

At Last! IRS Issues Final ACA Reporting Instructions and Forms for Employers and Providers of “Minimum Essential Coverage”

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On September 16, 2015, after several draft iterations, the IRS issued the long awaited:

- Final [2015 Forms 1094-C and 1095-C](#) (and related instructions) for “applicable large employers” to report coverage offered to their full-time employees to allow the IRS to determine whether the employer owes a payment under the employer shared responsibility provisions of Section 4980H of the Internal Revenue Code (the “Code”); and
- Final [2015 Forms 1094-B and 1095-B](#) (and related instructions) for providers of “minimum essential coverage” (“MEC”), such as health insurance issuers and multiemployer trusts sponsoring self-funded plans, to report coverage provided to covered individuals to help the IRS determine if the individual is liable for the individual shared responsibility payment under Section 5000A of the Code.

The IRS also issued [Notice 2015-68](#) announcing its intent to propose regulations further implementing the reporting requirement under Section 6055 of the Internal Revenue Code for MEC providers.

While the final instructions for the most part track the requirements of the draft instructions (see our [August 2015](#) and [May 2015](#) newsletters for a discussion of these requirements), they include the following significant changes:

- **Simpler Reporting of Coverage Offered under a Multiemployer Plan in 2015:** If an employer relies on the multiemployer plan interim guidance and, therefore, enters “2E” on line 16 for any month in Part II of the Form 1095-C, it may now enter “1H” on line 14 for the corresponding month irrespective of whether the employee was eligible to enroll or enrolled in coverage under the multiemployer plan. This means that an employer is no longer required to obtain information from the multiemployer plan to determine if any of its employees were actually enrolled in the plan.¹ To claim this relief with respect to a full-time employee, an employer must be required to contribute to a plan that meets the “affordability” and “minimum value” requirements of Section 4980H of the Code on that employee’s behalf under the terms of a collective bargaining agreement.
- **COBRA Elected by Terminated Employees Need Not Be Reported:** Departing from the draft instructions, the final Form 1095-C instructions no longer require an employer

to report COBRA continuation coverage that is offered to a terminated employee. The “no offer of coverage” code (*i.e.*, “1H”) may now be entered on line 14 for any month that that COBRA was offered with the corresponding “not an employee” code “2A” on line 16 for that month.

- **HRA Coverage Need Not Be Reported if Employee Is Also Covered by Employer’s Medical Plan:** In a departure from the draft August 2015 instructions, the final Forms 1094-B and 1095-B instructions state that if an employee is covered by more than one MEC, for example a “health reimbursement arrangement” or “HRA” and a self-funded or insured major medical plan sponsored by the same employer, only one of the coverages must be reported. This means that if an employer offers an HRA to employees who are also enrolled in the insured medical plan sponsored by the same employer, the employer is not required to report the HRA coverage as the insurance carrier will report the insured coverage. An employer, however, must report HRA coverage if the employee’s medical coverage is provided through another employer’s plan (for example, a spouse’s plan).
- **Filing Extension:** The final instructions confirm that an automatic 30-day extension of the time to file the Forms 1094-B/1095-B or 1094-C/1095-C with the IRS is available with the submission of the Form 8809 by the due date of the applicable return (by February 29, 2016 or March 31, 2016 if filing electronically). No signature or explanation is necessary to obtain this extension. With respect to the time for furnishing the Form 1095-C to employees (*i.e.*, February 1, 2016 for 2015 returns), a 30-day extension is available only if a letter signed by the filer is sent to the IRS with the reason for the delay and the IRS approves the request.
- **Waiver from Electronic Filing Requirement:** Recognizing that filers may not be able to file electronic returns, the instructions allow filers to apply for a waiver by filing the Form 8508 at least 45 days before the due date of the returns. Electronic filing with the IRS is required if the entity must file 250 or more information returns and the entity has not received an approved waiver.
- **Corrected Returns:** As described in our prior newsletters, relief from the filing penalties is available if the filer timely submits 2015 returns with incorrect or incomplete information and can show a good faith effort to comply with the filing requirements. However, as the filing instructions include the process for filing corrected returns, it appears that the IRS expects filers to submit corrected 2015 returns to the IRS and to the affected employee, as applicable, once the filer discovers an error and has the information to correct the error, to avoid penalties.

In [Notice 2015-68](#), the IRS announced its intent to propose rulemaking under Section 6055 of the Code on the following:

- To require reporting in 2017 by Exchanges of “catastrophic coverage” purchased by individuals in 2016;
- To allow insurers that file and furnish the Forms 1094-B and 1095-C, to use a truncated taxpayer identification number for the employer sponsoring the plan on the statement furnished to the individual taxpayer (*i.e.*, the Form 1095-B);

- To allow filers to electronically furnish the Form 1095-B statement to individuals covered by an expatriate plan;
- To confirm that reporting of MEC that supplements or provides benefits in addition to other MEC (for example, HRA coverage that is integrated with self-insured or insured major medical coverage) is not required if the primary and supplemental coverage have the same plan sponsor or the coverage supplements government-sponsored coverage such as Medicare or Tricare;
- Penalty relief under the “reasonable good cause rules” relating to the requirement to report and solicit, as applicable, taxpayer identification numbers (“TIN”) (note: until additional guidance is issued, the Notice states that no penalties will be imposed for failing to report an individual’s TIN if: (a) the initial solicitation for the individual’s TIN is made at the individual’s initial enrollment or, if already enrolled on September 17, 2015, the next open season; (b) the second solicitation is made at a reasonable time thereafter; and (c) the third solicitation is made by December 31 of the year following the initial solicitation.

If you have any questions regarding the foregoing, please contact the author of this article.

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¹ While the prior draft instructions state that the code indicating that the employee was enrolled in coverage (*i.e.*, “2C”) supersedes all other codes, including the code for multiemployer plan relief (*i.e.*, “2E”), the final instructions eliminate this rule.