



September 2015

IRS Releases Final 2015 1094 and 1095 Forms and Instructions

In September, the IRS released final 2015 1094 and 1095 Forms and Instructions. Beginning in 2016, Forms 1094-B and 1095-B (“B Forms”) will be used by small employers (i.e., those with fewer than 50 full-time and equivalent employees) sponsoring self-insured plans to report on coverage provided to plan participants and their families to the IRS as required by the Patient Protection and Affordable Care Act (“PPACA”). Employers may also use the B Forms to report coverage for individuals who were not current employees for any month during the applicable calendar year. Whereas, applicable large employers will use Forms 1094-C and 1095-C (“C Forms”) to report to the IRS regarding offers of employer-sponsored health coverage made to its full-time and full-time equivalent employees.

When compared to the 2014 B and C Form Instructions, the final 2015 Instructions are largely unchanged but do contain some important clarifications. The 2015 Instructions also contain new guidance that was not previously contained in the 2014 Instructions regarding the logistics of the reporting and disclosure requirements, such as extensions of time and correction procedures. The changes and clarifications are highlighted below. (Note: Some of the guidance in the final Instructions are part of IRS Notice 2015-68, in which the IRS announces its intention to release proposed guidance under Section 6055.)

2015 B and C Form Instructions Provide New Guidance on Deadline Extensions for IRS Filings and Furnishing Employee Statements

Extension Type	Forms/Statement	Length of Extension	How to Apply for the Extension
Employee Statements	1094-B, 1095-B, or Simplified Employee Statement	30 day maximum extension at the discretion of the IRS	Letter addressed to the IRS postmarked by January 31. The letter must include the following: (1) filer’s name; (2) filer’s TIN; (3) filer’s address; (4) type of return; (5) statement that extension request is for providing statement to recipients; (6) reason for delay; and (7) signature of the filer or authorized agent.
IRS Paper Filing	1094-B, 1094-C, 1094-C, 1095-C	Automatic 30-day extension; discretionary second 30-day extension (total of 60 days) for hardships	Submitting Form 8809 on or before the paper filing deadline (i.e., February 28)
IRS Electronic Filing	1094-B, 1094-C, 1094-C, 1095-C	Automatic 30-day extension; discretionary second 30-day extension (total of 60 days) for hardships	Submitting Form 8809 on or before the electronic filing deadline (i.e., March 31)

Extension to Provide Employee Statements: Employers (or a Designated Government Entity (“DGE”), if applicable) may request additional time to provide Forms 1095-B, 1095-C, or simplified statements to employees by sending a letter to the IRS. If granted, employers or DGEs will generally receive a maximum extension of 30 days to furnish employee statements. To receive an extension, the letter must be postmarked by January 31, the date on which statements are due to employees. The letter must include the following: (1) filer’s name; (2) filer’s TIN; (3) filer’s address; (4) type of return; (5) statement that extension request is for providing statement to recipients; (6) reason for delay; and (7) signature of the filer or authorized agent.

Extension to File with IRS: Employers may apply for a 30-day extension to file the Forms with the IRS by completing Form 8809. The extension will be granted automatically when Form 8809 is submitted by the filing deadline (i.e., either by February 28 (paper filing) or by March 31 (electronic filing)); however, it is recommended that Form 8809 be filed as soon as an employer is aware that an extension is needed. Form 8809 may be submitted on paper or through the FIRE System. The automatic 30-day extension starts running from the original due date of the Forms.

Under a hardship extension, an employer may request a second 30-day extension that would effectively lengthen the total extension to 60 days. However, this second 30-day extension is not automatic and will generally be granted only when the employer can show that extenuating circumstances prevented filing by the date granted by the first request. To receive the second 30-day extension, an employer must submit a second Form 8809 before the end of the first extension period.

Note: Proposed, final, and temporary regulations issued on August 13, 2015 will remove the automatic extension of time to file Forms 1094-C, 1095-B, and 1095-C with the IRS starting with the 2017 reporting due in early 2018. Under these regulations, IRS will have the discretion to grant a single 30-day extension only in limited cases where a catastrophe or extraordinary circumstances occurred, such as a natural disaster or fire.

2015 B and C Form Instructions Provide New Guidance on the Logistics of IRS Filings and Employee Statements and Penalties

Electronic Filing Waiver: To request a waiver from electronic filing (required for organizations filing 250 or more of a particular return (e.g., 250 or more Forms 1095-C)), permitting an employer to file paper copies with the IRS, an employer must file Form 8508 at least 45 days before the due date of the returns. The waiver is not automatically granted. Should the IRS approve the electronic filing waiver, the waiver applies for that tax year only. An employer should not include a copy of the waiver in the paper filing, rather it should be kept for its records only. The waiver will also cover any future corrections for the types of returns listed.

Procedure for Filing Forms with the IRS: The IRS requires electronic filing of Forms 1094-B, 1095-B, 1094-C, and/or 1095-C when 250 or more forms are required to be filed. The 250 or more requirement applies separately to each type of form as well as to both original and corrected returns. For more information regarding how to file electronically (and not through a vendor), please see [Publication 5165](#).

If filing on paper, the forms must be sent to the IRS via first-class mail. The mailing should be flat (i.e., not folded) labeled with: (1) employer’s name; and (2) the package number, ordered sequentially if mailing the

forms in multiple packages. If multiple packages are sent, then Form 1094-C should be included in package number one.

Procedure for Providing Employee Statements: Copies of the Forms or simplified statements must be provided on paper by mail or hand delivery. If mailed, the statement must be sent to the full-time employee's last known permanent address or, if no permanent address is known, to the employee's temporary address. Alternatively, statements may be provided electronically by email or on the employer's website if the employee consents. (Note that statements disclosing coverage under an expatriate plan can be furnished electronically unless the employee refuses consent or requests a paper statement.) Consent may be made electronically in any manner that reasonably demonstrates that the employee can access the statement in the electronic format in which it will be furnished.

Procedures for Corrections: Employers are required to file a corrected Form with the IRS and provide a corrected statement to employees when there was an error in the original filing or a retroactive change in coverage occurred (such as cancellation of coverage in December for nonpayment of premiums). Forms 1094-B, 1095-B, 1095-C, and simplified employee statements each have their own correction procedures. When an error is discovered, all Forms should be corrected and filed as soon as possible following the procedure for each Form.

Record Keeping Requirements: Generally, copies of Forms 1094-B, 1095-B, 1094-C, and 1095-C filed with the IRS must be kept for at least three years from the due date of the returns. In lieu of keeping copies of the Forms, employers may alternatively maintain records that allow them to reconstruct the form data for at least three years from the due date of the returns.

Penalties: The penalties for failing to file Forms with the IRS or provide employee statements are \$250 each with a maximum of \$3,000,000 per year. For 2015 reporting only, the IRS will not impose penalties upon employers who file incorrect or incomplete information and make a "good faith effort" to comply. However, the 2015 penalty relief will not be available to employers who fail to file or who file late.

2015 B and C Form Instructions Provide New Guidance Reporting Health Reimbursement Arrangement ("HRA") Coverage

Final 2015 Instructions issued in September 2015 contain guidance on how an employer should report HRA coverage. When an individual is covered by more than one type of MEC, an employer is required to report only one type of MEC if:

- (1) The individual is covered by more than one type of MEC provided by the employer; or
- (2) The individual is eligible for coverage only because the individual is covered by other MEC for which reporting is required (but both types of coverage must be through the same employer).

Under the first condition, if an individual is covered by an employer's self-insured primary medical plan and an HRA, then employer is required to report the coverage of the individual under only one of the arrangements. Under the second condition, an employer with an insured primary medical plan and an HRA is not required to report an individual's HRA coverage if the individual is only eligible for the HRA because the individual enrolled in the insured primary medical plan. However, for any individual who is enrolled in one employer's primary medical plan and another employer's HRA (e.g., spousal coverage), each employer is required to report on the coverage it provides to that individual.

2015 C Form Instructions Clarifications

Reporting under the 98% Offer Method: According to final 2015 Instructions for Forms 1094-C and 1095-C, an employer is eligible to use the 98% Offer Method by certifying: (1) that it took into account all the months that individuals were employees of the employer and were not in a limited non-assessment period, (2) that it offered affordable health coverage providing minimum value to at least 98% of its employees for whom it is filing a Form 1095-C, and (3) offered minimum essential coverage to those employees' dependent children. An employer is not required to identify which employees for whom it is filing were full-time employees. However, for any employee for whom the employer fails to file Form 1095-C, the employer should confirm that the employee was not a full-time employee for any month of the calendar year.

Reporting Offers of COBRA Coverage: The 2015 Instructions distinguish between an offer of COBRA coverage made to a former employee whose employment was terminated employee versus an active employee who is offered COBRA coverage due to a reduction in hours. According to the 2015 Instructions, an offer of COBRA continuation coverage made to a former employee upon termination of employment should not be reported as an offer of coverage on line 14. For a terminated employee, code 1H (no offer of coverage) should be entered for any month for which the offer of COBRA continuation coverage applies in line 14 and code 2A (employee not employed during the month) should be entered in line 16. The 2015 Instructions expressly prohibit the use of code 2C (employee enrolled in coverage offered) for any month in which a terminated employee is enrolled in COBRA continuation coverage. However, this appears to contradict guidance issued by the IRS in a set of frequently asked questions, titled "[Questions and Answers about Information Reporting by Employers on Form 1094-C and 1095-C.](#)" In Question #16, the IRS states that a former employee who terminated employment and enrolled in COBRA coverage should be reported as follows:

- Line 14: Enter applicable series 1 Code depending on which Qualified Beneficiaries enrolled in coverage (e.g., employee only - 1B; employee, spouse, and dependents - 1E);
- Line 15: Enter COBRA premium for the lowest-cost self-only coverage providing minimum value offered; and
- Line 16: Enter Code 2C.

Clarification from the IRS about how to correctly report offers of COBRA continuation coverage would be deeply appreciated.

Conversely, an offer of COBRA continuation coverage that is made to an active employee due to a reduction in hours is reported in the same manner and using the same code as an offer of that type of coverage to any other active employee. However, the cost of coverage included in line 15 will be the COBRA premium for the lowest cost employee-only coverage offered.

Reporting Multiemployer Interim Relief in 2015: For 2015 calendar year reporting in 2016, an employer relying on the multiemployer interim rule relief should enter code 1H on line 14 and code 2E on line 16 (indicating that the employer was required to contribute to a multiemployer plan on behalf of the employee for that month), regardless of whether any other Series 2 code applies (including code 2C). The codes may be entered regardless of whether the employee was eligible to enroll in coverage under the multiemployer plan. Applicable large employers with self-insured multiemployer plans will not be required to complete Part III of Form 1095-C. For 2016 calendar year reporting and beyond, offers of coverage made through a multiemployer plan may be reported differently.

Simplified Employee Statements under the Qualifying Offer and 2015 Qualifying Offer Transition

Relief Method: While not new guidance, the 2015 Instructions clarify that employers using the Qualifying Offer or 2015 Qualifying Offer Transition Relief Method may provide simplified employee statements only to eligible employees who enrolled in insured coverage or who did not enroll in self-insured coverage. Under these methods, employees enrolling in self-only coverage must receive Form 1095-C with Part III completed. The Instructions include the example below.

Employee's employment with Employer begins on January 1. Employee is in a health coverage waiting period (and an Employer Shared Responsibility Payment could not apply with respect to Employee, because Employee is in a Limited Non-Assessment Period) until April 1 and is a full-time employee for the remainder of the calendar year. Employer makes a Qualifying Offer to Employee for coverage beginning on April 1 and for the remainder of the calendar year. Employer is eligible to use the Qualifying Offer method because it has made a Qualifying Offer to at least one full-time employee for all months in which both (1) the employee was a full-time employee and (2) an Employer Shared Responsibility Payment could apply with respect to the employee. Employer may use the alternative method of completing Form 1095-C under the Qualifying Offer Method for this Employee. However, unless Employer is eligible for the Qualifying Offer Method Transition Relief for 2015, Employer may not use the alternative method of furnishing Form 1095-C to Employee under the Qualifying Offer Method because Employee did not receive a Qualifying Offer for all 12 months of the calendar year.

Total Employee Count: The 2015 final Instructions provide a new manner for employers to determine their total employee count for the month on Form 1094-C, Part III, column (c). That manner is using the employee count on the 12th day of the each month.

Employee's Monthly Contribution Calculation: Employers may determine the monthly employee contribution by dividing the employee's total cost for the plan year by the number of months in the year.

Plan Start Month: Form 1095-C, Part II contains a new field – “plan start month.” This field is optional for 2015 reporting (meaning that employers may leave this field blank), but will likely be mandatory for the 2016 Form 1095-C. To complete the box, employers should enter the two-digit number (i.e., 01 through 12) indicating the calendar month during which the plan year begins. If more than one plan year could apply, for example due to a change in plan year, an employer should enter the earliest applicable month. If the employer does not offer health coverage to its employees, then the employer should enter “00.”

ALE Status: For purposes of determining whether an employer is an “applicable large employer,” the employer may disregard any employees for any month in which the employee has TRICARE or Veterans Administration coverage. This change is a result of the Surface Transportation and Veterans Health Care Choice Improvement Act.

Reporting Breaks in Service: An employee who had a break in service is treated as an employee during that break in service for reporting purposes so long as the individual's employment did not terminate. For example, an employee on unpaid leave during the break in service would be treated as an employee for reporting purpose during the break in service, while a former employee whose employment had been terminate during the break in service would not be treated as an employee for reporting purposes.

Minimum Value Reporting under 4980H Transition Rule: Plans that exclude coverage for inpatient hospitalization coverage and/or physician services do not offer minimum value, but may be eligible for

Section 4980H transition rule under Notice 2014-69. Even if the plan is eligible for this transition relief, an offer of coverage that fails to provide substantial inpatient hospitalization coverage and/or physician services should be reported on Form 1095-C as not providing minimum value by entering code 1F on Form 1095-C, line 14.

Reporting Offers of Coverage made to a Spouse: An offer of coverage to a spouse includes an offer that is subject to a reasonable, objective condition regardless of whether the spouse meets that condition. For example, an offer of coverage that is available to a spouse only if the spouse certifies that the spouse does not have access to health coverage from another employer is treated as an offer of coverage to the spouse for reporting purposes. This treatment is for reporting purposes only. It generally will not affect the spouse's eligibility for a premium tax credit if the spouse did not meet the condition and therefore did not actually receive an offer of coverage.

Form 1095-C Requires SSN of Individual: Form 1095-C may only be used if the individual identified on Line 1 has a SSN. Therefore, applicable large employers required to use Form 1095-C must have the SSN of an employee that was offered health coverage and, if self-insured, enrolled in coverage. If a non-employee enrolls in the employer's self-insured coverage and that individual's SSN is unknown, then the employer must use Form 1095-B to report coverage information.

Future Indexing of 9.5% Affordability Safe Harbor: The final Instructions indicate that the 9.5% affordability safe harbor could be indexed in future. The affordability calculations and reporting for the 2015 calendar year are not impacted.

2015 B Form Instructions Clarifications

Responsible Individual: The "responsible individual" is typically the person who is the primary name on the coverage or the person who should be receiving the statement based on the circumstances. Generally, the statement should be sent to the taxpayer who would be liable for the Individual Shared Responsibility payment for the covered individuals. This person may be a parent of minor children (when the children are the only covered individuals) or an employee or former employee in the case of employer-sponsored coverage.

Do not Complete Form 1094-B, Part II for Coverage provided by a Multiemployer Plan: The 2015 Instructions confirm that Part II of Form 1094-B should not be completed if coverage is provided by a multiemployer plan.

Comparison of Final 2014 and Final 2015 Forms

A comparison of the final 2014 and final 2015 versions of Forms 1094-B, 1095-B, 1094-C, and 1095-C reveals no substantial changes, just a couple of slight differences, as noted below. These differences will not require employers to track or gather any new information for reporting in early 2016 on coverage provided during the 2015 calendar year.

- Form 1094-B: No changes.
- Form 1095-B: The final 2015 Form 1095-B contains a "continuation sheet" to allow employers to report more than six covered individuals. This extends Form 1095-B, Part IV from lines 23 – 28 to lines 23 - 40.
- Form 1094-C: The final 2015 Form 1094-C moved line 19 from Part II to Part I, but retains the same line number and content.

- Form 1095-C: The 2015 Form 1095-C contains a new field titled “Plan Start Month.” According to the IRS, this field will be optional for 2015. For 2016 and beyond, the “Plan Start Month” field will be required. Additionally, the 2015 Form 1095-C contains a “continuation sheet” to allow employers to report more than six covered individuals – extending Part III from line 17 - 22 to lines 17 - 34.

Publication for Substitute Statements

Instead of using IRS Forms 1094-B, 1095-B, 1094-C, and 1095-C, employers may develop and use substitute forms that may be used for IRS reporting as well as providing statements to recipients. Substitute forms must meet the format and content requirements set forth in IRS Publication 5223. According to Publication 5223, the substitutes must be exact replicas of the official IRS forms in terms of both layout and content. Substitute forms that do not adhere to specifications in Publication 5223 may be subject to penalties.

Links to Final Forms and Instructions

- C-Form Instructions - <http://www.irs.gov/pub/irs-pdf/i109495c.pdf>
- 1094C - <http://www.irs.gov/pub/irs-pdf/f1094c.pdf>
- 1095C - <http://www.irs.gov/pub/irs-pdf/f1095c.pdf>

- B-Form Instructions: <http://www.irs.gov/pub/irs-pdf/i109495b.pdf>
- 1094B - <http://www.irs.gov/pub/irs-pdf/f1094b.pdf>
- 1095B - <http://www.irs.gov/pub/irs-pdf/f1095b.pdf>

Action Steps

Employers should familiarize themselves with the new guidance provided in the instructions and make any necessary adjustments to their Forms 1094 and 1095 strategy. If a third-party vendor has been contracted to perform an employer’s reporting on its behalf, the employer should confirm that the vendor is aware of these changes and issuance of final IRS Publication 5156. To assist employers with their compliance efforts, Gallagher is in the process of updating its Section 6055 and 6056 Toolkit to reflect the changes between the 2014 and 2015 final Forms and Instructions. GBS’ 6055 and 6056 Toolkit is available [here](#).

Gallagher Benefit Services, through its compliance experts and consultants, will continue to monitor developments on healthcare reform legislation and regulation and will provide you with relevant updated information as it becomes available. In the interim, please contact your Gallagher Benefit Services Representative with any questions that you may have.

The intent of this analysis is to provide general information regarding the provisions of current healthcare reform legislation and regulation. It does not necessarily fully address all your organization’s specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization’s general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.