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## Draft 2015 Form 1095-C and Instructions, Increased Penalties, and Electronic Filing Steps Issued

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As background, beginning with calendar year 2015, an applicable large employer (“ALE”) must use Forms 1094-C and 1095-C to report the information required under Internal Revenue Code sections 6055 and 6056 about offers of health coverage. The information reported allows the IRS to manage the requirements of both the individual and employer mandates and subsidy eligibility under the Affordable Care Act (“ACA”).

### Draft 2015 Forms 1094-C and 1095-C and Instructions

On August 7, 2015, the IRS issued revised draft 2015 Form 1095-C with instructions. The forms and instructions are substantially the same as those applicable to the 2014 year, but include the following changes:

- Add a first month of the plan year indicator (plan start month) in Part II and a Part III Covered Individuals Continuation Sheet. Completing this new box is optional for the 2015 form. This change was in the previously-issued draft form issued in June 2015.
- Indicate in the Forms 1095-B and 1095-C instructions that ALEs may use Form 1095-B instead of Form 1095-C to report coverage of individuals who are not full-time employees (“FTEs”) for any month during the year. However, an ALE must still report any employee (full- or part-time) enrolled in self-insured coverage on Form 1095-C.
- Appear to require insured plans to now report offers of COBRA to former FTEs that actually enroll in the COBRA coverage and to employees offered COBRA based on a reduction in hours.
- Expand the order of priority for line 16 code selection.
- Provide that an automatic 30-day extension is granted by submitting a Form 8809 by the due date of the forms.
- Provide that a waiver from the required filing of information returns electronically by submitting Form

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8508 at least 45 days before the due date of the returns.

- Provide information regarding when and how a corrected form is filed.
- Clarify that Form 1095-C may be hand delivered to individuals.
- Indicate that for Line 14 of the Form 1095-C for the 2015 tax year, an employer using the multiemployer arrangement interim guidance can use code 1H (no offer) for any month for which it enters code 2E (multiemployer plan relief) on line 16 without regard to whether the employee was actually eligible to enroll in coverage under the multiemployer plan. The 2014 instructions required that the employer report the code for the actual coverage offered to the employee where the employer qualified for the relief.
- Include important clarifications on how to report for COBRA participants, reflective of previously-issued Q&As. Those Q&As provide that when an offer of COBRA coverage is made to a former employee as the result of a termination from employment, the employer should indicate on Form 1095-C that an offer of coverage was made only if the former employee actually elects to enroll in the coverage. The reason for this is that the IRS does not want to disqualify a terminated employee from a premium subsidy based on an offer of COBRA coverage that was not accepted. However, when an offer of COBRA coverage is made to an employee due to a reduction in hours, the employer should indicate on Form 1095-C that an offer of coverage was made, whether or not the employee elects to enroll in the coverage. In this situation, the cost used to determine affordability should be the employee's self-only COBRA premium or contribution.

Also, per previously-issued draft Form 1094-C, line 19 (Is this the Authoritative Transmittal for this ALE Member?) was moved from Part II into Part I of the form and to allow for an entry in the "All 12 Months field" in Part III, Line 23, column (b) Full-Time Employee Count for ALE Member.

As stated above, the forms and instructions are only in draft form at present and are subject to further changes prior to being made final. Once finalized, these are the forms that will be used for calendar year 2015 reporting, due in early 2016.

For more information, see the draft forms and instructions here:

Form 1094-C: <http://www.irs.gov/pub/irs-dft/f1094c--dft.pdf>

Form 1095-C: <http://www.irs.gov/pub/irs-dft/f1095c--dft.pdf>

Instructions: <http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf>

Also note that the IRS indicated that for 2016 reporting, due in early 2017, new indicator codes will be established to require employers to report conditional offers to spouses. A conditional offer is one that is subject to a reasonable, objective condition such as offering coverage upon certification that the spouse does not have group health coverage available from another employer. Currently, the instructions to Form 1095-C provide that a conditional offer such as this should be treated as an offer for reporting purposes only. However, the new indicator codes are needed so that the IRS can determine whether the spouse should be eligible for a premium tax credit.

## Increased Penalties

Penalties for filing failures have been increased via the Trade Preferences Extension Act of 2015 (the "Act"), effective with this first year as follows:

Penalty	Previous Amount	Revised Amount
Failure to file/furnish an annual IRS return or provide individual statements to all full-time employees	\$100	\$250
Annual cap on penalties	\$1,500,000	\$3,000,000
Failure to file/furnish when corrected within 30 days of the required filing date	\$30	\$50
Annual cap on penalties when corrected within 30 days of required filing date	\$250,000	\$500,000
Failure to file/furnish when corrected by August 1 of the year in which the required filing date occurs	\$60	\$100
Cap on penalties when corrected by August 1 of the year in which the required filing date occurs	\$500,000	\$1,500,000
Lesser cap for entities with gross receipts of not more than \$5,000,000	\$500,000	\$1,000,000
Lesser cap for entities with gross receipts of not more than \$5,000,000 when corrected within 30 days of required filing date	\$75,000	\$175,000
Lesser cap for entities with gross receipts of not more than \$5,000,000 when corrected by August 1 of the year in which the required filing date occurs	\$200,000	\$500,000
Penalty per filing in case of intentional disregard. No cap applies in this case.	\$250	\$500

To access the Act, visit: <https://www.congress.gov/114/bills/hr1295/BILLS-114hr1295enr.pdf?elqTrackId=3d8f383c69614727a7601244c2f57972&elq=f15626ced81d4b068dc139147d4d8c33&elqCampaignId=&elqaid=9563&elqat=1>

For additional information, see: <http://www.irs.gov/Affordable-Care-Act/Employers/Information-Reporting-by-Providers-of-Minimum-Essential-Coverage>

## Electronic Filing Steps

Filers of 250 or more information returns must file the returns electronically, subject to waiver via Form 8508. Filers of less than 250 information returns may file the returns electronically.

Employers (and vendors on behalf of employers) are required to use the ACA Information Return ("AIR") system and complete the following steps prior to being able to electronically submit any forms:

1. Register with the IRS's e-services website, including submission of personal information about the person registering for the Submitting Entity;

2. Obtain an AIR Transmitter Control Code ("TCC"), a unique identifier authorizing each Submitting Entity to submit the Reporting Forms; and
3. Pass a series of technical/system tests to ensure that Reporting Forms will be properly submitted when due.

The first two steps can be completed now. The third step is anticipated to become available in the fall.

For more information on the AIR program, visit: <http://www.irs.gov/for-Tax-Pros/Software-Developers/Information>Returns/Affordable-Care-Act-Information>Returns-AIR-Program-Did-You-Know%3F?elqTrackId=f29970dbb4384383a49cc85c0c3afc53&elq=f15626ced81d4b068dc139147d4d8c33&elqCampaignId=&elqaid=9563&elqat=1>

For the reference guide, visit: [http://www.irs.gov/PUP/for\\_taxpros/software\\_developers/information\\_returns/AIR\\_Composition\\_and\\_Reference\\_Guide.pdf](http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/AIR_Composition_and_Reference_Guide.pdf)

For the updated draft of IRS Publication 5164, Test Package for Electronic Filers of ACA Information Returns, visit: [http://www.irs.gov/PUP/for\\_taxpros/software\\_developers/information\\_returns/Pub%205164\\_2%201.pdf](http://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/Pub%205164_2%201.pdf)