



# American Payroll Association

Government Relations • Washington, DC

June 27, 2016

Internal Revenue Service  
Email: Joseph.M.Guillen@irs.gov

## **Re: Recommendations for the 2016 Forms 1094-C and 1095-C and Instructions**

Dear IRS:

Thank you for the opportunity to offer recommendations on the Internal Revenue Service's 2016 Forms 1094-C and 1095-C and instructions.

### **ABOUT THE AMERICAN PAYROLL ASSOCIATION (APA)**

Established in 1982, the APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals and their employers in the United States. The APA's primary mission is to educate members and the payroll industry about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws. The APA's Government Relations Task Force (GRTF) works with legislative and executive branches at the federal and state levels to assist employers with understanding their legal obligations with significant emphasis on minimizing the administrative burden on government, employers, and individual workers. The GRTF maintains a close relationship with the IRS to ensure that APA's members receive the latest information about federal tax law changes and the IRS receives meaningful feedback on its programs, regulations, guidance, and tax forms.

### **GENERAL RECOMMENDATIONS**

Thank you for extending the deadlines for filing 2015 information returns under the Affordable Care Act (ACA). APA recommends an extension of the original deadlines again for the 2016 forms. We anticipated that the effort to complete the reports this year would lead to systems and processes designed to comply with the original due dates in the 2017 filing season. However, some significant difficulties remain. For example, employers must still process large amounts of data from different systems and vendors and this data must be provided new each year. Other filing deadlines, such as for Forms W-2 and 1099, are competing for the same preparation and filing time, as well as for precious IT resources. In recommendations for the IRS's 2016-2017

Priority Guidance Plan, APA asked the IRS to consider options for employers to match employee, spouse, and dependent names and social security numbers for purposes of ACA information reporting. However, at this time, such an option is not available.

In addition, APA recommends that the IRS provide instructions or guidance for companies that are acquired, merged, or split during the year and controlled groups that change during the year. Employers need to know how to identify the employee offer of coverage in these situations. For example:

- Does the merged company collect the data from the two previously separate companies and then add the information from the merged company's healthcare coverage?
- Should reporting include just the data based on the start date of coverage by the merged company?
- Are three different information filings required for each of the three entities in a merger?
- In an acquisition, are two different information returns required for employees of the acquired company?
- When a company splits, are separate information reports required from the original company and then each of the newly formed entities?

More guidance also would be helpful with respect to determining full-time employee status under different measurements and payroll periods involving mergers and acquisitions.

#### **GENERAL INSTRUCTIONS FOR 2015 FORMS 1094-C AND 1095-C**

On page 2 in the paragraph titled, "Reporting of Enrollment Information for Non-Employees: Option to Use Forms 1094-B and 1095-B," language should be added to make clear that this reporting option applies only to those individuals who were non-employees for the entire year. If they were full-time employees for any month during the year, Form 1095-C must be used.

On page 2 in the paragraph titled, "Substitute Statements to Recipients," the name of "Pub. 5223" shown in the instructions is different than the title on the latest revision of Pub. 5223 (Rev. Date 0915). The instructions use "General Rules & Specifications for Affordable Care Act Substitute Forms 1094-B, 1095-B, 1094-C, and 1095-C and Certain Other Information." The name on the publication is "General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C." To avoid confusion, please make sure that the two documents match.

On page 3 in the paragraph under “How to File,” titled, “Keeping copies,” the instructions require retaining copies of information returns for at least three years. Employers are required by the IRS to keep other employment and tax forms (e.g. W-2 forms) for four years. The IRS should consider offering an explanation or reference to the regulations in the instructions for the three-year requirement or change the instructions to four years for consistency.

On page 4, in the TIP under the heading “Corrected Forms 1094-C and 1095-C,” the instructions state: “To file corrections for electronically filed forms, see section 7.1 of Pub. 5165.” This language makes it sound like employers must file corrections electronically if the original forms were filed electronically. Please clarify by describing the e-filing requirement. The general threshold for e-filing corrected information returns is 250 or more corrections of the same type of form.

On page 5 in the paragraph, “Information reporting penalties,” the instructions are missing information about reduced penalties that may be assessed if correct information returns are filed within 30 days of the filing deadline or by August 1. This information might be useful here or, as an alternative, the IRS could include a reference to where this information can be found.

#### **SPECIFIC INSTRUCTIONS FOR FORM 1094-C**

On page 6 in the last line of the first paragraph under “Line 19” replace “(lines 20-22 of Part II, and all of Parts III and IV)” with “(Parts II, III, and IV).” The APA does not believe the instructions need to separately identify lines 20-22 of Part II because on the 2015 Form 1094-C, line 19 is now in Part I.

#### **SPECIFIC INSTRUCTIONS FOR FORM 1095-C**

##### ***Health Reimbursement Arrangements and Supplemental Coverage***

In the 2015 Instructions for Forms 1094-B and 1095-B, on page 3 under the heading “Supplemental Coverage,” there is a sentence that states, “Thus, an insured group health plan and a self-insured health reimbursement arrangement covering the employees of the same employer aren’t supplemental.” Because employers are required to report information on employees, spouses, and dependents enrolled in self-insurance in Part III of Form 1095-C, the instructions for Forms 1094-C and 1095-C should include information on this reporting requirement as it applies to health reimbursement arrangements where the employer sponsors an HRA and also provides minimum essential coverage through a third-party insurer. Information also should be included on how to determine whether an employee, spouse, or dependent is “enrolled” in the HRA.

***Other Comments on Form 1095-C***

On page 9 in the section headed, “Part II – Employee Offer and Coverage,” there are many different codes that do not include sufficient explanation for employers to understand which ones to use. This becomes more difficult in understanding the relationship between codes. Some examples include:

- If 1A is entered on line 14, no entry is required in lines 15 and 16 for the months during which code 1A applies;
- If 1E is entered on line 14, the only valid entries for line 16 for the months during which code 1E applies are 2C, 2F, 2G, 2H, or “blank”; and
- If 1H is entered on line 14, no entry should be made on line 15 for the months during which code 1H applies and the only valid entries for line 16 for the months during which code 1H applies are 2A, 2B, 2D, 2E, or “blank”.

APA recommends that the IRS include more specifics on valid and invalid combinations of codes to assist employers in compliance.

On page 12 in the paragraph headed, “Column (c)” on page 12, the instructions require that an individual’s date of birth (DOB) be entered in column (c) of lines 17-22 only if a social security number (SSN) is not entered in column (b) for that individual. The instructions suggest that the DOB can be used only when the SSN is unavailable. This may imply that the DOB is considered an error on the form and should be corrected if an SSN is later obtained by the employer. APA recommends that the IRS allow use of a DOB regardless of whether an SSN is also reported. In addition, the IRS should clarify that use of a DOB when an SSN is not available is not an error requiring correction.

Sincerely,

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