

August 26, 2016

ACA Reporting – Draft 2016 Forms and TIN Collection

Draft versions of the 2016 Forms 1094 and 1095 and related instructions were recently released to be used by employers and other reporting entities to report information on healthcare coverage as required by the Affordable Care Act (ACA). Reporting includes filing the required information with the Internal Revenue Service (IRS) and furnishing a statement to covered individuals containing the required information. The ACA also requires that self-insured employers of any size collect and report the taxpayer identification number (TIN) of covered individuals. The IRS uses information collected on the forms to enforce both the individual mandate and the employer shared responsibility “pay or play” rules. The reporting allows the IRS to verify an employers’ liability for employer shared responsibility payments and an individuals’ eligibility for premium tax credits. For more information on the IRS information reporting applicable for employers, please see the [IRS ACA Reporting webpage](#).

2016 Draft Forms and Instructions

The following 2016 draft forms and instructions are posted at [IRS.gov/draftforms](https://www.irs.gov/draftforms):

- [2016 draft Form 1094-C](#) (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, dated July 7, 2016)
- [2016 draft Form 1095-C](#) (Employer-Provided Health Insurance Offer and Coverage, dated July 7, 2016)
- [2016 draft Instructions for Forms 1094-C and 1095-C](#) (dated August 1, 2016)
- [2016 draft Form 1094-B](#) (Transmittal of Health Coverage Information Returns, dated June 22, 2016)
- [2016 draft Form 1095-B](#) (Health Coverage, dated June 22, 2016)
- [2016 draft Instructions for Forms 1094-B and 1095-B](#) (dated August 10, 2016)

The instructions and forms will be used by applicable large employers (ALEs), insurers, multiemployer plans, and small employers with self-insured plans. The reporting is required for medical coverage provided on or after January 1, 2016, with the 2016 Form 1094-C and 1095-C to be distributed to individuals by January 31, 2017. The draft instructions provide for a 30-day extension that may be granted by submitting a letter to the IRS on or before the due date for providing forms to individuals. Information returns must also be filed with the IRS by February 28, 2017 (March 31, 2017, if filed electronically). The 2016 draft instructions provide for an automatic 30-day extension if [Form 8809](#) is submitted to the IRS on or before the filing due date.

ALEs and other reporting entities should note that the new draft 2016 forms and instructions are

still in draft form. Compared to the final 2015 forms, the draft 2016 forms include a number of noteworthy elements and changes. Some changes are intended to help plan sponsors and third-party administrators properly complete and file the forms, while others eliminate indicator codes no longer in use and add some new codes. While the 2016 draft Forms 1094-C and 1095-C are substantially similar to the final 2015 versions, the following proposed additions and clarifications should be reviewed by plan sponsors and third-party administrators.

- The 2016 draft instructions describe the adjusted information reporting penalty amounts and remove the reference to 2015 penalty relief. The instructions reflect the increased penalties for the failure to file or furnish correct forms (\$250 is increased to \$260 and the \$3 million maximum is increased to \$3,139,000).
- The draft instructions clarify that each ALE Member must file its own forms under its own employer identification number (EIN), even if it is part of an Aggregated ALE Group. The instructions also clarify that each ALE should only file one Authoritative Transmittal, and that no Authoritative Transmittal should be filed for an Aggregated ALE Group.
- Per the draft instructions, the ALE Member contact person on Form 1094-C may be different than the contact information used on Form 1095-C.
- The IRS removed forms of transition relief that are no longer available and clarified the months in 2016 to which the remaining transition relief applies (for non-calendar year group health plans).
- The draft instructions state that references to 9.5% for affordability purposes are applied based on indexed amount (e.g., 9.66% for plan years beginning in 2016).
- On Form 1094-C, line 22, box B is designated “reserved” because the associated transition relief is not applicable for 2016.
- On Form 1095-C, the IRS inserted “Do not attach to your tax return. Keep for your records.” under the title.
- Listing the “Plan Start Month” continues to be optional for 2016 (however, this will be mandatory for 2017 calendar year reporting).
- Indicator codes 1I for line 14 and 2I for line 16 are no longer applicable and have been “reserved.”
- New indicator codes 1J and 1K were added for a “conditional offer of spousal coverage” to line 14, which is an offer that is subject to one or more reasonable, objective conditions, such as an offer to cover the spouse only if the spouse is not eligible for coverage under Medicare or a group health plan sponsored by another employer. An ALE Member can report this as an offer of coverage regardless of whether the spouse meets the condition.
- Clarifications were added for coding for COBRA continuation coverage and post-employment (non-COBRA) coverage reporting on Line 14.
- Multiemployer arrangement interim relief reporting that applied for the 2015 reporting year remains in effect for 2016 (i.e., ALE member uses codes 1H/2E regardless of whether the employee was actually offered coverage under the multiemployer plan).

The release of the draft 2016 forms and instructions is a further step in the IRS finalizing the process for employers to continue compliance with the pay or play mandate and reporting requirements in 2017. Final 2016 forms and instructions to be used for the actual filings due in 2017 are expected before the end of the year. Conner Strong & Buckelew will provide alerts and updates as new information is issued on this important topic. While we can assist with a general understanding of these rules, we will not handle form preparation, and we will refer our clients to their reporting, tax and legal advisors for assistance with specific issues/complexities regarding appropriate eligibility and hours tracking rules, and the actual implementation of the data gathering,

tracking and reporting rules.

TIN Collection

Recently proposed IRS [regulations](#) clarify the steps employers with self-insured health plans must take to collect and report the taxpayer identification number (TIN) of covered individuals. For individuals, the TIN is the social security number. The TIN reporting is intended to allow individuals to determine, and the IRS to verify, the individuals who were covered by minimum essential coverage. An information reporting penalty may be waived if the failure to collect a TIN is not due to willful neglect, and despite acting in a responsible manner the employer was unable to obtain and report the required information. Under the newly proposed regulations, the penalty for failure to timely report a proper TIN may be avoided if an employer takes the following steps:

- The TIN is requested as part of the application for new health coverage or to add an individual to existing coverage;
- If the TIN is not received, the TIN is requested again no later than 75 days after the date the employer received a substantially complete application for coverage (or if coverage is retroactive, no later than 75 days after a determination of retroactive coverage is made); and
- If the TIN is not received as a result of the second solicitation, the TIN is requested a third and final time by December 31 of the year following the year in which the employer received a substantially complete application for coverage.

After taking these steps, there is no further obligation to request the TIN, and the employer reports the covered individual's date of birth in place of the TIN. For the 2016 reporting year, the proposed regulations provide a special rule for individuals already enrolled in coverage. Under this transition rule, July 29, 2016 is used as the initial solicitation date, as long as the TIN was requested as part of the application for health coverage or at any time before July 29, 2016, and the second request is required by October 12, 2016. If the TIN is not received as a result of the second solicitation, the TIN must be requested a third and final time by December 31, 2016. Employers can rely on the guidance of the proposed regulations until final guidance is issued.

The proposed regulations clarify that TIN solicitations made to the responsible individual (generally, the employee under a self-insured plan) would be treated as TIN solicitations of every covered individual on the plan. However, to avoid penalties, a self-insured employer should solicit TINs separately for any individual later added to the plan.

TIN Errors

Many employers received Form 1095 validation error notices from the IRS for 2015 Forms, providing that their information returns contained missing or incorrect TINs. Name/TIN mismatches were a common reason for error messages on Form 1095-C. For example, an employer may have provided the correct TIN for an employee (correct social security number), but an error could have resulted from using the wrong middle initial or no middle initial, or the wrong last name (due to marriage, divorce, etc.). The IRS uses the taxpayer's tax return (Form 1040) to verify the information on the Form 1095-C. But employers do not know how the applicable information is reported on the employee's income tax return and the information may vary from year-to-year. A footnote in the preamble to the recent regulations explains that a Form 1095 validation error for a TIN and name that do not match IRS records is not a penalty notice or an indication that the filer is required to solicit a TIN. However, it is not clear whether failing to re-solicit a TIN after receiving a TIN validation error message would preclude a filer from relying on the reasonable cause penalty

waiver. Hopefully the final 2016 instructions will clarify this issue.

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](#).



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