



BENEFIT NEWS BRIEFS

A Closer Look At IRS Forms 1094-C and 1095-C

In [Benefit News Briefs 2015-09](#), we presented a general overview of the new IRS forms that will be used to fulfill certain *Affordable Care Act (ACA)* reporting requirements. The two sets of forms used are the (draft 2015) [1094-B](#) and [1095-B](#), and (draft 2015) [1094-C](#) and [1095-C](#). The 1094 forms are transmittal forms that accompany the corresponding 1095 reporting forms. The 1094-B and 1095-B forms are used to fulfill the Code [Section 6055](#) reporting requirements about the provision of minimum essential coverage (MEC) and the 1094-C and 1095-C forms are used by Applicable Large Employers (ALEs)(≥ 50 EEs) to fulfill the Code [Section 6056](#) Employer Shared Responsibility reporting requirements. **No filings are due for the 2015 plan year until early 2016**, as discussed later herein.

Good Faith Reporting Standard

With the surrounding confusion and complexity of these new filings, the IRS has adopted a "good faith" standard this first year of required ALE reporting. This was set out in the [Preamble to the final Code Section 6056 regulations](#) at Part XIII. *Applicability of Information Return Penalties and Penalty Relief for 2015*.

In implementing new information reporting requirements, short term relief from penalties frequently is provided. This relief generally allows additional time to develop appropriate procedures for collection of data and compliance with these new reporting requirements. After considering the comments received, the IRS will not impose penalties under Sections 6721 and 6722 on ALE members that can show they make good faith efforts to comply with the information reporting requirements for incorrect or incomplete information reported on the return or statement, including social security numbers. No relief is provided in the case of ALE members that do not make a good faith effort to comply with these regulations or that fail to timely file an information return or statement.

Overview

In [Benefit News Briefs 2015-13](#), we looked at IRS Forms 1094-B and 1095-B which are used by providers of minimum essential coverage (MEC) to fulfill their reporting requirement under Code Section 6055. As part of that required reporting, providers of MEC will file Forms 1094-B and 1095-B with the IRS and also provide a copy of

the 1095-B to each individual covered under the health plan. Sponsors of multiemployer health plans will file the Forms 1094-B and 1095-B.

In this publication, we will take a look at IRS Forms 1094-C and 1095-C with a focus on how ALEs that contribute to multiemployer health plans will use these forms. These forms are used to fulfill Code Section 6056 Employer Shared Responsibility reporting requirements. We will close with some information on the electronic filing requirements. Draft 2015 1094/1095 series Forms have been released and links are available at the end of this publication. Draft 2015 instructions are not yet available, so reference to instructions refers to the 2014 instructions.

Entity	IRS Form Filed
Employers with less than 50 full-time employees	Do not have to file either set of forms.
Employers with 50 or more full-time employees	Must file Forms 1094-C and 1095-C and provide Form 1095-C to employee.
Self-funded multiemployer group health plans	Must file Forms 1094-B and 1095-B and provide Form 1095-B to employee.

When to File?

The ALE information reporting requirements are first effective for coverage offered (or not offered) in 2015. An ALE member must file information returns with the IRS and furnish statements to employees beginning in 2016, to report information about its offers of health coverage to its full-time employees for calendar year 2015. ALEs may voluntarily report in 2015 for coverage offered in 2014. The IRS has a [Q&A webpage](#) with 25 Q&As on reporting information for ALEs and another page with [56 Q&As](#). See last page herein for more detail.

Current Problems

Before discussing these Forms in detail, we thought it helpful to sum up the “problems” with this reporting for ALEs that contribute to self-funded multiemployer group health plans. We will address the following basic problems:

1. How can a Plan provide the information an ALE needs to complete the Form 1095-C (especially lines 14-16) without violating the *HIPAA Privacy Rule*?
2. How can the Plan pay for the data-gathering it may need to undertake?

How can a Plan provide the information an ALE needs to complete the Form 1095-C (especially lines 14-16) without violating the HIPAA Privacy Rule?

This question arises because, under the current instructions for the Form 1095-C the employer needs to know whether the employee was offered coverage (line 14) and whether the employee was eligible for coverage (line 16). Generally, a contributing employer would not know which of the employees for which it contributes are offered coverage or eligible for coverage. Enrollment data is

considered protected health information (PHI) and currently it is being reported that HHS has a problem with allowing such PHI to be communicate by the Plan to the employer. It would seem such a disclosure could fall under the “required by law” allowance for such disclosure of this PHI, but no firm guidance has been released on this issue.

The Interim Multiemployer Arrangement Relief discussed later would seem to take care of such issues, but the current IRS instructions seem to contradict the relief. A detailed comment letter to the IRS on the problems with ALEs that contribute to multiemployer plans was submitted to the IRS by the Associated General Contractors of America. In lieu of repeating the discussion, that letter is available be [“clicking here.”](#)

How can the Plan pay for the data-gathering it may need to undertake?

Another issue is how the Plan can pay for the data-gathering it may need to undertake, as the information sought from ALEs by the IRS is not generally tracked by plans in the way needed. Spending plan assets to benefit only ALEs seems to run afoul of ERISA’s fiduciary duties and the prohibited transaction rules. Some have suggested a solution is for the Plan to bill each ALE its pro-rata share of Plan costs to obtain this data. These costs would be in the form of reprogramming costs, etc., needed to be able to extract the necessary information.

One possible solution to the disconnect between information which the Plan has and the ALE needs is found in IRS [FAQ 28](#) which states:

- **28. May an employer hire a third party administrator or other third party service provider to file the return with the IRS and furnish the statements to employees required under Code Section 6056?**

Yes. Reporting arrangements between ALE members, issuers, and other parties are not prohibited. However, entering into a reporting arrangement does not transfer the ALE member’s potential liability under section 4980H and (except in the case of a related entity properly designated by a governmental unit) does not transfer the potential liability for failure of the ALE member to file returns and furnish statements under Code Section 6056. If a person who prepares returns or statements required under Code Section 6056 is a tax return preparer, that person will be subject to the requirements generally applicable to tax return preparers.

ALE members are responsible for reporting under Code Section 6056. Generally, each ALE member must file a separate Form 1094-C providing that ALE member’s EIN. If more than one third party is facilitating reporting for an ALE member, there must be only one Form 1094-C authoritative transmittal reporting aggregate employer-level data for the ALE member. Additionally, there must be only one section Form 1095-C for each full-time employee with respect to employment with that ALE member.

This approach may be used by some plans and ALEs. However, we have heard of problems with this approach as it requires the Plan to take on liability for the filing of information which it is an ALEs duty to report.

We had hoped more guidance addressing these issues would have been issued by now, but it has not. So, we will address matters as they exist at the moment.

A Closer Look at Form 1094-C

These forms are used by ALEs. The Form 1094-C is the transmittal form used when filing the Form 1095-C. There are three parts to Form 1094-C.

Part I is for entering information about the Plan Sponsor. Note carefully the instructions concerning the "authoritative transmittal".

Form 1094-C		Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns		<input type="checkbox"/> CORRECTED	OMB No. 1545-2251
Department of the Treasury Internal Revenue Service		Information about Form 1094-C and its separate instructions is at www.irs.gov/1094c .		2015	
Part I Applicable Large Employer Member (ALE Member)					
1 Name of ALE Member (Employer)		2 Employer identification number (EIN)			
3 Street address (including room or suite no.)					
4 City or town		5 State or province		6 Country and ZIP or foreign postal code	
7 Name of person to contact				8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)				10 Employer identification number (EIN)	
11 Street address (including room or suite no.)					
12 City or town		13 State or province		14 Country and ZIP or foreign postal code	
15 Name of person to contact				16 Contact telephone number	
17 Reserved					
18 Total number of Forms 1095-C submitted with this transmittal				▶	
19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions <input type="checkbox"/>					

For Official Use Only



Part II concerns information on the 1095-Cs filed and the certification of eligibility the ALE is using.

Part II ALE Member Information	
20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member ▶	
21 Is ALE Member a member of an Aggregated ALE Group? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If "No," do not complete Part IV.	
22 Certifications of Eligibility (select all that apply):	
<input type="checkbox"/> A. Qualifying Offer Method <input type="checkbox"/> B. Qualifying Offer Method Transition Relief <input type="checkbox"/> C. Section 4980H Transition Relief <input type="checkbox"/> D. 98% Offer Method	
Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.	
▶ Signature	▶ Title
▶ Date	
For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.	
Cat. No. 61571A	
Form 1094-C (2015)	

Part III would be where information about coverage for individuals will be listed.

120216
Page 2

Form 1094-C (2015)
Part III ALE Member Information--Monthly

		(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4960H Transition Relief Indicator
		Yes	No				
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>	Line 25, (b).		<input type="checkbox"/>	
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28	May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29	June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

Filers should review the instructions for this form once they are released in final form. A review of the current instructions now will help minimize confusion later.

Part IV will only apply to ALEs that are members of a aggregated group.

120315
Page 3

Form 1094-C (2015)
Part IV Other ALE Members of Aggregated ALE Group

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

Name	EIN	Name	EIN
36		51	
37		52	
38		53	
39		54	
40		55	
41		56	
42		57	
43		58	

A Closer Look at Form 1095-C

As noted in the introduction, the Form 1095-C is where problems arise for ALEs who contribute to multiemployer group health plans, in particular, at lines 14-16. But, first let's look at the rest of the Form. We will be concentrating on ALE's with employees that are covered by a multiemployer plan. Part I of Form 1095-C contains lines for information on the employee and the employer.

600116
OMB No. 1545-2251
2015

Form **1095-C**
Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

Information about Form 1095-C and its separate instructions is at www.irs.gov/ft1095c.

VOID
 CORRECTED

Part I Employee **Applicable Large Employer Member (Employer)**

1 Name of employee		2 Social security number (SSN)		7 Name of employer		8 Employer identification number (EIN)	
3 Street address (including apartment no.)				9 Street address (including room or suite no.)			
4 City or town		5 State or province		6 Country and ZIP or foreign postal code		10 Contact telephone number	
				11 City or town		12 State or province	
				13 Country and ZIP or foreign postal code			

Part II of the Form contains the troublesome lines 14-16. The problems with this section have been noted by others. The AGC submitted a comment letter to the IRS that discusses the lines in detail, available by "[clicking here.](#)"

Rather than repeat that thoughtful analysis, we would note that line 14 instructs the employer to enter a certain code on whether and for which months the employer offered minimum essential coverage to its employees and whether the employee was eligible for coverage. The problem is ALEs generally won't know that information.

Line 16 instructs an employer to enter a code corresponding to an applicable Code Section 4980H safe harbor. The instructions appear to grant code 2C priority over the other codes in the 2 series, including code 2E which stands for multiemployer relief. This creates confusion about which code to use. It would seem 2E should be used by ALEs contributing to multiemployer plans. Compounding the problem, an IRS FAQ states an ALE does not need to enter a code on line 16!

9. Is an ALE member required to enter a code in line 16, Applicable Section 4980H Safe Harbor, of Form 1095-C?

No. An ALE member is not required to make an entry on line 16 of Form 1095-C. However, an ALE member can use line 16 to indicate whether the ALE member qualifies for an exception from the assessable payment under section 4980H(b) for a given month. An ALE member should enter the appropriate code on line 16 if any applies. For more information about using line 16, see the [Instructions for Forms 1094-C and 1095-C](#). If no code is applicable for a given month, line 16 should be left blank.

Part II Employee Offer and Coverage		Plan Start Month (Enter 2-digit number):											
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)													

Interim Guidance Regarding Multiemployer Arrangements

Reporting by ALEs that contribute to a multiemployer health plan are subject to transition relief as set forth in Preamble to the [final regulations](#) in the *Shared Responsibility for Employers Regarding Health Coverage* at section XV.E (PDF page 34). This transition relief was summed up on page 11 of the instructions to Forms 1094-C and 1095-C:

Interim Guidance Regarding Multiemployer Arrangements. *An employer is treated as offering health coverage to an employee if the employer is required by a collective bargaining agreement or related participation agreement to make contributions for that employee to a multiemployer plan that offers, to individuals who satisfy the plan's eligibility conditions, health coverage that is affordable and provides minimum value, and that also offers health coverage to*

those individuals' dependents or is eligible for the section 4980H transition relief regarding offers of coverage to dependents. For more information, see section XV.E of the preamble to the final Code Section 4980H regulations.

Thus, ALEs that are required to contribute to a multiemployer plan will not be considered to have failed to offer MEC to its employees and dependents and will not be subject to a penalty for failing to do so. On its face, an ALE that contributes to such a multiemployer plan should be considered as satisfying its employer responsibility requirements under the ACA.

Part III does not apply to multiemployer plans according to the [2014 instructions for Forms 1095-B and 1095-C](#), Part III, page 8, first paragraph.

Part III Covered Individuals																	
If Employer provided self-insured coverage, check the box and enter the information for each covered individual. <input type="checkbox"/>																	
(a) Name of covered individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage													
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec		
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Electronic Filing Required In Most Instances

Form 1094-B and Form 1095-B are subject to the [requirement to file returns electronically](#). Filers of 250 or more information returns (Forms 1095-B) must file Forms 1094-B and 1095-B electronically. The 250-or-more requirement applies separately to each type of return and separately to each type of corrected return. Filers of fewer than 250 returns may file electronically or on paper. The [Affordable Care Act Information Returns \(AIR\) Program page](#) is the main page for this information and contains information.

[Publication 5164, Test Package for Electronic Filers of Affordable Care Act \(ACA\) Information Returns](#) and [Publication 5165, Affordable Care Act \(ACA\) Information Returns \(AIR\) Guide for Software Developers and Transmitters](#), are available in draft form for 2015 and outlines, among other things, the communication procedures, transmission formats, business rules and validation procedures for [returns filed electronically through the AIR system](#). To develop software for use with the AIR system, transmitters and software developers should use the guidelines provided in Publication 5165 along with the Extensible Markup Language (XML) Schemas published on IRS.gov.

Filers will receive an electronic acknowledgment once they have completed the filing transaction. This acknowledgment should be kept with the filers records.

The Internal Revenue Service (IRS) posted the [Tutorial for Affordable Care Act \(ACA\) Application for Transmitter Control Code \(TCC\)](#) to the [Affordable Care Act Information Returns \(AIR\) Program page](#). Beginning June 29, 2015 transmitters, software developers and issuers can apply for authorization to electronically file AIR and receive an ACA TCC (Transmitter Control Code). TCCs are required to electronically submit ACA information returns and transmittal Form 1094/1095-B's and Form 1094/1095-C's.

When To File

The return and transmittal form must be filed with the IRS on or before February 28 (March 31 if filed electronically) of the year following the calendar year of coverage. Neither of the 1094 Forms are required to be filed until 2016 for coverage provided in 2015. The first filing for a calendar year plan will be February 28, 2016 (March 31, 2016, if filed electronically); however, recordkeeping will be required in 2015 for that 2016 filing deadline.

Filers will meet the requirement to file if the form is properly addressed and mailed on or before the due date. If the regular due date falls on a Saturday, Sunday or legal holiday, filers have until the next business day to file. A business day is any day that is not a Saturday, Sunday or legal holiday.

Draft 2015 Forms

The IRS has released draft versions of the 2015 employer/plan reporting forms (Forms 1094 and 1095) to be filed in 2016. The accompanying draft instructions were not released yet. The 2015 Forms are basically the same as the 2014 Forms. Below are the IRS links to the draft forms.

1094-B - <http://www.irs.gov/pub/irs-dft/f1094b--dft.pdf>

1095-B - <http://www.irs.gov/pub/irs-dft/f1095b--dft.pdf>

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

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

Conclusion

There are many unresolved issues as discussed in the introduction, but many more clear steps an ALE can take to prepare to timely file the 1095 forms. Professional advice is recommended in areas of uncertainty. Hopefully, the IRS, HHS, and DOL will issue guidance on the murkier matters. Some ALEs are filing themselves, others are working with the Plan to undertake part of the filing (as discussed above) and others are using third-party filers.

We will report on the draft 2015 Form 1095 Instructions once they are released.

* * *