

EXPERT UPDATE



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ACA Updates

By Shari Herrle, Director of Compliance

Over the past few months regulators have been busy issuing clarity on several Affordable Care Act provisions. The following information is a summary of the Internal Revenue Service's recent releases.

Update #1 for large employers – Medicare Enrollment and the Employer Shared Responsibility Provision

The IRS has provided clarity on how Medicare enrollment will affect an applicable large employer's (ALE) liability under the Affordable Care Act's Play or Pay provision.

Subsection (a) Penalty Liability

- All full-time employees are counted, regardless of whether they are enrolled in Medicare or another type of coverage. This penalty is \$2,160 (\$180 monthly) for 2016.

Subsection (b) Penalty Liability

- This penalty applies only for employees who enroll in Marketplace coverage and receive a premium tax subsidy. Employees enrolled in Medicare are not entitled to receive federal premium assistance; therefore, no penalty can be imposed on the ALE for Medicare enrolled employees. This penalty is \$3,240 (\$270 monthly) for 2016.

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Update #2 for all size employers – New IRS Guidance on Conditional Opt-out Incentives

The value of opt-out payments that are conditioned not only on the employee declining health coverage but also on the satisfaction of the employee providing proof of having other group health coverage would not need to be added to the single-only contribution for the purposes of affordability. Large employers that provide cash incentives when employees decline health coverage should implement a conditional opt-out approach if there is any concern that single-only premium cost may be unaffordable to the employee. This guidance applies to plan years beginning on or after January 1, 2017.

➤ *Conditional Opt-out incentive:*

Single-only monthly contribution must be affordable

➤ *Unconditional Opt-out incentive:*

Single-only monthly contribution + monthly cash opt-out must be affordable to the employee

Update #3 for large employers – IRS Releases 2016 Draft Forms 1094-C and 1095-C

The Internal Revenue Service (IRS) has released **2016 draft forms** for reporting under Internal Revenue Code (Code) Sections 6055 and 6056. [Instructions](#) for the 2016 draft forms have just recently been released as well.

Modifications to Draft Forms

The 2016 draft forms are largely unchanged from the 2015 versions. However, the following minor changes were included in the 2016 draft versions:

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1) Additional “Offer of Coverage” Codes

The Form 1095-C includes “Offer of Coverage” codes (Code Series 1), which specify the type of coverage, if any, offered by the employer to an employee, the employee’s spouse and the employee’s dependent(s). The IRS previously stated that they intended to include additional codes in 2016 and beyond, which an employer would use, if applicable, to indicate that the employer’s offer of coverage to an employee’s spouse is a conditional offer (for example, an offer of coverage that is available to a spouse only if the spouse certifies that he or she does not have access to health coverage from another employer). As a result, the 2016 draft Form 1095-C includes the following two additional “Offer of Coverage” 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).

2) Plan Start Month

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. However, the [2016 draft Form 1095-C](#) provides that the “Plan Start Month” box will remain optional on the 2016 Form 1095-C.

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As a result, for 2016, ALEs can choose to:

- Add this field and provide plan year information;
- Add this field and enter “00”; or
- Leave this new field out (thus using the 2015 format)

To provide plan year information in the “Plan Start Month” box, employers should enter the two-digit number (01 through 12) indicating the calendar month during which the plan year begins of the health plan in which the employee is offered coverage (or would be offered coverage, if the employee were eligible to participate in the plan). For example, an employer would enter “01” for a calendar-year plan. If more than one plan year could apply (for instance, if the employer changes the plan year during the year), enter the earliest applicable month. If no coverage is offered to the employee, enter “00”.

3) Reserved Fields Relating to 2015 Transition Relief

For reporting under Section 6056, a transition relief rule was available in 2015 under the Qualifying Offer Method (an alternative method of reporting). An ALE that was eligible for this transition relief was required to:

- Certify by **checking Box B on Line 22** of [Form 1094-C](#) that the employer is eligible for, and is using, the Qualifying Offer Method Transition Relief for 2015; and
- Use the “Offer of Coverage” **Code 1A on Line 14** of [Form 1095-C](#) for each employee for any months in which the employer was eligible for the transition relief.

However, the Qualifying Offer Method Transition Relief rule was only available for 2015 offers of coverage. As a result, the 2016 draft Form 1094-C reserved Box B, making it unavailable for employers in 2016. In addition, the 2016 draft Form 1095-C reserved Code 1I for 2016.

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4) Other Clarifications

In addition, the 2016 draft forms included several minor changes and clarifications, as noted below.

- The 2016 draft Form 1095-B **reserved the “Small Business Health Options Program (SHOP) Marketplace Identifier” field**. This field was previously included in the Form 1095-B, but was not required to be completed for 2015.
- The 2016 draft Form 1095-C clarified that employers completing Part III, *Covered Individuals*, should enter information for all individuals enrolled in the self-insured coverage, **including the employee**.
- The 2016 draft 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.
- Both 2016 draft Forms 1095-B and 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).

We anticipate more information from the IRS regarding the 2016 reporting requirements and will provide additional education and instructions upon receiving the IRS releases. Please contact Henderson Brothers for more information on reporting under Code Sections 6055 and 6056.

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