

REFORM UPDATE

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DRAFT 2015 INSTRUCTIONS FOR FILING FORMS 1094-C AND 1095-C

Most employers have begun working on their process for the new employer reporting requirements. The IRS has released the draft model forms for the 2015 calendar year. Recently, the IRS also released draft 2015 instructions for Forms 1094-C and 1095-C, which address a wider range of issues than the 2014 instructions. This *Reform Update* will review the 2015 instructions.

Employers should download copies of the draft forms and instructions to become familiar with their reporting responsibilities:

- Draft 2015 1094-C: <http://www.irs.gov/pub/irs-dft/f1094c--dft.pdf>
- Draft 2015 1095-C: <http://www.irs.gov/pub/irs-dft/f1095c--dft.pdf>
- Draft Instructions for 1094-C and 1095-C: <http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf>

Reading IRS instructions is not the most exciting activity, but if you are responsible for the reporting requirements at your organization, it is critical that you understand how these forms should be completed.

More details on the reporting requirements can be found in *Reform Update* 98 at http://www.mcgrawwentworth.com/Reform_Update/2014/Reform_Update_98.pdf and *Reform Update* 109 at http://mcgrawwentworth.com/wp-content/uploads/Reform_Update_109.pdf.

The new draft instructions are more expansive than the previous version. The forms submitted to the IRS will be used to determine if an Applicable Large Employer (ALE) owes a tax penalty under the “play or pay” rules. If an employer self-funds the plan, the forms will be used by employees to substantiate their coverage, in order to avoid the individual tax penalty. The forms will also be used to determine if an individual is eligible to receive subsidies when purchasing individual coverage through the Health Insurance Marketplace.

The following highlights the key points in the new instructions:

- If an employer is not an ALE, but sponsors a self-funded medical plan, the employer must complete a Form 1094-B and Form 1095-Bs for the employees covered by the self-funded plan.
- For employers who qualify to furnish substitute statements to employees, the IRS is developing Publication 5223 (General Rules & Specifications for Substitute Affordable Care Act Forms). This publication will explain the format and content requirements of the substitute statements.

- An employer that self-funds the plan and covers non-employees (such as retirees and COBRA participants) has two options:
 - The employer can report coverage using Form 1094-B and Form 1095-B.
 - The employer can report coverage using Form 1094-C and Form 1095-C.
- At a minimum, for each employer EIN that has employees associated with it, a Form 1094-C and Form 1095-C for all full-time employees must be submitted. An employer can submit more than one 1094-C associated with an EIN, but only one can be marked the authoritative transmittal.
- One 1095-C must be completed for each full-time employee. An exception is allowed if the employee is in a limited non-assessment period for the year being reported. Employees that are in a limited non-assessment period are not counted as full-time employees for the “play or pay” rules. Limited non-assessment periods are defined in the instructions, but include qualifying new hire waiting periods and the initial measurement period for variable-hour employees. For example, assume an employer has a 90-day new hire waiting period. The employer hires a new employee on November 1, 2015. A Form 1095-C does not have to be completed for this employee, because the employee was in a limited non-assessment period during the entire period of employment in 2015.
- The IRS strongly recommends a quality review of the data included on the forms to prevent incorrect statements from being provided to recipients.
- Use a flat mailing if you are submitting paper forms to the IRS. If more than one mailing is needed, they should be numbered in consecutive order.
- An automatic 30-day extension can be secured by completing Form 8809. This form can be submitted on paper or through the FIRE system, either as a fillable form or as an electronic file. The extension must be filed by the due date or before the due date. An additional 30-day hardship extension may be granted under limited circumstances. More details can be found in the instructions for Form 8809. Please note, this automatic extension will not be available after the 2017 tax year.
- Waivers of the requirement to file these forms electronically can also be requested by submitting Form 8508. You can only apply for the waiver one tax year at a time. If a waiver is approved for the original returns, any corrections to those same types of returns will be covered by the original waiver. If the original returns were filed electronically, but the employer wants to file the corrections on paper and there are more than 250 corrected returns, then the employer must file for a waiver on the corrections in order to file via paper. If received, the waiver does not need to be submitted with the forms; the employer simply keeps the approval for the waiver in their records.
- If you are required to submit electronically and fail to do so without being granted a waiver, you may be subject to a penalty of up to \$250 per return unless you establish reasonable cause. Since you may submit up to 250 forms on paper, the first 250 forms will not be subject to the penalty to file electronically. For example, if you file a total of 300 returns and you fail to file electronically, you could be subject to the \$250 penalty on 50 of the returns.

- The instructions include details on how to file corrected returns. Different rules apply depending on the information requiring correction:

Original Authoritative Transmittal Form – 1094-C

If any of the following information is incorrect...	Then...
<ul style="list-style-type: none"> ALE Member or Designated Government Entity (name and/or EIN) 	1. Prepare a new authoritative transmittal Form 1094-C.
<ul style="list-style-type: none"> Total number of 1095-C forms filed by or on behalf of ALE member 	2. Enter an “X” in the “CORRECTED” box at the top of the form.
<ul style="list-style-type: none"> Aggregated group membership 	3. Submit the corrected 1094-C on a standalone basis with the corrected information included.
<ul style="list-style-type: none"> Certifications of eligibility 	
<ul style="list-style-type: none"> Minimum essential coverage indicator 	
<ul style="list-style-type: none"> Full-time employee count for ALE member 	
<ul style="list-style-type: none"> Aggregated group indicator 	
<ul style="list-style-type: none"> Section 4980H Transition Relief indicator 	

Original Form 1095-C Submitted to IRS and Furnished to Employee

If any of the following information is incorrect...	Then...
<ul style="list-style-type: none"> Name, SSN, employer EIN 	1. Prepare a new 1095-C.
<ul style="list-style-type: none"> Offer of coverage (line 14) 	2. Enter an “X” in the “CORRECTED” box at the top of the form.
<ul style="list-style-type: none"> Premium amount (line 15) 	3. Submit the corrected 1095-C to IRS with a non-authoritative 1094-C transmittal.
<ul style="list-style-type: none"> Safe harbor and other relief codes (line 16) 	
<ul style="list-style-type: none"> Covered individuals information 	
	4. Furnish the corrected 1095-C to employee.

Important – If you need to file a corrected 1094-C, the IRS does not want any forms filed with the corrected version (that is, no 1095-Cs should accompany a corrected 1094-C).

You should only check the “CORRECTED” box if you are correcting a form previously filed with the IRS. If you need to correct a form that was provided to an employee, but not yet filed with the IRS, simply write CORRECTED on the new form furnished to the employee.

- You can meet the requirement to furnish the Form 1095-C to an employee if the form is properly addressed and mailed on or before the due date. If the due date falls on a Saturday, Sunday or a legal holiday, you are permitted to file the next business day. The Form 1095-C can also be hand-delivered or electronically furnished, if you follow the rules about electronic and hand delivery of W-2s.
- You may truncate Social Security numbers on the Form 1095-C provided to employees. However, truncation is not allowed on the forms filed with the IRS.

- You can request an extension of the time period allowed to furnish statements to recipients. This extension is not automatic. The request must be made in writing to the IRS. Generally, the extension will be a maximum of 30 days. The details on how to request the extension are included on page 5 of the instructions.

The following highlights the key points for completing Form 1094-C:

- At a minimum, for each employer EIN that has employees associated with it, a Form 1094-C and 1095-C forms for all full-time employees must be submitted. An employer can submit multiple 1094-Cs associated with an EIN, but only one should be marked the authoritative transmittal.
- Under the Certifications of Eligibility, employers should check the qualifying offer method if they qualify for and intend to use code 1A in line 14. The employer is not required to offer minimum-value, affordable coverage (based on the Federal Poverty Level) for the entire year. However, in order to use a substitute statement, the coverage must be offered for the entire year.
- If you are considering using a substitute statement, review the details in the instructions to confirm that your organization qualifies to provide a substitute statement. Make sure the substitute statement meets the content and format requirements outlined in Publication 5223. Please note that employers who self-fund their medical plan are not eligible to use the substitute statement.
- Under the Certifications of Eligibility, if the employer checks that they are eligible for Section 4980H transitional relief, they must indicate what relief they qualify for under Section 3, column (e).
- Under the Certifications of Eligibility, a clarification was made in terms of being eligible for the 98 percent offer method. The draft instructions clarify that employees in limited non-assessment periods (e.g., certain permitted waiting and other periods) may be excluded when calculating the monthly percentage of employees receiving offers of coverage. A new example also illustrates the 98 percent offer method. Assume an employer has 325 employees. The employer identifies 25 employees as being possibly not full-time, because they work a regular schedule of 10 hours per week. Of the remaining 300 employees, 295 are offered affordable, minimum-value coverage for all time periods, with the exception of any applicable waiting period. The employer files 1095-Cs for all 300 employees. The employer qualifies for the 98 percent offer method because it offered 98 percent of the 300 employees affordable, minimum-value coverage. Qualifying for the 98 percent offer method means the employer does not need to complete Section 3, column (b) (i.e., month-to-month full-time employee counts).

The following highlights the key points for completing Form 1095-C:

- The employer information reported in Part I should correspond to the particular employer (EIN) paying this employee.
- The 2015 version of the form added a box in Part II for the plan start month. This box is optional for 2015, but is expected to be required for 2016. The employer completes this by indicating the month in which the plan year starts. For example, a calendar-year plan will enter 01 in the box. If no health plan is offered to the employee, the employer should enter 00. If the plan year changes during the year, the earliest possible start date should be entered.

- On line 14, a code must be entered for each month of the calendar year. If a code is the same for all 12 months, that code may be entered in the “All 12 Months” box. When an employer uses a code that indicates an offer of coverage is made, that offer must be for the entire month. If the offer is not for the entire month, then another code should be used.
- On line 16, it is noted that an employer can use code 2B if an employee is not a full-time employee. It can also be used if the offer of coverage was not for an entire month because full-time employment terminated before the end of the month.
- On line 16, employers should not enter code 2C to indicate coverage if 1G is entered in the “All 12 Months” box on line 14. Code 1G means the individual named on the form was not an employee at any time during the calendar year.

The draft instructions also note the possibility of indexing the affordability safe harbors. All of the affordability safe harbors measure 9.5 percent of income, whether that is based on the Federal Poverty Level, the W-2 box 1 earnings or the rate of pay. However, the actual affordability test is indexed annually. In 2015, the Marketplace uses an affordability measurement of 9.56 percent of household income. At some point, the IRS may apply the same indexing factors to the safe harbor percentages applicable under the statute.

The IRS also released 2015 draft instructions for issuing 1094-B and 1095-B forms. Most employers are not required to produce these forms with the exception of a non ALE who sponsors a self-funded medical plan. However, these instructions include a change for employers that sponsor Health Reimbursement Arrangements (HRAs). Based on the draft 2015 instructions, the IRS is now saying (despite indicating the opposite in both the Proposed and Final Regulations) that employers have to “report” on their HRAs. Employers have to report on the HRA if they sponsor the HRA and an insurance carrier provides the medical coverage associated with the HRA. It is not clear on how employers are supposed report their HRA participants. Employers are likely to push back on the IRS over this requirement. The draft instructions can be found at <http://www.irs.gov/pub/irs-dft/i109495b--dft.pdf>. Employers should wait for additional guidance from the IRS on how to report. They may end up removing this requirement when they issue the final instructions for the 2015 forms.

This *Reform Update* summarizes the key points in the new 2015 draft instructions. An employer that will be responsible for these reporting requirements should carefully read these instructions in their entirety. Even if your organization has contracted with an outside vendor to complete and submit the forms, you need to be familiar with the specifics. Most employers will want to review forms for accuracy before the vendor distributes them to employees and sends them to the IRS. The employer is ultimately responsible for the information included in these forms. You need to understand what and how information will be reported on these forms.

At this point, employers only have draft forms and instructions with which to work. The IRS will likely release final 2015 forms and instructions within the next two months. The forms are expected to change very little from the draft forms already released.

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