

# Legislative Brief

## HCR - ACA Reporting of Health Coverage

September 2015

### FINAL 2015 ACA REPORTING FORMS AND INSTRUCTIONS ISSUED

#### SUMMARY:

- The IRS released final 2015 forms and instructions for ACA reporting.
- The 2015 instructions finalize proposed deadline extensions and electronic filing waivers, and clarify the reporting rules for employers offering HRAs.
- The IRS also issued Notice 2015-68 which includes proposals and requests comments regarding minimum essential coverage (MEC) under Section 6055 of the Internal Revenue Code.

#### OVERVIEW:

The Affordable Care Act (ACA) created new reporting requirements under Sections 6055 and 6056 of the Internal Revenue Code (the "Code"). Under the new reporting rules, certain employers and insurers, must provide information to the IRS regarding the health coverage offered, or not offered, to employees in order to help the IRS administer the individual and employer mandates.

#### *Who must perform ACA reporting:*

- ◆ An employer employing an average of at least 50 full-time employees (including full-time equivalents) that averaged at least 30 hours of service per week on business days during the preceding calendar year, defined as an "**applicable large employer (ALE)**" under Code Sec. 4980H, is required to report plan and coverage information **under Code Sec. 6056** to the IRS and to its full-time employees regarding the coverage offered (or not offered) on Forms 1094-C and 1095-C. Simplified reporting may be available under certain circumstances.
- ◆ An **employer offering a self-funded plan**, regardless of the number of employees employed by the employer, is required to report information regarding minimum essential coverage (MEC) **under Code Sec. 6055** to the IRS and to responsible individuals regarding covered individuals enrolled in MEC on Forms 1094-B and 1095-B. ALEs may perform this reporting under Part III of Form 1095-C as combined reporting. If an employer offers a fully-insured plan, Forms 1094-B and 1095-B are prepared by the insurer. "Minimum essential coverage" is the type of coverage an individual is required to obtain to meet the ACA individual mandate and includes individual market policies, employer-provided coverage, Medicare, Medicaid, CHIP, TRICARE and certain other coverage.

The Code Sections 6055 and 6056 reporting requirements were optional for the 2014 calendar year; they are mandatory for the 2015 calendar year (i.e., returns and statements are required to be filed in 2016 for the 2015 calendar year).

The IRS released final 2015 versions of the forms and instructions that employers will use to report under Code Sections 6055 and 6056.

- ◆ **Form 1094-B** and **Form 1095-B** (and related [instructions](#)) will be used by entities reporting under **Section 6055**, including sponsors of self-insured group health plans that are not reporting as applicable large employers (ALEs).
- ◆ **Form 1094-C** and **Form 1095-C** (and related [instructions](#)) will be used by ALEs that are reporting under **Section 6056**, and for combined reporting by ALEs that sponsor self-insured plans required to report under **both Sections 6055 and 6056**.

The IRS also issued [Notice 2015-68](#) to provide additional guidance for purposes of Section 6055 reporting.

**KEY CHANGES:**

The final forms have some minor changes from the 2016 draft versions:

- Form 1095-B: Part II was revised to include Covered Individual continuation sheets;
- Form 1094-C: Line 19 was moved to Part I, and an entry in the “All 12 months field” in Part III, line 23, column (b) is now available; and
- Form 1095-C: 1st month of plan year indicator is now located in Part II, and added Part III Covered Individual continuation sheet.

The final instructions also provide the following key provisions:

- Extensions of time to file returns with the IRS and furnish statements to individuals;
- A process to obtain waivers from the electronic filing process; and
- Relief from separate Section 6055 reporting for many health reimbursement arrangements (HRAs).

**Extensions**

In general, reporting entities may receive an **automatic 30-day extension** of time to file returns with the IRS by completing [Form 8809, Application for Extension of Time To File Information Returns](#), by the due date of the returns. Under certain hardship conditions, reporting entities may apply for an additional 30-day extension.

Reporting entities may also request an extension of time to furnish the statements to recipients by sending a letter to the IRS, postmarked by the date on which statements are due to recipients.

**Waivers**

Reporting entities may receive a waiver from the requirement to file returns electronically by submitting [Form 8508, Request for Waiver From Filing Information Returns Electronically](#), at least 45 days before the due date of the returns.

**Section 6055 Reporting for HRAs**

The last version of the 2015 draft instructions indicated that separate Section 6055 reporting would be required for many HRAs, despite prior guidance suggesting that HRAs would be considered “supplemental coverage” for which separate reporting was not required. The 2015 final instructions include important clarifications on this issue, resolving this question in favor of employers in many scenarios as indicated in the below chart:

Scenario (for any month in which):	Action Needed (for that specific month):
An individual is enrolled in <b>self-insured major medical group health plan</b> <u>and</u> self-insured HRA from same employer	Employer only required to report on one type of coverage (either the major medical plan or the HRA, but not both)
An individual is enrolled in <b>insured major medical group health plan</b> <u>and</u> self-insured HRA	Employer not required to report for a HRA that is available only to employee and other individuals who is also enrolled in employer’s insured group health plan (insurer reports on insured group health plan)
An individual is <u>only</u> enrolled under HRA coverage offered by employer and not enrolled in employer’s major medical plan (e.g., due to dropping the non-HRA coverage or retiring)	Employer must report the HRA coverage
Individual is enrolled in a major medical health plan <u>and</u> HRA sponsored by different employers (e.g., employee enrolled in both their own employer’s HRA and their spouse’s employer’s non-HRA self-insured group health plan)	Each employer will have to separately report

## OTHER CLARIFICATIONS—FORMS 1094-C AND 1095-C (APPLICABLE LARGE EMPLOYER REPORTING)

- ◆ **Qualifying Offer Method.** An example was added to the instructions involving a full-time employee who receives a qualifying offer for fewer than 12 months in the calendar year (a “qualifying offer” is an offer of affordable, minimum value coverage to the employee and at least minimum essential coverage (MEC) offered to employee’s family members—if an employee receives a qualifying offer it disqualifies employees and family members from eligibility for premium tax credits on an exchange). The example clarifies that an applicable large employer (ALE) member can use the qualifying offer code (1A) on line 14 of Form 1095-C so long as the employee received a qualifying offer for all months in which the employee was full-time (and not in a limited non-assessment period), but the ALE member cannot furnish the alternative statement unless the employee received a qualifying offer for all 12 months in the calendar year.
- ◆ **Reporting Offers of COBRA.** Significant changes were made to how offers and acceptances of COBRA coverage are reported. An offer of COBRA coverage made to a former employee upon termination of employment is not reported as an offer of coverage on line 14. Instead, the ALE will enter code 1H (no offer of coverage) on line 14 and code 2A (individual not employed) on line 16 for any month for which a COBRA offer was made to a terminated employee. By entering code 2A on line 16, the ALE is protected from potential Code § 4980H penalties for the month. **(This is a major change from the IRS’ former position in Q&A guidance issued earlier this year re COBRA that would have required ALEs to report “offer” based on actual COBRA elections. Code 2C should not be used for any month in which a terminated employee is enrolled in COBRA coverage; enter 2A.)**
- ◆ **Counting Total Employees**
  - ⇒ The final instructions state that an ALE can count employees on the 12th day of each month (with this addition, an ALE may choose 1 of any 5 permissible days within each month to count employees, but the ALE must use that same day for all months in the year).
  - ⇒ The final instructions provide that an employee is not counted for purposes of determining an employer’s average number of employees for any month that the employee has coverage under TRICARE or Veteran’s Administration health care programs.

### IRS NOTICE 2015-68

IRS Notice 2015-68 indicates that the IRS intends to issue proposed regulations related to Code Section 6055 reporting. These proposed regulations are expected to:

- Require health insurance issuers to report coverage in catastrophic health insurance plans that were enrolled in through an Exchange;
- Allow electronic delivery of statements reporting coverage under expatriate health plans, unless the recipient explicitly refuses consent or requests a paper statement;
- Allow filers reporting on insured group health plans to use a truncated taxpayer identification number (TTIN) to identify the employer on the statement furnished to a taxpayer; and
- Specify when a provider of minimum essential coverage (MEC) is not required to report coverage of an individual who has other MEC.

Notice 2015-68 also invites comments on issues relating to the solicitation of covered individuals’ taxpayer identification numbers (TINs). Comments may be submitted in writing on or before November 16, 2015.

### 2015 FILING AND DISTRIBUTION DEADLINES

Mandatory reporting deadlines for coverage offered or provided in the 2015 calendar year, are as follows:

- **To IRS:** **Feb. 29, 2016** for paper filing (generally must file by Feb. 28, but Feb. 28, 2016 is a Sunday); and **Mar. 31, 2016** if filing electronically (mandatory electronic filing if filing 250 forms or more).  
Under both Sections 6055 and 6056, each reporting entity will be required to file all of the following with the IRS:
  - A separate **statement** (Form 1095-B or Form 1095-C) for each individual who is provided minimum essential coverage (for providers reporting under Section 6055), or for each full-time employee (for 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.
- **To Employees/Responsible Individuals:** **Feb. 1, 2016** (generally must furnish by Jan. 31, but Jan. 31, 2016 is a Sunday).
  - Either Form 1095-B or Form 1095-C depending on the reporting entity, unless simplified reporting is available.

## PENALTIES

As mentioned in previous client guidance issued, while the IRS has stated that it will not impose penalties for a good faith effort to comply with the ACA reporting requirements in 2016 for the 2015 calendar year, a failure to timely file or furnish without a showing of reasonable cause, or an inability to show a good faith effort to comply, will result in penalties.

**In June of 2015, the IRS raised the amount of the penalties and the annual maximum caps associated with ACA reporting. These new amounts are effective for returns and statements required to be filed in 2016 for the 2015 calendar year:**

PENALTY TYPE	PER VIOLATION	ANNUAL MAXIMUM (CAP ON PENALTIES)	ANNUAL MAXIMUM – SMALL EMPLOYER* (CAP ON PENALTIES)
General	<b>\$250</b> (previously \$100)	<b>\$3 million</b> (previously \$1.5 million)	<b>\$1 million</b> (previously \$500,000)
Corrected within 30 days	<b>\$50</b> (previously \$30)	<b>\$500,000</b> (previously \$250,000)	<b>\$175,000</b> (previously \$75,000)
Corrected after 30 days before Aug. 1	<b>\$100</b> (previously \$60)	<b>\$1.5 million</b> (previously \$500,000)	<b>\$500,000</b> (previously \$200,000)
Intentional Disregard (no reduction)	<b>\$500</b> (previously \$250)  This penalty does not offset other penalties.	No annual limit on amount of penalty	No annual limit on amount of penalty

\*gross receipts of not more than \$5,000,000

For more information regarding ACA reporting, please contact your Kapnick Client Executive.

The health care reform law—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.

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