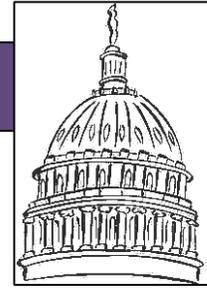




## Health Care Reform Update



### **IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #61**

**October, 2016**

#### **IRS Releases Final 1094 and 1095 Forms and Instructions**

The IRS has released additional materials related to health coverage reporting for the 2016 tax year. Final Forms 1094-B and C and 1095-B and C Forms and the related instructions generally incorporate the revisions included in the drafts to report information necessary for the IRS to administer the Code § 4980H employer shared responsibility provisions.

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

Key provisions include details on reporting for individuals with coverage under more than one MEC plan (e.g., a major medical plan and an HRA) and references to proposed regulations regarding solicitation of taxpayer identification numbers (TINs). The instructions include updated penalty amounts and add a reference to IRS Publication 1586, which explains reasonable cause penalty relief and requirements for missing and incorrect name/TINs.

Separately, the IRS announced impending changes to the identity authentication process for e-Service, i.e., a suite of web-based tools allowing users to complete certain transactions online with the IRS. Included in these services are tools used by software developers, transmitters, and issuers in connection with electronic filing of Forms 1094 and 1095 through the Affordable Care Act Information Returns (AIR) Program system. According to the IRS, the upcoming changes will strengthen protections for e-Services accounts by requiring two-factor authentication to use the Secure Access platform. Each time returning users access the e-Services system, they will have to provide their username and password as well as a security code sent in a text message to their mobile phone. Thus, merely having credentials, which could be stolen, will not be sufficient to enter the system. Most users returning to their e-Services account after the effective date of the changes, which should be October 24, 2016, will be instructed to update their account information.

##### **1094-C and 1095-C Forms**

Notable additions and clarifications in the final instructions include:

Proposed Regulations: The final instructions add a reference to proposed regulations issued in August 2016 that include reporting rules applicable to health reimbursement arrangements (HRAs) and new requirements for soliciting taxpayer identification numbers (TINs).

Substitute Statements: Substitute Forms 1095-C furnished to individuals may be printed in portrait layout, but the final instructions specify that those filed with the IRS must be in landscape.

Full-Time Employee Count: The final instructions correct an apparent omission regarding the full-time employee count reported on Part III of Form 1094-C. The draft instructions could have been interpreted to require ALEs to use the monthly measurement method to count full-time employees. The final instructions clarify that either the monthly or look-back measurement method—and no other methods or full-time employee definitions—may be used.



## Health Care Reform Update



### **IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #61**

**October, 2016**

### **IRS Releases Final 1094 and 1095 Forms and Instructions**

COBRA Reporting: A small change to the note following the example of COBRA reporting for dependents of a terminated employee emphasizes that dependent coverage offers are treated differently for purposes of reporting and Code § 4980H. For Code § 4980H purposes, an ALE is treated as having offered minimum essential coverage (MEC) to an employee's dependents for an entire plan year so long as the dependents had an effective opportunity to enroll—even if they declined coverage. However, if, following an employee's termination, the ALE does not offer COBRA coverage to dependents who declined enrollment, the ALE will report that it did not offer coverage to dependents for the period following termination. [EBIA Comment: Reporting "no offer" on line 14 of Form 1095-C preserves the dependents' potential eligibility for premium tax credits, while reporting Code 2A for the terminated employee on line 16 should protect the ALE from potential Code § 4980H penalties otherwise assessable for failure to offer dependent coverage.]

Enrollment by Non-Full-Time Employees: As with 2015 Form 1095-C reporting, ALEs will use Code 1G to report enrollment of individuals other than full-time employees in a self-insured health plan. A note has been added to the final instructions to emphasize that Code 1G applies for the entire year or not at all.

Non-MEC Enrollment: The Form 1095-C final instructions include a reminder not to use Code 2C, the enrollment code, if the employee's coverage is not MEC (e.g., coverage consisting solely of certain excepted benefits).

Affordability Safe Harbors: The final instructions caution that ALEs should not enter an affordability safe harbor code on line 16 of Form 1095-C for any month in which they offer MEC to less than 95% of full-time employees (as reported on Form 1094-C).

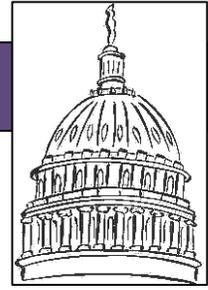
Final Publication 5164: This publication generally tracks the draft publication. Additional details are provided on the two options (predefined or criteria-based narratives) for submitting test scenarios. The IRS advises testers using predefined scenarios to review the online answer key before submitting their scenarios since submissions that do not contain all of the information shown in the answer key will not pass testing.

Publication 5165: This publication explains the procedures for electronic filing of information returns, explains various changes for the 2017 processing year, including more detailed error messages for rejections by the IRS portal and the Affordable Care Act Information Returns (AIR) Program system. In the AIR system, error data files will contain information that may be used to pinpoint the data element that caused the error, which should make error correction easier.

With these releases, ALEs and others involved with completion and filing of C Forms can begin in earnest their preparations for the 2017 processing year. One of the key lessons from the 2016 filing was the



## Health Care Reform Update



### **IMPORTANT NOTICE REGARDING HEALTHCARE REFORM** **Update #61** **October, 2016**

#### **IRS Releases Final 1094 and 1095 Forms and Instructions**

importance of starting early by gathering the information necessary to complete the forms accurately is a big task. The many filers that received TIN validation errors in 2016 will appreciate the AIR system's enhanced ability to identify specific data elements triggering error messages.

Links to the 2016 final forms and instructions are below:

<a href="#"><u>1094-B</u></a>	<a href="#"><u>1095-B</u></a>	<a href="#"><u>B Instructions</u></a>	<a href="#"><u>e-Services</u></a>	
<a href="#"><u>1094-C</u></a>	<a href="#"><u>1095-C</u></a>	<a href="#"><u>Instructions</u></a>	<a href="#"><u>Pub. 5164</u></a>	<a href="#"><u>Pub. 5165</u></a>

---

Bernie Lowe & Associates, Inc. is not providing any legal advice with regard to compliance with the requirements of the Affordable Care Act ("ACA"). Bernie Lowe & Associates, Inc. makes no representation as to the impact of plan changes on a plan's grandfathered status or interpretation or implementation of any other provisions of ACA. Bernie Lowe & Associates, Inc. will not determine whether coverage is discriminatory or otherwise in violation of Internal Revenue Code Section 105(h).