

# Legislative Brief

## HCR - ACA Reporting

November 2016

### IRS Extends ACA Reporting Deadlines and Good Faith Relief

#### SUMMARY:

- The IRS just released [Notice 2016-70](#), which extends the deadline for furnishing statements to employees (i.e., 2016 Forms 1095-C and 1095-B) from Jan 31, 2017 to **March 2, 2017**. The filing deadlines to the IRS remain unchanged (i.e., deadlines remain Feb. 28 for paper filing and Mar. 31 for electronic filing).
- The IRS has also extended the 2015 “good faith effort” transition relief for inaccurate information on forms to the 2016 calendar year. The good faith effort relief applies only to furnishing or filing incorrect or incomplete information reported on a statement or return; it is not applicable to a failure to timely furnish or file a statement or return.
- The final 2016 ACA reporting forms, issued late September, have some minor changes, including the addition of two new “Offer of Coverage” codes for use on Form 1095-C and the instructions have some noted clarifications.

#### BACKGROUND

The Affordable Care Act (ACA) created reporting requirements under Code Sections 6055 and 6056. Under these rules, certain employers must provide information to the IRS about the health plan coverage they offer (or do not offer) or provide to their employees. Each reporting entity must annually file all of the following with the IRS:

- A separate **statement** (Form 1095-B or Form 1095-C) for each individual who is provided with minimum essential coverage (for providers reporting under Section 6055), or for each full-time employee (for applicable large employers (ALEs) reporting under Section 6056); and
- A **transmittal form** (Form 1094-B or Form 1094-C) for all of the returns filed for a given calendar year.

Forms must be filed with the IRS no later than February 28 (March 31, if filed electronically) of the year following the calendar year to which the return relates.

Entities must also furnish related statements (Forms 1095-B or 1095-C, or a substitute form) to individuals.

#### EXTENSION OF DEADLINES AND GOOD FAITH EFFORT TRANSITION RELIEF

**The deadline for furnishing statements to individuals has been extended 30 days from Jan. 31, 2017 to Mar. 2, 2017.** In view of this automatic extension, the provisions allowing the IRS to grant extensions up to 30 days will not apply to this extended due date.

**The deadline for filing forms with the IRS for the 2016 calendar year remains unchanged:**

- If filing via paper—forms are due no later than Feb. 28, 2017.
- If filing electronically—forms are due no later than Mar. 31, 2017.

Notice 2016-70 does not affect provisions regarding automatic extensions for filing returns with the IRS so this extension remains available by submitting a Form 8809.

#### Good Faith Effort Relief Extended

The IRS recognized that the challenges involved in creating new systems and procedures for accurately collecting and reporting the information required under ACA reporting, thus transitional relief was provided for good faith efforts to comply with reporting requirements in 2015. Upon further consideration, the IRS has extended this relief so it is applicable for ACA reporting for the calendar year 2016.

- No relief is provided in the case of an employer or issuer that does not make a good faith effort to comply with reporting requirements or that fail to file an information return or furnish a statement by the due dates (as extended).
- In determining good faith, the IRS will look at whether reasonable efforts were made (e.g., examine the efforts made to gather and transmit necessary data to a third party to prepare the data for submission to the IRS or testing of its ability to transmit information to the IRS) and will also take into account the steps being taken to ensure compliance with the reporting requirements for 2017.
- The IRS does not foresee further extension of good faith effort relief for calendar year 2017.

### Effect on Individual Taxpayers

Notice 2016-70 confirms that individuals will not need to provide the IRS with a copy of Form 1095 with their tax returns, but it is still recommended that copies of these forms are kept with tax records. The Notice also clarifies that individuals do not need to wait until they receive a copy of their Form 1095 before filing 2016 individual tax returns, but rather may rely on other information received from their employers or other coverage providers.

### KEY CHANGES TO THE 2016 1094/1095 FORMS

The 2016 forms and instructions are largely unchanged from 2015 versions.

- Forms [1094-B](#) and [1095-B](#) (and related [instructions](#)) are used by entities reporting under Section 6055, including self-insured plan sponsors that are not ALEs.
- Forms [1094-C](#) and [1095-C](#) (and related [instructions](#)) are used by applicable large employers (ALEs to report under Section 6056, as well as for combined Section 6055 and 6056 reporting by ALEs who sponsor self-insured plans.

Most of the changes were made to provide additional clarification, rather than make substantive revisions. However, note the following items:

- ⇒ [Waivers from Electronic Filing](#). The **2016 instructions expanded timing to file a waiver from electronic filing** by stating reporting entities are encouraged to file Form 8508 requesting a waiver at least 45 days before the due date of the return, but no later than the return's due date. The instructions also note that the IRS does not process waiver requests until January 1 of the calendar year that the returns are due. The 2015 instructions required waiver requests to be filed at least 45 days before the due date of the return.
- ⇒ [Reporting Penalties](#). The 2016 instructions include adjusted penalty amounts for failures to file returns and furnish statements. The adjusted penalty amount is **\$260 per violation**, with an **annual maximum of \$3,193,000.00**. Penalty amounts can be increased or decreased, depending on the situation. Lower annual maximums continue to apply for small businesses.
- ⇒ [Taxpayer Identification Number \(TIN\)](#). Both Form 1095-B and Form 1095-C clarified that employers may report a Taxpayer Identification Number (TIN) instead of a Social Security number (SSN) for any covered individuals (except for employees listed in Part I of Form 1095-C).

### 2016 Final Forms 1094-C/1095-C and Instructions

The following changes were made to Form 1094-C:

- On Line 22, Box B is designated as "Reserved." For 2015, this box was used to indicate eligibility for the Qualifying Offer Method Transition Relief. This relief is not applicable for 2016.
- The language "Section 4980H" was inserted before "Full-Time Employee Count for ALE Member" in Part III, Column (b) to remind reporting entities that the Section 4980H definition of "full-time employee" applies for purposes of this column, not any other definition that an ALE may use for other purposes. The instructions contain clarification and an example illustrating this point.

**The following changes were made to Form 1095-C:**

- New Codes 1J and 1K have been added for use on Line 14. The instructions contain information on using these codes:
  - Code 1J can be used if: (1) minimum essential coverage providing minimum value was offered to the employee; (2) minimum essential coverage was conditionally offered to the employee’s spouse; and (3) minimum essential coverage was not offered to the employee’s dependent(s).
  - Code 1K can be used if: (1) minimum essential coverage providing minimum value was offered to the employee; (2) minimum essential coverage was conditionally offered to the employee’s spouse; and (3) minimum essential coverage was offered to the employee’s dependent(s).
- The heading on Line 15 was revised to read “Employee Required Contribution (see instructions).” The instructions include a new definition of this term, as described below, which is intended to clarify the amount to be entered on this line.
- The 2015 Form 1095-C included a “Plan Start Month” box, which was optional for 2015, but was expected to be required for 2016 and beyond. The 2016 Form 1095-C provides that the “Plan Start Month” box will remain optional for 2016, but is expected to be mandatory for 2017.
- Language regarding Part III, *Covered Individuals*, has been added to clarify that employers should enter information for all individuals enrolled in the self-insured coverage, including the employee.
- Codes 1I and 2I are no longer applicable and have been reserved.
- The language “Do not attach to your tax return. Keep for your records.” was inserted under the title of the form to inform the recipient that Form 1095-C should not be submitted with the return.
- The 2016 Form 1095-C noted that the affordability percentage for employer-sponsored coverage is adjusted each year. Initially set at 9.5 percent, the affordability percentage increased to 9.56 percent for 2015 plan years, and 9.66 percent for 2016 plan years. For more information, visit [www.IRS.gov](http://www.IRS.gov).

**The instructions for Forms 1094-C and 1095-C also contain the following clarifications or revisions:**

- ⇒ **Transition Relief.** Several forms of transition relief were available to ALEs for 2015 under Sections 4980H and 6056, but only limited transition relief continues to apply in 2016. References to transition relief that applied only in calendar year 2015 have been removed. Descriptions of the remaining forms of transition relief have been amended to clarify for which months in 2016 the transition relief applies.
- ⇒ **Aggregated ALE Groups.** The instructions contain additional information on filing by ALEs that are part of an Aggregated ALE Group, including clarification that each member of the group must file regarding its own full-time employees. The instructions also include information and an example on filing related to employees who work for more than one member of an Aggregated ALE Group.
- ⇒ **Authoritative Transmittal.** ALEs must designate one Form 1094-C as the Authoritative Transmittal. The instructions include information and examples on the Authoritative Transmittal requirements.
- ⇒ **Qualifying Offer Method.** The instructions clarify that ALEs using the Qualifying Offer Method may, but are not required to, enter a safe harbor code on Line 16 when Code 1A is entered on Line 14. **A Qualifying Offer is, by definition, treated as an offer that falls within an affordability safe harbor even if no code is entered on Line 16.**
- ⇒ **COBRA and other Post-employment Coverage.** Clarifying language has been added on how to report offers of COBRA and other post-employment (non-COBRA) coverage. Offers of COBRA or other post-employment coverage to former employees (and their family members) should not be entered as offers of coverage on Line 14. However, an offer of COBRA coverage to an employee who remains employed should be entered as an offer of coverage.
- ⇒ **Affordability.** The instructions state that references to 9.5 percent related to the coverage affordability calculation are applied as indexed for purposes of the premium tax credit. The percentage, as adjusted, is 9.56 percent for 2015, 9.66 percent for 2016 and 9.69 percent for 2017.

- ⇒ **Employee Required Contribution.** The instructions include a new definition of this term, which is intended to clarify the amount to be entered on Line 15 of Form 1095-C. The “Employee Required Contribution” is the employee’s share of the monthly cost for the lowest-cost self-only minimum essential coverage providing minimum value that is offered to the employee by the ALE. The instructions clarify that the employee share 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, and include information for calculating this amount.
- ⇒ **Substitute Statements.** The instructions clarify that substitute statements furnished to individuals may be in portrait format. However, substitute returns filed with the IRS on paper must be printed in landscape format.
- ⇒ **Code 1G.** The instructions clarify that Code 1G applies for the entire year or not at all. Therefore, if Code 1G applies, an ALE must enter Code 1G on Line 14 of Form 1095-C in the “All 12 Months” column, or in each separate monthly box (for all 12 months). 1G is the code that is entered if: (a) an offer of coverage for at least one month of the calendar year is made to an individual who was not an employee for any month of the calendar year; or (b) an offer of coverage is made to an employee who was not a full-time employee for any month of the calendar year (which may include one or more months in which the individual was not an employee) and who enrolled in self-insured coverage for one or more months of the calendar year.
- ⇒ **Code 2C.** The instructions clarify that Code 2C (employee enrolled in health coverage offered) should not be entered on Line 16 of Form 1095-C for any month in which the employee enrolled in coverage that was not minimum essential coverage.
- ⇒ **Affordability Safe Harbor Codes.** The instructions clarify that an affordability safe harbor code (Code 2F (Form W-2 safe harbor), 2G (FPL safe harbor) or 2H (rate of pay safe harbor)) should not be entered on Line 16 of Form 1095-C for any month that the ALE did not offer minimum essential coverage to at least 95 percent of its full-time employees and their dependents (that is, any month for which the ALE checked the “No” box in column (a), Minimum Essential Coverage Offer Indicator, on Form 1094-C, Part III).

For additional information regarding ACA reporting, please contact your Client Executive. **An updated 2017 ACA Employer Reporting Guide, providing detailed coding information for Forms 1094-C and 1095-C, is available to Kapnick clients upon request.**

Health Care Reform —the Affordable Care Act (ACA)—has many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of the health care reform requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding health care reform and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties.