



American Payroll Association

Government Relations • Washington, DC

September 8, 2015

Internal Revenue Service
Tax Products Coordinating Committee
SE:W:CAR:MP:T:T:SP
1111 Constitution Avenue, NW - IR-6526
Washington, DC 20224-0001

Re: Draft Instructions for Forms 1094-C and 1095-C

Dear IRS Tax Products Coordinating Committee:

Thank you for the opportunity to comment on the Internal Revenue Service's 2015 Instructions for Forms 1094-C and 1095-C, draft of August 6, 2015. Our comments include requests for guidance, clarification on the meaning of requirements, correction of typos, and recommended changes.

GENERAL INSTRUCTIONS FOR FORMS 1094-C AND 1095-C

On page 2 in the paragraph titled, "Substitute Statements to Recipients," the name of "Pub. 5223" shown in the draft instructions is different than the title on the latest draft of Publication 5223 (August 11, 2015). The draft instructions use "General Rules & Specifications for Substitute Affordable Care Act Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C and Certain Other Information." The name on the August 11, 2015 draft 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 2 in the first paragraph under the heading 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 third paragraph under the heading titled, "One Form 1095-C for Each Employee of Each Employer," the first word in the 7th line should start with a capital "M" such that the term reads "ALE Member." This inconsistency occurs again on page 5, "Information reporting penalties," the last word in the second line.

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 3 in the second paragraph under “Electronic Filing,” in the third line in the parentheses, the term, “Processing Year 2016” should be “Processing Year 2015,” and the words “currently under development” should be deleted because Publication 5165 was already released.

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 including language describing the e-filing requirement. The general e-filing requirement for information returns is that corrected forms need to be filed electronically only when 250 or more corrections of the same type of form must be filed.

On page 5 in the first line of the sixth paragraph under, “Furnishing Forms 1095-C to Employees,” the instructions state, “Statements must be furnished on paper by mail (or hand delivered). . . .” For filing Form 1095-C with the IRS, the instructions state that first class mail must be used. The APA asks the IRS to clarify in the instructions whether first class mail also is required for furnishing the form to employees.

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 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.

On page 6 in the third line of the paragraph under “Part II – ALE Member Information,” titled, “Reminder,” change the word “Employees” to “Employers.”

On pages 7, 8, 15, and 16 the instructions make several references to “employees’ dependents” without adding “and spouses” in describing different offers of health coverage. If in any of these instances the offers also must apply to the employees’ spouses, please add that language to clarify the requirements.

SPECIFIC INSTRUCTIONS FOR FORM 1095-C

Multiemployer Arrangements

Please confirm that on page 9 an employer relying on the multiemployer arrangement interim guidance would enter code 1H on line 14 and code 2E on line 16 regardless of whether an employee was actually enrolled in minimum essential coverage through the multiemployer plan.

In addition on page 9, will code 2E prevail over code 2C where specifically applicable on line 16 in the multiemployer arrangement interim guidance to the extent an employee was actually enrolled in the multiemployer plan?

On page 11 for line 16 code 2C, the draft instructions retain the description from the original final instructions of February 4, 2015 that code 2C is to be entered for any month in which the employee enrolled in employer-offered health coverage “regardless of whether any other code in Code Series 2 might apply.” The APA assumes this is a drafting oversight and that code 2E would control regardless of code 2C because the IRS added the specific page 9 instruction for multiemployer arrangement coding to the updated draft instructions. Having a participating multiemployer plan employer enter code 2C in line 16 would negate the specific direction on page 9 for several reasons:

1. The multiemployer plan includes reporting for enrolled coverage information for employee and dependent participants in Form 1095-B; thus, it is redundant for the multiemployer contributing employer to report the same fact in line 16 through code 2C.
2. Multiemployer plans operate autonomously from contributing employers. Therefore, employers will not have knowledge about whether an employee was offered or enrolled in coverage. The simplified multiemployer arrangement, code 2E, applies in this situation.
3. The multiemployer arrangement coding instructions on page 9 expressly direct the contributing employer to report code 2E on line 16 regardless of whether the employee is offered coverage by the plan. To relieve a contributing employer from offering an employee health coverage, but not from reporting health coverage offer enrollment information when that information is equally unavailable is not logical.

The APA recommends adding to page 9 either line 14 instructions for employer reporting of multiemployer plan arrangements or on page 11 line 26 instructions for code 2C that code 2E, where specifically applicable, will prevail over code 2C to the extent that an employee was actually enrolled in multiemployer plan coverage.

Health Reimbursement Arrangements and Supplemental Coverage

In the 2015 Draft 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 Draft Form 1095-C

On pages 11 and 12 in the second sentence of the last paragraph on page 11 and 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 do not say that the DOB can be used only when the SSN is “unavailable.” More information is needed in the instructions on what circumstances allow the entry of the DOB, what constitutes unavailability of an SSN (assuming that is what is required as a prerequisite for entering the DOB), and whether having the DOB is considered an error on the form that should be corrected if an SSN is later obtained by the employer.

On page 12 under “Definitions,” the citations to 2014-9 I.R.B. and 2014-13 I.R.B. need to be completed with the appropriate page number references.

On page 12 in the 3rd line of the paragraph, “COBRA continuation coverage,” please change 1986 to 1985.

The APA’s comments are meant to assist the IRS in providing clear, concise, and meaningful instructions for Forms 1094-C and 1095-C. Please contact, Alice Jacobsohn, APA staff, at 202-248-3901 to discuss these comments or the draft instructions further. Thank you.

Sincerely,

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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 that the IRS receives meaningful feedback on its programs, regulations, guidance, and tax forms.