

# REFORM UPDATE

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## UPDATES ON EMPLOYER REPORTING REQUIREMENTS

Most employers will need to comply with the Section 6056 reporting requirements, which apply to Applicable Large Employers (ALEs) with 50 or more full-time equivalent employees. The reporting requirements were previously discussed in detail at [http://www.mcgrawwentworth.com/Reform\\_Update/2014/Reform\\_Update\\_98.pdf](http://www.mcgrawwentworth.com/Reform_Update/2014/Reform_Update_98.pdf).

The IRS will use the reports or forms for several purposes:

1. To determine potential penalties under the employer mandate
2. To prove individuals had minimum essential coverage and are thus not subject to the individual mandate penalty
3. To audit taxpayer eligibility for subsidized coverage through the Marketplaces

The employer mandate has two potential penalties:

1. The "A" penalty applies to employers that fail to offer at least 95 percent (70 percent in 2015) of their full-time employees minimum essential coverage (MEC). The penalty is triggered when one full-time employee purchases subsidized coverage through the Marketplace. Originally, the penalty was set at \$2,000 annually per employee. These amounts are indexed annually, so the 2015 penalty amount is \$2,080. The penalty is determined on a month-to-month basis, and is calculated by taking the number of full-time employees less the first 30 (80 in 2015).
2. The "B" penalty applies when an employer offers substantially all employees MEC, but the MEC is not of minimum value (60 percent) for some employees or is not considered affordable (i.e., the employee's contribution for single coverage must be less than 9.56 percent of household income). This penalty applies to each employee not offered minimum value, affordable coverage who subsequently purchases subsidized coverage in the Marketplace. Originally, the penalty was set at \$3,000 annually per employee. These amounts are indexed annually, so the 2015 indexed penalty amount is \$3,120. The penalty is determined on month-to-month basis, and is only assessed for the specific employees not offered minimum value, affordable coverage who purchased subsidized coverage in the Marketplace.

The reporting requirements will challenge most employers. This Reform Update will provide new details related to these requirements, including:

- 2015 forms released
- Instructions for electronic submission
- Updates on how to report COBRA participants on the 1095 C forms

Many employers have already engaged a vendor to complete the forms and send them to the IRS. However, other employers have not yet taken steps to outsource their reporting. Completing these forms and sending them to the IRS will be a time-intensive undertaking, requiring both IT skills and a keen understanding of the ACA rules. If your organization intends to outsource this function, **please do not delay in determining and engaging a vendor**. Many vendors are nearing their capacity to work with new clients on the reporting requirements. If you wait too long to determine an outsourcing solution, you may not have a vendor willing to partner with you.

## 2015 FORMS RELEASED

Most employers have seen the final 2014 1095-C forms. The IRS recently released draft copies of the 2015 forms:

- Draft 2015 1094-C: <http://www.irs.gov/pub/irs-dft/f1094c--dft.pdf>
- Draft 2015 1095-C: <http://www.irs.gov/pub/irs-dft/f1095c--dft.pdf>

The last page of the 2015 draft forms highlights minimal differences from the 2014 versions. The final 2015 forms are expected to be released later this year.

The IRS did not publish updated instructions. The 2014 instructions can be found at <http://www.irs.gov/pub/irs-pdf/i109495c.pdf>.

The IRS has also posted questions and answers related to the reporting requirements, found at <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056>.

## INSTRUCTIONS FOR ELECTRONIC SUBMISSION

Employers that produce 250 or more 1095-C forms will be required to submit electronic copies of the forms to the IRS. The electronic filing instructions can be found at [http://www.irs.gov/PUP/for\\_taxpros/software\\_developers/information\\_returns/AIR\\_Composition\\_and\\_Reference\\_Guide.pdf](http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/AIR_Composition_and_Reference_Guide.pdf).

Your IT personnel will be instrumental in determining if it is feasible for your organization to submit the forms electronically. The IRS website provides the following high-level information on electronic filing:

### **Registering to Electronically File Information Returns through AIR (Affordable Care Act Information Return)**

Each software developer, transmitter and issuer/payer (submitter) must first complete the [e-Services Registration](#) to obtain login credentials, and then log in within 28 days to confirm registration and to activate the IRS user account.

### **AIR Testing**

The AIR architecture will have two environments: testing and production.

- The AIR System will be available for the ACA Assurance Testing System (AATS) in the summer of 2015.
- Publication 5164, Test Package for Electronic Filers of Affordable Care Act (ACA) Information Returns (AIR), contains general and program-specific testing information for use with the ACA Assurance Testing System (AATS). Draft Publication 5164 is now available for review.
- Software developers are required to complete assurance testing using only the applicable scenarios that will be posted at a later date.
- Software developers will need a new Software ID for each tax year and each ACA information return package that they support.
- Transmitters and issuers/payers (submitters) must use approved software to prepare and transmit AIR returns.
- For the first year only, transmitters and issuers/payers (submitters) are required to complete an error-free communication test to transmit electronic information returns to the IRS.

### **Electronic Filing Through AIR**

- The AIR System will be available in the fall of 2015.
- ACA information returns are subject to Regulation 301.6011-2, which requires filers of 250 or more of any one type of information return to file electronically.
- Publication 5165, Affordable Care Act (ACA) Information Return (AIR) Guide for Software Developers and Transmitters, outlines the communication procedures, transmission formats, business rules and validation procedures for ACA information returns filed electronically. Draft Publication 5165 is now available for review.
- Transmissions to AIR must be comprised of only one type of ACA information return and its associated transmittal form. For example, a transmission must contain only:
  - Form 1094-B and Form 1095-B or
  - Form 1094-C and Form 1095-C.
  - The form types cannot be combined.

- The data file size limit for a single transmission filed through AIR is 100MB.
  - The 100MB limit applies to ACA assurance testing and production.
- A Receipt ID will be generated for each transmission.
- The Receipt ID is the key piece of information required when requesting the acknowledgement for that transmission from the IRS. The Receipt ID is not proof, however, that the transmission was accepted or rejected.
- The IRS will return one of the following processing statuses for each transmission: In Processing, Accepted, Accepted with Errors or Rejected.
- The IRS will create an error data file, when applicable, that includes record information, error code and description.

## ADDITIONAL RESOURCES

You can submit questions to the [AIR Mailbox](#) about electronically filing Forms 1094-B, 1094-C, 1095-B and 1095-C.

AIR uses [QuickAlerts](#), an IRS e-mail service, to disseminate information quickly to subscribers. Stay current on the AIR electronic filing program by subscribing to [QuickAlerts](#) and choosing the Affordable Care Act Information Return (AIR) category.

## UPDATES ON REPORTING COBRA PARTICIPANTS ON 1095-C FORMS

The IRS recently published additional details on reporting information for COBRA participants. Employers have struggled with how to report on COBRA-qualified beneficiaries, as none of the indicators in Code Series 1 directly corresponds with a COBRA participant. In addition, the COBRA reporting codes differ if COBRA is offered as a result of termination or following a reduction in work hours. It also appears to vary depending on whether the plan is fully-insured or self-funded.

The IRS offers very specific example situations related to an employment termination:

**Example 1:** The employer's health plan is **self-funded** and subject to the employer mandate and reporting requirements. An employee terminated employment on June 15, 2015. He covered his family under the plan and was offered COBRA. He did not elect COBRA.

The codes reported for the months of January through May 2015 are as follows:

- **Line 14:** 1E – Minimum value coverage offered to the employee and at least minimum essential coverage offered to the spouse and children
- **Line 15:** The monthly employee cost for single coverage in the lowest-cost minimum value plan
- **Line 16:** 2C – The employee has enrolled for coverage
- Part III needs to be completed with details on the employee, spouse and covered children

For the month of June 2015, his termination month, the codes are as follows:

- **Line 14:** 1H – No offer of coverage
- **Line 15:** Nothing entered
- **Line 16:** 2B – Not a full-time employee
- In Part III, you can indicate coverage for the employee and family (for Part III purposes, the employee only needs to be covered for one day of the month to check the coverage box)

For the months of July through December 2015, the codes are as follows:

- **Line 14:** 1H – No offer of coverage
- **Line 15:** Nothing entered
- **Line 16:** 2A – No longer an employee
- In Part III, you indicate no coverage for the months of July through December

While this example is specific to self-funded plans, fully-insured plans should likely report mid-year terminations in the same way. The only difference is that fully-insured plans will not need to complete Part III.

**Example 2:** The same facts as in Example 1, except the employee elects COBRA for himself and all of his family members.

The codes reported in lines 14 and 16 can be the same for the entire year:

- **Line 14:** 1E – Minimum value coverage offered to the employee and at least minimum essential coverage offered to the spouse and children
- **Line 16:** 2C – The employee has enrolled for coverage
- Part III needs to be completed with details on the employee, spouse and covered children

The only data that changes during the year are the **amounts entered into Line 15:**

- **January through May 2015:** Enter the monthly employee cost for single coverage in the lowest-cost minimum value plan
- **June through December 2015:** Enter the COBRA premium (i.e., self-only COBRA premium) for the lowest-cost minimum value plan **offered to the individual**

**Example 3:** The same facts as in Example 2, except the employee elects COBRA only for himself.

The codes reported for the months of January through May 2015 are as follows:

- **Line 14:** 1E – Minimum value coverage offered to the employee and at least minimum essential coverage offered to the spouse and children
- **Line 15:** The monthly employee cost for single coverage in the lowest-cost minimum value plan
- **Line 16:** 2C – The employee has enrolled for coverage
- Part III needs to be completed with details on the employee, spouse and covered children for January through June 2015.

For the months of June through December 2015, the codes are as follows:

- **Line 14:** 1B – Minimum value coverage offered to the employee only
- **Line 15:** Enter the COBRA premium (i.e., self-only COBRA premium) for the lowest-cost minimum value plan **offered to the individual**
- **Line 16:** 2C – The employee has enrolled for coverage
- In Part III, you indicate coverage for the employee for July through December 2015 (for Part III purposes, you only need to be covered for one day of the month to check the coverage box)

An additional set of examples addresses the loss of coverage following a reduction in work hours.

**Example 1:** The employer's health plan is **self-funded** and subject to the employer mandate and reporting requirements. An employee is full-time and offered coverage for himself and his family members. He elects single coverage for himself. As of November 1, 2015, the employee is transferred to a part-time position and is therefore no longer eligible for coverage under the health plan. He elects COBRA for the remainder of the year.

The codes reported for January through October 2015 are as follows:

- **Line 14:** 1E – Minimum value coverage offered to the employee and at least minimum essential coverage offered to the spouse and children
- **Line 15:** The monthly employee cost for single coverage under the lowest-cost minimum value plan
- **Line 16:** 2C – The employee has enrolled for coverage
- Part III needs to be completed with details on the covered employee.

For the months of November through December 2015, the codes are as follows:

- **Line 14:** 1H – No offer of coverage
- **Line 15:** Enter the COBRA premium for lowest cost (self-only COBRA premiums) minimum value plan **offered to the employee**

- **Line 16:** 2C – The employee has enrolled for coverage
- In Part III, you indicate coverage for the months of November through December

**Example 2:** The same facts as in Example 1, except the employee does not elect COBRA. In this case, the reporting is identical to Example 1 with the exception of Line 16 for the months of November and December. You enter the code that best applies. Since the employee has moved to a part-time status, Code 2B, indicating that the employee is not a full-time employee should be used. Part III should indicate coverage only for the months of January through October 2015.

The IRS also provided guidance on how to handle a situation where the dependents elect COBRA but the former employee does not. A self-funded plan needs to report this coverage, so the dependents are able to provide proof of coverage when filing their tax returns. The employer can use the 1095-B forms in this situation to provide proof of coverage. The IRS will also permit the employer to use Form 1095-C.

An employer that sponsors a self-insured health plan may report enrollment information for individuals who were not employees on any day of the calendar year by entering code 1G on line 14 of Part II of the Form 1095-C for all twelve months. Part III of Form 1095-C must also be completed. This option is only available for individuals who are not employees for any part of the year, which may include:

- A non-employee director
- A former employee receiving COBRA coverage who terminated employment during a previous calendar year
- A retired employee who terminated employment during a previous calendar year
- A family member (including a surviving spouse or dependent) of such an individual if he or she is receiving coverage independently of the individual, such as the election of individual COBRA continuation coverage. All family members who are covered due to that individual's enrollment (for instance, a spouse of a retiree who is enrolled in the plan because the retiree elected self plus spousal coverage) should be included on the same Form 1095-C as the individual who enrolled in the coverage.

The reporting requirements are going to challenge most employers, who need to understand now how they are going to handle their filing. Many vendors will stop accepting new business within the next month. They are already approaching capacity and need to focus on getting their newly engaged clients set up in their systems.

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