

August 7, 2017

ACA Reporting - Draft 2017 Forms and Enforcement

IRS has released draft versions of the Form 1094/1095 information returns for the 2017 tax year (for filing in early 2018), which are used by employers and other reporting entities to report information on healthcare coverage as required by the Affordable Care Act (ACA). The following 2017 draft forms are posted at [IRS.gov/draftforms](https://www.irs.gov/draftforms):

- [2017 draft Form 1094-C](#) (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, dated July 27, 2017)
- [2017 draft Form 1095-C](#) (Employer-Provided Health Insurance Offer and Coverage, dated July 27, 2017)
- [2017 draft Form 1094-B](#) (Transmittal of Health Coverage Information Returns, dated July 27, 2017)
- [2017 draft Form 1095-B](#) (Health Coverage, dated July 27, 2017)
- [2017 draft Form 1095-A](#) (Health Insurance Marketplace Statement, dated July 13, 2017)

While draft instructions for the transmittal forms have not been issued, the draft forms themselves show few substantive changes from 2016. The only change to Form 1094-C is removal of the line 22 box for "Section 4980H Transition Relief," which was applicable only to the 2015 plan year (the box remained on the 2016 form since some non-calendar-year plans qualified for this relief for months of the 2015 plan year falling in the 2016 calendar year). A new paragraph has also been added in the Instructions for Recipients on Forms 1095-B and 1095-C entitled "Additional information" which refers recipients to an IRS [webpage](#) on the reporting requirements and premium tax credits, along with contact information for the IRS Healthcare Hotline. This IRS webpage addresses President Trump's [January 20, 2017 executive order](#) and the current filing season. It provides that the IRS is currently reviewing the Executive Order to determine the implications, and also advises that taxpayers should continue to file their tax returns as they normally would. For more information on the IRS information reporting applicable for employers, please see the [IRS ACA Reporting webpage](#).

Enforcement

Despite ongoing efforts to repeal, replace, or otherwise change certain provisions of the ACA, no changes have yet been made to the reporting requirements. Thus, coverage providers and employers should continue their efforts to prepare for filings for the 2017 tax year. The release of the draft 2017 forms is an indication of the IRS' continued focus on the pay or play mandate and reporting requirements. In fact, the IRS has issued notices to certain employers that require them

to disclose whether they complied with ACA large employer reporting duties, or their excuse for not doing so, where applicable. The ACA imposes separate penalty taxes for failing to timely furnish and file the required forms. The potential penalties can be very large – up to \$500 per each 2105 Form 1095-C statement (\$250 for not furnishing the form to the employee and \$250 for not filing it with IRS) – up to a total annual penalty liability of \$3 million. The penalty amounts and cap are periodically adjusted for inflation.

IRS notices, called “Request for Employer Reporting of Offers of Health Insurance Coverage (Forms 1094-C and 1095-C)” and also known as [Letter 5699](#) forms have been received by some employers who failed to furnish Form 1095-C and file copies with Form 1094-C for 2015 or 2016. Employers that receive a Letter 5699 form must respond within thirty days with a statement explaining why required returns were not filed. The Letter also provides: “[i]f you are required to file information returns under IRC Section 6056, failure to comply may result in the assessment of a penalty under IRC Section 6721 for a failure to file information returns.” The IRS offers good faith relief from filing penalties only for incomplete or incorrect returns that were timely filed for 2015 and 2016. Relief from penalties for failures to file entirely for those years is available only upon a showing of “reasonable cause” (for instance, due to fire, flood, or major illness). As to when any employer shared responsibility penalty payment (\$2,000/\$3,000) would be due for employers who have filed the forms, it is still unknown when the first IRS demand for payment will be sent to any applicable large employer, although we understand the IRS is preparing to start imposing penalties this year. Employers are not required to include an employer shared responsibility payment with any tax return they may file. Instead, based on information from the employer and from employees’ tax returns (which would show any claims for the premium tax credit), the IRS will calculate the potential employer shared responsibility payment and contact the employer to inform it of any potential liability.

Large employers should not look to recent ACA repeal/replace efforts for relief from filing requirements. Recent repeal and replace bills called for the elimination of the penalties associated with the employer and individual mandates, but the ACA employer reporting/filing requirements were not expressly repealed in the proposals, largely due to procedural rules that limit reform/repeal provisions to those affecting tax and revenue measures (which do not include reporting rules). In light of President Trump's Executive Order directing regulatory agencies to reduce "the economic burden" of the ACA, many are hopeful the White House will now issue a statement of non-enforcement of the employer reporting requirements in light of the recent failure of repeal/replace efforts. But for now nothing changes and the ACA, including penalties for noncompliance and all employer reporting and notice requirements, continue to apply.

We will continue to monitor developments over the coming weeks and months, and provide details on new and revised employer obligations as they take shape over time. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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