



# Health Care Reform

## LEGISLATIVE BRIEF

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## Employer Reporting of Health Coverage—Code Section 6056

The Affordable Care Act (ACA) created new reporting requirements in Internal Revenue Code (Code) Section 6056. Under these rules, applicable large employers (ALEs) subject to the ACA's employer shared responsibility rules must provide information to the Internal Revenue Service (IRS) about the health coverage they provided (or did not provide) to their full-time employees. Related statements must also be provided to each of the ALE's full-time employees. **Reporting is first required in early 2016 for calendar year 2015.**

The additional reporting is intended to promote transparency with respect to health plan coverage and costs. It will also provide the government with information to administer the ACA's employer mandate, which imposes penalties on ALEs that do not offer affordable, minimum value coverage to their full-time employees and dependents.

On March 5, 2014, the IRS released [final regulations](#) on the Section 6056 reporting requirements. In addition, the IRS issued [Q&As](#) on Section 6056 reporting on Aug. 29, 2014, and a [brochure](#) to aid compliance on Feb. 9, 2015, followed by a separate set of [Q&As on Employer Reporting using Form 1094-C and Form 1095-C](#).

The IRS also released final 2014 versions of [Form 1094-C](#) and [Form 1095-C](#) (along with related [instructions](#)) that employers will use to report under Section 6056 for 2014. **These forms are not required to be filed for 2014.** However, the IRS is encouraging voluntary compliance for 2014.

On Sept. 17, 2015, the IRS **released final 2015 versions of Forms 1094-C and 1095-C**, along with related [instructions](#). The 2015 final forms remained unchanged from the 2015 draft versions. The 2015 final instructions were also largely unchanged from the 2015 draft versions, but provide clarifications on some questions. The final instructions also contain the following key provisions:

- **Extensions of time to file returns with the IRS and furnish statements to individuals** (finalized from draft versions);
- **A process to obtain waivers from the electronic filing requirement** (finalized from draft versions); and
- **Relief from separate Section 6055 reporting for many health reimbursement arrangements (HRAs)** (clarified from prior guidance and draft versions).

Also, on June 29, 2015, President Obama signed the [Trade Preferences Extension Act of 2015](#) into law, which **increased the penalties** for failure to file correct information returns or provide individual statements under Section 6056. **These changes are effective for information returns and individual statements required to be filed or provided after Dec. 31, 2015.**

### FILING REQUIREMENTS—REQUIRED FORMS

Under Section 6056, each ALE is required to file all of the following with the IRS:

- A single **transmittal form** (Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return*) for all of the returns filed for a given calendar year; and
- A separate **employee statement** (Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*) for each full-time employee.



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Substitute statements that comply with applicable requirements may be used, as long as the required information is included. Entities using substitute forms instead of the official IRS versions may develop substitute forms themselves or buy them from a private printer. Currently in draft form, [Publication 5223, General Rules & Specifications for Substitute ACA Forms 1094-B, 1095-B, 1094-C, and 1095-C and Certain Other Information](#), explains the requirements for the format and content of substitute statements to recipients. **Only forms that conform to the official form and the specifications in Publication 5223 are acceptable for filing with the IRS.** Employers may not request special consideration.

The IRS also released final 2014 versions of [Form 1094-C](#) and [Form 1095-C](#), along with related [instructions](#). These are **2014 versions only**, and are not required to be filed for 2014. However, ALEs may voluntarily file them in 2015 with respect to 2014 coverage. On Sept. 17, 2015, the IRS **released final 2015 versions of Forms 1094-C and 1095-C**, along with related [instructions](#). The 2015 final forms remained unchanged from the 2015 draft versions. The 2015 final instructions were also largely unchanged from the 2015 draft versions, but provide clarifications on some questions.

## DEADLINES FOR FILING WITH THE IRS AND FURNISHING STATEMENTS TO EMPLOYEES

Under Section 6056, the required forms must be filed with the IRS annually, no later than **Feb. 28 (March 31**, if filed electronically) of the year following the calendar year to which the return relates. Due to the one-year delay, the first returns required to be filed under Section 6056 are for the 2015 calendar year, and must be filed no later than **Feb. 29, 2016** (Feb. 28, 2016, being a Sunday), or **March 31, 2016**, if filed electronically.

Each ALE will also be required to furnish statements annually to its full-time employees on or before **Jan. 31** of the year immediately following the calendar year to which the statements relate. Thus, the first statements (the statements for 2015) must be furnished no later than **Feb. 1, 2016** (Jan. 31, 2016, being a Sunday).

Extensions may be available in certain circumstances. However, an alternate deadline is generally not allowed for employers with non-calendar year plans. Although employers may collect information on a plan year basis, employees will need to receive their individual statements early in the year in order to have the requisite information to correctly and completely file their income tax returns for that year.

### **Proposed Filing and Furnishing Extensions**

The 2015 draft instructions propose to allow employers an **automatic 30-day extension of time to file** with the IRS. To receive the automatic extension, employers must complete and file [Form 8809, Application for Extension of Time To File Information Returns](#), by the due date of the returns. The form may be submitted on paper, or through the FIRE System either as a fill-in form or an electronic file. No signature or explanation is required for the extension. Under certain hardship conditions, employers may also apply for an additional 30-day extension. See the instructions for Form 8809 for more information.

Employers may also request an extension of time to furnish the statements to recipients by sending a letter to Internal Revenue Service, Information Returns Branch, Attn: Extension of Time Coordinator, 240 Murall Drive, Mail Stop 4360, Kearneysville, WV 25430. The letter must include:

- The filer's name, TIN and address;
- The type of return;
- A statement that extension request is for providing statements to recipients;
- A reason for delay; and
- The signature of the filer or authorized agent.

A request must be postmarked **by the date on which statements are due to recipients**. If the request for an extension is approved, employers will generally be granted a maximum of 30 extra days to furnish the statements.

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## APPLICABLE LARGE EMPLOYERS

The Section 6056 reporting requirements apply to “applicable large employers” (ALEs) subject to the ACA’s employer shared responsibility rules. An ALE is an employer that employed an average of at least **50 full-time employees**, including full-time equivalents (FTEs), on business days during the preceding calendar year. Full-time employees are those employed, on average, **at least 30 hours of service per week**. Whether an employee qualifies as a full-time employee is determined under either the look-back measurement method or the monthly measurement method, as described in the employer shared responsibility [final regulations](#).

Section 6056 applies to all employers that are ALEs, regardless of whether coverage is offered to full-time employees, and regardless of whether the employer is a tax-exempt or government entity (including federal, state, local and Indian tribal governments). However, only ALEs with full-time employees are subject to the Section 6056 requirements (and only with respect to their full-time employees). Thus, **ALEs without any full-time employees are not subject to the Section 6056 reporting requirements**.

### **Controlled Group Rules**

For purposes of the Section 6056 reporting requirements, related employers are treated as a single employer for determining employer size if they meet certain IRS criteria. Thus, all persons treated as a single employer under Code Sections 414(b), (c), (m) or (o) are combined and treated as a single employer for purposes of determining whether or not the employer has at least 50 full-time employees (including FTEs) and together will be an ALE (called an Aggregated ALE Group). When the combined total of full-time employees (including FTEs) meets the threshold, each separate company (or ALE member) is subject to the Section 6056 reporting requirements, even if any particular company individually does not employ enough employees to meet the threshold of 50 full-time employees.

However, each ALE (and each member of a group of related companies that constitute an ALE) is responsible for its own reporting obligations. For purposes of the information reporting requirements under Section 6056, each ALE member must file an information return with the IRS and furnish a statement to its full-time employees, using its own employer identification number (EIN).

For any calendar month in which a full-time employee works for more than one ALE member of an Aggregated ALE Group, only one ALE member is treated as the employer and only that ALE member reports for that employee for that calendar month (and the other ALE member is not required to report for that employee for that calendar month). If, under these rules, an ALE member is not required to report for an employee for any month in the calendar year, the employer is not required to report for that full-time employee for that calendar year.

Generally, an employee is treated as an employee of the employer for whom he or she has the greatest number of hours of service for that calendar month. If the employee has an equal number of hours of service for two or more employers of the same Aggregated ALE Group for the calendar month, those employers must treat one of the employers as the employer of that employee for that calendar month.

### **ALEs That Sponsor Self-insured Plans**

ALEs that sponsor self-insured group health plans also are required to report information under Section 6055 about the health coverage they provide. The IRS and individuals will use the information provided under Section 6055 to administer the ACA’s individual mandate. These ALEs file with the IRS and furnish to employees the information required under both Sections 6055 and 6056 on a single form, using a combined reporting method. This combined reporting method is described in more detail below.

### **Reporting for Medium-sized ALEs**

The employer shared responsibility [final regulations](#) included transition relief delaying compliance for medium-sized ALEs for one year, until 2016. Medium-sized ALEs are those with at least 50 full-time employees (including full-time equivalents), but fewer than 100 full-time employees (including full-time equivalents). **ALEs eligible for this transition relief will still report under Section 6056 for 2015.**

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As part of the transition relief from the employer shared responsibility rules for medium-sized ALEs, the ALE must certify by checking a box on its Section 6056 transmittal form (Form 1094-C) for calendar year 2015 (that is, for the Section 6056 transmittal form that will be filed in 2016) that it meets the following eligibility conditions:

- The ALE **employs a limited workforce** of at least 50 full-time employees (including full-time equivalents), but fewer than 100 full-time employees (including full-time equivalents) on business days during 2014;
- Between Feb. 9, 2014, and Dec. 31, 2014, the ALE **does not reduce the size of its workforce or the overall hours of service** of its employees in order to satisfy the workforce size condition; and
- During the coverage maintenance period (that is, the period ending Dec. 31, 2015, or the last day of the plan year that begins in 2015), the ALE **does not eliminate or materially reduce the health coverage**, if any, it offered as of Feb. 9, 2014.

ALEs with non-calendar year plans will also certify with regard to the months of their 2015 plan year that fall in either 2015 or 2016.

The IRS noted that the delay for medium-sized ALEs is solely for the employer for purposes of the employer shared responsibility rules, and does not affect the employee's potential eligibility for the premium tax credit. Accordingly, **regardless of whether the employer is eligible for this delay, the Form 1095-C for each full-time employee must accurately reflect the health coverage offered to that employee (if any) during that period, including, if applicable, the required employee contribution.** Thus, reporting for medium-sized ALEs is *not* a simplified method of reporting.

## **Multiemployer Plans**

Section 6056 reporting related to full-time employees who are eligible to participate in a multiemployer plan may be provided in a bifurcated manner. Under this approach:

- One return, filed by the multiemployer plan administrator, would pertain to the employees who are eligible to participate in the multiemployer plan; and
- A separate return filed by the employer would pertain to the remaining full-time employees who are not eligible to participate in a multiemployer plan.

This approach is optional. Section 6056 applies the reporting and furnishing requirements only to the employer, and not to the relevant plan in which the employee participates. Therefore, although multiemployer plan administrators may prepare and submit returns for certain employees of an ALE, the employer would remain the responsible person under Section 6056 with respect to all of its full-time employees, and would be subject to any potential liability for failure to properly file returns or furnish statements. However, to the extent that the plan administrator that prepares returns or statements required under Section 6056 is a tax return preparer, it is subject to the requirements generally applicable to return preparers. The regulations also require that there be:

- A single identified Section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the ALE (including those for whom reporting was done by a multiemployer plan); and
- Only one Section 6056 employee statement (Form 1095-C) for each full-time employee of the ALE with respect to the employee's employment with the ALE.

According to the 2015 draft instructions, for reporting offers of coverage on the Form 1095-C for 2015, an employer relying on the multiemployer arrangement interim guidance should **enter Code 1H on Line 14 for any month for which the employer enters Code 2E on Line 16** (indicating that the employer was required to contribute to a multiemployer plan on behalf of the employee for that month and therefore is eligible for multiemployer interim rule relief). For reporting for 2015, Code 1H may be entered without regard to whether the employee was eligible to enroll (or enrolled) in coverage under the multiemployer plan. For reporting for 2016 and future years, ALEs relying on the

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multiemployer arrangement interim guidance may be required to report offers of coverage made through a multiemployer plan in a different manner.

## ***Designating Third Parties to File and Furnish on Behalf of an ALE***

Reporting arrangements between ALEs, issuers and other parties are not prohibited. Thus, ALEs can use third parties to facilitate filing returns and furnishing employee statements. However, this does not transfer the ALE's potential liability under the employer shared responsibility rules, or the potential liability for failure to file returns and furnish statements under Section 6056 (except in the case of a related entity properly designated by a governmental unit). If a person who prepares returns or statements required under Section 6056 is a tax return preparer, that person will be subject to the requirements generally applicable to tax return preparers.

An ALE that is a governmental unit or agency may report on its own or may designate (in writing) another person to report on its behalf, as long as the designation meets certain criteria. The designated person, called a Designated Government Entity (DGE), must be a person or persons that are part of (or related to) the governmental unit ALE. In this case, the DGE is responsible for providing the information, and is liable for penalties for failure to comply.

## ***Excluded Employers***

Employers that are not subject to the ACA's employer shared responsibility rules are not required to report under Section 6056. Thus, employers that employed fewer than 50 full-time employees (including FTEs) during the prior year are not subject to the reporting requirements. However, any employer that sponsors a self-insured health plan is required to report under Section 6055, even if the employer has fewer than 50 full-time employees.

## **INFORMATION THAT MUST BE FILED WITH THE IRS**

In general, the ALE's return filed with the IRS must include the following information:

- The ALE's name, address and employer identification number (EIN), and the name and telephone number of the ALE's contact person;
- A certification of whether the ALE offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan, by calendar month, and the months during the calendar year for which MEC under the plan was available;
- Each full-time employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to that employee under an eligible employer-sponsored plan, by calendar month;
- The number of full-time employees and the number of total employees for each month;
- The name, address (including country code) and Social Security number (SSN) or other taxpayer identification number (TIN) of each full-time employee during the calendar year and the months (if any) during which the employee was covered under the eligible employer-sponsored plan during the calendar year; and
- Any other information required by the IRS.

Each ALE will also have to report the name, address and EIN of any third party reporting on behalf of the ALE and whether the ALE is a member of an Aggregated ALE Group. The final regulations do not require employers to report whether they expect to be an ALE the following year.

In an effort to simplify the Section 6056 reporting process, certain information required to be reported to the IRS and furnished to full-time employees may be reported through the use of **indicator codes**, rather than by providing more detailed information. More details about the reporting process is available in the reporting forms and instructions.

According to the IRS, they intend to include two additional "Offer of Coverage" indicator codes for 2016 and beyond. Although the "Offer of Coverage" codes will remain unchanged for 2015, the IRS plans to include these additional

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codes in 2016 and beyond that an employer would use, if applicable, to indicate that the employer's offer of coverage to the spouse is a conditional offer. Also, the 2015 draft Form 1095-C includes an additional field, titled "Plan Start Month." This new field is optional for 2015, but will be required for 2016 and beyond. For 2015, ALEs can choose to: (1) Add this field and provide plan year information; (2) Add this field and enter "00"; or (3) Leave this new field out (thus using the 2014 format).

## **Minimum Essential Coverage (MEC)**

Most employer-sponsored health plans will qualify as MEC. The ACA broadly defines MEC to include both insured and self-insured group health plans, as well as plans with grandfathered status under the ACA. However, MEC does not include specialized coverage, such as coverage only for vision care or dental care, workers' compensation, disability policies or coverage only for a specific disease or condition.

## **Reporting Required for All Full-time Employees**

Under Section 6056, each ALE is required to report information about the health coverage, if any, offered to its full-time employees (and their dependents), **including whether an offer of health coverage was (or was not) made**. This requirement applies to all ALEs, regardless of whether they offered health coverage to all, none or some of their full-time employees. For each full-time employee, regardless of whether health coverage was offered to the employee, the ALE is required to file a return with the IRS and furnish a statement to the employee reporting:

- Whether an offer of health coverage was or was not made to the employee; and
- If an offer was made, the required information about the offer.

Therefore, even if an ALE does not offer coverage to any full-time employees, it must file returns with the IRS and furnish statements to each of its full-time employees to report information specifying that coverage was not offered.

An ALE is *not required* to file a Form 1095-C for an individual who, for all months of a calendar year, is either **not an employee of the ALE** or is in a **limited non-assessment period** (for example, an employee who was hired mid-year and then was in an initial measurement period that continued into the following year). However, for the months in which the employee was an employee of the ALE, he or she would be included in the total employee count reported on Form 1094-C. Also, if the employee enrolled in self-insured employer-sponsored coverage during the limited non-assessment period, the ALE must file a Form 1095-C for the employee to report coverage information for the year.

## **Offers of Coverage**

An employer makes an offer of coverage to an employee if it provides the employee with an effective opportunity to enroll in the health coverage (or to decline that coverage) **at least once for each plan year**. This includes cases where the employer continues the employee's election of coverage from a prior year, but provides the employee an effective opportunity to opt out of the health coverage. If an employer does not provide the employee an effective opportunity to decline the coverage, the employer is treated as having made an offer of health coverage to the employee only if that health coverage provides minimum value and does not require an employee contribution for any calendar month of more than 9.5 percent of the mainland federal poverty line for a single individual.

An offer of coverage for a month must provide coverage for every day of that month. However, if an employee terminates employment before the last day of a calendar month and the offer ends on the date of termination, the employer is treated as having offered the employee health coverage for the month only if the employee would have been offered health coverage for the entire month, had the employee been employed for the entire month.

## **Reporting Offers of COBRA Coverage**

The IRS issued a number of [Q&As](#) that provide examples of how to report certain offers of COBRA coverage. In general, an offer of COBRA continuation coverage that is made to a **former employee upon termination of**

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**employment** should not be reported as an offer of coverage on Line 14. For a terminated employee, Code 1H (No offer of coverage) should be entered for any month for which the offer of COBRA continuation coverage applies.

An offer of COBRA continuation coverage that is made to an **active employee** (for instance, an offer of COBRA continuation coverage that is made due to a reduction in the employee's hours that resulted in the employee no longer being eligible for coverage under a plan) is reported in the same manner and using the same code as an offer of that type of coverage to any other active employee.

## **Reporting Information on Coverage Offered to Spouses and/or Dependents of Full-time Employees**

Section 6056 does not require ALEs to report specific information about spouses and/or dependents of full-time employees, such as their name, SSN or enrollment information. However, ALEs are required to report information about whether coverage was offered to spouses and/or dependents of its full-time employees by calendar month, using an indicator code. (Note that ALEs that sponsor self-insured plans *are required* to report specific information about spouses and/or dependents who are enrolled in the self-insured coverage under Section 6055.)

For purposes of reporting under Section 6056, the term "dependent" is defined as an employee's child, including a child who has been legally adopted or legally placed for adoption with the employee, who has not reached age 26. A dependent does not include stepchildren, foster children or a child who does not reside in the United States (or a country contiguous to the United States) and who is not a U.S. citizen or national.

A dependent also does not include a spouse. In addition, for this purpose, an offer of coverage is treated as made to an employee's dependents only if the offer of coverage is made to **an unlimited number of dependents**, regardless of the actual number of dependents an employee has, if any, during any particular calendar month.

An offer to a spouse includes an offer that is subject to a reasonable, objective condition, regardless of whether the spouse meets the condition. 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 is treated as an offer of coverage to the spouse for reporting purposes. However, this treatment is for reporting purposes only and generally will not affect the spouse's eligibility for the premium tax credit if the spouse did not meet the condition, and therefore did not have an actual offer of coverage.

According to the IRS, they intend to include two additional "Offer of Coverage" indicator codes for 2016 and beyond to indicate that the employer's offer of coverage to the spouse is a conditional offer. The "Offer of Coverage" codes will remain unchanged for 2015.

## **INFORMATION THAT MUST BE FURNISHED TO FULL-TIME EMPLOYEES**

Under Section 6056, an ALE generally must furnish to each full-time employee a written statement showing the ALE's name, address and EIN, and the information required to be shown on the Section 6056 return with respect to the full-time employee (and his or her spouse and dependents).

Employee statements may truncate the TIN or SSN of an employee (or any family member of the employee receiving coverage) on any statements furnished to employees, by showing only the last four digits of the TIN or SSN and replacing the first five digits with asterisks or Xs. Truncation is not allowed on forms filed with the IRS. In addition, an employer's EIN may not be truncated on any forms filed with the IRS or provided to individuals.

## **METHODS OF REPORTING**

The final rule provides a **general reporting method** that all ALEs may use for filing forms with the IRS and furnishing statements to full-time employees, and **two optional alternative reporting methods** for eligible ALEs. If an ALE cannot use an alternative reporting method for certain employees, the ALE must use the general method for those employees. In any case, the alternative reporting methods are optional, so that an employer may choose to report for all of its full-time employees using the general method even if an alternative reporting method is available.

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## **General Reporting Method**

As a general method, each ALE may satisfy the requirement to file a Section 6056 return with the IRS by filing a transmittal on **Form 1094-C** for all of the returns filed for a given calendar year, and a separate employee statement on **Form 1095-C** for each full-time employee. Generally, each ALE must file separate Section 6056 returns providing that ALE's EIN. There must be only **one Section 6056 Authoritative Transmittal** (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the ALE, and **one Section 6056 employee statement** (Form 1095-C) for each full-time employee with respect to employment with that ALE.

### **AUTHORITATIVE TRANSMITTAL**

**A separate Section 6056 transmittal (Form 1094-C) must be filed with any Forms 1095-C filed by each ALE.** An ALE may choose to file multiple Forms 1094-C, each accompanied by Forms 1095-C, for some of its employees, provided that a Form 1095-C is filed for each employee for whom the ALE is required to file. However, if more than one Section 6056 transmittal is filed for an ALE, one of those Form 1094-C transmittals must be an **Authoritative Transmittal** reporting aggregate employer-level data for all full-time employees. The form must be identified, on Line 19 of Part II, as the Authoritative Transmittal.

One Authoritative Transmittal must be filed for each ALE, even if multiple Forms 1094-C are filed by and on behalf of the ALE. For example, if an employer has prepared a separate Form 1094-C for each of its two divisions in order to transmit Forms 1095-C for each division's full-time employees, one of the Forms 1094-C filed must be designated as the Authoritative Transmittal and report aggregate employer-level data for all full-time employees (for both divisions).

In the case of an Aggregated ALE Group, each separate ALE Member must file its own Authoritative Transmittal. Similarly, in the case of a governmental unit that has delegated its reporting responsibilities for some of its employees to a DGE, one Authoritative Transmittal must still be filed for that governmental unit reporting aggregate employer-level data for all employees of the governmental unit (including those for whom the governmental unit has delegated its reporting responsibilities).

### **ONE FORM 1095-C PER FULL-TIME EMPLOYEE**

Also, **there must be only one Section 6056 employee statement (Form 1095-C) for each full-time employee** with respect to that full-time employee's employment with the ALE, so that all information for a particular full-time employee of the ALE is reflected on a single Form 1095-C. For example, if an ALE separately reports for the full-time employees of its two divisions, the ALE must combine the information for any employee who worked at both divisions during the year, so that a single Form 1095-C is filed for that employee which reports information for all 12 months of the calendar year from that employer.

However, a full-time employee who works for more than one ALE that is a member of the same Aggregated ALE Group (that is, works for two separate ALE members) must receive a separate Form 1095-C from each ALE member, unless the ALE member is not treated as the employer for any month in the calendar year.

## **Alternative Methods of Reporting**

The final rule provides two alternative methods of reporting under Section 6056 that are intended to minimize the cost and administrative tasks for employers. In certain situations, the alternative reporting methods may allow employers to provide **less detailed information** than under the general method. The two alternative reporting methods are:

- Reporting Based on Certification of Qualifying Offers (the Qualifying Offer Method); and
- Option to Report Without Separate Identification of Full-Time Employees if Certain Conditions Related to Offers of Coverage Are Satisfied (the 98 Percent Offer Method).

In addition, transition relief is available under the Qualifying Offer Method for 2015. Each of these alternative methods of reporting are described in greater detail below.

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In some circumstances, only some of the information required under the general method is necessary. Accordingly, the alternative reporting methods identify specific groups of employees for whom simplified alternative reporting would provide sufficient information.

If an ALE is not eligible to use an alternative method of reporting with respect to one or more full-time employees, the ALE **must use the general method of reporting** for those employees. In addition, the alternative methods of reporting are all optional. An employer is not required to use any alternative reporting method, even if it is eligible, and may instead report the more detailed information under the general method of reporting.

## REPORTING BASED ON CERTIFICATION OF QUALIFYING OFFERS

The first alternative method applies with respect to an ALE that **certifies on Form 1094-C that it offered certain coverage (a Qualifying Offer) to one or more of its full-time employees**. A "Qualifying Offer" occurs when, for all months during the year in which the employee was a full-time employee with respect to whom an employer shared responsibility penalty could apply, the ALE:

- Offers MEC providing minimum value at an employee cost for self-only coverage of less than 9.5 percent of the mainland single federal poverty line to one or more of its full-time employees; and
- Offers MEC to the employee's spouses and dependents.

Note that, although the employer shared responsibility rules only require ALEs to offer coverage to dependent children (not spouses), ALEs must offer coverage to a full-time employee's spouse and dependent children in order to use the Qualifying Offer Method of reporting under Section 6056. Also, the employer shared responsibility final rules provide transition relief for certain ALEs that do not offer dependent coverage in 2015. An ALE using this transition relief **will not be treated as offering dependent coverage** under this alternative reporting method.

An ALE that is eligible to use the Qualifying Offer Method for one or more employees may provide less detailed information on the Form 1095-C for each employee who received a Qualifying Offer, as follows:

- **Alternative Method of Completing Form 1095-C:** For any month in which a Qualifying Offer is made, an ALE must not report the dollar amount for the employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to that employee. Instead, the ALE must enter the **Qualifying Offer Code 1A** on Form 1095-C, Line 14, for any month for which the employee received a Qualifying Offer (or in the all 12 months box, if the employee received a Qualifying Offer for all 12 months). Line 15 must be left blank for any month for which Code 1A is entered on Line 14.
- **Alternative Method of Furnishing Form 1095-C to Employees:** For any full-time employees who received a Qualifying Offer for all 12 months of the calendar year (and who did not enroll in self-insured coverage), the ALE may furnish either a **copy of Form 1095-C** as filed with the IRS or a **statement containing:** (1) ALE's name, address and EIN; (2) Contact name and telephone number at which the employee may receive information about the offer of coverage and the information on the Form 1095-C filed with the IRS for that employee; (3) A notification that, for all 12 months of the calendar year, the employee (and his or her spouse and dependents) received a Qualifying Offer and therefore are not eligible for a premium tax credit; and (4) Information directing the employee to see [Publication 974, Premium Tax Credit \(PTC\)](#), for more information on eligibility for the credit.

For a full-time employee who received a Qualifying Offer and enrolled in self-insured coverage, the ALE must furnish the information reporting enrollment in the coverage on Form 1095-C, Part III. The ALE may not provide a simplified statement for that employee. Instead, the ALE may provide the information to the employee by furnishing a copy of Form 1095-C as filed with the IRS (with or without the statement described above).

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## QUALIFYING OFFER METHOD TRANSITION RELIEF FOR 2015

Transition relief is available in 2015 for ALEs that certify on the Form 1094-C that they have made a Qualifying Offer to **at least 95 percent of their full-time employees** (and their spouses and dependents). Generally, employers will have to use the general method of reporting for any employees that did not receive a Qualifying Offer for all 12 months. However, solely for 2015, ALEs that have made a Qualifying Offer to at least 95 percent of their full-time employees (and their spouses and dependents) will be treated as complying with Section 6056 if they take the two simplified steps listed above. However, in this case, employers will use either:

- The **Qualifying Offer Code 1A** for any months for which the employee received a Qualifying Offer; or
- The **Qualifying Offer Method Transition Relief Code 1I** for any months for which the employee did not receive a Qualifying Offer.

*An employer may not, for any month, use Code 1A or Code 1I and also report the dollar amount for the employee's share of the lowest cost monthly premium for self-only coverage providing minimum value.*

In addition, the simplified employee statement will vary based on whether the employee received a Qualifying Offer for all, some or no months of the calendar year.

- If the Qualifying Offer applied to an employee for all 12 months of the calendar year, the statement will inform the employee that the employee (and the employee's spouse and dependents, if any) will not be eligible to claim a premium tax credit for any of the 12 calendar months.
- If the Qualifying Offer did not apply to an employee for all 12 months, the statement will inform the employee that the employee (and his or her spouse and dependents) may be eligible to claim a premium tax credit for one or more of the 12 calendar months.

## REPORTING BASED ON CERTIFICATION OF 98 PERCENT OFFERS

The second alternative method applies with respect to an ALE that certifies on its transmittal form that, taking into account all months during which the individuals were employees of the ALE (and were not in a limited non-assessment period), the ALE:

- **Offered MEC that is affordable and provides minimum value to at least 98 percent of its full-time employees** on whom it reports in its Section 6056 return; and
- **Offered MEC to those employees' dependents.**

For this purpose, coverage is treated as affordable if the cost of employee-only coverage satisfies any applicable affordability safe harbor under the employer shared responsibility final regulations.

This alternative method allows eligible ALEs to provide Section 6056 reporting without determining whether each employee offered coverage is a full-time employee or specifying the number of the ALE's full-time employees. Under this alternative method, the ALE does not have to provide its full-time employee count on Form 1094-C.

This alternative method is designed to ensure that the ALE has offered coverage to "substantially all" of its full-time employees, and therefore is not subject to an employer shared responsibility penalty, without having to know which reported employees are full-time and which are part-time. However, this alternative method does not exempt the ALE from any penalties that might apply for failure to report with respect to any full-time employee. Thus, reporting is still required under the normal rules for all full-time employees, including those not offered coverage.

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## MANNER OF FILING RETURNS WITH THE IRS

**Any ALE that is required to file at least 250 individual statements with the IRS under Section 6056 must file electronically.** Each Form 1095-C is counted separately when applying this 250-or-more return requirement, and only Forms 1095-C are counted. The transmittal (Form 1094-C) is not treated as a separate return, but must also be filed electronically when the individual statement is filed electronically. ALEs filing fewer than 250 returns with the IRS during the calendar year may choose to file in paper form, but are permitted (and encouraged) to file electronically.

Electronic filing will be done using the ACA Information Returns (AIR) Program. [Pub. 5165](#), *Guide for Electronically Filing ACA Information Returns for Software Developers and Transmitters (Processing Year 2015)* provides very detailed technical information regarding standards for software developers and transmitters that plan to facilitate this electronic reporting for calendar year 2015 through the AIR System. To develop software for use with the AIR system, software developers, transmitters and issuers (employers filing their own Forms 1094-C and 1095-C) should use the guidelines provided in Pub. 5165 along with the Extensible Markup Language (XML) Schemas published on [www.IRS.gov](http://www.IRS.gov).

More information on the AIR Program is available on the [IRS website](#). The AIR System is expected to be available for production in the fall of 2015.

### **Proposed Waiver of the Electronic Reporting Requirement**

The 2015 draft instructions propose **a waiver from the requirement to file returns electronically**. To receive a waiver, employers must submit [Form 8508](#), *Request for Waiver From Filing Information Returns Electronically*, at least 45 days before the due date of the returns. Employers cannot apply for a waiver for more than one tax year at a time, and must reapply at the appropriate time for each year in which a waiver is required. Any approved waivers should be kept for the employer's records only. A copy of an approved waiver should not be sent to the service center where paper returns are filed.

If a waiver for **original returns** is approved, any corrections for the same types of returns will be covered under the waiver. However, if original returns are submitted electronically, but the employer wants to submit corrections on paper, a waiver must be approved for the corrections if the employer must file 250 or more corrections.

Without an approved waiver, an employer that is required to file electronically but fails to do so may be subject to a penalty of up to \$250 per return, unless it can establish reasonable cause. However, employers can file up to 250 returns on paper; those returns will not be subject to a penalty for failure to file electronically.

## MANNER OF FURNISHING STATEMENTS TO FULL-TIME EMPLOYEES

Individual statements may be furnished to full-time employees by hand delivery or by mail, to his or her last known permanent address, or, if no permanent address is known, to the employee's temporary address. The Form 1095-C may be furnished in the same mailing with the Form W-2.

Individual statements may also be furnished electronically if certain notice, consent, and hardware and software requirements are met (similar to the process currently in place for the electronic furnishing of employee Forms W-2). **It is not sufficient for an entity to simply post the information on a website accessible to the individual (similar to the current process for furnishing SBCs), or to provide the information only upon request.**

Consent to receive an electronic statement must be in a manner that reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished. The final regulations explicitly allow individuals to provide consent and to access Section 6056 statements in response to a notice on a website. The consent may also be made on paper, if it is confirmed electronically.

An ALE may simultaneously request consent to receive an electronic Section 6056 statement and consent regarding other statements (for example, simultaneously requesting consent to provide electronic statements for Forms W-2 and 1095-C). However, each form must be specifically referenced in the request. A general consent to receive

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statements electronically does not reasonably demonstrate that the recipient is able to access the electronic Section 6056 statement, and does not serve as consent to receive the Section 6056 statement electronically.

According to the 2015 draft instructions, statements reporting coverage under an expatriate health plan may generally be furnished electronically without affirmative consent, unless the recipient affirmatively refuses consent or requests a paper statement. For more information on expatriate health plans, see [Notice 2015-43](#).

## COMBINED REPORTING

ALEs that sponsor self-insured plans are required to report under both Section 6055 and Section 6056. In an effort to minimize burdens and streamline the reporting process, while minimizing the need for employers and the IRS to build multiple systems to accommodate multiple forms, **the final regulations allow all ALEs to use a single combined form for reporting the information required under both Section 6055 and Section 6056.**

Under this combined reporting method, Form 1095-C will be used by ALEs to satisfy the Section 6055 and 6056 reporting requirements, as applicable.

- An ALE that sponsors a self-insured plan will complete all parts (Part I, II and III) of Form 1095-C to report the information required under both Sections 6055 and 6056. Therefore, these ALEs will be able to use a single form to report information regarding whether an employee was covered.
- An ALE that provides insured coverage will also report on Form 1095-C, but will complete only the parts related to Section 6056 (Part I and II).

Section 6055 reporting entities that are not ALEs or are not reporting in their capacity as employers (such as health insurance issuers, self-insured multiemployer plans and providers of government-sponsored coverage) will report under Section 6055 on Form 1095-B.

ALEs will also be providing only a single employee statement (with the Section 6056 information, and, with respect to employers with a self-insured group health plan, Section 6055 information). Employers may mail one or more of the required information returns to an employee in the same mailing, such as the combined Section 6055 and Section 6056 employee statement and the Form W-2.

The following table provides an overview of the forms that will be used by each type of entity.

ALEs that sponsor self-insured plans	ALEs that sponsor insured plans	Non-ALEs that sponsor self-insured plans	Non-ALEs that sponsor insured plans
Complete: <b>Form 1094-C</b> + <b>Both sections of Form 1095-C</b>	Complete: <b>Form 1094-C</b> + <b>The section of Form 1095-C addressing the information under Section 6056</b>	File: <b>Form 1094-B</b> + <b>Form 1095-B</b>	These employers are not required to report under either Section 6055 or Section 6056.
To report: (1) Information under Section 6055 about health coverage provided; and (2) Information under Section 6056 about offers of health coverage.	To satisfy the Section 6056 reporting requirements. These employers are not required to report under Section 6055.	To satisfy the Section 6055 reporting requirements. These employers are not required to report under Section 6056.	

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## Reporting for Nonemployees Enrolled in Self-insured Coverage

The 2014 [instructions](#) for Forms 1094-C and 1095-C include a new option for ALEs that are reporting information for nonemployees (such as nonemployee directors, retirees or nonemployee COBRA beneficiaries), which allows ALEs to report employer-sponsored self-insured health coverage for nonemployees (and their family members) using either:

- Forms 1094-B and 1095-B; or
- Form 1095-C, Part III (note, though, that the Form 1095-C may only be used if the individual identified on Line 1 has a SSN).

This option applies only for ALEs offering self-insured health coverage for any individual who enrolled in the coverage for one or more calendar months of the year, but was not an employee for any calendar month of the year, such as:

- A nonemployee director;
- A retired employee who retired in a previous year;
- A terminated employee receiving COBRA coverage who terminated employment during a previous year; and
- A nonemployee COBRA beneficiary.

A nonemployee does *not* include an individual who obtained coverage through the employee's enrollment, such as a spouse or dependent obtaining coverage when an employee elects family coverage.

**Under this new option, ALEs may report enrollment for these individuals using either:**

**Forms 1094-B and 1095-B**

**OR**

**Form 1095-C, Part III**

If Form 1095-C is used with respect to an individual who was not an employee for any month of the calendar year, Part II must also be completed by using Code 1G on Line 14 in the "All 12 Months" box (or the box for each month of the calendar year).

In the case of a nonemployee who enrolls in the coverage under a self-insured health plan, all family members who are covered individuals due to the individual's enrollment must be included on the same Form 1095-B or Form 1095-C as the individual who is offered, and enrolls in, the coverage.

## PENALTIES

An ALE that fails to comply with the Section 6056 reporting requirements may be subject to the general reporting penalties in the tax code for:

- Failure to file correct information returns (under Code Section 6721); and
- Failure to furnish correct payee statements (under Code Section 6722).

However, penalties may be waived if the failure is due to reasonable cause and not to willful neglect. Penalties may be reduced if the reporting entity corrects the failure within a certain period of time. Also, lower annual maximums apply for reporting entities that have average annual gross receipts of up to \$5 million for the three most recent taxable years.

On June 29, 2015, President Obama signed the [Trade Preferences Extension Act of 2015](#) into law, which **increased the penalties** for failure to file correct information returns or provide individual statements under either Section 6055 or Section 6056. **These changes are effective for information returns and individual statements required to be filed or provided after Dec. 31, 2015.**

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The increased penalty amounts are as follows:

Penalty Type	Per Violation		Annual Maximum		Annual Maximum for Employers with ≤\$5 Million in Gross Receipts	
	Old Amount	New Amount	Old Amount	New Amount	Old Amount	New Amount
General	\$100	<b>\$250</b>	\$1.5 million	<b>\$3 million</b>	\$500,000	<b>\$1 million</b>
Corrected within 30 days	\$30	<b>\$50</b>	\$250,000	<b>\$500,000</b>	\$75,000	<b>\$175,000</b>
Corrected after 30 days, but before Aug. 1	\$60	<b>\$100</b>	\$500,000	<b>\$1.5 million</b>	\$200,000	<b>\$500,000</b>
Intentional disregard	\$250*	<b>\$500*</b>	None		N/A	

\*For failures due to intentional disregard of the filing requirement, the penalty will be equal to the greater of either the listed penalty amount or 10 percent of the aggregate amount of the items required to be reported correctly.

### Short-term Relief from Penalties

The final regulations also include short term relief from penalties to allow additional time to develop appropriate procedures for data collection and compliance with these new reporting requirements. **For returns and statements filed and furnished in 2016 to report offers of coverage in 2015, the IRS will not impose penalties on reporting entities that can show they made good faith efforts to comply with the information reporting requirements.**

This relief is provided only for incorrect or incomplete information reported on the return or statement, including SSNs, TINs or dates of birth. No relief is provided for reporting entities that do not make good faith efforts to comply with these regulations or that fail to timely file an information return or statement.

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