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# *New 2015 Forms 1094 and 1095 instructions*

*September 23, 2015*

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## *In brief*

The Affordable Care Act (ACA) requires entities that provide minimum essential coverage (MEC) to report that coverage to the IRS and individuals to show compliance with the individual shared responsibility mandate. This information generally will be reported on the Forms 1094-B and 1095-B (B series).

An applicable large employer (ALE) is required to report whether it offered its full-time employees affordable minimum value coverage and to report which individuals receive minimum essential coverage. These reports must be provided to the individuals and to the IRS, to assist the IRS in enforcing the ACA's employer mandate and individual premium tax credits. Employers will use Forms 1094-C and 1095-C (C series) to report on both MEC and ALE matters. The 2015 reports to individual must be postmarked by February 1, 2016, and the report to the IRS by March 31, 2016.

Recently released IRS final forms and instructions for the C series, as well as new Notice 2015-68, give employers and other stakeholders needed guidance for the upcoming reporting. This Insight discusses the final instructions to the C series forms and the new notice.

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## *In detail*

### *Draft 2015 forms and instructions raised unanswered questions*

Early in the summer, the IRS released draft 2015 forms 1094 and 1095 and instructions. Very little changed from the 2014 instructions to the draft 2015 instructions on the B series forms. However, there were some significant changes in the draft 2015 C series, such as:

- Clarifying which codes to use if the multiemployer interim relief applied

- Providing codes for an offer of COBRA coverage
- Requiring one Authoritative Transmittal to be filed by each employer member of an aggregated ALE group that is reporting aggregate employer-level data
- Including an optional section to designate the plan year
- Clarifying that employers may request an automatic 30-day extension of time to file information reports with the IRS by filing Form 8809

and an additional extension of not more than 30-days.

The draft instructions also included a discussion of the penalties that would apply if an employer didn't file or had to correct the forms. These penalties (which also apply to other wage reporting, such as Form W-2 and 1099-R) were increased as part of legislation enacted earlier in 2015 to fund unrelated legislation. The chart below reflects the changes.

**Increased penalty applicable for filing on and after January 1, 2016**

Penalty	Old amount	New amount
Penalty per failure to file an information return or furnish a payee statement	\$100	\$250
Combined calendar year maximum penalty	\$1,500,000	\$3,000,000
Penalty per failure to file/ furnish when corrected within 30 days of required filing date	\$30	\$50
Calendar year maximum when corrected within 30 days of required filing date	\$250,000	\$500,000
Penalty per failure to file/ furnish when corrected by August 1	\$60	\$100
Calendar year maximum when corrected by August 1	\$500,000	\$1,500,000
Penalty per failure to file/ furnish in case of intentional disregard (no calendar year maximum applies)	\$250	\$500

**Observation.** As many employers continue to refine their information collection and data aggregation procedures to file forms for the first time in early 2016, they'll find themselves facing increased potential penalties for noncompliance. Fortunately, the increased penalties don't affect the IRS' limited relief of not assessing 2015 reporting penalties for errors or incomplete reporting for ALEs who demonstrate a good faith effort to comply with the new ACA reporting requirements and who make timely filings of returns and furnishing of returns to individuals.

**Final C Series Instructions**

The IRS released final instructions to the C Series Forms in September, providing important clarifications. The following is a list of the major changes and clarifications to the final instructions from the draft.

**Extension for Furnishing Reports to Individuals.** The instructions permit an employer to request up to a 30 day extension to send the information to individual recipients, by writing to the IRS and providing an explanation. In

the final instructions, the IRS spells out what information an employer must send to the IRS to request this extension.

**Qualifying Offer, Limited Reporting Relief.** An employer whose offer of minimum essential coverage providing minimum value that is affordable to employees because the employee cost for single coverage does not exceed 9.5% of the mainland single federal poverty line (a 'Qualifying Offer') may provide a statement to those individuals in lieu of providing them the Form 1095-C. However, the instructions provide that this only is available for employees who receive insured coverage, or for employees eligible for self-funded plans who don't actually enroll in the employer-sponsored coverage. This relief applies only to the reports due to the employee, and not to the requirement to file the 1095-C with the IRS.

**Total Employee Count.** In column (c) of lines 23 through 35, an employer is required to enter the total employee count for the ALE member for each month of 2015. The final instructions

allow an employer to use the 12<sup>th</sup> day of each month for determining this number, or any of these dates: 1) the first day of the month; 2) the last day of the month; 3) the first day of the payroll period that starts during each month; or 4) the last day of the first payroll period that starts during each month.

**Multiemployer Arrangement Interim Guidance.** The IRS previously stated that an employer will be treated as offering minimum essential coverage for each employee for whom it is required to contribute to a multiemployer plan if such coverage is affordable and has minimum value. However, there was some confusion about how to report this on the Form 1095-C, especially whether the contributing employer was required to determine whether an employee is actually eligible for and enrolled in the plan in a particular month.

The instructions clarify that if code 2E is entered on line 16 of the form to indicate that the employer was required to contribute to a multiemployer plan on behalf of the employee for that month, code 1H (no

offer of coverage) should be entered on line 14 for that employee.

**Observation.** The instructions relieve employers from obtaining information about actual eligibility and enrollment of individuals for whom they are able to claim the multiemployer interim relief, and should simplify the reporting process for these employers. The IRS notes that in future years, an ALE member may be required to report offers of coverage made through a multiemployer plan in a different manner.

**COBRA.** The final instructions simplify COBRA reporting. The draft instructions provided that an offer of COBRA made to a former employee is reported as an offer of coverage on line 14 only if the employee enrolls in coverage. Otherwise, code 1H (no offer of coverage) was to be entered, regardless of whether the former employee's spouse or dependents enrolled in coverage. In the final instructions, code 1H should be entered for all former employees who are offered COBRA, regardless of whether or not enrolled.

On line 16, the final instructions state that code 2C (employee enrolled in coverage) should not be entered for any month in which a terminated employee is enrolled in COBRA. Code 2A (employee not employed in the month) should be entered in such cases.

Similar to the draft instructions, the final instructions provide that an offer of COBRA coverage to an active employee (namely, an employee whose hours were reduced) should be treated as any other offer of coverage.

**HRA reporting.** An ALE member is only required to report the HRA coverage in Part III for any individual who is not enrolled in the ALE's major medical coverage.

**Observation:** This raises the question whether HRA reporting is required for individuals enrolled in insured major medical coverage. In Notice 2015-68 discussed below, the IRS has suggested that they will amend the regulations to provide that MEC reporting is not required for the HRA in this case.

**ALE Determination.** To reflect recent changes to the law, the instructions explain that for purposes of determining an employer's average number of employees, an employee may disregard an employee for any month in which the employee has coverage under TRICARE or Veteran's Administration coverage.

#### Notice 2015-68

In Notice 2015-68, the IRS has announced that they will soon issue proposed regulations amending the regulations on ACA reporting, to:

1. require health insurance issuers to report on Form 1095-B coverage in catastrophic health insurance plans when enrolled in through an exchange, effective in 2017 (for coverage provided in 2016),
2. allow electronic delivery of statements reporting coverage under expatriate health plans unless the recipient explicitly refuses consent or requests a paper statement,
3. allow filers reporting on insured group health plans to use a truncated taxpayer identification number (TTIN) to identify the employer on the statement furnished to a taxpayer, and
4. specify when a provider of minimum essential coverage is not required to report coverage of an individual who has other minimum essential coverage, as mentioned in the Observation above.

The notice also invites comments on issues relating to solicitation of taxpayer identification numbers (TINs) of covered individuals; advises that the governments of United States possessions or territories (namely American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) are not required to report coverage under Medicaid and the Children's Health Insurance Program (CHIP); and provides that the state government agency sponsoring coverage under the Basic Health Program is required to report Basic Health Program coverage.

#### The takeaway

By issuing final forms and instructions, the IRS is demonstrating its commitment to implementing the employer shared responsibility requirements. This means that employers should be prepared to report by the 2016 deadlines.

## Let's talk

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