

News Flash: September 5, 2014 - IRS Releases Draft Pay or Play Information Reporting Form Instructions

On August 28, 2014, the Internal Revenue Service (IRS) released draft instructions for the draft forms to be used by: (1) applicable large employers (ALEs) subject to the Pay or Play requirements; and (2) insurers to report information on health coverage required under the Patient Protection and Affordable Care Act (PPACA). The draft forms were previously reported in the [July 24, 2014 News Flash](#), and general information about the required Information Reporting was reported in the [March 14, 2014 News Flash](#).

In conjunction with the release of these instructions, the IRS also released [Q&As Information Reporting by Health Coverage Providers \(Section 6055\)](#) and [Q&As on Reporting of Offers of Health Insurance Coverage by Employers \(Section 6056\)](#).

Key Points:

- Pay or Play reporting is not required for 2014. The first year that the reporting forms apply to is 2015, and those forms are not due until early 2016.
- All employers report on a calendar year basis, regardless of whether they have calendar or non-calendar year plans. The instructions include directions for non-calendar year plans to indicate those months during which they are not subject to the employer shared responsibility obligation due to the delayed 2015 start that is permitted for non-calendar year plans that meet certain requirements.

Background

As reported in the March 14, 2014 News Flash, final regulations were issued on March 10, 2014, regarding information reporting required under PPACA. The information to be reported and the corresponding draft forms that have been issued are described below.

- Annual reporting under Internal Revenue Code Section 6055 of minimum essential coverage provided by entities to individuals. The draft forms published by the IRS for this purpose are the following:
 - [Form 1094-B: Transmittal of Health Coverage Information Returns](#)
 - [Form 1095-B: Health Coverage](#)
- Annual reporting under Internal Revenue Code Sections 6055 and 6056 of health coverage provided by ALEs under the Pay or Play mandate. The draft forms published by the IRS for this purpose are the following:
 - [Form 1094-C: Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return](#)
 - [Form 1095-C: Employer Provided Health Insurance Offer and Coverage](#)

Reporting Entities Using Forms 1094-B and 1095-B (the “B Forms”)

Overview

The purpose of Form 1095-B is to report certain information to the IRS and to responsible individuals or policy holders (discussed below) about individuals who are covered by minimum essential coverage and therefore, not liable for the individual shared responsibility payment. Basically any person/entity that provides minimum essential coverage to an individual must file a Form 1095-B along with the Form 1094-B transmittal. This means, among other things, that the B Forms are used by insurance companies that provide health insurance coverage, but not by the employers who sponsor those insured plans.

Minimum essential coverage is described as including eligible employer-sponsored plans as well as government-sponsored programs, individual market plans, and miscellaneous coverage designated by the Department of Health and Human Services (HHS). Eligible employer-sponsored plans include:

- A self-insured group health plan for employees; and

- Group health insurance coverage for employees under:
 - A grandfathered insured health plan offered in a group market;
 - An insured plan or coverage offered in the small or large group market within a state; or
 - A governmental plan.

Government-sponsored programs that are minimum essential coverage include, among others, Medicare Part A coverage, most Medicaid coverage, Children’s Health Insurance Program (CHIP) coverage, certain types of veterans health coverage administered by the Veterans Administration, most types of TRICARE coverage provided in connection with military service, coverage provided to Peace Corps volunteers, and the Department of Defense Nonappropriated Fund Health Benefits Program.

Among the miscellaneous coverages specially designated by HHS as minimum essential coverage are self-insured student health plans and state high risk pools (2014 only), Medicare Advantage plans, coverage provided to business owners who are not employees, and coverage provided through foreign government regulated insurance to foreign nationals in the U.S. (i.e., inpatriates) if the covered individual is either physically absent from the U.S. at least one day during the month or the covered individual is physically present in the U.S. for a full month and the coverage provides health benefits within the U.S. while the individual is outside the U.S.

Most entities will be able to use the “B Forms”. The “B Forms” are made up of a transmittal form that goes to the IRS (1094-B) and a return (1095-B) furnished to the IRS (a copy of the return is also provided to the responsible individual or policy holder, which is defined in the discussion of Form 1095-B below). The guidance also refers to this copy as a “statement.”

Which Entities File the “B Forms”?

The following reporting entities are required to use Forms 1094-B and 1095-B:

- Sponsors of self-insured group health plans who are not reporting as ALEs (i.e., not subject to the Pay or Play provisions). These plan sponsors include:
 - Each participating employer (for its own employees) in a plan or arrangement established or maintained by more than one employer;
 - The association, committee, joint board of trustees or similar group of representatives who establish or maintain a multiemployer plan;
 - The employee organization for a plan or arrangement maintained solely by an employee organization; and
 - Each participating employer (for its own employees) for a plan or arrangement maintained by a Multiple Employer Welfare Arrangement (MEWA);

Note: Plan sponsors of self-insured group health plans which are subject to the “Pay or Play” mandate because of their size, will report information about the minimum essential coverage that they provide in Part III of Form 1095-C and will complete the “C Forms”. Such plan sponsors will not use either 1094-B or 1095-B.

- Insurance companies, who file for most health insurance coverage including insured coverage sponsored by employers and individual market coverage, except that Children’s Health Insurance Program (CHIP), Medicaid and Medicare coverages provided through insurers are reported by the government sponsors of those programs.

Note: Individual health insurance policies purchased on one of the exchanges are reported by the exchanges on [Form 1095-A, a draft of which was also just released](#) along with [draft instructions for that form](#); and

- Governmental units that provide minimum essential coverage under a government-sponsored program, including Medicare Part A, Medicaid (except for certain programs), CHIP, most TRICARE military coverage programs, coverage administered by the Department of Veterans Affairs, coverage for Peace Corps volunteers, and the Department of Defense Nonappropriated Fund Health Benefits Program. The state agency administering the Medicaid or CHIP program files the Form 1095-B for that program.

Transmittal Form to the IRS (1094-B)

A Form 1094-B Transmittal of Health Coverage Information Returns accompanies the Forms 1095-B that the reporting entity submits to responsible individuals/policy holders and to the IRS. The return and transmittal forms must be filed with the IRS on or before February 28 each year (March 31 if filed electronically), with the first forms due February 29, 2016 (March 31, 2016 if filed electronically) because February 28, 2016 falls on a Saturday. The forms must be submitted electronically if 250 or more Forms 1095-B are being filed; filers with fewer than 250 returns may file electronically or on paper. All filings are made either at the Austin, Texas or Kansas City, Missouri IRS Centers, depending on the state where the filer’s principal business, office or agency or legal residence (if an individual) is located.

Return Filed with the IRS (1095-B)

The Form 1095-B is made up of four parts:

- **Part I—Responsible Individual (Policy Holder).** This part identifies the responsible individual/policy holder and the origin of the insurance policy (usually employer-sponsored coverage). The responsible individual is the primary insured employee, former employee, parent, uniformed services sponsor or other person enrolling individuals in coverage, but never a business or business owner that is the policy holder for its employees. The responsible individual's full SSN must be provided if available, as compared with use of a truncated SSN when sending a copy of the 1095-B to the responsible individual. If the responsible individual's SSN is not available after reasonable efforts are made to obtain the individual's SSN (i.e., two annual solicitations of this information), then use that person's date of birth.
- **Part II—Employer-Provided Coverage.** This part is intended primarily for insurance companies to use in identifying the employer sponsoring the coverage.
- **Part III—Issuer or Other Coverage Provider.** The provider of the coverage is identified, which includes the issuer or carrier of insured coverage, the sponsor of a self-insured employer plan who is not an employer subject to Pay or Play, and a government agency providing government-sponsored coverage.
- **Part IV—Covered Individuals.** The name, SSN (or date of birth if SSN is not available) and months covered is reported for each covered individual (employee, spouse and dependents).

Copy of Return (1095-B) is Furnished to the Responsible Party

On or before January 31 each year the filing entity must furnish a copy of the Form 1095-B to the person identified as the responsible individual named on the form. The 2016 deadline for sending the copy is February 1, 2016, because January 31, 2016 falls on a Sunday. Filers are allowed to truncate the SSN of the responsible individual on the form, by showing only the last four digits of the SSN and replacing the first five digits with asterisks (*) or Xs.

The copy must be furnished by U.S. mail to the responsible individual's last known permanent address, unless the recipient affirmatively consents to receive the statement electronically. That consent can be obtained on paper or electronically via email, but if the consent is on paper the recipient must confirm the consent electronically. Electronic delivery can be made either by email or by informing the recipient how to access the copy on the filer's website.

Reporting Entities Using Forms 1094-C and 1095-C (the “C Forms”)

Overview

Employers who are subject to Pay or Play (i.e., ALEs with 50 or more full-time employees) use Forms 1094-C and 1095-C to report the information required under Internal Revenue Code Sections 6055 and 6056 about offers of health coverage and enrollment in health coverage for their employees. Form 1095-C is used to report information about each employee, and Form 1094-C is used to transmit the Forms 1095-C to the IRS as well as summarize the reported information about each employer. In addition, these forms are used to determine whether an employer owes the employer shared responsibility penalty, whether an employee owes the individual shared responsibility penalty, and whether an employee is eligible for a premium tax credit.

Note: Employers with 50-99 employees who are exempt from the Pay or Play penalty in 2015 are still required to prepare and file these forms for the 2015 calendar year.

Transmittal Form to the IRS (1094-C)

A Form 1094-C must be attached to any Forms 1095-C filed by an employer. An employer can choose to submit multiple Forms 1094-C (for example, using a separate Form 1094-C for each of the employer’s divisions), but one Form 1094-C must be designated as the Authoritative Transmittal on behalf of the employer. In the Authoritative Transmittal, the employer reports aggregate employer-level data for all full-time employees of the employer (i.e., the employees of both divisions).

The form 1094-C is made up of four parts:

- **Part I—Identification of ALE Member.** This part provides contact information for the employer subject to Pay or Play and indicates the number of Forms 1095-C being submitted.
- **Part II—ALE Member General Information.** Under this part an employer indicates whether one or more special eligibility rules apply in connection with the employer’s compliance with Pay or Play reporting, as follows:
 - **Qualifying Offer Method**—the employer indicates whether it is eligible for and using the Qualifying Offer Method for one or more full-time employees. Under this optional reporting method, the employer certifies that for all months during a year in which an employee was a full-time employee, the employer made a Qualifying Offer of coverage—an offer of minimum essential coverage for an employee that provides minimum value and meets the 9.5% of the single federal poverty level standard for affordability, and also provides minimum essential coverage to the employee’s spouse and dependents (if any). Please note that in order to be eligible for the Qualifying Offer Method the minimum essential coverage provided to an employee’s spouse and dependents does not have to meet minimum value and affordability requirements.

This method provides the employer with an easier approach for reporting the coverage it provided to its full-time employees by avoiding having to report the applicable employee contribution information. If the employer does not qualify for this method or does not want to use this method, the employer can report the dollar amount required as an employee contribution for the lowest-cost employee-only coverage providing minimum value for each month of employee coverage.

- **Qualifying Offer Method Transition Relief**—the employer indicates whether it is eligible for and using this optional special transition relief that is limited to 2015, under which the employer certifies that it made a Qualifying Offer of coverage for one or more months in 2015 to at least 95% of the employer’s full-time employees.

Like the Qualifying Offer Method, this transition relief provides the employer with an easier reporting approach. If the employer does not qualify for this method or does not want to use this method, the employer can report the dollar amount required as an employee contribution for the lowest-cost employee-only coverage providing minimum value for each month of employee coverage.

- **Section 4980H Transition Relief**—this is the box an employer checks if it is relying on one or more of the special transition rules that apply for 2015, as discussed in the [June 23, 2014 Alert: Employer Pay or Play Mandate - Final Regulations Explained](#). Those special transition rules include exemption for employers with 50 to 99 full-time employees, increasing the number of full-time exclusions from 30 to 80 before determining the Pay or Play penalty for employers with 100 or more full-time employees, lowering the full-time employee coverage minimum threshold from 95% to 70% for employers with 100 or more full-time employees, allowing such employers not to offer coverage to dependents, permitting an employer to delay offering health coverage to an employee until the first day of the first payroll period that begins in January 2015, and delaying the effective date of Pay or Play requirements for non-calendar year plans until the start of the plan’s 2015 plan year.
- **98% Offer Method**—the employer checks this box to indicate whether it is eligible for and using the 98% Offer Method. Under this optional reporting method, the employer certifies that for all months of a calendar year the employer offered affordable health coverage providing minimum value to at least 98% of all of its employees (not just the employer’s full-time employees) and their dependents. Although this method does not relieve the employer from having to file Forms 1095-C on behalf of its full-time employees or send copies of those forms to its full-time employees, use of this method allows the employer to avoid having to identify whether a particular employee is full-time or report the total number of its full-time employees each month during the calendar year.

- **Part III—ALE Member Monthly Information.** In this part the employer reports whether it offered minimum essential coverage to 95% of its full-time employees (or whether certain transition relief applies as discussed above), the number of full-time employees for each month, the total number of employees (full-time and non-full-time) for each month (based on whether the employer chooses to make this determination as of the first day or last day of the month), and whether the employer was a member of an Aggregated ALE Group each month (i.e., a controlled group of companies).
- **Part IV—Other ALE Members of Aggregated ALE Group.** If an employer indicated it was a member of an Aggregated ALE Group, it identifies the other members of the group up to 30 members, listing them in descending order starting with the highest average monthly number of full-time employees.

Return Filed with the IRS (1095-C)

An employer who is subject to the Pay or Play requirements must file a Form 1095-C for each employee who was a full-time employee of the employer for any month of the calendar year regardless of whether the employer is providing insured or self-insured coverage for its employees. If the employer provided insured coverage, the employer must fill out only parts I and II of the Form 1095-C—part III does not apply to insured plans. If the employer provided self-insured coverage, the employer must also fill out part III in addition to parts I and II. As previously indicated, an employer who is not subject to the Pay or Play requirements is not required to file Forms 1094-C and 1095-C.

For each full-time employee of an employer, there must be only one Form 1095-C for employment with that employer. If an employee works for two different divisions of the same employer, the employer must combine the information from both divisions into one Form 1095-C. To the extent the employee works for more than one employer that is a member of the same Aggregated ALE Group (i.e., works for two separate ALE Members), each employer must prepare and submit a separate Form 1095-C for that employee.

The three parts of Form 1095-C are summarized below:

- **Part I—Employee and ALE Member.** This part identifies the employee (including SSN) and the employee's employer. The employee's full SSN must be provided, as compared with use of a truncated SSN when sending a copy of the 1095-C to the employee, as discussed below.
- **Part II—Employee Offer and Coverage.** In this part, for each month during the calendar year the employer indicates, among other things:
 - whether the employee was employed and whether employment was full-time;
 - the type of health coverage offered by the employer for each month during the calendar year based on the use of certain codes which vary according to whether coverage was offered;

- who was offered coverage (among the employee, the employee’s spouse and the employee’s dependents);
 - the type of coverage offered (i.e., minimum essential coverage, affordable coverage (including the type of safe harbor being used), and coverage providing minimum value);
 - if the employer did not provide the employee with a Qualifying Offer (as defined above), the employee’s share of the monthly premium for the lowest-cost self-only minimum essential coverage offered to the employee;
 - whether the employee enrolled in the coverage offered;
 - whether the employee was in a “Limited Non-Assessment Period” (such as a waiting period for a new employee or an initial measurement period for a variable employee), and therefore, the employer was not required to offer coverage to the employee; and
 - whether non-calendar year plan transition relief (i.e., delay in application of Pay or Play until the start of the non-calendar year plan’s 2015 plan year) applied to the employee.
- **Part III—Covered Individuals.** As previously noted, this part only applies to employers who offer employer-sponsored self-insured health coverage, and should only be filled out if the employee enrolled in the coverage. It does not apply to coverage under a multiemployer plan.

In this part the employer reports the name and SSN (or birthdate if SSN is not available) of each covered individual enrolled through the employee (generally, employee, spouse and dependents). The employer then indicates each month during the calendar year that the covered individual was covered for at least one day during the month.

Like the Forms 1094-B and 1095-B, Forms 1094-C and 1095-C must be filed with the IRS on or before February 28 each year (March 31 if filed electronically), with the first forms due February 29, 2016 (March 31, 2016 if filed electronically) because February 28, 2016 falls on a Saturday. The forms must be submitted electronically if 250 or more Forms 1095-B are being filed; filers with fewer than 250 returns may file electronically or on paper. All filings are made either at the Austin, Texas or Kansas City, Missouri IRS Centers, depending on the state where the filer’s principal business, office, agency or legal residence (if an individual) is located.

Copy of Return (1095-C) is Furnished to Full-Time Employees

Also like the Forms 1094-B and 1095-B, on or before January 31 each year the filing entity must furnish a copy of the Form 1095-C to the individual identified as the employee on the form, which, like the copy of the Form 1094-B, is also referred to as a “statement.” The 2016 deadline for sending the copy is February 1, 2016, because January 31 falls on a Sunday. Filers are allowed to truncate the SSN of the employee on the form, by showing only the last four digits of the SSN and replacing the first five digits with asterisks (*) or Xs.

In lieu of providing a copy of the Form 1095-C, there is an alternative method available for sending the Form 1095-C information to employees if an employer is eligible for and uses either the Qualifying Offer Method or the 2015 Qualifying Offer Method Transition Relief and checks either of these boxes on the Form 1094-C, as discussed above.

- If the Qualifying Offer Method is used, the employer can furnish each full-time employee a document containing employer information and a statement indicating that for all 12 months of the calendar year the employee and the employee's spouse and dependents, if any, received a Qualifying Offer and therefore, are not eligible for a premium tax credit.
- If the 2015 Qualifying Offer Method Transition Relief is used, the employer can furnish each employee who does not receive a Qualifying Offer for all 12 calendar months a document containing employer information and a statement indicating that the employee and the employee's spouse and dependents, if any, may be eligible for a premium tax credit for one or more months in 2015.

Regardless of which method is used—a copy of the Form 1095-C or the alternative document described above—the information must be furnished by U.S. mail to the individual's last known permanent address, unless the recipient affirmatively consents to receive the information electronically. That consent can be obtained on paper or electronically via email, but if the consent is on paper the recipient must confirm the consent electronically. Electronic delivery can be made either by email or by informing the recipient how to access the information on the filer's website.

Reporting Penalties

Under Internal Revenue Code Sections 6721 and 6722, failure to comply with these reporting requirements is subject to penalties for failure to file an information return or failure to furnish the required statements (i.e., copies of Form 1095-B or Form 1095-C, as applicable) to employees. The penalties apply not only when the forms or statements are not sent or are sent late, but also if the forms or statements are incomplete or incorrect, including when modifications are required as a result of a change in circumstances (like a retroactive change in coverage). The penalty for noncompliance is \$100 for each return or statement up to \$1,500,000 per calendar year (less if the employer has gross receipts of \$5,000,000 or less), subject to reduction for correction within a certain time period.

The IRS indicated that it will not impose penalties in 2016 on ALEs for 2015 returns and statements that contain incorrect or incomplete information, provided the ALE can show that it made a good faith effort to comply with the information reporting requirements. This temporary penalty relief does not apply to an ALE who fails to timely meet the reporting requirements, but the employer may still be eligible for penalty relief if the employer can show that its failure was due to reasonable cause (and not reasonable neglect) under the standard provided by Internal Revenue Code Section 6724.

Conclusion

As previously reported, the IRS is continuing to request comments on the reporting forms, including the instructions and the processes and procedures they describe. Since the IRS forms and instructions have been issued in draft form, changes are likely, and while this is an important compliance requirement, the processes and procedures for filing these forms as well as the forms themselves may change before the first quarter of 2016.

Like the PPACA law that they implement, the reporting forms and instructions are complex and cumbersome. For this reason, it is recommended that the lengthy period of time remaining before the first filings are due be used to become familiar with these forms and instructions and gather the information necessary to complete and timely send the forms to the IRS and participants.

Willis' National Legal & Research Group will continue to review and provide timely updates on these and other related changes in Health Care Reform that affect employers.

The information in this publication is not intended as legal or tax advice and has been prepared solely for informational purposes. You may wish to consult your attorney or tax adviser regarding issues raised in this publication.