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IRS Releases Final Forms and Instructions for Affordable Care Act Reporting

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In February 2015, the IRS released final forms and instructions related to information reporting under the Affordable Care Act (the "ACA"). These forms include Form 1095-B, *Health Coverage*, Form 1094-B, *Transmittal of Health Coverage Information Returns*, Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, and Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage*.

The issuance of the final forms is a critical step in implementing the ACA's reporting requirements, which enable the government to track compliance with the individual and employer mandates, and to determine eligibility for premium tax credits used to purchase health insurance coverage through a Health Insurance Marketplace (the "Marketplace"). Although these forms are not required to be provided to employees and filed with the IRS until early 2016, the reporting requirements are complex and require reporting detailed coverage and employment information for the 2015 calendar year. In preparation for these rapidly-approaching deadlines, employers should consider taking the following steps as soon as possible:

- review the forms and instructions to become familiar with the reporting requirements;
- identify where the required data is collected and stored in their financial and information systems;
- develop systems to collect any data that is not currently captured in existing systems and aggregate this data to prepare the required forms;
- coordinate with health plan insurers or third-party administrators and payroll providers, and examine whether assistance is needed from an outside vendor; and
- consult with legal counsel.

Background

The ACA added Sections 6055 and 6056 to the Internal Revenue Code (the "Code"). These new sections require employers, plans, and health insurance issuers to report health coverage information to the IRS and to participants annually. The Section 6055 reporting requirements apply to insurers, employers that sponsor self-insured group health plans, and other entities that provide minimum essential coverage (such as multiemployer plans). The Section 6056 reporting requirements apply to "applicable large employers" or "ALEs" (generally, employers with 50 or more full-time employees) and require reporting of health care coverage provided to the employer's full-time employees.

Reporting under Sections 6055 and 6056 will be conducted on one or both of two sets of forms – the "B Forms" (Forms 1094-B and 1095-B) and the "C Forms" (Forms 1094-C and 1095-C). Each set of forms includes a transmittal form (Forms 1094-B and 1094-C), which serves as a cover page and provides aggregate information, and an individualized form (Forms 1095-B and 1095-C) for each employee for whom the employer is required to report. The B Forms are used to report whether individuals are covered by minimum essential coverage and, therefore, are not liable for the individual shared responsibility payment. The C Forms are used to report information about offers of health coverage and enrollment in health coverage for employees, to determine whether an employer owes an employer shared responsibility payment, and to determine the eligibility of employees for the premium tax credit.

The forms that must be filed and distributed depend on whether the employer is an ALE and the type of coverage provided. The following chart summarizes the filing and distribution requirements for the relevant reporting entities:

	Self-Insured Plan	
Non-ALE	Forms 1094-B and 1095-B	Not required
ALE	Forms 1094-C and 1095-C for employees Either Forms 1094-B and 1095-B or Forms 1094-C and 1095-C for non-employees	Forms 1094- completed)

Insurance Provider	Not applicable	Forms 1094-

Also included in the group of new tax forms for ACA reporting is Form 1095-A. Form 1095-A is provided by the Marketplace to individuals who receive coverage through the Marketplace. Although Forms 1095-B and 1095-C are not required in 2015 (for 2014 coverage), some tax preparers are asking individuals for Forms 1095-B and 1095-C, who are then asking employers for these forms. These forms are not required to prepare an individual's tax return for 2014. If the individual had Marketplace coverage in 2014, he or she will receive a Form 1095-A from the Marketplace that can be used to reconcile premium tax credits.

A general overview of the C Forms and the technical reporting requirements and a discussion of notable changes to the final instructions for these forms are provided below.

Forms and Instructions

The IRS issued initial drafts of the B Forms and C Forms on July 24, 2014, and draft instructions for these forms on August 28, 2014. Frequently Asked Questions (FAQs) and revised draft forms followed. Reporting entities and their advisors and service providers quickly concluded that compliance with the reporting requirements would be difficult and significant resources would need to be dedicated to the reporting process, especially in the implementation phase. Numerous comments to the draft forms and instructions were sent to the IRS for consideration. The final set of forms are nearly identical to earlier drafts, quashing hopes of simpler reporting requirements, although changes in the final instructions answered some questions and clarified certain requirements.

The final forms and related instructions are technically for the 2014 calendar year (reporting is voluntary for 2014), but instructions addressing transition relief that is available for the 2015 calendar year suggest that the IRS intends to use these forms and instructions for 2015. Final forms and instructions for reporting 2015 coverage will be provided by the IRS later this year. The IRS has stated informally that it expects to release FAQs that will answer additional questions on the reporting requirements, although a publishing date has not been determined.

Reporting entities must file the returns and transmittal forms with the IRS by February 28 of the year following the calendar year of coverage (March 31 if filing electronically) and provide the returns to individuals by January 31. Reporting entities filing 250 or more information returns (Form 1095-B or 1095-C) are required to file the returns and transmittal forms electronically. The IRS will grant short-term relief from accuracy-related penalties for reports filed and furnished in 2016 (for 2015 coverage) if the reporting entity can show a good faith effort to comply with the reporting requirements and the reports are timely filed and furnished, although the reasonable cause standard applies for those that fail to meet the timeliness requirement.

We anticipate that many challenges will arise in the implementation of the reporting requirements for employers that are members of a controlled group, employers that intend to use third parties to prepare and file reports on their behalf, and employers that contribute to multiemployer plans (read here "*Contributing Employers to Multiemployer Plans Are Not Off the Hook - Tracking the Full-Time Status of Employees*" on Proskauer's ERISA Practice Center Blog, Nov. 11, 2014). The instructions make clear that each employer is responsible for satisfying its reporting obligation, regardless of its use of third parties to assist with the reporting process.

More Information on Forms 1094-C and 1095-C

As noted above, the C Forms consist of a transmittal form and an individualized form. Form 1094-C is the transmittal form, and provides a summary of aggregate, employer-level data to the IRS. For ALEs that are members of a controlled group, separate transmittal forms must be filed for each ALE member that is required to report. Separate transmittal forms for one ALE member may also be filed for different employee groups (*e.g.*, union employees, non-union employees, salaried employees, hourly employees, etc.). However, if there are multiple transmittal forms for ALE employee groups, one form must be designated as the "authoritative" form for the ALE member, which will include aggregate information for the ALE member. Non-authoritative transmittal forms need to include only employer information and the number of individual forms being submitted with that transmittal. Much more information is required in the authoritative transmittal form for an ALE member, including:

- employer information and information on the ALE member's controlled group;

whether the employer is using simplified reporting methods (discussed below) or transition relief for 2015 from the employer mandate under Code Section 4980H;

- information about whether an offer of coverage was made to 70% of full-time employees and their dependents (95% beginning for 2016 coverage);
- total number of Forms 1095-C issued to employees;
- full-time employee count by month; and
- total employee count by month.

Form 1095-C is the individual, employee-specific return to be filed with the IRS and distributed to employees. This form reports information about the employer's offer of, and the employee's enrollment in, coverage. The operative portion of Form 1095-C is Part II, which requires employers to insert specified codes describing the type of offer, if any, made to an employee, and other information about the coverage. To complete Part II, employers will need the following information for each month:

- whether the employee was a full-time employee;
- whether the employee received an offer of minimum essential coverage providing minimum value, and whether that offer was also extended to his or her spouse and/or dependents, if any;
- whether the individual enrolled in the coverage;
- the employee's share of the monthly premium for lowest-cost self-only minimum value coverage;
- the affordability safe harbor used by the employer; and
- whether other relief from the employer mandate applies for an employee.

Note that if the employer sponsors a self-insured plan, Part III of Form 1095-C must be completed to report information that would otherwise be reported on the B Forms. As this information must be reported for all covered individuals, employers sponsoring self-insured plans must complete the C Forms for enrolled part-time employees as well as for full-time employees.

A significant portion of the instructions relate to the requirements for employers to use simplified reporting methods. The benefits of these simplified reporting methods, however, are limited given the detail and complexity of the reporting requirements. By way of summary, these simplified reporting methods include the following alternative methods and transition relief:

- *Qualifying Offer Method*. This reporting method allows for simplified reporting for employees who receive a qualifying offer (generally, an offer of minimum value coverage that costs no more than 9.5% of the single individual federal poverty line and includes an offer to the employee's spouse and children). If the qualified offer method applies for the full year, employers are not required to report the cost of coverage on Form 1095-C. Also, employers may provide an alternative statement in lieu of Form 1095-C if the employee receives a qualifying offer for the entire calendar year and is not covered under a self-insured plan. The alternative statement, however, is of limited use for employers sponsoring self-insured plans as the employer must still file the Form 1095-C to report coverage information (which would otherwise be reported on the B Forms) to the IRS.
- *2015 Qualifying Offer Method Transition Relief*. For 2015, employers making a qualifying offer to 95% of their full-time employees for one or more months may use the alternative statement method for all employees.
- *98% Offer Method*. Employers that offer affordable, minimum value coverage to at least 98% of the employees (and their dependents) for whom it is required to report on the C Forms may certify the offer to such percentage without identifying which employees are full-time. This allows employers to report on an employee without identifying the employee's full-time or part-time status. Employers must still file the Form 1095-C with the IRS and furnish it to employees.

Updates to Final Instructions

As noted above, the final instructions for the forms are substantially similar to the draft instructions, although a few notable changes and clarifications were made. These include the following:

Employees in Limited Non-Assessment Period. The final instructions clarified that an employer is not required to file a Form 1095-C for an individual who, for each month of a calendar year, is not a full-time employee of the employer or is an employee in a limited non-assessment period. The instructions note that the employee is still included in the total employee count reported on Form 1094-C for any month that the employee was employed. Also, if the employee actually enrolled in coverage under a self-insured plan during the limited non-assessment period, the employer must file a Form 1095-C for the employee in order to report coverage information for the year.

- *Reporting Enrollment for Non-Employees*. If an employer has enrollees in its self-insured plan who are classified as non-employees for the full year, the employer may use Form 1094-C and Part III of Form 1095-C, rather than the B Forms, to report coverage for those individuals and other family members. (Employers choosing to report on the C Forms must still complete Parts I and II of Form 1095-C for non-employees.) These non-employees may include non-employee directors, retirees after the year of retirement, former employees on COBRA after the year of termination, and non-employee COBRA beneficiaries. Employers will want to determine which reporting alternative they will use to file and distribute reports for non-employees and consider this decision in their preparations.
- *Aggregated Applicable Large Employer Groups*. If a full-time employee works for more than one employer member of an aggregated ALE group during a month, only one member of the group is treated as the employer and that member reports for that employee for that month. The other employer member is not required to report for that employee for that month. The employee is treated as an employee of the employer for whom the employee worked the greatest number of hours for that month. Employer members of aggregated groups must coordinate which employer will report for an employee who works for more than one member of the group in the same month. As the reporting employer is determined on a monthly basis, employees may receive multiple Forms 1095-C for a year.

Offer of Spousal Coverage. For reporting purposes, an offer to a spouse includes an offer that is subject to a reasonable, objective condition, regardless of whether the spouse meets the condition. For example, an offer of coverage available to a spouse only if the spouse certifies that the spouse does not have access to health coverage from another employer is treated as an offer of coverage to the spouse for reporting purposes.

- *Total Employee Count*. As noted above, employers must report their total number of employees on Form 1094-C, including full-time employees, part-time employees, and employees in a limited non-assessment period. Employers must count the number of employees on the first day or last day of the month, on the first day of the first payroll period that starts during the month, or on the last day of the first payroll period that starts during the month as long as the last day falls within the same month that the payroll period starts.
- *Employee Offer of Coverage*. An employer reports offering health coverage for a month on Form 1095-C only if the employer offers coverage for every day of that month. But, if an employee terminates employment and the coverage offer ends before the last day of the month of termination, the employer is treated as having offered the coverage for the full month if the employee would have been eligible had he or she remained employed the whole month.

More to Come?

With the release of the final forms and instructions, employers and reporting entities should undertake preparations to meet the reporting requirements early next year. We anticipate that many questions will come up as reporting requirements are analyzed, data is gathered, and reports are prepared. Some examples of items that require clarification include:

- reporting for COBRA coverage;
- the use of third parties to prepare forms. For example, the current forms do not include a place for a third-party preparer to sign the form; and

information-sharing between entities in the multiemployer plan context. For example, collective bargaining agreements may prevent the exchange of information between the plan and the employer that is required to complete the forms.

Although some questions may be answered by the IRS in the form of FAQs and, possibly, through updated instructions for the 2015 calendar year, it appears that the final forms and instructions for 2014 will provide the bulk of the guidance on reporting requirements.

This information is intended to provide an overview of the ACA reporting requirements. If you have questions on the information described in this client alert, please contact one of the lawyers listed at left.