

September 8, 2014

## Information Reporting – Instructions and Guidance Released

Draft instructions were recently released for the reporting forms that will be used by employers to report information on the healthcare coverage that they offer to employees, as required by the Affordable Care Act (ACA). These instructions apply to the draft Forms the IRS first released in July, 2014. See our [Update](#) “IRS Releases Draft Forms on Health Coverage Reporting” for more information. The IRS will use the information collected on the Forms to enforce both the individual mandate and the employer shared responsibility “pay or play” rules. Note that the draft forms and the instructions (see below) are not yet ready to be used for filing purposes. They are being released by the IRS as a courtesy. Drafts will usually have some changes before they are released as finals. Both the forms and the instructions will be finalized later this year.

Release of the draft forms and instructions is a further step in the IRS finalizing the process for employers to comply with the pay or play mandate. The reporting will allow the IRS to verify an employers’ liability for employer shared responsibility payments and an individuals’ eligibility for premium tax credits. With the release of this guidance, it now appears that this reporting requirement will not be further delayed, and will be effective come 2015.

**Background – Employer Mandate:** The ACA pay or play penalty (employer mandate) provisions go into effect in 2015. This means that by January 1, 2015, employers with 100 or more full-time (FT) and FT-equivalent employees in its controlled group must offer health benefits to employees working an average of 30 hours per week, or 130 hours per month, or pay a penalty. If an employer has a non-calendar year plan and can meet certain complicated transition rules, they can delay offering employee health benefits until the start date of their non-calendar 2015 plan year. Employers with 50–99 FT and FT-equivalent employees in its controlled group will have until 2016 plan years to comply with these employer mandate provisions. Employers that have fewer than 50 FT and FT-equivalent employees in its controlled group are not subject to the pay or play employer mandate provisions.

**Background – Reporting Requirements:** The ACA added two health coverage reporting requirements to the Internal Revenue Code (Code) under Section 6055 and 6056, as further explained below. This reporting is necessary to enforce both the individual mandate and the employer mandate “shared responsibility” pay or play rules. An employer is not subject to the reporting rules described below if it has fewer than 50 FT and FT-equivalent employees in its controlled group and it either (1) does not sponsor any health plan, or (2) sponsors a fully insured (FI) medical plan. All other employers are required to report on health coverage effective as of January 1, 2015 as follows:

- An employer is subject to reporting requirements if it has fewer than 50 FT and FT-equivalent employees in its controlled group and it sponsors a self-insured (SI) health plan (this is true even though they are not subject to the pay or play mandate rules).
- An employer is subject to reporting requirements if it is an applicable large employers (ALE) with 100 or more FT and FT-equivalent employees.
- An employer is subject to reporting requirements if it is an ALE with 50–99 FT and FT-equivalent employees (this is true even though they won’t be liable for employer mandate penalties in 2015).

The following provides links to the IRS draft forms, instructions, and recently released questions and answers (Q&As) from the IRS on the information reporting requirements under Sections 6055 and 6056:

- Code Section 6055. This reporting is intended primarily to support IRS enforcement of the individual mandate. Section 6055 requires providers of minimum essential coverage (MEC) and providers of coverage through an employer’s group health plan to report information that will allow taxpayers to establish and the IRS to verify that the taxpayers were covered by MEC and their months of enrollment during a calendar year. *Form 1095-B and 1094-B will be used primarily by insurers for reporting insured coverage, by sponsors of SI plans that are not ALEs, and by multiemployer plans for reporting SI coverage.* Information is provided about the entity providing coverage, which individuals are enrolled in coverage, and the months for which they were covered.
  - [Form 1095-B](#): for reporting 6055 information to individuals (the “individual statements”)
  - [Form 1094-B](#): for transmitting the Form 1095-B health coverage information to the IRS
  - [1094-B and 1095-B Draft Instructions](#)
  - [IRS Section 6055 Q&As](#)
- Code Section 6056. This reporting will support IRS enforcement of the employer shared responsibility provisions (“employer mandate” or “pay or play”) and the subsidies for coverage purchased in the marketplace (“exchange”). Section 6056 requires ALEs – generally employers with 50 or more FT employees – to report to the IRS information about coverage they offer to employees and requires them to furnish related statements to employees. *Form 1095-C and 1094-C will be used by ALEs for reporting.* Information is provided about the employer offering coverage (including contact information and the number of employees), about the coverage (if any) offered to an employee, by month, including the lowest employee cost of self-only coverage offered. Employers that “self-insure” can report both the employer and insurer reporting provisions using Form 1095-C (the top half includes the information needed for 6056 pay or play reporting, while the bottom half includes the information needed for 6055 MEC reporting).
  - [Form 1095-C](#): for reporting 6055 and 6056 information to individuals (the “individual statements”)
  - [Form 1094-C](#): for transmitting the Form 1095-C health coverage information to the IRS
  - [1094-C and 1095-C Draft Instructions](#): includes important additional guidance on several alternative methods that can be used for reporting to both IRS and employees
  - [IRS Section 6056 Q&As](#)

Employers must report for each employee (part-time or full-time) actually covered by self-insured employer-sponsored plans, including COBRA coverage. Employers do not have to report with respect to part-time employees who receive no coverage or receive coverage through insured plans. Employers that are part of a controlled or affiliated service group also must report the name and employer identification number (EIN) of all other employers that were part of the group during the calendar year (up to 30). Each employer in a controlled or affiliated service group must file a separate report, although one member of the controlled group (for example, a parent company) may complete the form on behalf of other members. If employers are members of a controlled group, one of the employers (for example, a parent company) can file on behalf of the other members of the group. However, each employer subject to ACA’s employer shared responsibility rules ultimately is responsible for its own reporting.

The following chart summarizes the party typically responsible for issuing the required forms based on an employer-sponsored health plan’s funding structure.

ACA Reporting Requirements	Applicable Form	Fully-insured plans, multiemployer plans, and sponsors of self-insured plans that are not ALEs*	Sponsors of self-insured plans that are ALEs (non-multiemployer plans)**
Code Section 6055 – applies to providers of MEC	1094-B (Form to IRS)	Transmittal Form provided by carrier/sponsor to the IRS with Forms 1095-B	Not required for ALEs - they may use Form 1094-C to satisfy 6055 reporting requirements
	1095-B (Form to employee)	<ul style="list-style-type: none"> <li>• Provided by carrier/sponsor to employee who receives coverage**</li> <li>• Provided by carrier/sponsor to the IRS with Transmittal Form 1094-B</li> </ul>	Not required for ALEs - they may use Form 1095-C to satisfy 6055 reporting requirements
Code Section 6056 – applies to ALEs	1094-C (Form to IRS)	Transmittal Form provided by sponsor to the IRS with Forms 1095-C	Transmittal Form provided by sponsor to the IRS with Forms 1095-C
	1095-C (Form to employee)	<ul style="list-style-type: none"> <li>• Provided by sponsor*** to covered employees**</li> <li>• Provided to IRS with Transmittal Form 1094-C</li> </ul>	<ul style="list-style-type: none"> <li>• Provided by sponsor to covered employees****</li> <li>• Provided by sponsor to IRS with Transmittal Form 1094-C</li> </ul>

\*Entities reporting as health insurance issuers, sponsors of SI plans that are not ALEs, and sponsors of multi-employer plans, will report under section 6055 on Form 1094-B and Form 1095-B.

\*\*Employees of ALEs who offer FI coverage will receive both a Form 1095-B (from the insurance carrier) and a Form 1095-C (from the employer) for their employer-provided health coverage in a reporting year.

\*\*\* An ALE that provides FI coverage will complete only the section of Form 1095-C that reports the information required under section 6056.

\*\*\*\* Employees of ALEs who offer SI coverage may only receive a Form 1095-C for their employer provided health coverage in a reporting year.

In any event, the count of Forms received by an employee in a reporting year will vary depending on the number of plans that provided the employee with MEC during the year and the number of employer sponsored plans that offered the employee coverage.

These reporting requirements are effective for 2015, with the first reporting due in early 2016. Individual statements are due to employees on or before January 31 following each calendar year. Employers must obtain employees’ affirmative consent to provide statements to employees electronically. Otherwise, employers must furnish the statements on paper by mail. Employers must file Form 1094-C and 1095-C with the IRS on or before February 28 (March 31 if filed electronically) following each calendar year. Employers filing 250 or more returns must file electronically.

Employers now have the guidance they need to begin to assess and gather the information needed to prepare for 2015 compliance with the pay or play and reporting requirements. Employers will likely look to third-party advisers to assist in developing compliance processes.

Conner Strong & Buckelew will provide alerts and updates as new information is issued on this important topic. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).