



Eye On Washington Health Care Reform Update



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IRS Releases Draft of 2017 Instructions for ACA Reporting Forms

On August 30, 2017, the Internal Revenue Service (IRS) published its draft of 2017 Instructions for Forms 1094-C and 1095-C. The draft 2017 Forms 1094-C and 1095-C were previously released on August 28, 2017.

Background

Internal Revenue Code (IRC) Section 6056 under the Affordable Care Act (ACA) requires Applicable Large Employers (ALEs) to report to the IRS whether they offer their full-time employees and their employees' qualified dependents the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan. An ALE is an employer that employed (any combination of workers within a controlled group) an average of at least 50 full-time employees (including full-time equivalent employees) during the preceding calendar year. Employees are considered full-time in any month that they are credited with at least 30 hours of service per week, on average, or 130 hours of service in the month.

Form 1094-C is the transmittal report which accompanies and summarizes information from Forms 1095-C. A Form 1095-C is filed for each employee, who was full-time for one or more months during the calendar year and includes details of any health care coverage offered to the employee, reported on a monthly basis. For self-insured plans, Form 1095-C must also be provided to any individuals who enrolled in qualified coverage, which may include non-full-time employees and any covered spouses and dependents. (One Form 1095-C may be furnished to the employee; i.e., it is not necessary to provide a form to each covered spouse/dependent.) Generally, Forms 1095-C must be furnished to employees by January 31 for coverage offered the

previous calendar year, and must be filed with the IRS by February 28 if filed on paper and by March 31 if filed electronically. Electronic filing is required for parties filing 250 or more forms. For calendar year 2017, Forms 1094-C and 1095-C are required to be filed by February 28, 2018, or April 2, 2018, if filing electronically.

Highlights from the 2017 Instructions for Forms 1094-C and 1095-C

- Deletes all references to the Section 4980H transition relief for 2015-2016 plan years.
- States that Forms 1095-C filed with incorrect dollar amounts on Line 15 (the employee required contribution), may fall under the *de minimis* error safe harbor, which generally applies if no single amount in error differs from the correct amount by more than \$100. If the safe harbor applies, the ALE member is not required to correct the Form 1095-C to avoid penalties. However, if the recipient elects for the safe harbor not to apply, the ALE member may have to issue a corrected Form to avoid penalties. Note: While this appears to be welcome relief to employers, there are several outstanding questions regarding the application of the *de minimis* error safe harbor as it applies to Line 15 and in general. Notice 2017-09 (January 23, 2017) stated that the IRS will issue further regulations to implement the *de minimis* error safe harbor, including details as to how employers should



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notify employees regarding the *de minimis* error safe harbor and their right to elect to receive a corrected statement (i.e., Form 1095-C). Employers should consider waiting for this additional IRS guidance before relying on the *de minimis* error safe harbor for corrections to Form 1095-C Line 15 amounts.

- Directs ALE members to the IRS ACA Tax Provisions Questions and Answers website for additional information, including examples, about reporting offers of COBRA coverage and post-employment coverage.
- Clarifies that there is no specific code to enter on Line 16 to indicate that a full-time employee offered coverage either did not enroll in the coverage or

waived coverage. (This is not a change, but is a common point of confusion. Forms 1095-C are intended to report on offers of coverage, not whether such coverage was accepted or waived.)

- “Plan Start Month” continues to be optional for 2017 (as in 2016), but may be required for 2018 reporting.
- Multiemployer interim rule relief and reporting remains in effect for tax year 2017 reporting for ALEs with multiemployer (e.g., union-sponsored) plans. This may change for 2018 reporting.

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