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SUMMARY OF IRS DRAFT 2016 FORMS 1095-C AND 1095-B AND INSTRUCTIONS

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On August 2, the Internal Revenue Service (IRS) released [draft instructions](#) for completing forms [1094-C](#) and [1095-C](#). The IRS previously released revised draft Forms 1094-C and 1095-C on July 7.

These forms will be used to fulfill the requirements specified in final regulations under Code sections 6055 and 6056 implementing the reporting of offers and coverage information of employer-provided minimum essential coverage (MEC). Under Code Section 6055, providers of MEC, including employers with self-insured plans, must file a return with the IRS and furnish a statement to covered individuals that reports the months of coverage. Under Code Section 6056, every [applicable large employer](#) member (ALEM – generally, an employer that, together with other employers in its controlled group, employed on average at least 50 full-time employees or equivalents) must file a return with the IRS and furnish a statement to full-time employees that reports the terms and conditions of the health care coverage offered to the employer's full-time employees during the year. ALEMs that sponsor self-insured plans report information under both Code Sections 6055 and 6056 on the Forms 1094-C and 1095-C.

Draft instructions have not yet been issued for the related forms 1094-B and 1095-B, which are used by providers of MEC that are not ALEMs to fulfill the requirement under Code Section 6055. The IRS did, however, release revised draft Forms 1094-B and 1095-B on June 22, 2016.

Compared to the current forms for 2015 calendar year reporting, the draft 2016 forms include a number of noteworthy elements and changes.

For the purposes of reviewing these instructions, an “ALE Member” is any person that is an applicable large employer or a member of an aggregated group that is determined to be an applicable large employer. An “authoritative transmittal” is a completed form that contains all aggregated ALE Group information.

DRAFT INSTRUCTIONS TO THE FORM 1094-C

- The draft instructions repeatedly state that each ALE should only file one Authoritative Transmittal and adds examples regarding the Authoritative Transmittal. The instructions also clarify that no Authoritative Transmittal should be filed for an Aggregated ALE Group.
- The draft instructions add the following item to the list of examples of errors to the Authoritative Transmittal that require the ALE Member to file a corrected Authoritative Transmittal: “An error in the name and/or [employer identification number (EIN)] of the other ALE Members in the Aggregated ALE Group.”
- There was some uncertainty under the existing instructions regarding whether an ALE Member that uses Code 1A on Line 14 for the Qualifying Offer Method (a simplified reporting method that an employer can use when it, among other things, offers coverage to the employee that is affordable based on the federal poverty line) was also required to enter a code on Line 16. The draft instructions clarify that an ALE Member may – but is *not* required to – enter an applicable code on Line 16 for any month in which it enters Code 1A on Line 14. The draft instructions also state that a Qualifying Offer, by definition, is treated as an offer that falls within an affordability safe harbor even if no code is entered on Line 16.
- The draft instructions clarify that for 2016 calendar year reporting, certain 2015 Section 4980H Transition Relief (relief for employers with 50-99 full-time and full-time equivalent employees, relief for employer with 100 or more full-time and full-time equivalent employees, relief that decreases the 95 percent offer threshold to 70 percent and relief for offering dependents coverage) only applies if the ALE Member offers coverage under a non-calendar year plan and only for the months in 2016 that fall within the 2015 plan year. If any ALE Member or different members in an Aggregated ALE Group offer coverage under more than one health plan with different plan years, the draft instructions provide that the transition relief applies to all members of the Aggregated ALE Group through the last day of the latest of those plan years.
- For purposes of the full-time employee count, the draft instruction state that an ALE Member should count an employee as full-time for a month if he/she satisfied the definition of a full-time employee under the monthly measurement

method (if applicable). If the employer uses the look back method, the ALE Member should count the employee as full-time if he/she is in a stability period during which he/she should be treated as full-time regardless of his/her actual hours that month. The draft instructions make clear that an ALE Member should use the 4980H definition of full-time and not the definition that the employer uses for other purposes.

- Per the draft instructions, an ALE Member should not list itself as a member of the Aggregated ALE Group on Form 1094-C, Part IV (which is titled, “Other ALE Members of Aggregated ALE Group”).

DRAFT INSTRUCTIONS TO FORM 1095-C

- The draft instructions clarify that an ALE Member should not use Code 1G for any full-time employee.
- The draft instructions remove “Premium Amount” from the list of examples of errors to the Qualifying Offer Method alternative statement that requires the ALE Member to submit a corrected Form 1095-C to the IRS and furnish a corrected statement to the employee.
- Per the draft instructions, it remains optional whether a reporting entity lists a “Plan Start Month” (however, the draft instructions indicate this will be a mandatory requirement for 2017 calendar year reporting).
- The draft instructions state that the ALE Member should not leave Line 14 blank for any month, even if the person was not an employee of the ALE Member for that month. If an employee works for more than one ALE Member in a month, and only one ALE Member is treated as the employer for that month for reporting purposes because the employee worked the greatest number of hours for that ALE Member, the other ALE Member is not required to report for that employee for that month unless it is otherwise required to file a Form 1095-C for that employee because he/she was a full-time employee of that ALE Member for another month in the year. In that case, the draft instructions provide that the ALE Member may treat the individual as not employed by the ALE member for that month by using Codes 1H and 2A.
- In a positive development for employers with collectively bargained populations, the multiemployer arrangement interim relief reporting that applied for the 2015 reporting year remains in effect for 2016 (i.e., the ALE member uses codes 1H/2E regardless of whether the employee was actually offered coverage under the multiemployer plan).

- The draft instructions add codes 1J and 1K for a “conditional offer of spousal coverage,” 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. But, to help employees/spouses who have received such an offer determine their eligibility for a premium tax credit, the employer should be prepared to provide, upon request, a list of any and all applicable conditions.
- An ALE member may not report a conditional offer of coverage to a dependent as an offer unless it knows that the dependent meets the condition to be eligible for coverage. Also, per the draft instructions, an offer of coverage is treated as made to the employee’s dependents only if the offer is made to an unlimited number of dependents regardless of the actual number of dependents the employee has.
- With respect to reporting offers of COBRA coverage for employees who remained employed by the ALE Member, the draft instructions state that an ALE Member should report an offer only for an individual who receives an offer of COBRA coverage. There is a note that states that an ALE Member is treated as having made an offer of coverage to the employee’s dependents for an entire plan year if the ALE Member provided the employee an effective opportunity to enroll the dependents at least once for the plan year, even if the employee declined to enroll the dependents in the coverage and, as a result, the dependents did not receive an offer of COBRA coverage. However, a subsequent example in the draft instructions seems to indicate the exact opposite and states that the ALE Member does *not* report an offer of coverage to such dependents for the COBRA months. Hopefully the final instructions will be clarified in this regards.
- The draft instructions provide that an offer of post-employment coverage that is not COBRA coverage made to a former employee (or to his/her spouse/dependents), such as a retiree, should not be reported as an offer of coverage. If the ALE Member is otherwise required to file Form 1095-C for the person (e.g., because the person was full-time for at least one month of the year), the ALE Member should enter code 1H (no offer) for any month to which the offer of post-employment coverage applies and enter 2A (employee not employed) on Line 16, even if the person enrolled in coverage.
- The draft instructions state that references to 9.5 percent for affordability purposes are applied based on the indexed amount (e.g., 9.66 percent for plan years beginning in 2016).

- Regarding Part III of the Form 1095-C, the draft instructions provide that if the employee enrolled in the employer’s self-insured plan, the ALE Member should list the employee on Line 17 and the other enrolled family members on subsequent lines.
- The draft instructions add a definition of “Employee Required Contribution” and clarify that this is the portion of the monthly cost that would be paid by the employee for self-only coverage, whether paid through salary reduction or otherwise. The draft instructions reference the Code Section 5000A minimum essential coverage and Code Section 36B premium tax credit regulations and Notice 2015-87 for rules regarding HRA contributions, cafeteria plan contributions, wellness program incentives, and opt-out payments.
- Per the draft instructions, if an ALE Member makes an offer of coverage if it provides the employee an effective opportunity to enroll at least once per plan year. For this purpose, the plan year must be 12 consecutive months unless a shorter plan year is permitted for a valid business purpose.

Regarding the Draft Instructions to BOTH Forms 1094-C and 1095-C

- The draft instructions to both forms clarify that each ALE Member must file its own Forms under its own EIN, even if it is part of an Aggregated ALE Group.
- The draft instructions remove references to the Qualifying Offer Method Transition Relief for 2015.
- Per the draft instructions, the ALE Member’s contact person on the Form 1094-C may be different than the contact information on the Form 1095-C.
- The draft instructions to the Forms make clear there is a difference in the definition of limited non-assessment period (LNAP) for purposes of reporting (1) whether the employer offered coverage to at least 95% of its full-time employees on the Form 1094-C and (2) the Code on Line 16 on the Form 1095-C. This is because the Form 1094-C deals with the 4980H(a) penalty while the Form 1095-C deals with the 4980H(b) penalty. For purposes of the 4980H(a) penalty and Form 1094-C, the coverage the ALE Member offered at the end of the LNAP did not have to be affordable or provide minimum value; however, for purpose of the 4980H(b) penalty and the Form 1095-C, for certain LNAPs, the coverage the ALE Member offered at the end of the LNAP must have been affordable and provided minimum value. Thus, an employee could be in a LNAP for purposes of the Form 1094-C but not the Form 1095-C.