

Final Forms and Instructions for 2023 ACA Reporting Released

The IRS has released final 2023 forms and instructions for reporting under Internal Revenue Code Sections 6055 and 6056:

- 2023 Forms [1094-B](#) and [1095-B](#) (and [instructions](#)) will be used by providers of minimum essential coverage, including self-insured plan sponsors that are not applicable large employers (ALEs), to report under Section 6055.
- 2023 Forms [1094-C](#) and [1095-C](#) (and [instructions](#)) will be used by ALEs to report under Section 6056, as well as for combined Section 6055 and 6056 reporting by ALEs who sponsor self-insured plans.

No major substantive changes were made to the final forms and instructions for 2023 reporting. However, the 2023 instructions include information on the new electronic filing threshold for information returns

required to be filed on or after Jan. 1, 2024, which has been **decreased to 10 or more returns** (originally, the threshold was 250 or more returns).

Employers should become familiar with these forms and instructions for 2023 calendar year reporting and begin to explore options for filing these returns electronically (e.g., they may be able to work with a third-party vendor to complete the electronic filing). Reporting entities that may be in a position to perform their own electronic reporting can review the IRS' ACA Information Returns (AIR) Program [webpage](#).

Electronic IRS returns for 2023 must be filed by March 31, 2024. However, since this is a Sunday, electronic returns must be filed by the next business day, which is **April 1, 2024**.

Deadline for Submitting Gag Clause Attestation Is Dec. 31, 2023

A federal transparency law prohibits health plans and health insurance issuers from entering into contracts with health care providers, third-party administrators (TPAs) or other service providers that contain gag clauses (i.e., clauses restricting the plan or issuer from providing, accessing or sharing certain information about provider price and quality and de-identified claims).

Plans and issuers must annually submit an attestation of compliance with the gag clause prohibition to the federal government. **The first gag clause attestation is due by Dec. 31, 2023.**

Employers should review what action they may need to take to comply with the attestation requirement.

If the issuer for a fully insured health plan provides the attestation, an employer does not also need to provide an attestation for the plan. Self-insured employers can enter into written agreements with their TPAs to provide the attestation, but the legal responsibility remains with the health plan. Also, some TPAs may be unwilling to submit attestations for their self-insured groups.

Employers who need to submit their own attestations should review the [instructions and user manual](#) for submitting attestations electronically through the [Centers for Medicare & Medicaid Services](#).