

REVIEWING THE INSTRUCTIONS FOR FORMS 1094-C AND 1095-C FOR 2016

A few days ago, the IRS released the final instructions for Forms 1094-C and 1095-C for 2016. The following is a review of those instructions along my comments and observations.

Who must file?, Form 1095-C, Page 2:

IRS makes it very clear that each separate member of a controlled group must file its own Forms 1094-C and 1095-C. This is true even if the individual member has less than 50 full-time employees.

Reporting by Employer that Sponsor Self-insured Health Plans, Page 2:

For any member who sponsors a self-insured health plan, it must complete Parts I, II and III of Form 1095-C for any employee who enrolled in coverage even not a full-time employee for any month of the calendar year.

For any employee enrolled in self-insured coverage who is not a full-time employee for a month during the calendar year, code 1G must be entered on line 14 in the "all 12 months column or in the separate monthly boxes for all 12 calendar months and Part II lines 15 and 16 do not need to be completed.

For this purpose, an employee is an individual who is an employee under the common law standard. An employee does not include a sole proprietor, a partner in a partnership or an S corporation shareholder who owns at least 2 percent of the S corporation, leased employee or a worker that is a qualified real estate agent or direct seller.

Comment: These above individuals only receive a Form 1095-C if the employer sponsored a self-insured group health plans. In addition, these employees would not be included in the employee counts for purposes of Form 1094-C.

Reporting of Enrollment Information for Non-Employees: Option to use Forms 1095-B and 1095-B, Page 2:

Members who offer self-insured health coverage to non-employees who enroll may use Form 1094-B and 1095-B rather than Form 1095-C, Part III to report coverage for those individuals and other family members.

Comment: For 2015, most employers who sponsored self-insured group health plans reported coverage on Form 1095-C and did not use Form 1095-B.

Authoritative Transmittal for ALE Members Filing Multiple Forms 1094-C, Pages 2-3:

If a member files more than one Form 1094-C, one filing must be identified on line 19, Part I as the Authoritative Transmittal and on that filing, the member must report certain aggregate data for all full-time employees and all employees of the member.

Each member must fill its own Forms 1094-C and 1095-C under its own separate EIN even if the member is part of a controlled group.

No Authoritative Transmittal should be filed of controlled group.

Comment: If an employer has four different divisions with their own employer identification numbers, each division has to file its own Form 1094-C and 1095-C. Each division has to file an Authoritative Transmittal. There is no Authoritative Transmittal filed for the controlled group. For this group, there will be four.

In regard to a Governmental Unit that has delegated its reporting responsibilities to another Governmental Unit, such Governmental Unit must ensure that among the multiple Forms 1094-C filed by or on behalf of the Governmental Unit transmitting Form 1095-C for the Governmental Unit's employees, one of the filed Form 1094C is designated as the Authoritative Transmittal and reports aggregate employer-level data.

One Form 1095-C for each Employee of ALE Member, Page 3:

For each full-time employee of a member, only one Form 1095-C will be provided for employment with that member. If an employee works for more than one member that is a member of the same controlled group, he or she must receive a separate Form 1095-C from each separate member. For any calendar month in which a full-time employee works for more than one member, only one member is treated as the employer of that employer for reporting purposes, It is the member for whom the employee worked the greatest number of hours of service and only that member reports for that employee for that calendar month.

Comment: For any controlled groups, some employees may work for more than one member. The employer has to decide how the employee's hours will be counted and reported.

When to File, page 3:

For 2016, an employer must file Forms 1094-C and Form 1095-C by February 28 if filing on paper or March 31 if filing electronically.

Comment: The extended due dates for filing the forms in 2016 (May 31, 2016 and June 30, 2016) only applied for 2015 filing. These due dates in 2017 are same as for filing Form W-2.

Extensions, Page 3:

An employer can receive an automatic 30-day extension to file by completing Form 8809 on or before the due date. The form may be submitted on paper or through the FIRE System.

Comment: The extensions granted for the 2015 filing were automatic. The employer was not required to file any extensions.

Furnishing Forms to Employees, Page 6:

Form 1095-C must be furnished to individuals by January 31, 2017.

Forms must be furnished on paper by mail (or hand delivered) unless the employee consents to receive the statement in an electronic format.

Comment: This due date is the same as providing Form W-2 to employees, The extension granted for 2015 only applied to that filing,

Extension of time to furnish statement to recipients, page 6:

An employer may request an extension of time to furnish Form 1095-C by sending a letter to:

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

The letter must include:

- filer name,
- filer TIN,
- filer address,
- type of return,
- a statement that extension request is for providing statements to recipients,
- reason for delay, and
- the signature of the filer or authorized agent.

The request must be postmarked by the date on which the statements are due to the recipients.

If an employer's request for an extension is approved, it will be granted a maximum of 30 extra days to furnish the recipient statements.

Comment: To obtain an extension for providing a Form 1095-C for 2016, the employer has to file an extension. For 2015, employer was granted an extension to March 31, 2016 without filing for an extension.

Information reporting penalties, Page 6:

For returns required to be made and statements required to be furnished for 2016 tax year returns, the following apply:

- The penalty for failure to file a correct information return is \$260 for each return for which the failure occurs, with the total penalty for a calendar year not to exceed \$3,193,000.
- The penalty for failure to provide a correct payee statement is \$260 for each statement for which the failure occurs, with the total penalty for a calendar year not to exceed \$3,193,000.
- Special rules apply that increase the per-statement and total penalties if there is intentional disregard of the requirement to file the returns and furnish the required statements.

Comment: The penalties indicated above are an increase from 2015. For 2015, the penalty was \$250 for each statement with the total penalty of a calendar year not to exceed \$3,000.

Specific Instructions for 1094-C, Page 6:

Line 19, Page 7: If this Form 1094-C is the Authoritative Transmittal that reports aggregate employer-level data for the member, the box should be checked on line 19 and Parts II, III, and IV, are completed to the extent applicable. If the Form 1094-C is not Authoritative Transmittal, the signature portion of Form 1094-C is then completed and the remainder of Parts II, III, and IV is left blank.

Line 22, Page 7: For 2016, there are only 3 boxes left, Qualifying Offer Method, Section 4980 Transitional Relief and 98% Offer Method, Box B Qualifying Offer Method Transition Relief for 2015 has been reserved for 2016.

Qualifying Offer Method, Page 7:

Box A should be checked if the member is eligible to use and is using the Qualifying Offer Method to report the information on Form 1095-C for one or more full-time employees. Under the Qualifying Offer Method, there is an alternative method of completing Form 1095-C and an alternative method for furnishing Form 1095-C to certain employees. If the ALE Member is using either of these alternative rules, check Box A. To be eligible to use the Qualifying Offer Method, the member must certify that it made a Qualifying Offer to one or more of its full-time employees for all months during the year in which the employee was a full-time employee for whom an employer shared responsibility payment could apply.

If the member reports using this method, it must not complete Form 1095-C, Part II, line 15, for any month for which a Qualifying Offer is made. Instead it must enter the Qualifying Offer code 1A on Form 1095-C, line 14, for any month for which the employee received a Qualifying Offer (or in the all 12 months box if the employee received a Qualifying Offer for all 12 months), and must leave line 15 blank for any month for which code 1A is entered on line 14. The member may, but is not required, to enter an applicable code on line 16 for any month for which code 1A is entered on line 14; a Qualifying Offer is, by definition, treated as an offer that falls within an affordability safe harbor even if no code is entered on line 16.

A member is not required to use the Qualifying Offer Method, even if it is eligible and instead may enter on line 14 the applicable offer code and then enter on line 15 the employee contribution.

If the member is eligible to use the Qualifying Offer Method, it may report on Form 1095-C by entering the Qualifying Offer code 1A on Form 1095-C, line 14, for any month for which it made a Qualifying Offer to an employee, even if the employee did not receive a Qualifying Offer for all 12 calendar months. However, if an employee receives a Qualifying Offer for less than all 12 months, the member must furnish a copy of Form 1095-C to the employee (rather than using the alternative method of furnishing Form 1095-C).

A member that is eligible to use the Qualifying Offer Method may use the alternative method of furnishing Form 1095-C only for a full-time employee who: (1) received a Qualifying Offer for all 12 months of the calendar year, and (2) did not enroll in employer-sponsored self-insured coverage.

Comment: If a member used the federal poverty line to determine employee contributions for affordability, the biggest advantage of checking Box A is that line 15 does not have to be completed on Form 1095-C. Most employers did not use the alternative method and provided employees with a copy of Form 1095-C.

Section 4980H Transitional Relief, P8:

For the 2016 calendar year, the transition relief is applicable only if a member (or any other member of the controlled group) offers coverage under a health plan with a plan year beginning on a date other than January 1 (a non-calendar year plan year), and only for calendar months in 2016 that fall within that 2015 plan year. This Box should be checked if the member is eligible for section 4980H Transition Relief for one or more months of the 2016 calendar year under either:

- 2015 Plan Year Section 4980H Transition Relief for ALEs with Fewer Than 100 Full-Time Employees, Including Full-Time Equivalent Employees (50-99 Transition Relief), or
- 2015 Plan Year Transition Relief for Calculation of Assessable Payments Under Section 4980H (a) for ALEs with 100 or More Full-Time Employees, Including Full-Time Equivalent Employees (100 or More Transition Relief).

Comment: If a member has a noncalendar plan year for its medical plan, this box should be checked to take advantage of any transition relief. For members with 100 or more full-time employees, this includes applying the 70% rule for offering coverage to full-time employees, instead of the 95% rule and 80 employee rule instead of the 30 employee for applying the penalty for the 2015 plan year that ended in 2016. For members with less than 100 full-time employees, the employer mandate only applies in 2016 in the month in which the 2015 plan year ends.

98% Offer Method, Page 8.

Box D is checked if a member offered medical coverage to 98% of its full-time employees and their children. If this Box is checked, then the member does not have to complete the "Section 4980H Full-Time Employee Count for ALE Member" in Part III, column (b) of Form 1094-C.

Part III-ALE Member Information- Monthly, Page 8:

Column (a) Minimum Essential Coverage Indicator, Page 8: This column can be marked "Yes" for any month in which a member offered minimum essential coverage to at least 95% of its full-time employees and their children. A member can also mark "Yes" if it is eligible for one of the Section 4980 Transition Relief for the 2015 plan year. This transition relief is available in

2016 only for members with plans with a non-calendar year plan year; for such a member, the relief applies only to the calendar months in 2016 that fall within the 2015 plan year.

Comment: To take advantage if these transition rules for months in 2016, the member has to make sure that box C is marked on line 22 and the applicable Code is indicated in Column (e) in Part III of Form 1094-C.

Column (b) Section 4080H Full-time Count For ALE Member, Page 9:

The number of full-time employees must be entered for each month, but any employee in a Limited Non-Assessment Period is not counted. If the number of full-time employees (excluding employees in a Limited Non-Assessment Period) for a month is zero, enter "0." An employee should be counted as a full-time employee for a month if the employee satisfied the definition of full-time employee under the monthly measurement method or the look-back measurement method (as applicable) on any day of the month.

Comment: Employees in a waiting period, a monthly measurement or a look-back measurement period are not counted.

Column (c) Total Employee Count For ALE Member, Page 9:

The total number of all of the member's employees, including full-time employees and non-full-time employees, and employees in a Limited Non-Assessment Period, for each calendar month are entered. A member must choose to use one of the following days of the month to determine the number of employees per month and must use that day for all months of the year:

- the first day of each month;
- the last day of each month;
- the 12th day of each month;
- the first day of the first payroll period that starts during each month; or
- the last day of the first payroll period that starts during each month (provided that for each month that last day falls within the calendar month in which the payroll period starts).

Column (e) Section 4980H Transition Relief Indicator, Page 9:

If the member certifies by selecting box C on line 22, that it is eligible for Section 4980H Transition Relief and is eligible for the 50 to 99 Relief, enter code A for each month to which the transition relief applies. If the member certifies by selecting box C on line 22, that it is eligible for Section 4980H Transition Relief and is eligible for the 100 or More Relief, enter code B for each month to which the transition relief applies. A member will not be eligible for both types of relief. This transition relief is available in 2016 only for members with plans with a non-calendar year plan year or for members that are members of a controlled group with at least one plan with a non-calendar year plan year.

Specific Instructions for Form 1095-C, Page 10:

Part I Employee, Page 10:

Line 2: A valid Social Security Number must be entered for the employee.

Part II Employee Offer of Coverage, Page 10:

Line 14: If an employee was not offered coverage for a month, enter code 1H. Do not leave line 14 blank for any month (including months when the individual was not an employee of the member). A member offers health coverage for a month only if it offers health coverage that would provide coverage for every day of that calendar month. If coverage terminates before the last day of the month (because, for instance, the employee terminates employment with the member, or otherwise loses eligibility for coverage under the plan), the employee does not actually have an offer of coverage for that month (and code 1H should therefore be entered on line 14).

For reporting offers of coverage for 2016, a member relying on the multi-employer arrangement interim guidance should enter code 1H on line 14 for any month for which the member enters code 2E on line 16 (indicating that the member was required to contribute to a multi-employer plan on behalf of the employee for that month and therefore is eligible for multi-employer interim rule relief).

Indicator Codes for Employee Offer of Coverage (Form 1095-C, Line 14, Page 11:

For 2016, two new codes have been added and one code has been eliminated. New codes 1J and 1K address conditional offers of spousal coverage (also referred to as coverage offered conditionally). Code 1I. Qualifying Offer Transition Relief 2015 has been reserved for 2016. These new codes include:

- **1J.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage conditionally offered to spouse; minimum essential coverage not offered to dependent(s).
- **1K.** Minimum essential coverage providing minimum value offered to employee; at least minimum essential coverage offered to dependents; and at least minimum essential coverage conditionally offered to spouse.

A conditional offer is an offer of coverage that is subject to one or more reasonable, objective conditions (for example, an offer to cover an employee's spouse only if the spouse is not eligible for coverage under Medicare or a group health plan sponsored by another employer). Using new codes 1J and 1K, a member may report a conditional offer to a spouse as an offer of coverage, regardless of whether the spouse meets the reasonable, objective condition.

Cobra Continuation Coverage, Page 11:

An offer of COBRA continuation coverage that is made to a former employee (or to a former employee's spouse or dependents) due to termination of employment is not reported as an offer of coverage on line 14. In this situation, code 1H (No offer of coverage) must be entered on line 14 for any month for which the offer of COBRA continuation coverage applies, and code 2A) must be entered on line 16, without regard to whether the employee or spouse or dependents enrolled in the COBRA coverage.

Post-employment (non-COBRA) Coverage, Page 11:

An offer of post-employment coverage to a former employee (or to that former employee's spouse or dependent(s)) for coverage that would be effective after the employee has terminated employment (such as at retirement) should not be reported as an offer of coverage on line 14. If the member is otherwise required to file Form 1095-C for the former employee (because, for example, the individual was a full-time employee for one or more months in the calendar year in which the termination of employment occurred), the member should enter code 1H (no offer of coverage) on line 14 for any month to which an offer of post-employment coverage applies, and should also enter code 2A (not an employee) on line 16.

Line 15, Page 12:

A member should only complete line 15 only if it entered code 1B, 1C, 1D, 1E, 1J, or 1K on line 14 either in the "All 12 Months" box or in any of the monthly boxes. A member should enter the amount of the employee contribution, which is, generally, the employee share of the monthly cost for the lowest-cost self-only minimum essential coverage providing minimum value that is offered to the employee.

Line 16, Page 12:

The series codes for 2016 are the same as 2015, except that Code 2I has been eliminated, Code 2I was used when the noncalendar year transition relief applied. The following points should be remembered:

- If an employee enrolls in medical coverage, Code 2C should be used except where the multi-employer interim rule applies for the month. Use Code 2E.
- If Code 1G is entered in line 14, do not enter Code 2C.
- If an employee is offered coverage and waives it, then use Code 2F, 2G or 2H, depending on which safe harbor the member used for the affordability test.
- Use Code 2E if any month in which a member is required by a collective bargaining agreement to make contributions for an employee to a multi-employer plan that offers, to

individual who satisfy the plan's eligibility conditions, health coverage that is affordable and provides minimum value and also offers coverage to the individual's dependents.

Part III Covered Individuals (line 17-22), Page 13:

Part III is only completed if the member offers employer sponsored self-insured health coverage. Such coverage does not include coverage under a multi-employer plan or an insured group health plan.

A member with a self-insured major medical plan and a health reimbursement arrangement (HRA) that has an individual who enrolls in both types of minimum essential coverage is required to report the individual's coverage under only one of the arrangements in Part III. A member with an insured major medical plan and an HRA that has an individual who enrolls in both types of minimum essential coverage is not required to report in Part III the HRA coverage of an individual, if the individual is eligible for the HRA because the individual enrolled in the insured major medical plan. A member with an HRA must report coverage under the HRA in Part III for any individual who is not enrolled in a major medical plan of the member (for example, if the individual is enrolled in a group health plan of another employer (such as spousal coverage)).

Part III must be completed by a member offering self-insured health coverage for any individual who was an employee for one or more calendar months of the year, whether full-time or non-full-time, and who enrolled in the coverage. The employee (if enrolled in self-insured coverage) should be listed on line 17; any other family members who enrolled in coverage offered to the employee should be listed on subsequent lines.

If two or more employees employed by the same member are spouses or an employee and his or her dependent, and one employee enrolled in a coverage option under the plan that also covered the other employee(s) (for example, one employee spouse enrolled in family coverage that provided coverage to the other employee spouse and their employee dependent child), the enrollment information should be reflected only on Form 1095-C for the employee who enrolled in the coverage. (However, it would report the other employee family members as covered individuals).

Coverage of Non-Employees, Page 13:

Part III may be completed by a member offering self-insured health coverage for any other individual who enrolled in the coverage under the plan for one or more calendar months of the year but was not an employee for any calendar month of the year, such as a non-employee director, a retired employee who retired in a previous year, a terminated employee receiving COBRA continuation coverage (or any other form of post-employment coverage) who terminated employment during a previous year, and a non-employee COBRA beneficiary (but not including an individual who obtained coverage through the employee's enrollment, such as a spouse or dependent obtaining coverage when an employee elects COBRA continuation

coverage that is family coverage). If Form 1095-C is used with respect to an individual who was not an employee for any month of the calendar year, Part II must be completed by using code 1G in the “All 12 Months” box or the separate monthly boxes for all 12 calendar months. The employer must report for these individuals using Form 1095-B, if it chooses not to use Form 1095-C.