



update

Compliance News for Plan Sponsors

October 1, 2015

The IRS Has Issued Final Instructions on Affordable Care Act Reporting that Clarify Key Issues for Employers

On September 16, 2015, the Internal Revenue Service (IRS) published final forms and instructions for large employers' reporting requirements under the Affordable Care Act (ACA).¹ The final instructions clarify various issues relating to how large employers² prepare the Form 1095-C³ for full-time employees. The instructions also clarify the reporting rules applicable to Health Reimbursement Arrangements (HRAs), offers of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) and special rules that apply to employers that contribute to multiemployer plans.

In addition, a Treasury Notice released the following day, Notice 2015-68, simplifies the rules for collecting Social Security Numbers (SSNs).⁴ Treasury and the IRS are seeking comments on Notice 2015-68. Comments are due by November 16, 2015.

Health Reimbursement Arrangements

HRAs reimburse plan participants for qualified medical expenses on a tax-free basis. Many employers sponsor both a medical plan and an HRA. However, some employees have HRAs from one plan and medical benefits from another. The final instructions address how HRAs are reported and clarify previous draft instructions.

Under the final instructions, enrollment in an HRA must be reported if the individual is not enrolled in a major medical plan offered by the employer (for example, if the individual is enrolled in the plan's HRA but receives medical coverage under a spouse's group health plan). However, if the individual is receiving an HRA and medical plan coverage from the same employer, the HRA does not have to be reported. This is the case regardless of whether the medical plan is insured or self-insured.



Health Compliance News Highlights:

- Final form and instructions for 2015 Affordable Care Act reporting have been released.
- The final instructions clarify when to report enrollment in HRAs.
- The final instructions change how to address offers of COBRA coverage to terminated employees.
- The final instructions clarify reporting for employers that contribute to multiemployer plans.
- Notice 2015-68 provides clearer rules on the timing for requesting Social Security Numbers of plan enrollees.

NEW! On December 28, 2015, the IRS extended the due dates for employers' and health plans' Affordable Care Act reporting by several weeks.

¹ The Affordable Care Act is the shorthand name for the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-48, as modified by the subsequently enacted Health Care and Education Reconciliation Act (HCERA), Public Law No. 111-152.

² Large employers with 50 or more full-time employees, or equivalents, must furnish a copy of IRS Form 1095-C to full-time employees no later than February 1, 2016. In addition, they must file these Forms 1095-C with the IRS (along with the transmittal form, 1094-C) by February 29, 2016 — or March 31, 2016, if filing electronically.

³ The 2015 1095-C [final form](#) and [instructions](#) are on the IRS website.

⁴ Notice 2015-68 is available at <http://www.irs.gov/pub/irs-drop/n-15-68.pdf>.

In addition, in an attempt to clarify how to eliminate duplicate reporting, the final instructions, as well as Notice 2015-68 released the following day, propose two new rules, as follows:⁵

1. If an individual is covered by multiple plans or programs provided by the same coverage provider (e.g., the same employer), reporting is required for only one type of minimum essential coverage; and
2. Reporting generally is not required for an individual's minimum essential coverage if that coverage is provided only if the individual is covered by a plan that supplements Medicare or TRICARE (military coverage) or some other coverage for which reporting is required. The Treasury Department and the IRS anticipate that if both types of coverage are employer-sponsored coverage, both would have to be sponsored by the same plan sponsor.

Offers of COBRA

The final instructions also change how employers report offers of COBRA coverage on Part II of the Form 1095-C to employees who terminate employment. **Under the new rules, an employer does *not* report an offer of COBRA coverage to a terminated employee.** This is a major change from the rules announced in answers to Frequently Asked Questions earlier this year and summarized in the draft instructions released over the summer. However, the rules for reporting offers of COBRA to active employees (e.g., those who experience a reduction in hours and lose coverage) have not changed.

The text box below shows how the form should be filled out to report an offer of COBRA coverage.

Completing Form 1095-C for COBRA Coverage

For any month for which the offer of COBRA applies, the employer should enter code 1H ("no offer of coverage") on **Line 14 — Offer of Coverage**. The employer should also enter 2A ("not employed") on **Line 16 — Applicable Section 4980H Safe Harbor Codes and Other Relief for Employers**. The employer should *not* enter 2C ("enrolled in coverage") even if the employee actually elects and enrolls in COBRA. Offers of COBRA to active employees (e.g., those who experience a reduction in hours and lose coverage) should always be reported as an offer of coverage. In addition, if the employee enrolls in COBRA, the employer would enter 2C in line 16.

There has been no change in the way that employers report COBRA enrollment. Employers with self-insured plans should continue to report COBRA enrollment.⁶ For a partial year of COBRA coverage, enrollment will be reflected in Part III of the Form 1095-C. Large employers have the option of using Form 1095-C or Form 1095-B to report full-year enrollment in COBRA.

⁵ The final regulations published in 2014 provide that supplemental coverage does not have to be reported if it is either (1) coverage that supplements a government-sponsored program, such as Medicare or TRICARE (military health coverage), or (2) coverage of an individual enrolled in more than one plan or program sponsored by the same plan sponsor.

⁶ An individual who enrolls in COBRA will not qualify for a premium assistance tax credit.

Contributing Employers to Multiemployer Plans

The final instructions confirm how contributing employers should complete the Form 1095-C when they are relying on the multiemployer interim guidance⁷ for compliance with the ACA's employer shared responsibility penalty rules. The final instructions resolve ambiguities about coding, and clarify that contributing employers do not need participant-specific information as long as the multiemployer plan coverage is affordable, minimum value, and provided to all dependents until the end of the month in which they turn 26. The text box below shows how the form should be filled out to be in compliance with those rules.

Completing Form 1095-C for Multiemployer Plans

Large contributing employers should enter code 1H ("no offer of coverage") on **Line 14 — Offer of Coverage** for any month for which they enter code 2E on **Line 16 — Applicable Section 4980H Safe Harbor Codes and Other Relief for Employers**. Code 2E on line 16 indicates that the employer was required to contribute to a multiemployer plan on behalf of the employee for that month and therefore is eligible for multiemployer interim rule relief.⁸ The final instructions also confirm that code 1H may be entered without regard to whether the employee was eligible to enroll in coverage under the multiemployer plan for that month or was actually enrolled.⁹

The final instructions clarify a conflict over when code 2E would be used in Line 16. The conflict resulted from a concern that contributing employers might have to use code 2C ("enrolled in coverage") in line 16, instead of code 2E, when the participant was actually enrolled in the multiemployer plan's coverage. The final instructions resolve this issue by making multiple changes in the instructions to clarify that when 2E applies, the employer should use 2E and *not* 2C. Consequently, there is no need to furnish participant-specific eligibility or enrollment information to contributing employers so that they can fill out the form.

Treasury and the IRS are continuing to review issues related to multiemployer plan reporting for 2016 and future years. Therefore, the current rules for reporting for offers of coverage made through a multiemployer plan may be modified in the future.

Requesting Social Security Numbers

When an employer sponsors a self-insured plan, the employer must report the SSN for each enrolled individual (including dependents).¹⁰ Notice 2015-68 states that pending additional guidance, reporting entities will not be subject to penalties for failing to report SSNs¹¹ if they request them as follows:

- The first request (called a "solicitation") is made when the individual first enrolls in the plan. For individuals already enrolled on September 17, 2015, the first request must be made during the next open season.
- The second request must be made at a reasonable time after the first one.

⁷ For information about the multiemployer interim guidance under the employer penalty rules see Segal Consulting's January 15, 2015 *Capital Checkup*, "[How Contributing to a Multiemployer Plan Protects an Employer from the Affordable Care Act's Employer Shared Responsibility Penalty](#)." Segal Consulting and Sibson Consulting are both members of The Segal Group.

⁸ For information about this relief, see Segal's January 15, 2015 *Capital Checkup*, which can be accessed from footnote 7.

⁹ For more information about the draft 2015 instructions, see Segal's September 1, 2015 *Update* "[Latest Guidance for Employers and Multiemployer Plan Sponsors on Reporting Required by the Affordable Care Act](#)."

¹⁰ If the coverage is insured, the SSN will be reported by the health insurer.

¹¹ When SSNs are not provided or do not exist (e.g., for a newborn,) the reporting entity reports the individual's date of birth instead of SSN.

- The third request must be made by December 31 of the year following the first request.

The Notice also states that reporting entities are not required to ask for the SSN when the individual's coverage has terminated.

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