

REFORM UPDATE

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FINAL 1094 C AND 1095 C FORMS AND INSTRUCTIONS FOR 2016 POSTED BY IRS

The IRS has released final 1094 C and 1095 C forms for 2016. Final instructions were also posted. The changes from the 2015 forms were minor. However, the instructions for completing the 1094 C and 1095 C forms for 2016 have changed significantly. The changes primarily were more extensive explanations on how to complete the forms.

The final forms and instruction can be found at:

- Final 2016 1094 C - https://www.irs.gov/pub/irs-pdf/f1094c.pdf?_ga=1.107197191.445797047.1457980268
- Final 2016 1095 C - https://www.irs.gov/pub/irs-pdf/f1095c.pdf?_ga=1.184114979.445797047.1457980268
- Final Instructions - <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>

As of now, we have not seen a full cycle of reporting and penalty determinations. The due dates for providing the forms and submitting them to the IRS were delayed for the 2015 forms. Employers may not see penalty determinations from the IRS for these forms.

The reporting requirements will affect applicable large employers (ALEs) every year. Employers should establish a process for populating the forms and submitting them to the IRS.

This *Reform Update* summarizes the 2016 final forms and instructions. If you are responsible for completing these forms, it would be wise to read the final instructions.

FINAL INSTRUCTIONS

The following summarizes key points from the 2016 final instructions:

- The instructions include an explanation of purpose. For all ALEs, Part II communicates ACA full-time employee status, coverage offered or not offered to full-time employees and the reason the full-time employee will not trigger a penalty under ACA rules. For employers that self-fund their plans, the forms also explain who is covered for individual mandate purposes (Part III).

- Employers must either keep copies of the 1094 C and 1095 C forms that they file with the IRS or be able to reconstruct the forms for at least three years after the due date of the returns.
- The new instructions explain more clearly how ALEs file. The IRS first determines whether the organization is an ALE (50 or more full-time and full-time equivalents). Status as an ALE is determined based on the IRS controlled group. A 1094 C must be completed for each EIN that has employees associated with it. An employer may submit more than one 1094 C for an EIN but one must be marked as the authoritative transmittal. At least one 1094 C must be submitted for each employer with a different EIN that is part of an IRS control group and has employees associated with that EIN.
- The due dates remain the same. Employers must send 1095 C forms to employees by January 31st. Employers must also send the 1094 C and 1095 C forms to the IRS. The due date depends on how the forms are submitted. Forms submitted on paper (under 250 forms) must be sent to the IRS by February 28th. Forms submitted electronically (250 or more forms) must be sent to the IRS by March 31st.
- Extensions were available in 2015 but they didn't apply because the submission dates were delayed. Going forward, the following potential extensions are available:
 - Employers can get an automatic 30-day extension on IRS submissions by completing Form 8809 before the due date. They can file Form 8809 on paper or electronically through the FIRE system.
 - Under certain hardship conditions, an employer can follow the instructions on Form 8809 to apply for an additional 30-day extension.
- Employers issuing more than two hundred fifty 1095 Cs must submit them to the IRS electronically. Employers can apply to waive electronic filing by submitting Form 8508. This Form should be submitted at least 45 days before the due date. The IRS will not process any waiver requests before January 1 of the calendar year in which the forms are due. Waivers must be applied for and approved each year. If a waiver is approved, it will apply to any corrected forms submitted for that same year. If you submit the initial forms electronically, you can submit corrections on paper as long as there are 250 or fewer. If there are more than 250 corrected forms, they need to be submitted electronically or you need an approved waiver for submitting the forms on paper. If you fail to file electronically when you are required to and do not have an approved waiver, you may have to pay a penalty of up to \$260 per form. Penalties may be waived if you can show reasonable cause for not filing electronically. This penalty will not apply to the first 250 forms.
- Employers who want to send electronic 1095 C forms to employees must first obtain their employees' consent. The same process and rules apply to these forms that apply to providing the W-2 electronically. Employers need consent specific to Form 1095 C in order send electronically.
- Instructions include details on filing corrected forms. Most employers had their filing accepted even though there were errors. Many filed corrected forms this year. The correction process did not change for 2016.
- New instructions update the penalties:
 - Penalty for failing to file a correct information return with the IRS is generally \$260/per return. The total penalties that can be assessed for failing to file a correct return in a calendar year is capped \$3,193,000.

- Penalty for failing to give an individual a correct form is generally \$260/per form. The total penalties that can be assessed for not giving an individual a correct form in a calendar year is capped \$3,193,000.
- Special rules apply that may increase the per form penalty and penalty caps. An increased penalty applies if the employer intentionally disregards the requirement to file the forms and/or provide the forms to eligible individuals.
- Penalties may be waived if the failure was due to reasonable cause and not willful neglect.
- The final 2016 instructions explain how to report coverage under a Health Reimbursement Arrangement (HRA):
 - If you self-fund the medical plan paired with an HRA and an employee is enrolled in both, report the coverage under one of the arrangements in Part III.
 - If you insure the medical plan paired with an HRA and an employee is enrolled in both, do not complete Part III. Your insurance carrier will provide coverage information on a B form.
 - If you cover an individual under the HRA that is not covered under the medical plan (for example, the individual is covered under the spouse's medical plan), you must complete Part III in relation to that individual.
- The final 2016 instructions clarify COBRA reporting situations. A qualified beneficiary may become COBRA eligible for different reasons. The reason may impact how to report the situation:
 - An offer of COBRA made to a former employee, a former employee's spouse or dependent child(ren) should not be reported as an offer of coverage on line 14. In this situation, use code 1H on line 14 – no offer of coverage. On line 16, if an employee terminates mid-month, 2B on line 16 for that month and subsequent months should be 2A – not an employee that month. The instructions note 2C should **not** be entered on line 16 if a terminated employee elects COBRA.
 - An offer of COBRA made to an employee who remains an employee of the ALE should be reported as an offer of coverage. The Line 14 code should reflect who is offered COBRA. Remember, COBRA must be offered only to qualified beneficiaries who were covered under the group health plan on the day before the qualifying event. This means if the employee was the only person the plan covered and was offered COBRA because reduced work hours made the employee ineligible for the health plan, the employer would enter 1B in line 14. The code 1B indicates minimum value coverage was offered to the employee only. The codes in line 16 will indicate the employer should not be penalized. If COBRA is elected, 2C should be entered. The instructions note that an employer is treated as having made an offer of coverage to an employee's dependents for the entire year if the employer provides an opportunity to enroll at least once per plan year. The employee can choose not to enroll in the dependents. As a result, the dependents are not eligible for COBRA if a loss of coverage occurs as a result of a qualifying event.
- The 2016 instructions also clarify how to report on post-employment coverage, for example, retiree health plan coverage. If a retiree is covered under a self-funded plan for the entire year, the employer can use 1G in the all 12 months box on line 14 and complete Part III. If the employee retires mid-year at the point of retirement, no offer of coverage should be reported in line 14 (1H). Line 16 should be coded 2A, not an employee. If the employee retires mid-month, the employer should enter 2B in line 16 for month of retirement. The instructions note 2C should **not** be entered on line 16 if a retired employee elects retiree health coverage.

The 2016 instructions are much clearer than the filing instructions from 2015.

FORM 1094 C

The following summarizes key points from the final 2016 Form 1094 C:

- On 1094 C Form, line 22, some of the transition relief options have been removed, and others remain. The options that were removed did not apply beyond 2015. However, some of the transitional relief is based on an employer's plan year and may apply for certain months in 2016. The instructions now explain clearly when specific relief applies to non-calendar year plans.
- Line 22 relates to offers of coverage and transitional relief. The instructions clearly indicate you need to either check box "A" (the "qualifying offer method") if you intend to use code 1A on line 14 for at least one employee or provide a substitute statement to any full-time employee.
- On page 2, column A, the circumstances for checking "yes" to Minimum Essential Coverage Offer Indicator have changed. Employer can check "yes" in the following circumstances:
 - The ALE member offered at least 95 percent (or five employees whichever is greater) of full-time employees and dependent children minimum essential coverage.
 - If the ALE member offered only 95 percent of full-time employees and dependent children minimum essential coverage for specific months of the calendar year, then check "yes" to the specific months this holds true.
 - Check "no" if there are specific months you fail to offer 95 percent of full-time employees and dependent children minimum essential coverage.
 - Non-calendar year plans may check "yes" for the months of the plan year employers are still eligible for transitional relief. For example, your organization has a July 1 through June 30 plan year, you can check "yes" for January through June, if you offered 70 percent of full-time employees and dependent children minimum essential coverage.
- On page 2, column (b), do not include any employees in a limited non-assessment period in the full-time employee headcount for the month.
- On page 2, column (c), you are required to enter a total employee count. This count does include full-time and part-time employees. It also includes employees in limited non-assessment periods.

The 1094 C has changed minimally for 2016.

FORM 1095

The following summarizes key points from the final 2016 Form 1095 C:

- An employee in a limited non-assessment period is not considered an employee for reporting purposes. Limited non-assessment periods include time spent in a new hire waiting period as well as the new hire measurement period for employees that are look-back measured.
- The instructions clarify how self-funded employers need to report. First, self-funded employers must complete Part III for anyone covered under the self-funded plan. If the employee is part-time for the entire year, but covered under a self-funded plan, the employer would enter 1G on line 14 in the all 12 months box. No information needs to be entered in line 15 or 16. The Code 1G can be used only if the individual is a part-time employee for the entire twelve months of the calendar

year. Self-funded employers who are not ALEs should use the B Forms to report anyone the plan covers.

- New instructions note that ALEs offering coverage through an insured plan or a multi-employer health plan should **not** complete Part III on Form 1095 C. In these cases, the insurance carrier or plan sponsor of the multi-employer health plan provides Form 1095 B to indicate who was covered under the contract during the year.
- The new instructions state there may be more than one way to report an employee offer of coverage. Employers can report using any code combination that accurately reflects coverage situations.
- Self-funded employers can use Forms 1094 B and 1095 B to report coverage on non-employees who may be covered under the self-funded plan. This could include non-employee directors, those retired for the entire year, or a non-employee COBRA qualified beneficiary. These individuals can be reported on the 1095 C forms as well.
- The 2016 1095 C Form includes the Plan Start Month. This box is optional again in 2016. The employer simply enters a two-digit code to indicate the first month of the plan year. For example, January is 01, February is 02 and so on.
- The approach for reporting individuals covered by a multi-employer arrangement (for example, union trust plans) remains the same in 2016:
 - Line 14, 1H no offer of coverage.
 - Line 16, 2E indicates ALE contributes to a multi-employer health plan on behalf of the employee.

This process may change in 2017.

- Line 14 has two new code options. New codes show conditional spouse coverage:
 - **1J** – Minimum essential coverage (MEC) providing minimum value is offered to employee. MEC is conditionally offered to spouse. No coverage offered to dependent children.
 - **1K** – Minimum essential coverage providing minimum value is offered to employee. MEC is offered to dependent children. MEC is conditionally offered to the spouse.

A conditional coverage offer to a spouse does not include a spousal surcharge. It does include spousal force outs (spouse not offered coverage if coverage is available through spouse's employer). Another conditional offer would be if you required spouses to enroll in their employers' plan, before they could be eligible for your plan.

- The 2016 instructions note that an employer can't enter safe harbor codes (2F, 2G, 2H) in line 16 if the employer fails to offer 95% of full-time employees/dependent children minimum essential coverage (MEC).
- Instructions note that the safe harbors apply the indexed percentage amount going forward. It is 9.66% in 2016 and 9.69% in 2017.
- The 2016 instructions cover situations where two or more employees of an ALE are married or parent and child. If the family is covered under one contract, and the plan is self-funded, Part III is filled out on the 1095 C form for the employee who is the contract holder. If both spouses are full-time, each should receive a 1095 C and the covered participants would be listed on the contract holder's 1095 C. If the parent and child are both full-time, they would each get a 1095 C. Part III would be completed only on the contract holder's 1095 C.

CONCLUDING THOUGHTS

Employers should start addressing how they will handle reporting for 2016. If you are responsible for completing or checking the forms, read through the instructions. The final 2016 instructions explain more practically the reporting requirements. More examples are included as well.

If you are a self-funded plan and choose to use the B forms for specific non-employees, the B forms and instructions can be found at:

- 2016 instructions for 1094/1095 B forms - <https://www.irs.gov/pub/irs-pdf/i109495b.pdf>
- 2016 1095 B form - <https://www.irs.gov/pub/irs-pdf/f1095b.pdf>
- 2016 1094 B form - <https://www.irs.gov/pub/irs-pdf/f1094b.pdf>

Both the 1095 B forms and the 1095 C forms have a VOID box in the upper right hand corner. Employers are instructed to never check the VOID box.

Both the 1095 B and 1095 C forms include instructions for taxpayers to retain the form with their tax records. It appears these forms will not have to be submitted with tax returns in 2017.

The good faith compliance standard will not apply in 2016 unless the IRS decides at a later date to extend it. In addition, the original deadlines will apply.

Employers should be gearing up now to complete the necessary forms for 2016.

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