ACA REPORTING **WEBINAR** QUESTIONS AND ANSWERS

The following questions on ACA reporting requirements to the IRS were collected at a series of webinars offered by ThinkHR.

Introduction

The Affordable Care Act (ACA) added two employer reporting requirements to the Internal Revenue Code (Code) taking effect for 2015:

- Code § 6056 requires applicable large employers (ALEs) to provide an annual statement to each full-time employee detailing the employer's health coverage offer (or lack of offer).

- Code § 6055 requires employers (any size) that provide minimum essential coverage (MEC) under a self-funded (uninsured) plan to provide an annual statement to covered employees and former employees (including information about covered dependents).

The IRS has issued Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, for ALEs to satisfy the requirement under Code § 6056. If the employer self-funds its plan(s), the employer also will use Form 1095-C to satisfy the additional requirement under Code § 6055. Employers providing any Forms 1095-C also must file copies with the IRS using a transmittal form, Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*. In addition, the transmittal form requests aggregated information.

Glossary of Acronyms

The following acronyms are used throughout this document. All terms are written out on first use, with acronyms used thereafter. Refer to this list as needed.

- ACA — Affordable Care Act
- ALE — applicable large employer
- COBRA — Consolidated Omnibus Budget Reconciliation Act
- EIN — federal Employer Identification Number
- FPL — federal poverty level (also federal poverty line, federal poverty guideline, or federal poverty threshold)
- FTE — full-time equivalent (employee)
- HRA — health reimbursement arrangement

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- HSA — health savings account
- HRIS — human resource information system
- IRS — Internal Revenue Service
- LLC — limited liability company
- LNP — limited non-assessment period
- MEC — minimum essential coverage
- MV — minimum value (coverage)
- PEO — professional employer organization
- SSN — Social Security number
- TIN — taxpayer identification number
- TPA — third party administrator

General Definitions

Q What is a fully-insured health plan?

A fully-insured health plan is one where the plan sponsor (employer) contracts with an insurance carrier and pays a fixed premium to the carrier for an annual contract based upon the types of benefits coverage selected. The monthly premiums change during the year if the number of enrolled participants in the plan changes and the insurance carrier collects the premiums and pays the claims based on the benefits covered in the policy.

Q What is a self-insured health plan?

A self-funded, or self-insured, plan is one where the plan sponsor (employer) operates its own health plan instead of purchasing a fully-insured plan from the insurance carrier. Employers select this option after careful consideration of the potential savings by only paying for the claims incurred without the carrier's profit margin added versus the potential risk if higher or more claims than expected must be paid. There are a variety of options available to self-funded employers to assist them in managing claims administration and to cover excess claims loss. When considering self-funding, employers should work with their insurance brokers to ensure that benefits strategies are achieved and risks are mitigated.

Q What is the definition of a controlled group for the Affordable Care Act (ACA) reporting requirements?

The same definitions for controlled groups apply to the ACA reporting requirements as they do for other types of reporting under the Internal Revenue Service (IRS) regulations. The IRS defines a controlled group of businesses as a group of related businesses that have common ownership. If a controlled group exists as defined by the applicable Internal Revenue Code (Code) sections, the employees of those businesses are considered together for certain qualified plan requirements. The relevant IRS codes include Code § 414(b) for controlled groups consisting of corporations and Code § 414(c) for all other controlled groups.

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A controlled group exists if there is:

- A parent-subsidiary controlled group (Code § 1563(a)(1) and Treas. Reg. § 1.414(c)-2(b)), which is generally defined as a parent business owning 80 percent or more of a subsidiary business or businesses. There can also be multiple tiers of entities connected to a common parent. The parent company only needs to control one of the companies, since a lower level company could control other companies.
- A brother-sister controlled group (Code § 1563(a)(2) and Treas. Reg. § 1.414(c)-2(c)), which is typically defined as groups where five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the attribution rules) a controlling interest (80 percent) in each organization, and the ownership interests of each person are defined with respect to these companies and the persons are in effective control of (more than 50 percent) of each organization; OR
- A combination of the above (Code § 1563(a)(3) and Treas. Reg. § 1.414(c)-2(d)).

The IRS controlled groups are complex and employers are strongly encouraged to work with their corporate legal and tax experts to ensure that the controlled group definitions and attribution rules are carefully considered and reported appropriately.

Organizations that are part of a controlled group should manage reporting of the Forms 1094 and 1095 with these IRS rules in mind.

Q What is the FPL?

The Federal Poverty Line (FPL), also called the Federal Poverty Guideline, is used to determine qualification for financial assistance when individuals purchase insurance through the state or federal health insurance Marketplaces, determine eligibility for Medicaid (state rules also apply), and provide individual exemptions from the requirement to purchase insurance. Under § 6056, the employer may report that it made a qualifying offer to the employee if it offered coverage providing minimum value at an employee cost for employee-only coverage not exceeding 9.5 percent of the mainland single federal poverty line*.

Mainland single federal poverty line is the annual dollar amount in the federal poverty guideline chart for a single-member household in any of the 48 contiguous states: $11,670 (2014) or $11,770 (2015). Therefore, ***qualifying offer*** means the employee's cost for employee-only coverage does not exceed $92.38 per month (2014) or $93.17 per month (2015).

Q What does authoritative transmittal mean?

The authoritative transmittal Form 1094-C "rolls up" the other Forms 1094-C that an employer may file for certain divisions or other aggregated applicable large employer (ALE) groups that are accompanied by Forms 1095-C for each employee for whom the ALE is required to file. Although an employer may file multiple Forms 1094-C, one authoritative transmittal Form 1094-C, identified on line 19, Part II as the Authoritative Transmittal, must be filed for each employer reporting aggregate employer-level data for all full-time employees of the employer. For example, if an employer has two separate company

divisions and intends to file a separate Form 1094-C for each of the two divisions to transmit Forms 1095-C for each division's full-time employees, one of the Forms 1094-C filed must be designated as the Authoritative Transmittal and report aggregate employer-level data for both divisions, as required in Parts II, III, and IV of Form 1094-C.

Q What is the definition of full-time employee for purposes of ACA reporting?

A ***full-time employee*** is a common-law employee averaging at least 30 hours of service per week (or 130 hours per month). An hour of service is each hour for which payment is made or due (e.g., performance of duties, vacation, holidays, paid absence, or leave).

Q What is an FTE, and how are FTEs calculated?

All full-time equivalent (FTE) employees are counted for purposes of the employer shared responsibility mandate. To determine the number of FTEs at a company, employers calculate the number of employees working less than full time (those working less than 30 hours of service per week) by dividing the total number of hours of service for the month of the employees who are not full time by 120. This is the calculation associated with the term applicable large employer, and such employers are subject to the employer shared responsibility mandate.

Q What is the definition of ALE?

An applicable large employer (ALE) is an employer that had an average of 50 or more full-time employees (including full-time-equivalent employees) in the prior year. The employer's size in 2014 determines whether employer is an ALE for 2015. Related employers in a controlled group must be counted together.

Q What is MEC and MV?

Minimum essential coverage (MEC) means any employer-sponsored group health plan with medical benefits. Excepted benefits (e.g., most types of dental and vision plans, flexible spending accounts (FSAs), employee assistance programs (EAPs), and fixed indemnity plans) are not MEC.

Minimum value coverage (MV) means that the minimum essential coverage plan's share of total allowed cost of benefits is at least 60 percent of such costs.

Q What is the definition of affordable coverage?

Affordable means that the employee's required contribution for self-only coverage does not exceed 9.5 percent of the employee's income from the employer.

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General

Q Are ALEs required to file both forms 1094 and 1095?

Yes, each ALE must file at least one Form 1094-C and a 1095-C for each relevant employee.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e71

Q For completion of these forms, there are references to all 12 calendar months. If an employer is a non-calendar plan with an April 1st renewal date, how would it mark the boxes for January through March?

Forms 1094-C and 1095-C track information on a calendar year basis, regardless of an employer's plan year. This means that, for employers with a non-calendar year plan, the information reported on the forms will cross plan years. In the example above, the information for January through March would reflect information from the employer's previous plan year.

Q If we are a small employer and are not required to file Forms 1094 and 1095, what do we tell our employees if they ask for the form?

If you are a fully-funded small employer not required to file Forms 1094-C and 1095-C, your employees will still receive Form 1095-B from your insurance carrier. They will be able to use the information from this form to show proof of minimum essential coverage for purposes of the Individual Mandate.

Q Isn't there transitional relief from this reporting?

No. While an employer might be eligible for transition relief which allows the employer to not be subject to potential penalty payments, that relief does not extend to these reporting requirements. The IRS needs the information contained in the reports in order validate and assess penalties under both the Individual Mandate and the Employer Mandate.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e71

Q When an employee changes from full time to part time, how would an employer determine when the employee loses access to benefits?

The employer would be required to consider what the eligibility terms of their health plan documents say regarding each of these statuses. Additionally, it will depend on whether the employee originally was subject to the monthly measurement method or the look-back measurement method, and whether the employer uses the look-back method for employees in the same category as this employee.

For instance, if the employer uses only the monthly method, the employee's change from full time to part time can be considered a loss of eligibility and there is no need for the employer to offer coverage for months during which the employee has fewer than 130 hours of service. Loss of coverage due to a reduction in hours is a COBRA-qualifying event.

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If, on the other hand, the employee had been under the monthly measurement method while in the full-time position, but will be under the look-back method when he or she changes to part time, then other provisions apply which are designed to protect the employee from losing status that he or she already earned or would have earned:

- For the in-progress stability period, continue using the monthly method (unless the employee's hours during the preceding look-back period would have resulted in eligibility for this stability period; in that case, treat employee as full time for the entire stability period);
- For the upcoming stability period, treat the employee as full time based either on the look-back period or the monthly method, if either would result in full-time status.

Source: http://www.irs.gov/pub/irs-drop/n-14-49.pdf

Q Would we report for an employee who only has family dental or vision coverage?

While the excepted, stand-alone dental and vision plans are not reported, we suspect an offer of medical coverage was given.

Employers with 50 or more full-time employees use both Forms 1094-C (transmittal to IRS) and 1095-C (furnished to the employee) to report the information about offers of health coverage and enrollment in health coverage for their employees.

Even if the employee waives coverage, if they are full time and are offered coverage, the employer will need to complete both Form 1094-C and 1095-C. The premise of this form is to document that an offer was made. Fully-insured plan sponsors (e.g. carriers) will issue Forms 1094-B and 1095-B, which will show coverage was accepted, and if the individual is covered.

On line 14 an employer will use the Code Series 1 indicator codes to specify the type of coverage, if any, offered to an employee, the employee's spouse, and the employee's dependents.

From the Regulatory Guidance:

> The information related to whether the full-time employee was offered coverage (generally meaning the employee was eligible for coverage under the plan) must be accurate to facilitate administration of the premium tax credit, including in the case of coverage offered by a plan such as a multiemployer plan or a plan sponsored by a staffing firm or similar entity for which the client employer pays an additional amount for enrolled employees.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e250

Q Do fully insured plans need to report COBRA participants?

The employer reports for each month the employee was offered coverage. If the employee terminated mid-month before the end of the calendar year, you can report the offer for the whole month in which the separation occurred under § 6056. However, after the separation, the reporting on Form 1095-C ceases.

Q How will we prove we offered benefits to an employee?

The Shared Responsibility for Employers Regarding Health Coverage final regulations do not apply any specific rules for demonstrating that an offer of coverage was made. The otherwise generally applicable substantiation and recordkeeping requirements in § 6001 apply, including Rev. Proc. 98-25 (1998-1 CB 689).

It is considered a best practice to retain records indicating acceptance or declination of health coverage, such as enrollment forms that include a section for employees to waive coverage with a signature line. This offer of coverage will be noted on Forms 1095-C (and the transmittal to the IRS) using box 14 and reported to both the employee and IRS in 2016.

In many cases, this information can be housed in the employer's human resource information system (HRIS) or benefits enrollment recordkeeping systems. Because these reports are part of the employer's tax requirements for the year, employers are encouraged to consult with their tax professionals regarding best methods to satisfy recordkeeping for the tax transmittal.

Q If an employee misses the deadline for the initial enrollment period, are we required to allow them to sign up after the deadline has passed?

Generally no; the employee is given a set timeframe to enroll, as outlined in your plan materials. Once this date has passed, this can be treated as waiving coverage, whereby the employee may not enroll into the plan until he or she has a qualifying event or the next annual enrollment period. Keep good documentation for each employee of the reason for no coverage for the year-end reporting requirement.

Q We have less than 50 employees and provide each employee with a benefit credit. Are we required to report?

We assume the benefit credit is used to purchase various items in a cafeteria plan including group health insurance. Employers with insured plans are not required to report if they had less than 50 full-time or full-time equivalent employees in 2014.

Q Can we enroll an employee in basic coverage if he or she doesn't sign the enrollment form?

Note that the automatic enrollment provision is delayed until further guidance, so there is no need to automatically enroll someone. Additionally if the employee declines coverage, you cannot require the employee to join the plan. When the automatic enrollment provision takes effect, certain large employers will be required to continue enrollment of current employees, automatically enroll new full-time employees in a group health plan when eligible, and provide employees with adequate notice to opt out. Keep good documentation for each employee of the reason for no coverage for the year-end reporting requirement.

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Q Is there a specific amount that the employer is allowed to charge for dependent coverage?

In order avoid a penalty, coverage for the employee-only cost must be affordable (meaning the employee's required contribution for self-only coverage does not exceed 9.5 percent of the employee's income from the employer) and coverage must be extended to dependents. There is no specific cost sharing guideline for dependent coverage under the ACA.

Self-Funded Plans:

Q What do you mean by self-funded coverage?

Employers that offer health and welfare benefits typically will pay for those benefits in one of two ways: either by purchasing health insurance from an insurance company (fully-insured plans), or the employer provides the benefits directly to employees (self-funded plans). Most employers with self-insured plans work with a third party administrator (TPA) to write and administer the plan. The differences between the two types of plans depend on which entity assumes the risk, and certain plan characteristics:

- **Insured:** The employer pays the entire premium and, in return, transfers all of the risk and responsibility for claims payments to the insurance company.
- **Self-Funded:** An arrangement under which all or some of the risk associated with providing coverage is not covered by an insurance contract. Self-funded is usually the most appropriate term because true self-insurance means a complete reliance on internal assumption of liability. While many use the term self-insured, self-funding more accurately describes arrangements where some liability is covered directly by the plan sponsor and the plan sponsor purchases a stop-loss policy to limit upper liability.

Q Which forms would a self-funded employer file?

Self-funded employers who are not an ALE would use Forms 1094-B and 1095-B. Self-funded employers who **do** meet the definition of an ALE would use Forms 1094-C and 1095-C. An ALE is an employer who, based on average employee counts in the previous calendar year, had 50 or more full-time or full-time equivalent employees.

Q Will there be reporting requirements for small employers in future years?

The IRS has not indicated whether there will be reporting requirements for small employers with fully funded plans in the future. Currently, only small employers with self-funded plans are required to report using the 1094-B and 1095-B forms.

Q Is it true that self-funded employers cannot use simplified reporting?

Yes, the simplified reporting option for Form 1095-C can only be used by employers with fully-funded plans.

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Q Only self-funded employers are required to capture dependent information, correct?

Yes, only self-funded employers will be required to enter demographic information regarding dependents on Form 1095-C.

Q Which forms should we complete if our medical plan is self-funded but the dental and vision are fully funded?

There is no filing requirement for dental and vision coverage. If the employer with a self-funded plan had less than 50 full-time or full-time equivalent employees in 2014, the employer should file Forms 1094-B and 1095-B. If the employer with a self-funded plan is an ALE, the employer should file Forms 1094-C and 1095-C.

Q What are the reporting requirements for a large employer that changes from an insured plan to a self-funded plan midyear?

Employers that provide MEC through their self-funded health plan are responsible for completing the coverage provider reporting requirements under Code § 6055. For insured coverages, the insurer (carrier) is the coverage provider. The insurer complies with § 6055 by providing Form 1095-B to covered individuals and filing copies with the IRS using transmittal Form 1094-B. In the case of an employer's self-funded plan, the employer is the coverage provider but uses the "C" forms instead of the "B" forms used by traditional insurers. In other words, the employer reports the self-funded plan's coverage information by providing Form 1095-C to covered individuals and filing copies with the IRS using transmittal Form 1094-C.

The self-funded plan coverage information will be reported in Part III of Form 1095-C for the months in which the coverage was provided. For instance, if the self-funded plan provided the coverage for June through December, Part III of Form 1095-C will show information for those months only. If coverage had been provided January through May under an insured plan, the insurer will provide Form 1095-B to covered individuals showing coverage information for those months.

Q What are the reporting requirements for an employer with an insured plan and integrated health reimbursement arrangement (HRA)? Any special reporting for the HRA?

An integrated HRA is a component of a comprehensive health plan and does not stand on its own. The insurer of the primary component (e.g., major medical plan, high deductible health plan) will provide Form 1095-B to covered individuals (and file copies with the IRS using transmittal Form 1094-B) to report the insured plan coverage information. There is no separate coverage reporting requirement with respect to the HRA component.

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Q What are the reporting requirements for a partially self-funded plan (either ALE or non-ALE)?

A group health plan is either insured (the insurer collects premium and assumes risk) or self-funded (the employer assumes risk). The term "partially self-funded" is not defined in law and different carriers and brokers often use the term loosely with different meanings. In our experience, partially self-funded refers to a group insurance arrangement under which the employer pays fixed administration costs (retention) and funds claims expenses up to fixed dollar amounts (usually 110 percent of projected claims), but the employer's cost does not exceed the contractual premium amounts. That is, the plan is insured since the insurer assumes risk. The terms "flex-funded plan" and "minimum premium plan" are other examples with the same meaning as "partially self-funded plan." In any case, the employer is not self-funding the group health plan, but rather is purchasing a group insurance policy that offers flexible financing of costs.

Code § 6055 (and corresponding forms 1094-B and 1095-B) pertain only to an insurer (carrier) or to an employer that self-funds a plan providing minimum essential coverage. If the employer is offering only insured plans, including so-called partially self-funded plans, flex-funded plans, or minimum premium plans, the employer has no responsibility under § 6055. The insurance company will handle forms 1094-B and 1095-B ("B forms") to report the coverage information.

Affordability:

Q Does the 9.5 percent affordability threshold referenced on the forms apply to dependent costs or just the costs for employee-only coverage?

The 9.5 percent threshold referenced in Forms 1094-C and 1095-C refers to the cost of single (employee only) coverage.

Source: http://www.irs.gov/pub/irs-pdf/i109495c.pdf

Q Can you qualify for simplified reporting if you used an affordability safe harbor other than 9.5 percent of FPL?

No. While an employer might be able to use one of the other affordability safe harbors to avoid a potential penalty under the employer mandate, the 9.5 percent of FPL safe harbor is the only one which applies in order to qualify for simplified reporting.

Q Is the affordability threshold in the reporting 9.5 percent or 9.56 percent?

The reporting asks specifically about affordability safe harbors which may be used. While the affordability percentage for portions of the ACA did increase to 9.56 percent, the portions which apply to the affordability safe harbors remain at 9.5 percent. Thus, for Forms 1094-C and 1095-C reporting purposes, the affordability threshold is 9.5 percent.

Source: http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act#Liability

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Q Would we use the COBRA rate for an individual employee to set the affordability contribution for that employee?

Coverage for an employee under an eligible employer-sponsored plan is affordable if the employee's required contribution for self-only coverage does not exceed 9.56 percent of the taxpayer's household income for the taxable year.

Therefore, affordability is based on the employee's contribution for the plan, based on what is deducted from the employee's wages to pay for his or her portion of employee-only coverage. This can be determined using a COBRA premium (less administrative fee, if similarly situated employees pay this rate), less the employer contribution.

Source: https://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage

ALE Status:

Q Are union employees included when determining ALE status?

Yes, all common-law employees should be included in your employer count. Common law employees do not include self-employed individuals under IRS rules, such as:

- Sole proprietors;
- Partners in partnerships (LLCs) or members of LLCs;
- 2 percent or more shareholders in Subchapter S corporations; or
- Persons correctly classified as independent contractors.

Q Is an employer required to file Forms 1094 or 1095 if it has less than 50 FTE?

Only if the employer offers a self-funded plan. In that case the employer would complete forms 1094-B and 1095-B. Otherwise, only ALEs are required to complete forms 1094-C and 1095-C. ALEs are those who had an average of 50 full-time employees (including FTEs) in the previous calendar year.

Q At what point is an ALE required to comply with the reporting? Does this occur as soon as the employer has 50 employees?

ALE status is based on average employee counts in the previous calendar year. For example, ALE status for 2015 is based on 2014 employee counts and ALE status for 2016 will be based on 2015 employee counts. Even if an employer has 50 full-time or FTE employees at some point during the year, if the average for the year doesn't remain that high, it will likely not be an ALE for the next year.

Q Our company has two health plans under the same federal Employer Identification Number (EIN) with a combined 50 FTEs, but each individual plan has less than 50. How do we know if we are an ALE?

ALE status is based on average employee counts for the employer, not the number of participants in a given health plan. For example, if an employer has an average of 100 or more full-time or FTE employees for calendar year 2014 but only 40 plan participants for that same time period, the employer would still be considered an ALE

Q We are a multilocation employer (multistate) under one EIN number. Each location is under 100 employees but we have 150 employees across all locations. Are we considered an ALE?

ALE status is based on average employee counts for the employer as a whole, not the number of employees in a given employer location. For example, if an employer has an average of 100 or more full-time or FTE employees for calendar year 2014 across all their locations, but each location only has 20 employees, it would still be considered an ALE.

Q We have less than 50 employees year round but hire an additional 50 – 100 employees seasonally who work full time while employed. Are we considered an ALE?

Possibly. The influx in staffing may cause you to be deemed an ALE if during the previous calendar look-back counts exceed 50 (including FTEs) for a period of more than 120 days. Check Section V, Determination of Status as an Applicable Large Employer, to review the rules regarding this situation.

Temporary Employees, Union Employees, and Professional Employer Organizations (PEO):

Q Is an employer required to offer coverage to full-time temporary employees who it pays directly (not through an agency)?

The employer may be required to offer coverage if the temporary is a common-law employee and meets the eligibility terms of the employer's individual health plan provisions. Additionally, applicable large employers may be subject to potential penalties if they fail to offer coverage to an employee who meets the definition of full time under the ACA. The act defines full time as working an average of 30 or more hours a week, or working an average of 130 or more hours a month.

Q If an employer uses a professional employer organization (PEO), does the PEO do the filing?

In the case of a PEO arrangement, the workers are typically common-law employees of the client-employer, not the PEO, because the client employer has authority over how work is performed. Although the PEO may be the group health plan sponsor, the client-employer generally is deemed the employer under the Employer Mandate. An employer who is unsure should review its PEO agreements and consult with legal counsel. The employer would be required to file the forms for all common law employees, including common law employees who are part of a PEO arrangement. While the PEO will likely need to provide the employer with information about offers of coverage and enrollment, the employer is ultimately responsible for reporting the information and filing the forms.

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Q Who is responsible for completing forms for multi-employer plans?

Responsibility for the completion and reporting of Forms 1094-C and 1095-C ultimately lie with the employer, even when an employee participates in a multi-employer plan, such as a union plan. However, an employer should work directly with the union plan to come to an arrangement about the best way for the union to provide the employer with the necessary information to complete the forms. In some cases, the union might even agree to complete the forms on the employer's behalf and send them to the employer. Whatever arrangement is decided upon, the employer is still the party liable for completion and filing of the forms.

Q Can you provide any guidance regarding employer versus staffing agency responsibilities as it relates to the reporting requirement?

An employer is only required to report on individuals who are common law employees. Typically, with a staffing agency, the agency recruits and hires the workers, assigns them to various clients, and assigns them to other clients when projects end. In that case, the workers generally are common law employees of the agency and not of the client. Employers are advised to review their situation with legal counsel and to confirm their understanding in writing with the agency.

Q Would union employees be included when determining whether coverage was offered to 70 percent of our full-time employees?

Yes. Union employees who are full-time, common law employees are part of the employee count under the employer shared responsibility provision.

Employee Counts:

Q Would a firm partner receiving an IRS Schedule K-1 need to be reported and receive a Form 1095-C?

No, the partner is not a common-law employee, and therefore excluded from reporting requirements.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e482

Q Would I count an employee who only worked one hour in a month?

Yes, this partial employee's hours of service would be counted for the purpose of determining status for full-time equivalent employees. While this will not dramatically increase the counts, all hours of service are looked at for counting purposes.

Source: https://federalregister.gov/a/2014-03082

Q Are we required to report an employee who was employed for only a week but had benefits during that time?

Yes, if the employee was full time and offered coverage, the month in which coverage was offered will be reported.

An employer offers health coverage for a month only if it offers health coverage that would provide coverage for every day of that calendar month. However, under the employer shared responsibility provisions under § 4980H, if an employee terminates employment before the last day of a calendar month and the health coverage offer ends on the date of termination, the employer is treated as having offered the employee health coverage for the month only if the employee would have been offered health coverage for the entire month had the employee been employed for the entire month.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e250

Q How do we count employees who are not paid by the hour but by miles driven?

In general, an employer should determine an employee's full-time status based on the employee's hours of service. For purposes of the employer shared responsibility provisions, an employee is a full-time employee for a calendar month if he or she averages at least 30 hours of service per week or 130 hours of service in a calendar month.

The Department of Treasury and the IRS continue to consider additional rules for the determination of hours of service for certain categories of employees whose hours of service are particularly challenging to identify or track or for whom the general rules for determining hours of service may present special difficulties. For this purpose, until further guidance is issued, employers are required to use a reasonable method of crediting hours of service that is consistent with § 4980H. The preamble to the final regulations includes examples of methods of crediting these hours that are reasonable and that are not reasonable.

Q Our employees work different hours every day. What happens if they qualify one month then not the next but have already enrolled in coverage?

If these are variable hour employees, coverage is maintained during the stability period, which is reported as an offer of coverage. ***Offer*** in this case means eligible for the plan.

However, if this is a full-time employee who has experienced a change in status and lost coverage, you will exclude those months in which COBRA was offered when completing the reporting.

An employer offers health coverage for a month only if it offers health coverage that would provide coverage for every day of that calendar month. However, under the employer shared responsibility provisions § 4980H, if an employee terminates employment before the last day of a calendar month and the health coverage offer ends on the date of termination, the employer is treated as having offered the employee health coverage for the month only if the employee would have been offered health coverage for the entire month had the employee been employed for the entire month.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e482

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Controlled Groups

Q If you have several companies under an umbrella ownership, would you still provide each company's federal EIN and name based on which employees work for which company on these reports?

Yes, the specific company information, including the federal EIN should be included on the report. Please note that while you would complete a Form 1094-C for each company to accompany the employee Forms 1095-C for that company, you will need to be sure to designate one of the Forms 1094-C as the authoritative transmittal for the aggregated ALE group.

Q How do you know if you are a member of an aggregated ALE group?

The IRS instructions define an ***aggregated ALE group*** as a group of ALE members that are treated as a single employer under the Internal Revenue Code's (Code) controlled group and affiliated service group rules. The same definitions for controlled groups apply to the ACA reporting requirements as they do for other types of reporting under the IRS regulations. The IRS defines a ***controlled group of businesses*** as a group of related businesses that have common ownership. If a controlled group exists as defined by the applicable Code sections, the employees of those businesses are considered together for certain qualified plan requirements. The relevant IRS codes include Code § 414(b) for controlled groups consisting of corporations and Code § 414(c) for all other controlled groups.

A controlled group exists if there is:

- A parent-subsidiary controlled group (Code § 1563(a)(1) and Treas. Reg. § 1.414(c)-2(b)), which is generally defined as a parent business owning 80 percent or more of a subsidiary business or businesses. There can also be multiple tiers of entities connected to a common parent. The parent company only needs to control one of the companies, since a lower level company could control other companies.
- A brother-sister controlled group (Code § 1563(a)(2) and Treas. Reg. § 1.414(c)-2(c)), which is typically defined as groups where five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the attribution rules) a controlling interest (80 percent) in each organization, and the ownership interests of each person are defined with respect to these companies and the persons are in effective control of (more than 50 percent) of each organization; OR
- A combination of the above (Code §1563(a)(3) and Treas. Reg. §1.414(c)-2(d)).

The IRS controlled groups are complex and employers are strongly encouraged to work with their corporate legal and tax experts to ensure that the controlled group definitions and attribution rules apply to their organization's aggregated ALE status.

Form 1094-C

Q How can we file more than one Form 1094-C if only one authoritative transmittal is allowed?

Employers who choose to file more than one Form 1094-C will typically either be members of an aggregated ALE or they will be a company with departments or divisions who wish to compile information separately. This might be particularly true in larger companies where departments or divisions operate fairly independently and are more familiar with their own data.

Q Which portions of Form 1094-C do self-funded employers have to complete?

Self-funded employers have to complete the same sections as fully-funded employers. However, if the self-funded employer is not a member of an aggregated ALE, the employer is not required to complete any sections which only apply to a member of an aggregated ALE.

Part II:

Q Can an employer check more than one option on Form 1094-C, line 22?

Yes. An employer should check all options that apply as it is possible that an employer may be able to apply different options to different segments of its employee population.

Source: http://www.irs.gov/pub/irs-pdf/i109495c.pdf

Q Can you explain the Qualifying Offer Method, listed on form 1094-C, line 22?

An employer who checks the box for the Qualifying Offer Method is certifying that it made a qualifying offer to one or more of its full-time employees for all months during the year during which a Play or Pay penalty could have applied. In this context, a ***qualifying offer*** is one which provides MV, MEC that is affordable, and is offered to the employee along with eligible dependents. ***Affordability*** means an offer for which the employee share of the lowest cost, self-only coverage is no more than 9.5 percent of the mainland single FPL, divided by 12.

Source: http://www.irs.gov/pub/irs-pdf/i109495c.pdf

Q For line 22 of Form 1094-C you mentioned that affordable means no more than 9.5 percent of the FPL. Isn't affordability based on 9.5 percent of the employee's salary?

No. While an employer might be able to use one of the other affordability safe harbors (Form W-2 or rate of pay) to avoid a potential penalty under Play or Pay, the 9.5 percent of the FPL safe harbor is the only one which applies in order to qualify to check boxes A or B on line 22 of the 1094-C.

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Q If an employer uses an affordability method other than 9.5 percent of the FPL, does this mean that they can't check box A on line 22?

Yes, it does. While an employer might be able to use one of the other affordability safe harbors to avoid a potential penalty under Play or Pay, the 9.5 percent of FPL safe harbor is the only one which applies in order to qualify for box A on line 22 of form 1094-C.

Q Which box would self-funded plans check on line 22?

Self-funded employers should check any of the options which apply from line 22. However, if the self-funded employer checks boxes A or B, the employer is not eligible to use the simplified reporting option for Form 1095-C.

Q What box on Part II of Form 1094-C would an employer check if it uses the W-2 or rate of pay safe harbor for affordability determination?

An employer who uses the W-2 or rate of pay safe harbor may be able to check box D on line 22 of Form 1094-C. Box C does not relate to any of the affordability safe harbors, and boxes A and B only allow for affordability to be determined using the 9.5 percent of FPL safe harbor.

Q If an employer has 50 – 99 employees but does not offer coverage, can it use the codes for transition relief?

Transition relief codes can be used if they actually apply. There are two types of transitional relief available. Depending on which transition relief applies (if any), potential penalties will be delayed as follows:

- Relief based on non-calendar year plan delays compliance until renewal in 2015.
- Relief based on size (50 – 99 employees) delays compliance until 2016.
- Relief based on both size and plan year delays compliance until renewal in 2016.

Note that transition relief is not automatic. An employer using transition relief must meet the criteria and certify it meets the criteria when it reports in 2016.

Part III:

Q Does the total employee count for Form 1094-C, Part III, Column C include part-time employees and those employees not eligible for health benefits?

Yes, the employee count for this column should include full-time and non-full-time employees, as well as employees in a limited non-assessment period (LNP). Eligibility for health benefits is irrelevant for purposes of this count.

Source: http://www.irs.gov/pub/irs-pdf/i109495c.pdf

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Q What are the four methods the IRS allows for counting the number of employees in each month for Form 1094-C purposes?

Columns B and C of Part III of Form 1094-C ask for counts of full-time employees and total employees. Employers may use one of the following four methods to count employees each month:

- Employee count on the first day of the month.
- Employee count on the last day of the month.
- Employee count on the first day of the first pay period of the month.
- Employee count on the last day of the first pay period of the month.

Employers must use a consistent approach for each month of the year.

Q What is the definition of a full-time employee for purposes of Part III, Column B on Form 1094-C?

A full-time employee is one who regularly works 30 or more hours per week or 130 or more hours per month. For column B purposes, employers should not include employees in a LNP.

Aggregated ALE (Controlled Group):

Q For a controlled group, is it correct that each company submits a 1094-C for themselves and then an additional authoritative 1094-C is submitted on behalf of the entire group?

No. If a controlled group requires each member to submit a 1094-C on behalf of the group, one of those 1094-Cs must be designated as the authoritative transmittal for the entire group. The members would not need to submit individual Forms 1094-C plus an additional authoritative transmittal.

Q If a company is not a controlled group, would the number on lines 18 and 20 be the same?

The number would be the same if the group is only submitting one Form 1094-C. However, there may be employers who are not members of controlled groups who choose to file more than one 1094-C. These types of companies will typically be employers with departments or divisions who wish to compile information separately. This might be particularly true in larger companies where departments or divisions operate fairly independently and are more familiar with their own data.

Q We are a fully-funded employer with less than 50 employees but are part of a larger group covered by our insurance plan. Can we skip the filing or will we need to file as part of the larger group covered under the plan?

An employer that may be part of an aggregated ALE should discuss reporting processes with the other group members and the group's tax advisors. Individual members of an aggregated ALE are considered ALEs on their own and are subject to the reporting requirements.

Edition: 03.0415

Form 1095-C

Q Is an employer required to provide part-time employees with a Form 1095-C if it has a fully insured plan?

Possibly, if the employee was full-time for a portion of the year. Fully-insured plans are required to provide Form 1095-C to each individual who was a full-time employee for **any month of the calendar year**. For example, if an individual was part time for 10 months of the year but full time for the remaining two months, the employer would provide the employee with a Form 1095-C and use the appropriate codes to indicate whether the employee was offered and enrolled in coverage for any given month.

Q If an employee waives coverage, would he or she receive a Form 1095-C?

Yes, a full-time employee who waives coverage would still receive a Form 1095-C. The employer must still report information on whether coverage was offered to this employee so that the IRS can determine whether an individual or employer penalty may apply.

Q If someone was hired, terminated, and then rehired in the same year, would he or she still only receive one Form 1095-C?

Yes. Form 1095-C addresses offers and enrollment for the entire calendar year. The employer would need to use the appropriate code for months in which the employee was not employed and not offered coverage.

Q If an employer has 95 employees, would it complete 95 Forms 1095-C?

An employer would complete a Form 1095-C for each employee who was a full-time employee for any month of the year under a fully-funded plan, and for all employees (regardless of full-time status) who are offered and enrolled in coverage under a self-funded plan.

Q What is the best way to get the data for Form 1095-C and will there be technology available to assist with populating the forms?

Much of the data relating to your employees is housed in your HRIS, time tracking, and payroll systems. Work with your accounting, benefits, and payroll departments to ensure that all data needed for this report is captured within your systems.

Q If we file 1,000 Forms W-2 but only 150 Forms 1095-C, are we required to file the Forms 1095-C electronically?

No. Form 1094-C and Form 1095-C are subject to the IRS electronic filing requirements mandating that filers of 250 or more information returns must file the returns electronically. The 250-or-more requirement applies separately to each type of return and separately to each type of corrected return.

Edition: 03.0415

Q If an employer submits a Form 1095-C with a mistake, how can it be corrected?

At this time there is no guidance on filing corrected information returns. The IRS has indicated that further guidance will be provided in the fall of 2015.

Q How should we report employees that we consider part time but who work more than 30 hours a week with a fluctuating schedule?

While you may consider these individuals part time, they are considered full-time employees for reporting purposes if they regularly work 30 hours per week or more. If, based on their average hours of service, they meet the requirements to be considered full time, they would need to receive a Form 1095-C.

Offers of Coverage:

Q If we hire an employee midyear, can we consider him as having been offered coverage for the whole year?

The employer will want to report for each month the employee was offered coverage. If the employee terminated midmonth before the end of the calendar year, you can report the offer for the whole month in which the separation occurred under § 6056. However, after the separation, the reporting on Form 1095-C ceases.

In completing line 14, an employer offers health coverage for a month only if it offers health coverage that would provide coverage for every day of that calendar month. However, under the employer shared responsibility provisions under § 4980H, if an employee terminates employment before the last day of a calendar month and the health coverage offer ends on the date of termination, the employer is treated as having offered the employee health coverage for the month only if the employee would have been offered health coverage for the entire month had the employee been employed for the entire month.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e482

Q If you are eligible for transition relief for a portion of the year, would you indicate that you offered coverage for those months?

We assume this partial year transitional relief is based on a non-calendar year plan. An employer that meets the requirements for this relief reports its eligibility on the Form 1095-C, line 16, code 2I for each full-time employee for which the employer is eligible for this relief. This is included only in the months in which the transitional relief is applicable.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e1089

Q Is COBRA included in an "offer of coverage"? Does the 60-day election period post-termination count as months of coverage offered?

The employer reports for each month the employee was "offered" coverage. If the employee terminated midmonth before the end of the calendar year, you can report the offer for the whole month in which the separation occurred under § 6056. However, after the separation, the reporting on Form 1095-C ceases.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e482

Q Under what circumstances would an employer not offer coverage for an entire month?

These circumstances are based upon the eligibility requirements of the group health plan. Some group health plans are established with eligibility on the date of hire. Similarly some plans terminate at the time of termination and not the last day of the month.

Q We offer benefits upon hire and during open enrollment. How does this align with the requirement to offer coverage every month?

Even if you are not enrolling people each month, you are continuing to offer coverage each month. So unless you terminate benefits, you should be meeting the coverage offering.

Q We were under the impression that coverage only had to be offered to employees. Are we required to offer it to employees' spouse and dependents as well?

While the ACA requires that applicable large employers cover dependent children to age 26, there is no requirement for employers to cover spouses. The ACA reporting requirement including spousal offers of coverage is to determine the spouse's eligibility for individual premium assistance if enrolling in the Marketplace exchange. Therefore, if the employee coverage on the group health plan is considered affordable and the spouse is eligible for coverage, the spouse will not qualify for a subsidy for Marketplace coverage.

Q When determining whether coverage was offered for a month, how does a waiting period come in to play?

A health plan's initial waiting period is generally deemed to be part of a LNP. If an employee was not offered coverage for a month, regardless of the reason, the employer should indicate that on line 14 of Form 1095-C. However, on line 16, the employer would be able to use a code indicating that the employee was not offered coverage because they were in a LNP (in this case, their initial waiting period).

Q When does one day of coverage during a month equal an entire month of coverage?

If an employee terminates employment before the last day of a calendar month and the health coverage offer ends on the date of termination, the employer is considered as having offered the employee health coverage for the month only if the employee would have been offered health coverage for the entire month had the employee been employed for the entire month.

Edition: 03.0415

Part II:

Q If an employer only offered MEC (but not MV), would it leave line 15 blank?

Yes. Line 15 is only required to be completed if an employer uses codes 1B through 1E on line 14. These codes indicate that MEC that was also MV was offered to the employee, and in some cases, their spouse and dependents.

Q If an employer uses Code 1A for all 12 months of line 14, is the employer required to put anything in line 15?

No. Line 15 is only required to be completed if an employer uses codes 1B through 1E on line 14. These codes indicated that MEC that was also MV was offered to the employee, and in some cases, their spouse and dependents.

Q Does line 15 reflect what the employee is offered (whether enrolled or not)? Or does it reflect the actual cost of what the employee is enrolled in?

The amount in line 15 should reflect the employee cost of the lowest cost self-only, minimum essential, minimum value coverage **offered** to the employee. The amount of the plan that the employee is enrolled in is irrelevant for this purpose.

Q What is the difference between lines 14 and 16 and must they both be completed for an employee?

The primary difference between lines 14 and 16 are that line 14 indicates coverage which was offered, while line 16 indicates coverage which was enrolled in. Additionally, while line 14 cannot be left blank, line 16 can be left blank if circumstances warrant it. Line 16 is also the employer's opportunity to enter a code from Code Series 2 explaining to the IRS why the employer should not be subject to a penalty for this particular employee for a given month.

Q For line 14 of form 1095-C, if an employee is only employed for a partial month, would the employer use a code indicating "no offer" for that month?

Yes. For purposes of line 14, an employer is only considered to have offered health coverage for a month if that health coverage would provide coverage for every day of the month. However, an exception applies to terminated employees. Specifically, if an employee terminates before the end of a month, but the employee would have had coverage for the entire month if they had not terminated, the employer can treat them as having been offered coverage for the entire month.

Q If we pay employees weekly and deduct premiums weekly, what amount should we put in line 15? The actual amount per month or the annual divided by 12?

The instructions for line 15 specifically ask for the **monthly** premium for the lowest cost, self only, MEC providing minimum value.

Edition: 03.0415

Q On Form 1095-C, is an employer supposed to list all employees in Part II, and all covered employees and family members in Part III?

Yes. Only full-time employees would be listed in Part II and only self-funded employers are required to complete Part III of the 1095-C form.

Q Is it true that line 14 of the Form 1095-C requires an employer to indicate whether it offered coverage for someone in his or her initial new hire waiting period?

Yes, any full-time employee, including those in an initial new hire waiting period, would receive a Form 1095-C. However, line 16 of the form allows an employer to indicate whether an employee is in a LNP, including an initial waiting period. Doing so can help to avoid a potential penalty that might otherwise apply.

Q If an employee was hired midway through the month with coverage effective immediately, which code would be used?

The indicator code to be used will depend on which coverage was offered to the employee (even if he or she waived coverage) and will only be entered for the first full month coverage was offered. Therefore, even though coverage is offered midmonth, the Code Series 1 indicator will be entered in the first month in which coverage is offered for each day of the month. Note that the codes specify the type of coverage, if any, offered to an employee, the employee's spouse, and the employee's dependents. Therefore, this will depend on the coverage offered.

From the instructions:

> An employer offers health coverage for a month only if it offers health coverage that would provide coverage for every day of that calendar month. However, under the employer shared responsibility provisions under section 4980H, if an employee terminates employment before the last day of a calendar month and the health coverage offer ends on the date of termination, the employer is treated as having offered the employee health coverage for the month only if the employee would have been offered health coverage for the entire month had the employee been employed for the entire month.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e250

Q Regarding line 15 of the Form 1095-C, can we reflect the cost for a health savings account (HSA) plan?

No, HSA contributions are not reflected on Form 1095-C.

Edition: 03.0415

Q Is an employer required to complete all the boxes on line 14 for an employee who wasn't hired until midyear?

Yes. An employer is required to either complete the "All 12 Months" box on line 14 or the individual month boxes on that line for each employee that receives a Form 1095-C. Line 14 may not be left blank. For individuals who were not yet hired or where no offer of coverage was made, an employer would use the appropriate code from Code Series 1 denoting that for the months to which it applies.

Q When determining the lowest cost, self-only premium, can we use the premium amount after a wellness incentive is applied?

Not all wellness incentives can be counted toward the "affordability" component. Employers may only take into account whether a plan participant qualifies for an incentive or reward under a group health plan's wellness program that is designed to prevent or reduce tobacco use when determining the plan's affordability and minimum value under the ACA.

Source: http://www.irs.gov/irb/2013-23_IRB/ar08.html

Q If an employee chooses the more expensive of the two health plans an employer offers, should the employer still enter the cost of the lowest one on line 15 of the Form 1095-C?

Yes, affordability is based on lowest cost self-only coverage that provides minimum value that does not exceed 9.5 percent of household income, rather than the plan actually elected.

Source: https://federalregister.gov/a/2014-03082

Q When entering the cost on line 15 of 1095-C, if you use the "All 12 Months" box, do you list the cost per month or the cost of all 12 months combined?

The cost per month is indicated here.

Q What code should an employer use if the employee declines an offer of coverage?

Code Series 1, line 14 on Form 1095-C will indicate coverage was offered regardless of the fact that the employee did not enroll. The code used will be based on the actual coverage offered.

Q Will an employer be subject to a penalty if an employee declines coverage because he or she is covered elsewhere?

No. The employer offered and the employee declined. A penalty is only assessed if the employer fails to **offer** coverage, **and** an employee qualifies for a subsidy for coverage purchased on the exchange.

Edition: 03.0415

Part III:

Q On Part III of Form 1095-C, would the employer list the employee on line 17?

Yes. Part III indicates information regarding which individuals were offered and enrolled in self-funded coverage, including the employee.

Q Is an employer funding a HRA considered a self-funded plan for completion of section III of Form 1095-C?

While a HRA is a self-funded plan, this is integrated in the coverage itself and therefore not reported on Form 1095-C. In limited circumstances, such as if the contribution counts toward minimum value, there may be a reporting requirement. Work with your benefit professionals to understand this requirement as it relates to your specific plan.

Sources: http://www.dol.gov/ebsa/newsroom/tr13-03.html
http://www.gpo.gov/fdsys/pkg/FR-2014-11-26/pdf/2014-27998.pdf

Q Is dependent information needed if the employee does not elect dependent coverage in our plans?

Part III is only completed by self-funded employers, and the employers in these cases are only obligated to report those who are enrolled in the self-funded plan.

Source: http://www.irs.gov/instructions/i109495c/ar01.html#d0e250

Electronic Delivery

Q Where do you obtain consent for electronic delivery?

The employer will need to ask each employee for his or her written (or electronic) consent prior to issuing IRS documentation electronically. According to the IRS instructions, employers are required to obtain affirmative consent from each employee to furnish a Form 1095-C statement electronically. This requirement ensures that statements are furnished electronically only to individuals who are able to access them. An individual may consent on paper or electronically, such as by email. If consent is on paper, the individual must confirm the consent electronically. A statement may be furnished electronically by email or by informing the individual how to access the statement on the employer's website.

Q Can you please confirm that the government has not yet determined how we will file electronically?

This confirms that your understanding is correct. While there is general conjecture that the filing requirements will be similar to those for sending Forms W-2 and W-3 electronically, that has not been confirmed. According to the IRS website (http://www.irs.gov/for-Tax-Pros/Software-Developers/Information-Returns/Affordable-Care-Act-Information-Returns-AIR-Program-Did-You-Know%3F), the Affordable Care Act Information Returns (AIR) system will be ready for quality assurance testing in the summer of 2015 and Publication 5164 with the package of information for testing the system will be available sometime in the spring of 2015 for filers. The system is expected to be ready for production in the fall of 2015.

Q Can Form 1095-C be hand-delivered, or must it be either mailed or sent electronically?

According to the IRS instructions, Form 1095-C statements must be furnished on paper by mail, unless the recipient affirmatively consents to receive the statement in an electronic format. If mailed, the statement must be sent to the employee's last known permanent address, or if no permanent address is known, to the employee's temporary address. The instructions are silent about delivering the statements via hand-delivery.

Data Collection

Q How is an employer expected to get the data for each form? Is this something our insurance or payroll provider could complete since they have that information?

Most employers will have to use multiple sources to obtain the data necessary to complete the reports, including their benefits carrier or broker, payroll company, HRIS, time off tracking software, and other sources. The following is a listing of sources and types of data employers should start tracking now so reporting will be smoother at year-end:

- ALE EIN(s) plus ALE member and employee identifying information.
- Monthly counts of total employees (month by month).
- Identification of full-time employee status and full-time employee counts by month.
- Information about coverage offered for each month.
- Family member eligibility.
- MEC/MV coverage.
- Employee share of lowest-cost employee-only MV coverage.
- Offers of minimum essential coverage to full-time employees and dependents (be sure to obtain written acceptance/declinations for your documentation).
- Eligibility for qualifying transition relief (if applicable).
- Eligibility for "50 – 99" or "minus 80" transition relief (if applicable).
- Eligibility for 98 percent offer relief (if applicable).
- Information about all ALE members, if applicable (for those who are part of an aggregated ALE group.

Edition: 03.0415

- For self-funded groups:
  - Enrolled full-time and non-full-time employees and non-employees.
  - Enrolled family members, including SSNs.

Please be sure to follow the rules for documenting and tracking employees who are not "regular" employees, such as seasonal and temporary employees, for the 30 hours of service threshold that classifies an employee as full time. An employee must be credited with an hour of service for each hour the employee is paid or entitled to be paid for the performance of duties on the job. Additionally, an employee must be credited with an hour of service for each hour the employee is paid or entitled to be paid due to vacation, holiday, illness, incapacity, layoff, jury duty, military duty, or leave of absence. Not all of these hours are tracked in one place.

Q How valuable is hiring a provider to prepare the forms?

Each organization must make its own assessment of the value of hiring an outside provider to prepare these forms. The employer is still responsible for providing the right information and ensuring the accuracy of the reporting, and will be subject to any penalties for noncompliance.

Q What if an employee has dependents who are not U.S. citizens and therefore do not have a Social Security number (SSN)?

The IRS requires that the taxpayer identification number (TIN), which is usually the SSN, be used to identify individuals on the reports. The rules require that employers and insurers make reasonable efforts to obtain the SSN. If the SSN/TIN is not available, employers sponsoring self-funded plans and insurers must use date of birth to help the IRS confirm identity.

Source: http://www.irs.gov/pub/irs-pdf/f1095c.pdf

Q Are we required to collect dependent information for employees that refused coverage?

No. Employers must report on the Form 1095-C whether the employee and family members were offered health coverage each month that met the minimum value standard and whether the employee was enrolled in the health plan. Dependent information would only be required if the plan was self-funded and the dependent family members were covered by the plan.

Q Are there any tools or software available to manage ACA reporting for companies?

Check first with your insurance broker, payroll provider, tax accountant, and HRIS providers to see if they have resources available and/or a preferred provider that will integrate its systems (and your data) with theirs. Some of the accounting and health care reform software companies are developing solutions for ACA reporting. Review each solution carefully, because compliance with this reporting remains the employer's responsibility and missed deadlines or incorrect filing may result in penalties and fines

Edition: 03.0415

Miscellaneous

Q Are the 1094/1095 forms fillable on the computer?

No, not currently; however, it is possible the IRS may provide fillable versions of the form at a later date.

Q Are there any updates from the IRS on company health plans with no inpatient hospitalization?

The most recent guidance from the IRS was provided in IRS Notice 2014-69 and indicated that so-called "skinny plans," which did not provide for inpatient hospital services, would not be deemed to provide minimum value. As a result, employers offering such plans would be subject to potential penalties under the Employer Mandate because an employee offered such a plan who elected to obtain coverage through a Marketplace Exchange might be eligible for a tax subsidy.

Q Regarding IRS guidance on not reimbursing individual plan premiums on a pretax basis, does this mean we should not take pretax payroll deductions for employer-funded group plan premiums?

No. The prohibition on reimbursing individual premiums relates to non-group plans. For example, some employers previously had a practice of reimbursing employees for privately purchased insurance plans, outside of the employer group coverage. This type of approach is no longer permitted under the ACA. Employers may continue to allow employees to deduct group health plan premiums on a pretax basis as long as the employer has a valid § 125 cafeteria plan in place that covers the group health plan.

Q When will the government release the 2015 forms?

The IRS has not indicated a firm date for the release of the 2015 version of the forms, but it is anticipated to occur nearer to the end of the year.

Q Where do we file Form 1094?

If the employer is filing on paper, the instructions provide specific mailing addresses based on which state the employer's principal business, office, or agency is located in.

If the employer is filing electronically, the IRS has not finalized the electronic filing process. While there is general conjecture that the filing requirements will be similar to those for sending Forms W-2 and W-3 electronically, that has not been confirmed. According to the Internal Revenue Service website (http://www.irs.gov/for-Tax-Pros/Software-Developers/Information-Returns/Affordable-Care-Act-Information-Returns-AIR-Program-Did-You-Know%3F), the Affordable Care Act Information Returns (AIR) system will be ready for quality assurance testing in the summer of 2015 and Publication 5164 with the package of information for testing the system will be available sometime in the spring of 2015 for filers. The system is expected to be ready for production in the fall of 2015.

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Q Who is responsible for filling out the information related to Code § 6055? Are employers to wait for a request for this information?

Sections 6055 and 6056 refer to the Internal Revenue Code sections which discuss the reporting requirements. The actual reports an employer would file are Forms 1094 or 1095. ALEs are required to use forms 1094-C and 1095-C while small, self-funded employers would use forms 1094-B and 1095-B. An ALE is one who had an average of 50 or more full-time or full-time equivalent employees in calendar year 2014.

If you are required to file the forms, you will not receive a request. However, the requirements and instructions do include due dates for specific forms. Form 1095-C must be issued to an employee no later than February 1, 2016 and form 1094-C would be due by February 29, 2016 if the employer files on paper, or March 31, 2016 if the employer files electronically.

Q If small employers are not required to collect and report on this data, what are employees of small companies to use for their tax returns?

Small self-funded employers must file Forms 1094-B and 1095-C; Form 1095-B will go to the employee. For a fully funded employer, Forms 1094-B and 1095-B are issued by the insurance carrier.

Q We only offer health insurance to our employees and not their family members. If our employee chooses to go on their spouse's insurance and not ours, can we provide other pay to them since this is not a benefit they use?

It sounds as if you are talking about providing the employee with what is known as an "opt out" credit or "cash in lieu." This approach is permissible if it is structured properly. Specifically, a cash in lieu option is only valid if it is offered as taxable compensation which is part of a § 125 cafeteria plan, and it must be offered equally to all benefit eligible employees.

Q If a large employer goes out of business in 2015, is the employer or some entity still required to file the forms in 2016?

The guidelines for filing the Forms 1094 and 1095 do not directly address this type of situation. However, these are IRS filing reports that must be addressed like any other IRS reporting obligations for companies doing business in that tax year. Check with your tax and legal advisors regarding compliance requirements for IRS filings for this special circumstance.

Q If we have a grandfathered plan that doesn't meet MEC, does that automatically mean we will have to pay a penalty?

Not necessarily. Penalties may apply when ALEs do not offer MEC which is also affordable and MV to the majority of their full-time employees and dependents of those employees. However, the penalty is only triggered if a full-time employee purchases a health plan from a state or federal exchange and receives a tax subsidy for that plan. Additionally, for 2015, there are transition relief options which can reduce a potential penalty for an ALE. It's possible that a plan which does not provide MEC might not have to pay penalties.

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Q If the reporting requirements only apply to ALEs, how does the government determine an individual's eligibility for subsidy?

When an individual applies for a plan through a state or federal exchange, they are asked to provide specific information. That information is used to determine initial eligibility for a tax subsidy. However, the IRS will use the information provided by insurers and employers on Forms 1094 and 1095 to help confirm whether the individual was actually eligible for the subsidy.

IRS Resources

IRS Form 1094-C: http://www.irs.gov/pub/irs-pdf/f1094c.pdf
IRS Form 1095-C: http://www.irs.gov/pub/irs-pdf/f1095c.pdf
IRS Forms 1094-C and 1095-C Instructions: http://www.irs.gov/pub/irs-pdf/i109495c.pdf
IRS Overview Brochure on 1094-C and 1095-C: http://www.irs.gov/pub/irs-pdf/p5196.pdf

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