



Published: October 25, 2016

# Final 2016 Forms 1094-C and 1095-C Available

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The Internal Revenue Service (“IRS”) recently released final versions of the 2016 Forms 1094-C and 1095-C and associated instructions. These forms will be used in early 2017 by Applicable Large Employers (“ALEs”) to report whether the ALE offered (or did not offer) a full-time employee (“FTE”) health insurance coverage during the calendar year. Additionally, for ALEs with self-insured plans, these Forms reflect coverage provided under a self-insured group health plan to individuals (FTEs and non-FTEs) during calendar year 2016. Generally, the forms and instructions are substantially similar to their draft versions and the 2015 forms, with the exception of two new reporting codes, removal of certain transition relief that is no longer available and additional clarifications contained in the instructions.

Notable changes are summarized below.

## The Forms

### Form 1095-C Clarifications and Changes

- **New codes.** Codes 1J and 1K have been added for use on Line 14 to report a “conditional offer of spousal coverage.” 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 by a group health plan sponsored by another employer). Employers that have a spousal carve-out arrangement will need to be aware of these two new codes (specifically, 1K).
  - **1J:** MEC providing minimum value (“MV”) offered to employee and at least MEC conditionally offered to spouse; MEC not offered to dependent(s).
  - **1K:** MEC providing MV offered to employee; at least MEC offered to dependents; and at least MEC conditionally offered to spouse.

- **Codes that are no longer applicable.** Codes 11 and 21, used on the 2015 Form 1095-C in Lines 14 and 16 respectively, are no longer applicable and have been reserved. These Codes should not be used on the 2016 filings.
- **Qualifying Offer Method (Code 1A).** A “Qualifying Offer” means an offer of MEC providing MV to one or more FTEs for all calendar months during the calendar year for which the employee was an FTE, where the employee contribution for each month does not exceed (for 2016) 9.66% (\$95.63) of the mainland single federal poverty line, provided the offer of coverage includes an offer of MEC to the employee’s spouse and children. If this is the case, the employer may use Code 1A in Line 14 and leave Lines 15 and 16 blank. A corresponding Box “A” in Line 22 of Form 1094-C must also be checked. ALEs qualifying for this relief are not required to use Code 1A.
- **Line 15 of Form 1095-C.** Only complete if using Code 1B, 1C, 1D, 1E, 1J, or 1K on Line 14. If any other code is on Line 14 (e.g., 1A, 1F, 1G, or 1H), leave Line 15 blank.
- **“Do not attach to your tax return. Keep for your records.”** Language has been added to the top of Form 1095-C reminding recipients to keep this statement for recordkeeping purposes. A copy should not be submitted with an individual’s annual tax filing.
- Check Box “C” if the ALE is eligible for the following relief for one or more months of the 2016 calendar year:
  - ALE employed fewer than 100 FTEs (50-99 Transition Relief), or
  - For employers with 100 or more FTEs, qualified for relief on the “A” penalty (applicable when there was an offer of coverage to at least 70% of FTEs as opposed to 95%).

## The Instructions

### Aggregated ALE Groups

The instructions include an expanded discussion regarding instructions for filings made by ALE members that are part of an aggregated ALE group (i.e., controlled group or affiliated service group).

- There is no aggregated reporting or authoritative transmittal for all members of an aggregated ALE group (controlled group). Each ALE member must file its own Forms 1094-C and 1095-C under its own separate EIN, even if the ALE member is part of an aggregated ALE group.
- Only one Form 1094-C may be the authoritative transmittal for an ALE.

### Electronic Filing

- Generally, if an employer must file at least 250 information returns, the employer must file electronically. The 250-or-more filing requirement applies separately to each type of form and separately for original and corrected forms. If you were required to file your forms electronically because you filed more than 250 forms and you have 150 corrected Forms 1095-C to file, you may file the corrected returns on paper.

### Transitional Relief – Form 1094-C, Line 22

- For the 2016 calendar year, the transition relief described below is applicable only if an ALE offers coverage under a health plan with a non-calendar plan year, and only for calendar months in 2016 that fall within the 2015 plan year.

<b>Failure to file a correct information return.</b>	<b>\$260</b> /each return for which a failure occurs (maximum penalty for all failures during the calendar year cannot exceed \$3,193,000).
<b>Failure to provide a correct payee statement.</b>	<b>\$260</b> /each return for which a failure occurs (maximum penalty for all failures during the calendar year cannot 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 to furnish the required statements.	
Waiver of penalties. Penalties may be waived if the failure was due to reasonable cause and not willful neglect.	

### COBRA Coverage

An offer of COBRA coverage is reported differently depending on whether or not the offer is made due to an employee's termination of employment.

- If an employee is terminated, then the COBRA offer is reported as no offer of coverage using Code 1H on Line 14 and Code 2A on Line 16 with Line 15 blank.
- If there is an offer of COBRA coverage made to an employee who remains employed by the ALE (e.g., an offer of COBRA coverage due to a loss of group health plan coverage because of a reduction in hours), then the COBRA offer is reported using the appropriate code to indicate the offer of coverage to all eligible individuals. For example, use Code 1E if coverage is offered to employee, spouse, and dependents or Code 1B if coverage is offered to employee only.

### Example

During the applicable open enrollment period for its health plan, Employer makes an offer of MEC providing MV to Employee and to Employee's spouse and dependents. Employee elects to enroll in employee-only coverage starting January 1. On June 1, Employee experiences a reduction in hours that results in loss of eligibility for coverage under the plan. As of June 1, Employer terminates Employee's existing coverage and makes an offer of COBRA continuation coverage to Employee, but does not make an offer to Employee's spouse and dependents. Employer should enter Code 1E (MEC providing MV offered to employee and at least MEC offered to dependent(s) and spouse) on Line 14 for months January – May, and should enter Code 1B (MEC providing MV offered to employee only) on Line 14 for months June – December.

### Counting FTEs for the ALE

Column (b) in Section III of Form 1094-C requests the number of FTEs for each month of the calendar year.

- **Monthly measurement method.** Employee should be counted as an FTE for a month if the employee satisfied the FTE definition under the monthly measurement method (as applicable) on any day of the month.
- **Look-back measurement method.** If the employee is identified as an FTE during the measurement period, then the employee is considered an FTE for each month of the stability period so long as the employee remains employed by the employer.

Be sure to use the definition under the employer mandate for an FTE (determined under one of the two applicable measurement methods) and not any other definition.

### Example

Employer uses the look-back measurement method to determine the full-time status of its employees. Employee, who is not in a Limited Non-Assessment Period, averaged over 130 hours of service per month during the measurement period that corresponds with the stability period starting January 1, 2016, and ending December 31, 2016. Employee terminates employment with Employer on February 15, 2016. Employer must include Employee in the number of FTEs reported in column (b) for January and February.

### Post-Employment (non-COBRA) Coverage

An offer of post-employment coverage to a former employee upon termination of employment (i.e., a retiree) should not be reported as an offer of coverage on Line 14. Use Codes 1H in Line 14 and 2A in Line 16 if the ALE is required to file Form 1095-C for the former employee (for example, the employee was an FTE for part of the calendar year in which the termination of employment occurred).

### Employee Required Contribution

The Employee Required Contribution is the employee's share of the monthly cost for the lowest-cost self-only MEC providing MV that is offered to the employee by the ALE.

To determine the amount of the employee's share of the monthly cost, the ALE may divide the total cost to the employee for the plan year by the number of months in the plan year. This monthly amount of the employee's share of the cost would then be reported for any months of that plan year that fall within the 2016 calendar year.

### Self-Funded Plans

The instructions provide the following clarifications:

- Complete Part III of Form 1095-C ONLY if the ALE offers employer-sponsored self-insured health coverage in which the employee or other individual enrolled.
- If the ALE offers both insured and self-insured coverage, complete Part III only for employees who enroll in the self-insured coverage.
- Part III must be completed by the ALE 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 not, and who enrolled in the coverage.
  - The employee should be listed on Line 17 and any other family members who enrolled in the coverage offered to the employee should be listed on subsequent lines.
- Part III may be completed by the ALE 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 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 using Form 1095-C for this purpose, use 1G in the “all 12 months” box or the box for each month of the calendar year.
- If Form 1095-C is not used, the ALE must use Forms 1094-B and 1095-B.

### Reporting Offers of Coverage under a Multiemployer Plan

For reporting offers of coverage for 2016, an ALE relying on the multiemployer interim guidance should enter Code 1H on Line 14 for any month for which the ALE enters 2E on Line 16.

- For reporting for 2016, Code 1H may be entered without regard to whether the employee was eligible to enroll or enrolled in coverage under the multiemployer plan.
- For reporting for 2017 and future years, ALE relying on the multiemployer arrangement interim guidance may be required to report offers of coverage made through a multiemployer plan in a different manner.

### Other Clarifications

- Code 1G (used on Form 1095-C in Line 14) applies for the entire year or not at all. According to the instructions, there would not be an instance where 1G would be used with another Line 14 Code during the year.
- The “affordability” safe harbors for 2016 are based on 9.66%.
- Do not use an affordability safe harbor Code (e.g., 2F, 2G or 2H) if the ALE did not offer MEC to at least 95% of FTEs and their dependents (e.g., if NO is checked on Form 1094-C, Part III, column (a)).

- An FTE that experiences a break in service where no hours of service were credited should be reported as an employee only if the individual remained an employee during the break in service.
- A plan does not provide MV if it fails to offer substantial coverage of inpatient hospitalization and physician services.

## Additional Information

Additional information on this employer reporting may be found here:

<https://www.irs.gov/affordable-care-act/employers/questions-and-answers-about-information-reporting-by-employers-on-form-1094-c-and-form-1095-c>

The 2016 instructions may be found here:

<https://www.irs.gov/pub/irs-pdf/i109495c.pdf>

The final Forms 1094-C and 1095-C can be found here:

<https://www.irs.gov/pub/irs-pdf/f1094c.pdf>

<https://www.irs.gov/pub/irs-pdf/f1095c.pdf>

The 2016 Forms 1094-B and 1095-B and Instructions have been released and are available here, <https://www.irs.gov/pub/irs-pdf/i109495b.pdf>. They are not addressed in this summary.