Health Care Reform Update

ACA Compliance: On the Door Step to 2015

Sponsored by:

October 1, 2014

Presented by:

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Parker Brown Macaulay & Sheerin, P.C.

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ERISA at 40

DOL A TO Z
Learn About the Labor Department

ERISA

The Employee Retirement Income Security Act of 1974 protects workers, retirees and their families by setting standards for retirement, health and other employee benefit plans.

DID YOU KNOW?

Gerald Ford could have played football for the NFL, but he turned down offers from the Lions and the Packers and went into politics. As president, he signed the **Employee Retirement Income Security Act** into law on Sept. 2, 1974.

dol.gov/ERISA40

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Today's Agenda

- New 125 Permitted Election Change Guidance
- Employer Mandate is Back
- Employer Mandate Compliance Map
- Employer Reporting is Here
- Questions

Navigating the ACA in 2015

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The ACA Landscape

- Establishment of state/federal/partnership insurance exchanges/marketplaces to offer approved health plans to individuals and small groups
- Individual mandate – purchase essential health coverage or pay penalties to IRS
- Employers with 50+ FTE employees must offer "substantially all" FT employees (and dependent children) coverage that is affordable and provides minimum value or pay penalties to IRS if FT employees receive an exchange subsidy
- Certain individuals (incl. employees) may receive subsidies to purchase health coverage in an exchange based on income level
- Expanded Medicaid eligibility

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What's New for Employers re: ACA?

- **Employer Shared Responsibility (ESR) is HERE**
  - Reminder: ALE Determination, ER reporting and ESR Penalty Assessments are determined on a calendar year basis
- **Information Reporting is REAL**
  - IRS has released draft Forms and instructions
    - Forms 1094 and 1095
  - 6055 – Information Reporting of Minimum Essential Coverage
  - 6056 - Information Reporting by Applicable Large Employers on Health Insurance Coverage
  - Reminder: Reporting done on a calendar year basis
- **New Section 125 Permitted Election Changes**

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New Permitted Election Changes for Health Coverage Under § 125 Plans

- **Notice 2014-55 Effective 9/18/14**
- **Two New Situations Arising under the ACA:**
  - **<u>Reduction in Hours of Service Below 30</u> where the reduction in hours does not affect eligibility under GHP**
  - **<u>Leaving the GHP to Access Marketplace Coverage</u> without resulting periods of duplicate coverage or no coverage at all**
- **Optional, but employer must amend written plan document by last day of 2015 plan year and inform participants of the amendment**
- **Employer may rely on employee representation**

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Conditions for Election Change due to Enrollment in a QHP through an Exchange/Marketplace

- **Employee seeks enrollment in QHP through an Exchange/Marketplace during:**
  - **the Marketplace's annual open enrollment period; or**
  - **during a Special Enrollment Period when the Marketplace's enrollment is otherwise closed; and**
- **The GHP election change corresponds to the intended enrollment of the employee in a QHP through an Exchange/Marketplace; and**
- **New QHP coverage is effective beginning no later than the day immediately following the last day the revoked GHP coverage was in effect**

Conditions for Election Change due to Reduction in Hours Below 30

- **Employee has been in a FT employment status -- and there is a change in that status where employee is now expected to average less than 30 hours of service per week, even if that reduction does not result in the employee ceasing to be eligible under the GHP; and**
- **The GHP election change corresponds to the intended enrollment of the employee in another plan that provides minimum essential coverage; and**
- **New coverage becomes effective no later than the first day of the second month following the month that the GHP coverage was revoked**

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Employer Shared Responsibility

(Pay or Play)
(Employer Mandate)
(4980H)

“It’s Baaaaack”

The Map for ESR Compliance

- Determine Applicable Large Employer (ALE) each year
- If an ALE, determine the date any ESR penalties may first become effective
  - One or More Transition Rules may Apply
- Identify full-time EEs who must be offered coverage to avoid penalties
- Determine full-time EE contribution needed to meet affordability standards
- Plan documentation reflecting FT EE eligibility

Employer Shared Responsibility (ESR) for Large Employers

- Employers are generally not required to offer health coverage to employees
- Applicable Large Employers (ALE) may be liable for penalties if any FT employee enrolls in exchange coverage and receives a subsidy
- Small employers (< 50 FTEs) are not subject to penalties. Delay for mid-sized (50 to 99 FTEs) ERs
- Full-time employee is employed on average at least 30 hours of service per week (130 hours per month)
- ESR penalties are NOT tax deductible by the employer
- Commonly owned/affiliated ERs are aggregated for ALE determination only

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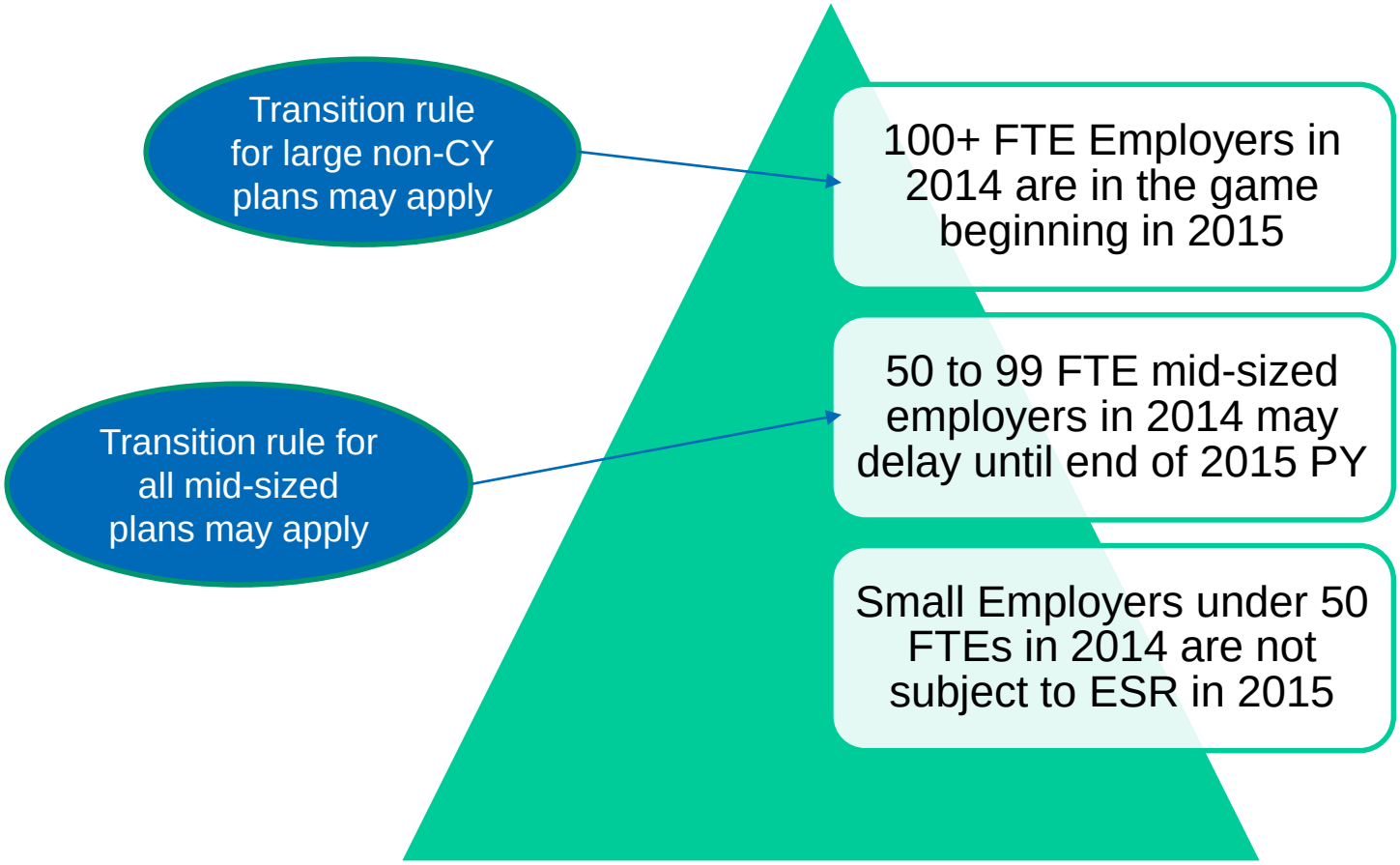
Employer Shared Responsibility Penalty Based on FT Employees

- **ALE is liable for assessment if FT EE enrolls and receives exchange subsidy**
- **Penalty A -- No Offer Penalty: The ER fails to offer substantially all FT EEs enrollment in coverage through an ER sponsored plan providing minimum value;**
  - **Penalty/Mo. = $166.67 X all FT EEs, excluding the 1st 30 FT EEs (1st 80 in 2015) (prorated among affiliated members)**
- **Penalty B -- Unaffordable/Inadequate Coverage Penalty: The ER offers substantially all FT EEs enrollment BUT coverage either is not affordable for that EE or does not provide minimum value**
  - **Penalty/Mo. = $250 X each FT EE in exchange w/subsidy, but capped at no more than the no offer penalty**

Disaggregate affiliated entities to calculate penalties

ESR Applicability – Size Matters
Transition Rules are in Play



50 to 99 Mid Size Delay to 2016 Subject to 4 Requirements

- **Limited Workforce Size – must employ on average from 50 to 99 full-time employees (including equivalents) on business days in 2014**
- **No Reduction in Workforce or Overall Hours – from 2/9/14 thru 12/31/14, except for bona fide business reasons, to fall under 100**
- **No Elimination/Material Reduction in Health Coverage Offered -- as of 2/9/14 thru end of 2015 plan year**
  - **ER contribution for EE only coverage must be 95% or more of ER dollar contribution in effect on 2/9/14, or same or higher % of cost**
  - **Must provide MV after any changes to coverage after 2/9/14**
  - **Eligibility terms cannot be narrowed or reduced from 2/9/14**
- **Certify to IRS satisfaction of the 3 requirements above as part of 6056 ALE information filing**

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ESR Penalty Effective Dates

- **Plan Year 2016 for all mid sized firms meeting applicable requirements**
- **January 1, 2015 for large calendar year plans**
- **First day of 2015 plan year for large non-calendar year plans in place as of 12/27/12, IF one of the Significant Percentage Tests is met.**

Significant Percentage Tests

- **Enrollment Test: on any date in the prior 12 months ending on 2/9/14:**
  - **at least 25% of ALL employees (full-time and part-time) OR**
  - **at least 33% of FT employees only who were enrolled in the plan**
- **Offer Test: during the most recent open enrollment period prior to 2/9/14:**
  - **the plan was offered to at least 33% of ALL employees (full-time and part-time) OR**
  - **to at least 50% of FT employees only AND**
- **Full-time employees are offered affordable, adequate coverage no later than the first day of the 2015 plan year**
- **FT = 130 hours/month**

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Substantiate Transition Relief Relied Upon NOW in a Memo to File

- **Memorialize ALE status testing results and Significant Percentage Test results in a Memo to File**
  - **Who performed test results and when**
  - **What transition relief was used / relied upon**
  - **Identify any applicable time periods / snapshot dates selected for testing**
  - **Record the testing results and compare to required ACA standard**
  - **Attach/include the calculations (show the math)**
  - **Attach the data set used in the testing**
  - **Remember FT = 130 hours/month**

Affordability – Demonstrating Affordable Health Coverage

FT EE contribution for single coverage of ER's least expensive GHP option

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9.5% ≥ **FT EE's actual Household (HH) income**

Used by the Exchange for purposes of awarding the APTC

- OR -

One of the three IRS Safe Harbor proxies for FT EE's HH income:

Rate of Pay

W-2

FPL

Can be used by the employer to avoid IRS assessment even if APTC is awarded

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IRS Affordability Safe Harbors

Optional SHs can be used for all EEs or for any reasonable category of EEs

- **Form W-2 SH – Form W-2, Box 1 income for months during which the EE was eligible for coverage**
  - **Applied after year end and on EE by EE basis**
  - **Adjusted if EE not employed the entire year**
- **Rate of Pay SH – Salaried EE's monthly salary, OR hourly EE's rate of pay X 130 hrs for months during which the EE was eligible for coverage**
  - **Only available if ER did not reduce EE wages during year**
- **Federal Poverty Line SH – FPL for a single individual. For 10/1/2013, FPL = $11,490**
  - **May use most recent FPL guidelines as of 1st day of PY**

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Section 6055 and 6056 Information Reporting Requirements

Calendar year reporting even if:

- The GHP is not calendar year
- The employer/GHP is in a transition period

General Information Reporting Requirements -- 6055

- 6055 reporting is intended to support IRS enforcement of the individual mandate
- Applies to insurers (on behalf of fully insured ERs), SHOP coverage, self-insured ERs and governmental entities
- Reporting on each individual and family member to whom minimum essential coverage (MEC) is provided
- A summary statement must also be provided to each individual

General Information Reporting Requirements -- 6056

- This reporting intended to support IRS enforcement of the ESR provisions
- Applies to large (ALE) employers subject to ESR (50+) even if in a transition period
- Reports GHP coverage provided to FT Ees
- Self-insured ALEs will use to report 6055 MEC info as well
- A summary statement must also be provided to each individual
  - Statement used to determine eligibility for the advance premium tax credit

More on 6055 and 6056 Information Reporting

- Both reporting requirements are effective for coverage provided on or after 1/1/15
- Calendar year reports, even if non-calendar plan year
- First information returns to be filed with the IRS and provided to individuals in early 2016 for the 2015 calendar year
  - Employee statements for 2015 must be provided by 2/1/16 (since 1/31/16 falls on Sunday)
  - Reporting to IRS for 2015 due by 2/29/16 (2/28/16 falls on Sunday and it's leap year), or 3/31/16 if filed electronically
  - Electronic filing required if ER is filing 250+ statements
  - ALE members must file their own returns

ACA Reporting
Draft Form Structure

- Forms 1094 are for Transmitting copies of the 1095 Forms to the IRS
- Forms 1095 are for Reporting:
  - Reporting information to the IRS
  - Providing summary statements to individuals
- C Forms are used by ALEs
- B Forms are used by insurers and other coverage providers
- A Forms used by Exchanges to report individual coverage information to the IRS

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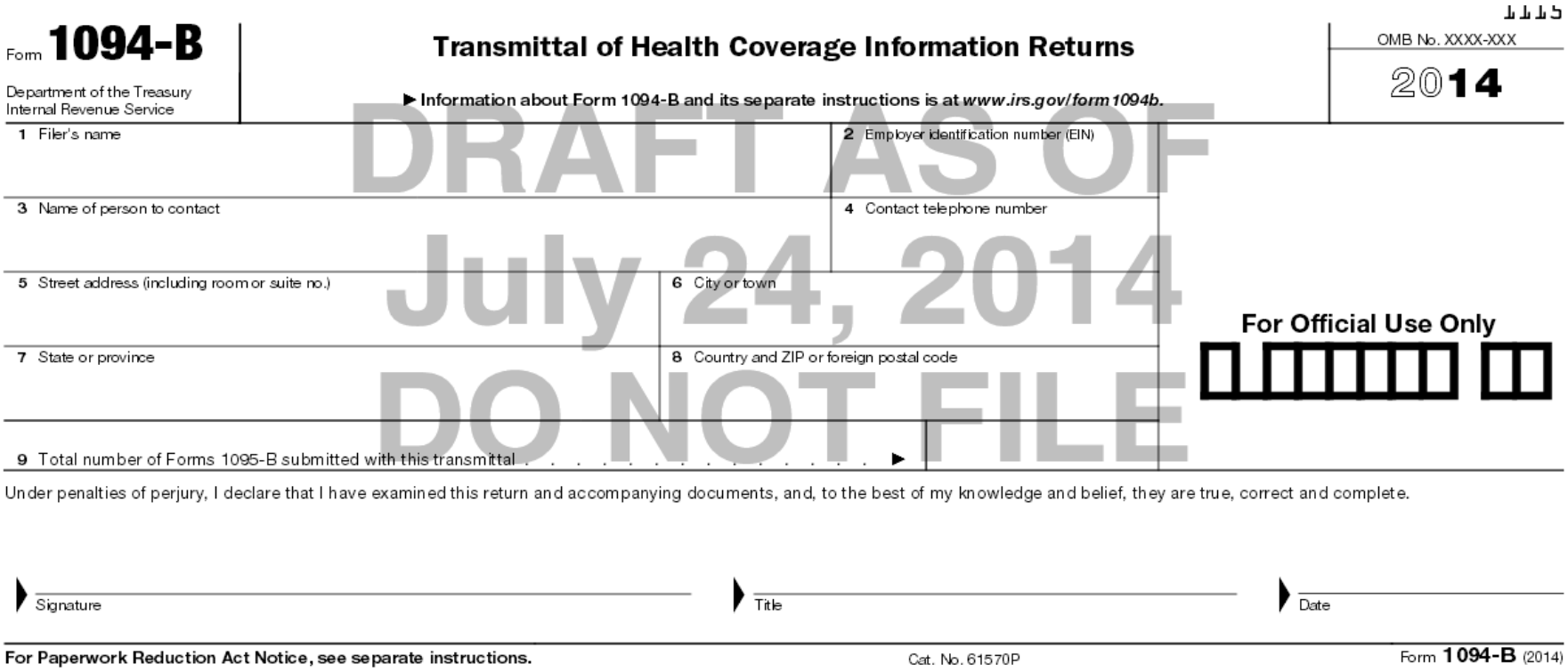
Forms 1094-B and 1095-B (Minimum Essential Coverage Reporting)

- Form 1094-B is the transmittal form to be used for MEC reporting
- Form 1095-B is the reporting form for MEC reporting
- Generally used by insurers and government plan sponsors. Also small ERs participating in a self-insured multiemployer plan.
- NOTE: self-insured ALEs subject to the employer mandate will not file these Forms for their employees, but will instead provide the required MEC reporting on the Form 1095-C

Forms 1094-C and 1095-C (Employer Mandate Reporting)

- Form 1094-C is the transmittal form to be used for employer mandate reporting
- Form 1095-C is the reporting form for employer mandate reporting
- These forms will be used by ALE members only, including those small (under 50) ERs that are part of an aggregated ALE group of 50 or more
- ALE members that sponsor self-insured GHPs will provide MEC reporting on these forms (and will not file Form 1094-B and Form 1095-B with respect to the coverage provided to its employees)

1094-B Transmittal



Form **1094-B**

Department of the Treasury
Internal Revenue Service

Transmittal of Health Coverage Information Returns

▶ Information about Form 1094-B and its separate instructions is at *www.irs.gov/form1094b.*

OMB No. XXXX-XXX

2014

1 Filer's name

2 Employer identification number (EIN)

3 Name of person to contact

4 Contact telephone number

5 Street address (including room or suite no.)

6 City or town

7 State or province

8 Country and ZIP or foreign postal code

For Official Use Only

9 Total number of Forms 1095-B submitted with this transmittal ▶

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Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct and complete.

▶ Signature ▶ Title ▶ Date

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 61570P Form **1094-B** (2014)

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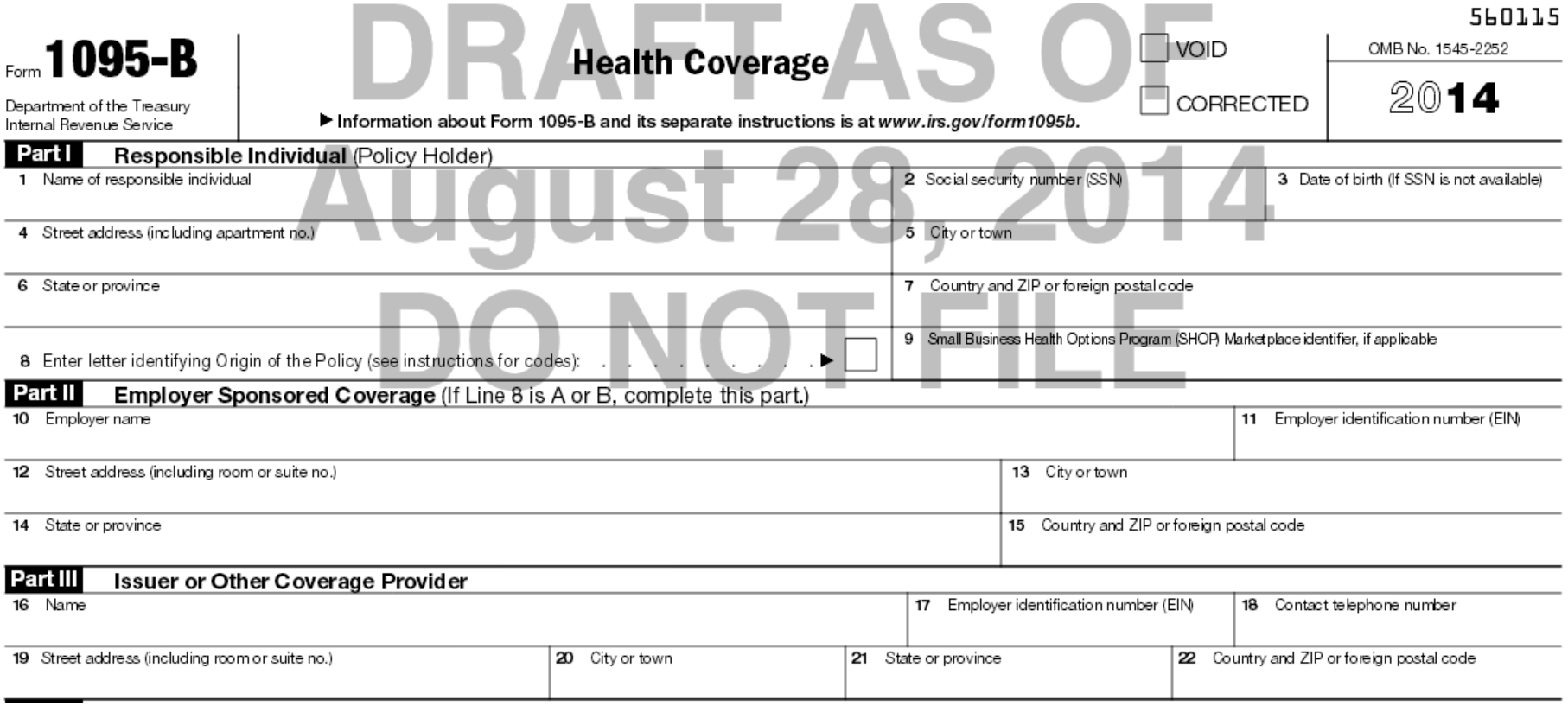
1095-B (MEC) Identification Sections



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Form **1095-B**

Department of the Treasury
Internal Revenue Service

Health Coverage

▶ Information about Form 1095-B and its separate instructions is at *www.irs.gov/form1095b.*

☐ VOID
☐ CORRECTED

OMB No. 1545-2252

2014

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Part I **Responsible Individual** (Policy Holder)

1 Name of responsible individual
2 Social security number (SSN)
3 Date of birth (If SSN is not available)
4 Street address (including apartment no.)
5 City or town
6 State or province
7 Country and ZIP or foreign postal code
8 Enter letter identifying Origin of the Policy (see instructions for codes): . . . . . ▶ ☐
9 Small Business Health Options Program (SHOP) Marketplace identifier, if applicable

Part II **Employer Sponsored Coverage** (If Line 8 is A or B, complete this part.)

10 Employer name
11 Employer identification number (EIN)
12 Street address (including room or suite no.)
13 City or town
14 State or province
15 Country and ZIP or foreign postal code

Part III **Issuer or Other Coverage Provider**

16 Name
17 Employer identification number (EIN)
18 Contact telephone number
19 Street address (including room or suite no.)
20 City or town
21 State or province
22 Country and ZIP or foreign postal code

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1095-B MEC Reporting Section

Part IV **Covered Individuals** (Enter the information for each covered individual(s).)

	(a) Name of covered individual(s)	(b) SSN	(c) DOB (If SSN is not available)	(d) Covered all 12 months	(e) Months of coverage											
					Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
23				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
24				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
25				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
26				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
27				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
28				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60704B Form **1095-B** (2014)

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Data Reported to the IRS Through Forms 1095-C and 1094-C

- The name, address and EIN of the employer
- The name and telephone number of the employer's contact person
- Certification as to whether the employer offered its full-time employees and their dependents (children to age 26) minimum essential coverage, by calendar month
- Months during the calendar year in which minimum essential coverage was available
- Number of full-time employees and of total employees for each month during the calendar year
- Indication by month the ER was a member of an aggregated ALE group

Data Reported to the IRS Through Forms 1095-C and 1094-C

- If a member of an aggregated ALE group, the names and EINs of all other members of the aggregated ALE group
- Indicator codes by month for 2015 transition relief from ESR
- Indicator codes by month for the specific affordability safe harbor used (if any)
- Indicator codes by month for specific ESR Limited Non-Assessment Periods (i.e., initial measurement period)
- Indicator codes re EE status: (i.e., not employed, not FT, enrolled in coverage)

Data Reported to the IRS Through Forms 1095-C and 1094-C

- The name and SSN, or date of birth if a SSN is not available, of each covered spouse and dependent of the employee
- The months for which each covered individual was enrolled in coverage and entitled to receive benefits.
  - Coverage of only one day in a month counts as a full month of coverage
- Each FT employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee, by calendar month

1094-C Transmittal ID Section

Form **1094-C**

Department of the Treasury
Internal Revenue Service

Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

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▶ Information about Form 1094-C and its separate instructions is at *www.irs.gov/f1094c.*

OMB No. XXXX-XXXX

2014

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Part I **Applicable Large Employer Member (ALE Member)**

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)
3 Street address (including room or suite no.)		
4 City or town	5 State or province	6 Country and ZIP or foreign postal code
7 Name of person to contact		8 Contact telephone number
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)
11 Street address (including room or suite no.)		
12 City or town	13 State or province	14 Country and ZIP or foreign postal code
15 Name of person to contact		16 Contact telephone number

For Official Use Only

17 Reserved . . . . . ☐

18 Total number of Forms 1095-C submitted with this transmittal . . . . . ▶

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1094-C ALE Member and Certification Sections

Part II **ALE Member Information**

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions . . . . . ☐

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member . . . . . ▶

21 Is ALE Member a member of an Aggregated ALE Group? . . . . . ☐ **Yes** ☐ **No**
If "No," do not complete Part IV.

22 **Certifications of Eligibility (select all that apply):**

☐ **A.** Qualifying Offer Method ☐ **B.** Qualifying Offer Method Transition Relief ☐ **C.** Section 4980H Transition Relief ☐ **D.** 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

▶ Signature ▶ Title ▶ Date

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 61571A Form **1094-C** (2014)

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1094-C "Tattle" on the Other Members of Your ALE Group Section

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July 24, 2014
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Form 1094-C (2014)

Part IV **Other ALE Members of Aggregated ALE Group**

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

	Name	EIN		Name	EIN
36			51		
37			52		
38			53		
39			54		
40			55		
41			56		
42			57		

1094-C Monthly ER Info Section

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Form 1094-C (2014)

Part III **ALE Member Information – Monthly**

		(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
		Yes	No				
23	All 12 Months	☐	☐			☐	
24	Jan	☐	☐			☐	
25	Feb	☐	☐			☐	
26	Mar	☐	☐			☐	
27	Apr	☐	☐			☐	
28	May	☐	☐			☐	
29	June	☐	☐			☐	
30	July	☐	☐			☐	

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1095-C ER ID and APTC Sections

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Form **1095-C**
Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

▶ Information about Form 1095-C and its separate instructions is at *www.irs.gov/f1095c.*

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600115
OMB No. 1545-2251
2014

Part I Employee

1 Name of employee	2 Social security number (SSN)
3 Street address (including apartment no.)	
4 City or town	5 State or province / 6 Country and ZIP or foreign postal code

Applicable Large Employer Member (Employer)

7 Name of employer	8 Employer identification number (EIN)
9 Street address (including room or suite no.)	10 Contact telephone number
11 City or town	12 State or province / 13 Country and ZIP or foreign postal code

Part II Employee Offer and Coverage

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	$	$	$	$	$	$	$	$	$	$	$	$	$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)													

1095-C MEC Reporting Section

Part III **Covered Individuals**

If Employer provided self-insured coverage, check the box and enter the information for each covered individual. ☐

	(a) Name of covered individual(s)	(b) SSN	(c) DOB (If SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
					Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
18				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
19				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
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22				☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60705M Form **1095-C** (2014)

Bottom Line . . . .

- Small ERs (under 50) should have no filing requirements UNLESS they
  - Are part of an aggregated ALE group
  - Are part of a self-insured multiemployer plan
- Mid sized ERs (50 to 99) will need to file the "C" Forms for their FT employees even if in a transition period from the ESR penalties
  - MEC reporting will be done by the carrier if fully insured
- Large ERs (100+) will need to file the "C" Forms for their FT employees even if in a transition period from the ESR penalties
  - MEC reporting will be done by the carrier if fully insured

Questions and Answers

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