



HEALTH CARE REFORM BULLETIN

RECENT DRAFT OF ACA EMPLOYER REPORTING INSTRUCTIONS REQUIRE EMPLOYER REPORTING OF HEALTH REIMBURSEMENT ARRANGEMENTS (HRAs)

September 3, 2015

The IRS has released 2015 draft instructions for Forms 1094-B, 1095-B, 1094-C, and 1095-C and updated draft forms for 1095-B and 1095-C. While these draft instructions and forms can be helpful in assisting employers and producers in their ongoing preparation for the upcoming 2015 ACA employer reporting (filed in early 2016), it is also important to note these are still draft instructions and forms. This means there still could be additional drafts released before the instructions are finalized. ***In other words, employers could still see additional changes to the forms and instructions prior to filing.***

The most recent drafts of the forms and instructions can be found at the following links:

- ◆ 2015 **DRAFT** [Form 1094-B](#)
- ◆ 2015 **DRAFT** [Form 1095-B](#)
- ◆ 2015 **DRAFT** [Instructions 1094-B and 1095-B](#)
- ◆ 2015 **DRAFT** [Form 1094-C](#)
- ◆ 2015 **DRAFT** [Form 1095-C](#)
- ◆ 2015 **DRAFT** [Instructions 1094-C and 1095-C](#)

The draft instructions contain a clarification on the subject of Health Reimbursement Arrangements (HRAs). Essentially, the instructions appear to state that an employer that maintains a fully insured group health plan, along with an HRA, must separately report the HRA coverage. This is due to the fact that an HRA is considered a self-funded group health plan.

It is imperative to note that these new draft instructions contradict prior guidance that indicated that HRAs would be considered "supplemental coverage" not subject to reporting. Specifically, the draft instructions change the manner in which some HRAs would be reported. The draft instructions state that for the plan sponsor of a health plan and an HRA to be the same, the coverages must be reported by the same reporting entity. This meant that, under the new draft instructions, an employer that sponsors a self-insured HRA and a fully insured group health plan would have to report the HRA coverage despite the fact that the insured coverage is reported by the health insurance carrier.

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If this language remains in the final instructions, it appears that small employers (under 50), with fully insured plans that maintain an HRA, will be required to issue Form 1095-Bs to all covered employees and transmit copies to the IRS on a Form 1094-B transmittal form. The insurance carriers will still be required to issue a separate set of 1095-Bs to all covered employees for the fully insured medical coverage.

The obligations for small employers, with self-funded medical plans, have not changed even if such employers also sponsor an HRA. Such employers will still be required to issue Form 1095-Bs to all covered employees and transmit copies to the IRS on a Form 1094-B transmittal form for the medical only. In this case, the HRA is considered supplemental since the employer is the reporting entity for the medical and the HRA, thus the employer does not have to provide information on the HRA.

Presumably, large fully insured groups will have to complete Part III of the Form 1095-C (and transmit on Form 1094-C) if they also maintain an HRA. Large self funded employers with an HRA will issue Form 1095-Cs with Parts I and II (but not III) along with the 1094-C transmittal.

Again, it is crucial to remember that these are still **DRAFT** instructions. Final instructions are expected in the next several weeks. Groups would be well advised to prepare for ACA employer reporting as soon as possible and monitor future guidance for any changes. This is a very complex subject that can change rapidly.

Gunn-Mowery and our benefit partner, Benecon, will continue to monitor this issue and provide updates when the final forms and instructions are released by the IRS.

This communication is provided for informational purposes only and does not constitute legal or tax advice. It contains only a summary of the applicable legal provisions and does not purport to cover every aspect of any particular law, regulation, or requirement. Depending on the specific facts and location of any situation, there may be additional or different requirements. Please use this communication as a guide and not as a definitive description of your compliance obligations. Groups should always consult their own tax professional and/or legal counsel.

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