

# REFORM UPDATE

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## 2017 EMPLOYER REPORTING FORMS AND INSTRUCTIONS

The IRS recently posted the final 2017 forms and instructions for employer reporting. They are available at the following sites:

- 1094 C Form – <https://www.irs.gov/pub/irs-pdf/f1094c.pdf>
- 1095 C Form – <https://www.irs.gov/pub/irs-pdf/f1095c.pdf>
- Instructions for completing 1094 C and 1095 C forms - <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>

Most employers will use the C forms to meet the reporting requirements. However, some employers may need the B forms for certain non-employees covered under self-funded health plans. These forms and instructions are available at:

- 1094 B Form – <https://www.irs.gov/pub/irs-pdf/f1094b.pdf>
- 1095 B Form – <https://www.irs.gov/pub/irs-pdf/f1095b.pdf>
- Instructions for completing 1094 B and 1095 B forms - <https://www.irs.gov/pub/irs-pdf/i109495b.pdf>

Applicable Large Employers (ALEs) must complete the 1094 C and 1095 C forms to comply with the Affordable Care Act (ACA). Employers had to submit these forms in 2016 for the first time, reflecting 2015 data. The launch year was a challenge. As a result, the due dates were delayed several times. The process improved for the 2016 forms submitted in 2017. Even with the improved process, the due date for sending the forms to employees was pushed back a month.

The law specifies 2017 forms will be due as follows:

- **Forms to employees** – January 31, 2018
- **Forms to IRS** – February 28, 2018, (on paper) or April 2, 2018, (electronically)

This is the third year that employers need to distribute these forms to employees and submit copies to the IRS. Employers have become more confident in collecting the necessary data. Many work with vendors to produce the forms and submit them to the IRS.

Employers need to make sure they have a plan for producing and submitting these forms for 2017. The forms can be mailed or hand-delivered to employees. If employers want to send Form 1095 C to their employees electronically, employees must specifically consent to receive this form electronically under the same rules that apply to providing the W-2 electronically.

Below are the penalties for violating the rules:

- The penalty for failing to file a correct information return will be \$260 for each return (IRS copy) up to a total penalty for the calendar year not to exceed \$3,218,500.
- The penalty for failing to file a correct payee statement is \$260 for each statement (employee copy) up to a total penalty for the calendar year not to exceed \$3,218,500.
- Special rules apply that may increase the statement and penalty totals if the failure is an intentional disregard to file returns or furnish statements.
- Penalties may be waived if the failure was due to a reasonable cause and not willful neglect.

The penalties will increase slightly for 2017 Forms incorrectly filed in 2018.

The IRS has made minor changes to the forms and instructions. The 2017 instructions actually do a better job of explaining some of the filing complexities than in years past. Employers should read the 2017 instructions to refresh their memories on the reporting details.

The following summarizes changes and highlights areas that have confused employers in past filing years:

- The instructions and the forms have removed any reference to Section 4980H transitional relief. No transitional relief is available in 2017. Any part of Form 1094 C that referred to transitional relief is now designated as reserved.
- The IRS controlled group rules determine Applicable Large Employer (ALE) status. However, the 1094 C and 1095 C filings are required to be done based on an employer's Employer Identification Number (EIN). Even if independent employers have fewer than 50 full-time employees, they must file the forms when they have over 50 full-time employees as part of the IRS control group. The EIN they use should be the one that appears on employees' W-2s.
- An ALE with a self-funded medical plan must complete Parts I, II and III (for any employee electing coverage under a self-funded plan) on Form 1095 C. If an employer is not an ALE and self-funds a medical plan, the employer must complete Forms 1094 B and 1095 B.
- If an ALE offers coverage through an insured plan or multi-employer health plan, the insurance carrier or sponsor of the multi-employer health plan is responsible for providing the coverage information to members. These ALEs should not complete Part III on Form 1095 C.

- If an ALE with a self-funded medical plan covers non-employees under the self-funded plan, the employer can use Form 1095 B to report that coverage rather than completing Part III of Form 1095 C. Non-employees would include a non-employee director, anyone retired for the entire calendar year, or a non-employee COBRA participant, including a former employee who terminated employment in the previous calendar year.
- More understandable instructions are included for ALEs that file more than one 1094 C form:
  - Employer A files only one 1094 C. It should be marked as the authoritative transmittal on line 19 and the remainder of the form should be completed as applicable.
  - Employer B files separate 1094 C forms, one for each of its operating divisions (Division X and Division Y). The two divisions are units of Employer B under the same EIN. The 1095 Cs for employees of Division X are attached to the 1094 C for Division X. The 1095 Cs for employees of Division Y are attached to the 1094 C for Division Y. One of the 1094 Cs should be marked as the authoritative transmittal. On that 1094 C, line 19 should include the aggregate count of all employees of both Division X and Y. The other 1094 C should NOT be marked as authoritative transmittal and only the number of forms attached to that 1094 C should be reported on line 18.
  - Another example makes clear that all members of an IRS control group must file under each separate EIN (if any employees are paid under that EIN).
- One Form 1095 C must be produced for each full-time employee of an ALE.
  - What if an employee works for different divisions of a company under the same EIN? The employee will have one 1095 C reflecting the offer of coverage and coverage status for the year filed under the ALE's EIN.
  - What if an employee works for two separate companies that are part of the same IRS control group at different points in the year? Each separate company must issue a 1095 C under its EIN that reflects the employee status for the part of the year the employee worked for that company.
  - What if an employee works 25 hours a week for one employer and 15 hours a week for another employer and both employers are part of the same IRS control group? The hours are added together to determine whether the employee is full-time. The IRS took this route to discourage employers from setting up two separate companies and splitting hours between the two to avoid designating employees as full-time. In general, the employer for whom the employee works the most hours would be responsible for issuing the 1095 C.
- Employers can get an automatic 30-day extension on submitting forms to the IRS by completing Form 8809 on or before the due date for the returns. Employers may apply for an additional 30-day extension under certain hardship conditions. The instructions for Form 8809 include details on both extensions. Employers may submit the form on paper or through the FIRE System electronically.
- Filing electronically is difficult. For that reason, many employers have their vendors file the forms electronically. If your organization decides to file electronically without a vendor's help, reference *Publication 5165, Guide for Electronically Filing ACA Information Returns*. Make sure you have an IT resource to help you through process. There are several

preliminary steps and file testing procedures. Make sure you start the process early so that you can meet filing deadlines.

- Employers can request more time to furnish statements to employees. The extension is typically 30 days. Requests must be postmarked no later than the date the statements are due to the recipient. Employers need to send a letter to the IRS at the following address to request this extension:

Internal Revenue Service  
Attn: Extension of Time Coordinator  
240 Murall Drive  
Mail Stop 4360  
Kearneysville, WV 25430

The letter must include the following information:

- Filer name
  - Filer tax ID number
  - Filer address
  - Type of return
  - Statement that extension is requested for providing statements to recipients
  - Reasons for the delay
  - Signature of the filer
- If you are filing 250 or more B or C forms, you must file them electronically. This rule applies separately for original and corrected forms. For example, an employer with 350 1095 Cs must file electronically. However, if that same employer has to submit 20 corrected forms, those corrected forms could be submitted on paper. Employers can request a waiver of the electronic filing requirement by submitting Form 8508 up to 45 days before the forms are due. The IRS will not begin processing waiver requests until January 1 of the calendar year in which the forms are due. Organizations who want the waiver must apply for it annually. If the waiver is approved, it applies to original and corrected forms for that year. Employers should keep a copy of the approved waiver in their records. Employers who do not file electronically when required to do so and do not obtain a waiver, may have to pay a penalty of up to \$260 for each form. The penalty could be waived if the employer has a reasonable explanation.

The following key details relate specifically to Form 1094 C:

- Line 18 should show the number of forms submitted with that specific 1094 C.
- Mark at least one 1094 C as the authoritative transmittal, check line 19 and complete Parts II, III and IV if applicable. If a 1094 C is not the authoritative transmittal, do not complete Parts II, III, and IV on that form. You need only complete the signature section in addition to Part I. The instructions now include examples and a detailed description of the rules for marking a 1094 C as the authoritative transmittal.

- On line 22, only the qualifying offer method and the 98 percent offer method remain as options under Certifications of Eligibility. All the other offer options were related to transitional relief that has expired.
  1. Check the “qualifying offer method” if you are going to use the qualifying offer for at least one full-time employee. This means you plan to use code 1A on line 14. A qualifying offer is minimum essential coverage providing minimum value and requiring employee contributions for self-only coverage equal to or less than 9.69 percent of the single federal poverty level and minimum essential coverage for spouses and dependents.
  2. Check the “98 Percent Offer Method” if you are certifying that you offered affordable, minimum value health coverage to at least 98 percent of the employees for whom you are filing 1095 Cs. Remember, you do not need to count employees in limited non-assessment periods (new hire waiting periods or initial measurement periods). The value of qualifying for the 98 percent offer method is that if you meet these requirements you do not have to complete column B on the 1094 C (month-to-month full-time employee headcount).
- In column C on Form 1094 C you must enter the total number of employees each month. This count includes full- and part-time employees as well as employees in limited non-assessment periods. You must choose one of the following days to count employees and you must then use the same day each month for the employee count:
  1. The first day of the month
  2. The last day of each month
  3. The twelfth day of each month
  4. The first day of the first payroll period of each month
  5. The last day of the first payroll period of each month (providing it ends within that month)
- In column D, indicate the months you were part of an IRS control group also called an Aggregated ALE Group. If in any month you indicate you are part of an IRS control group, you need to list all the other members of that group in Part IV in order of descending number of employees.
- File a corrected Form 1094 C as soon as you find an error. Correct the 1094 only on the authoritative transmittal, then check the CORRECTED box and submit it.

The following are details specific to Form 1095 C:

- On Lines 7 and 8, the employer’s name and EIN should match the employer name on the employee’s W-2.
- In Part II of the 2017 form, entering the plan start month is optional. Employers can either leave that line blank or enter the month in which the plan year starts. To designate a month, use a number between 01 (January) and 12 (December).
- Form 1095 C has a VOID box. DO NOT USE this box.
- New for 2017 – a safe harbor for “de minimis” errors. A 1095 C filed with an incorrect dollar amount on line 15 may fall within the safe harbor. The safe harbor generally applies if no

single error differs from the correct amount by more than \$100. If the safe harbor applies, you do not have to issue a corrected Form 1095 C to avoid penalties. However, the government has yet to issue regulations on the details of this safe harbor. Until it does, employers should issue corrected Forms for line 15 errors regardless of the amount. When the government issues the regulations, employers will have a better understanding on how to apply the safe harbor.

- Employers can use a truncated social security number for the forms they provide to individuals. A truncated social security number shows only the last 4 digits. The first 5 digits are replaced with \*\*\*\*\*. The full social security number, however, must be entered on the forms submitted to the IRS.
- An employer's EIN may not be truncated on any forms sent to the IRS or individuals.
- The codes for line 14 remain the same. Code 1I is reserved because it was associated with transitional relief that expired. Remember to use codes IJ or IK if your organization covers spouses conditionally; that is, it covers only spouses who do not have coverage available through their employers. Most employers in this situation will use code 1K, indicating that they cover the employee and dependent children but only cover spouses conditionally.
- The instructions for reporting COBRA coverage did not change from 2016. The reporting is different only if the employee leaves or works fewer hours:
  - An offer of COBRA to a former employee should not be reported as an offer of coverage on line 14. In this situation, enter 1H (no offer of coverage) on line 14. Enter Code 2A (employee is not employed during the month) on line 16. For the month in which the employee leaves, enter 2B (coverage ended before the end of the month) on line 16. If a plan is self-funded, the employer needs to list the employee and any dependents that continue coverage through COBRA under Part III. If the plan is fully-insured, the insurance carrier will send Form B to document the coverage.
  - Report an offer of COBRA to anyone still employed on line 14 as an offer of coverage. The offer code should reflect those actually offered COBRA. For example, assume the ALE covers an employee, spouse and dependent children. The employee, however, elects employee-only coverage. The employee's hours are then reduced midyear, he or she loses coverage and is offered COBRA. Line 14 should be coded 1E for the months the employee worked full-time. Once the employee loses coverage because of reduced hours, line 14 should be coded 1B (coverage offered only to employee) for the remainder of the year. Again, if the employee is covered by a self-funded plan, the details of coverage must be reported in Part III.
- Remember, self-funded plans must complete Part III, listing anyone the plan covers. You need to check a month as a coverage month if the individual is covered at least one day of that month.
- Employers can calculate affordability in a number of ways. The contribution tested is the lowest cost single coverage plan that meets minimum value. That number could be adjusted for a few reasons:
  - Tobacco user surcharges can be excluded from the contribution.

- For any other wellness incentive that affects cost, the employer should assume the employee did NOT meet the wellness requirement when determining the contribution to test.
- Opt-out bonuses do not need to be added to the contribution if the bonus is *conditional*. The monthly value of a *non-conditional* opt-out bonus, however, needs to be added to the single contribution amount before testing for affordability.
- The interim guidance remains in place for multi-employer or union trust plans. For employees covered by these plans, the ALE will enter 1H (no offer of coverage) on line 14 and 2E (employer contributed to multi-employer plan) on line 16. Do not complete Part III for these employees. The union or multi-employer plan is responsible for listing covered employees on B forms.
- Reporting of employees who have a Health Reimbursement Arrangement (HRA) depends on how the HRA is set up:
  - If the employer self-funds the medical plan and offers an HRA, the employer should report everyone the self-funded medical plan covers in Part III.
  - Employers do not need to complete Part III if they fully insure the medical plan and only those covered by the insured plan are covered by the HRA.
  - In Part III, employers must report employees covered by an HRA but not covered by the self-funded or fully insured base medical plan. This is rare. An employer would have to cover employees under an HRA if they had coverage under a spouse employer's plan.
- Remember, if you need to complete Line 15, enter the single cost of the lowest cost plan option that provides minimal value. The contribution will not always match what an employee pays for coverage (covers family or elects a more costly plan)
- You should file a corrected Form 1095 C as soon as you discover an error. If you need to submit a corrected Form 1095 C to the IRS, check the CORRECTED box. Submit corrected 1095 Cs along with a copy of the 1094 C. The 1094 C should **not** be marked corrected. Be sure to give your employees the corrected 1095 C. If you need to correct a form given to the employee but not yet submitted to the IRS, simply make the correction and write "CORRECTED" on the top of the form. Do not check the corrected box.

The good news is that the forms have not changed substantially from 2016.

## CONCLUDING THOUGHTS

While the forms have not changed from 2016, the forms and the submission process remain complicated. A bi-partisan Congressional committee is looking for ways to simplify this reporting process. However, changes will not likely affect the 2017 forms.

The IRS has announced recently in 2018 they will require taxpayers to complete the insurance question. The IRS will reject 2017 tax returns if the insurance question is not answered.

Employers will need to plan for producing and submitting the 2017 forms. As of now, the deadlines remain the ones included in the ACA. To date, there has been NO mention of continuing to recognize good faith compliance efforts. Dates may be extended or good faith efforts may be recognized by future guidance. MMA will keep you posted on any developments. At this point, employers should not count on the recognition of good faith efforts or delayed effective dates to provide the forms.

Employers should map out a plan for producing the forms, providing them to employees and submitting them to the IRS. The electronic submission process is complicated. If you do not hire a vendor to submit forms electronically, make sure you start the process early. There are several steps to setting up your accounts and testing the data submission. You will need to allow sufficient time to walk through the steps and test the submissions.

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