



COMPLIANCE SERVICES **ALERT** LOCKTON BENEFIT GROUP



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Final IRS Instructions for ACA Reporting Forms Confirm Massive Data Collection, Assimilation Effort

We hoped to have a different headline for this Alert. We hoped that the IRS was finding a way to streamline and simplify the reporting forms and instructions that employers will use in connection with the Affordable Care Act's (ACA) employer and individual mandates. Those hopes were dashed on Monday when the IRS released the final reporting forms and instructions.

On the plus side, employers who began data-gathering efforts based on the draft forms and instructions will need few, if any, adjustments. And for employers just becoming acquainted with the reporting requirements, our [Alert](#) on the **draft** reporting forms and instructions remains accurate, subject to a few tweaks. (See the section below entitled "[One Change That May Simplify Reporting](#)" for the biggest tweak.)

Lockton Comment: For background on the purpose and mechanics of the reporting obligations under the ACA, as well as how recipients will use the information, please refer to our [Alert](#) on the **draft** reporting forms and instructions, and [Compliance News](#) from spring 2014 (starting at p. 50) regarding the final regulations on the reporting requirements.

Below are some notes on the finalized forms and instructions. We'll dive into the details in a webcast scheduled for March 17, 2015, at 2 p.m. Central time. Please [register](#) for the webcast.

The Final Forms

Of greatest interest to employers, the IRS released final versions of Forms [1094-C](#) and [1095-C](#) and [instructions](#) for completing them. The IRS also released final versions of Forms

[1094-B](#) and [1095-B](#) and related [instructions](#), which will be used primarily by insurers to report minimum essential coverage.

Lockton Comment: The [Alert](#) on the **draft** reporting forms and instructions explains how these four forms are used in the information reporting related to the ACA employer and individual mandates. There is a change that makes **employers'** use of Forms 1094-B and 1095-B much less likely, as explained in the section below entitled "[One Change That May Simplify Reporting](#)."

Timing (and Much More) Remains the Same

First and foremost among the items that remain the same: There is no indication that the reporting requirements will be further delayed.

- Reporting is not required in 2015 with respect to 2014.
- Reporting is required in early 2016 with respect to calendar year 2015.

The reporting forms and instructions remain detailed and complex, with many caveats, exceptions and special rules. Complicating this, reporting continues to be based on the calendar year, regardless of the year on which an employer's plan operates.

Thus, employers with non-calendar plan years who qualify for delayed implementation of the employer play or pay penalties until the start of their 2015 plan year must report for the entire 2015 calendar year. Similarly, reporting for 2015 is required of employers who are subject to the employer play or pay mandate, but qualify for a one-year delay because they have more than 50, but fewer than 100, full-time employees and full-time equivalents. For details on these and other play or pay transition rules, see [Compliance News](#) from spring 2014.

Lockton Comment: The final forms and instructions are labeled as "2014" forms, meaning they would relate to coverage during 2014. It is apparent, however, that these materials were created for the required reporting in 2016 with respect to coverage during 2015. In addition to explicitly stating that reporting with respect to 2014 is voluntary, the instructions explain how to indicate use of various transition rules that apply during 2015.

Many employers have had employees ask about Forms 1095-C for 2014, most likely because the employees' tax preparers are asking for the forms to substantiate the extent of the employees' coverage during 2014, as reflected on the employees' 2014 federal tax returns. Employers may find the following text helpful in responding to these requests:

Some employees have asked whether they will be getting an IRS Form 1095-B or Form 1095-C for 2014 from [name of employer]. The answer is no, those forms aren't required for 2014. Those forms will be required for 2015 (so they will generally be provided in January 2016).

Employees who need information about reporting to the IRS on their health coverage during 2014 should ask their tax advisers or visit www.irs.gov. The IRS's "[Questions and Answers on the Individual Shared Responsibility Provision](#)" may be helpful.

Other items remaining unchanged include:

- The common-law employer of an employee is required to complete the reporting, even if that employer is part of a controlled group of companies and a different member of the controlled group sponsors the plan offering or provides coverage.
- For employers subject to the employer play or pay mandate, Form 1095-C is required for each of its full-time employees (even if coverage is declined or not offered) AND for each participant in any self-insured coverage it provides (even if not a full-time employee).
- A reference to a full-time employee means a full-time employee under the employer play or pay mandate rules (i.e., 30 or more hours of services per week on average), with full-time employees being identified using the look-back measurement method (assuming the employer uses that method to identify full-time employees for play or pay purposes).
- Employers reporting self-insured coverage will need to provide detailed, month-by-month information, including a Social Security number for each enrollee.
- Employers reporting on offers of coverage to full-time employees will use one of nine codes to identify the coverage offered (e.g., no coverage offered, minimum essential coverage offered for employee and children, or minimum value coverage offered for employee with minimum essential coverage available for spouse and children).
- Such employers will also use one of nine offering codes to indicate whether the full-time employee accepted the coverage offered, whether one of the three safe harbor affordability measures applied with respect to the coverage offered to the employee, or whether the employer relied on one of the play or pay mandate transition rules with respect to the employee. (For details on the affordability safe harbors and transition rules, see [Compliance News](#) from spring 2014.)
- Reporting shortcuts remain available and of dubious value to employers (see the Reporting Shortcuts Appendix to our [Alert](#) on the draft reporting forms and instructions).

One Change That May Simplify Reporting

The draft instructions directed employers to report separately (using Forms 1094-B and 1095-B) on self-insured coverage provided to non-employees (e.g., retirees, COBRA participants, outside directors, partners and other self-employed individuals). An example is the best way to explain the change made in the final instructions.

Example: For 2015, Edgar’s employer Goodco Partnership is subject to the employer play or pay mandate and provides self-insured coverage to Edgar. From Jan. 1 through May 31, 2015, Edgar is a full-time, common-law employee of Goodco, but becomes a Goodco partner on June 1, 2015.

Under the draft instructions, Goodco would provide two different forms to Edgar for 2015:

- A Form 1095-C showing Goodco’s offer and provision of self-insured coverage to Edgar as his employer.
- A Form 1095-B showing Goodco’s provision of self-insured coverage to Edgar as one of its partners.

The **final instructions make this double-reporting optional**, allowing Goodco to report the coverage provided to Edgar while a partner on the same Form 1095-C on which it reports the coverage offered and supplied to Edgar as an employee.

The same rule confirms that an employer subject to the employer play or pay mandate and providing self-insured coverage would provide a single Form 1095-C to an employee who moved to COBRA or retiree coverage following termination of employment.

Conclusion

Ideally, technology will take much of the reporting burden off of employers, automating significant portions of the data collection and reporting processes. Unfortunately, technology will not produce accurate reporting without accurate data. In addition, while an employer’s current HR technology solutions may capture the information required for ACA reporting, it is unlikely that the employer has any one system that incorporates all of this information. It is also very likely that gathering the information from various sources and entering it into the required forms will be difficult and time-consuming. Employers that have not done so already will want to discuss with their third-party payroll and benefits administration vendors the extent to which they can handle the required information gathering and reporting.

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