## Appendix E

---

Employers that offer particularly generous coverage may use alternative, simplified reporting instead of the "general" reporting explained above. Depending on the situation, the employer may be able to use alternative reporting for some employees even though it must use the general reporting method for



others. The employer also may use different alternative reporting methods for different groups of employees. Three alternative methods will be available for reporting on coverage offered in 2015:

1. If the employer makes a "qualifying offer" for each month in the calendar year, it can provide a code instead of the cost of coverage information on line 15 of Form 1095-C and provide streamlined reporting to the covered employees. The streamlined reporting must include the employer's name, address and EIN, a contact name and phone number, and a statement indicating 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. If the employee was not eligible for the full year, this alternative method may not be used for that employee. A "qualifying offer" is an offer that meets all of these requirements:
  - Is offered to the employee and to any spouse and dependent children
  - Provides minimum value
  - Has an employee contribution for single coverage that is less than 9.5% of the federal poverty level (FPL) in the 48 contiguous states (which would be a maximum contribution for 2014 of \$92.38 per month)
2. If the employer offers affordable, minimum value coverage to at least 98% of its total employees (regardless of whether they are full-time or part-time) it does not need to report whether an employee is full-time and it does not need to provide a count of its full-time employees. However, it will still need to provide a Form 1095-C to each of its employees which includes all of the other information required, and if an employee requests a premium tax credit, it will need to respond to an IRS inquiry about the employee's work and coverage status.
3. For 2015 only, an employer may take advantage of the "qualifying offer method transitional relief method" if it has provided a "qualifying offer" to 95% of its full-time employees, their spouses, and dependents during 2015. Instead of reporting the cost of coverage on Form 1095-C the employer will use a code for each month to indicate whether the employee did or did not receive a qualifying offer for the month. Instead of providing the completed Form 1095-C to the employee the employer may provide a statement that includes the employer's name, address and EIN, a contact name and phone number, and one of two statements. If the employee and his or her spouse and dependents, if any, received a qualifying offer for all 12 months of the calendar year and therefore are not eligible for a premium tax credit the statement will indicate that the employee and any dependents are not eligible for any premium tax credits for the year. Any full-time employees that do not receive a qualifying offer for all 12 months must receive a statement that they may be eligible for premium tax credits for any months in which a qualifying offer was not made. The employer transmittal will need to indicate that this method was used.

This information is general and is provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.