

## Preparing Employers for 2016 ACA Information Reporting: Lessons From 2015 Compliance Missteps

Navigating New and Expanded 2016 Reporting Requirements and Revised Forms 1094-C and 1095-C; Avoiding IRS Audits and Penalties

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# Preparing Employers for 2016 ACA Information Reporting

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# Code §§ 6055 and 6056

## Reporting Basics

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### **Employer Mandate Reporting**

- Provide full-time employees and the IRS with information about an employer's compliance with the employer mandate, minimum value, and affordability

### **Minimum Essential Coverage (MEC) Reporting**

- Provide individuals and the IRS with information about minimum essential coverage and whether an individual satisfied the individual mandate for the preceding calendar year

# Code §§ 6055 and 6056 Reporting for Employers

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- Employers subject to the employer mandate must report on Forms 1094-C and 1095-C for:
  - all full-time employees
  - any part-time employees enrolled in a self-insured plan
- Employers not subject to the employer mandate that provide self-insured MEC must report on Forms 1094-B and 1095-B for:
  - all enrolled individuals

# 6055 Reporting Basics

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- MEC reporting
  - Provide the IRS and covered individuals with information about the months they were covered
- File with the IRS
  - One Form 1094-B or -C (transmittal)
  - One Form 1095-B or -C for each “responsible individual”
- Furnish to responsible individuals one Form 1095-B or -C



# 6056 Reporting Basics

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- Employer mandate reporting
  - Provide the IRS and FTEs with information about an employer's compliance with the employer mandate, minimum value, and affordability
  - Must report for any employee who was FT for at least 1 month in the year
- File with the IRS
  - One Form 1094-C (transmittal)
  - One Form 1095-C for each full-time employee
- Furnish to FTEs one Form 1095-C

# Due Dates

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- To individuals by Jan 31 of the next year
  - Can request a 30-day extension (not automatic)
- To the IRS
  - Filing electronically ( $\geq 250$  1095s) – by March 31 of the next year
  - Filing paper ( $< 250$  1095s) – by Feb 28 of the next year
  - Can request an automatic 30-day extension



# Problems Employers Faced in Year One of Reporting

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- Employers were unsure of which codes to use in certain situations
- Employers had trouble compiling the data by the due dates for the Forms, even with the delay
- The IRS released final Instructions and Forms late in 2015

# Problems Employers Faced in Year One of Reporting

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- Vendors
  - Employers struggled to find qualified vendors to assist with preparation of the Forms
  - Vendors' systems limitations
  - Vendors were well-suited for typical employment patterns, but not one-off employment scenarios
  - Employers and vendors had difficulties in aggregating and coordinating the data necessary to complete the filings.

# Problems Employers Faced in Year One Reporting

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- IRS' AIR System
  - Users encountered difficulties because the system was frequently down and inoperable
  - There were various IT/systems limitations that made it difficult for employers filing a large number of Forms
  - There were limitations regarding the reporting of errors in the filed Forms

# Problems Employers Faced in Year One of Reporting

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- Name/TIN mismatch
  - Many employers received error messages of incomplete or unmatched names or TINs
  - It was unclear whether the receipt of a name/TIN mismatch triggered the TIN solicitation rules
- Employers were unsure of the need to file corrected Forms to rely on the “good faith” relief
- Confusion about supplemental coverage exception

# 2016 ACA Reporting Changes

October 25, 2016

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# Reporting Requirements under Code Sections 6055 and 6056

- Providers of minimum essential coverage are required to file an annual return under Internal Revenue Code (“Code”) Section 6055
- Employers subject to the shared responsibility requirements (“applicable large employers”) must file an annual return under Code Section 6056 providing information regarding the health coverage offered to full-time employees
- Third party may file the returns and statements, but responsibility for the filing remains with the employer or other reporting entity



- Information required under both Code Sections 6055 and 6056 is reported on Form 1095-C (with related transmittal on Form 1094-C and individual statement)
  - Form 1095-C used by applicable large employers (more than 50 full-time employees) sponsoring self-insured health coverage
    - Form 1095-B used by other self-insuring employers and insurers

# Reporting of Minimum Essential Coverage under Code Section 6055

- Applies to insurers, employers sponsoring self-insured health coverage, and other providers of health coverage
- Report must be filed with the IRS and sent to relevant individuals
  - Electronic filing required for entities required to file 250 or more returns

# Reporting of Minimum Essential Coverage under Code Section 6055

- General Deadlines: 2016 coverage report due to IRS on February 28, 2017 (March 31 if filed electronically) and individual statement for 2016 coverage is due on January 31, 2017 for coverage provided in 2016
  - These deadlines were extended for the 2015 reporting requirements
  - Limited transition relief is available for 2016 reporting

- Applies to applicable large employers
  - Filings must be completed by each subsidiary member of an applicable large employer (except those who do not have any full-time employees)
- Report must be filed with the IRS and sent to relevant individuals
  - Electronic filing required for entities required to file 250 or more returns

- General Deadlines: 2016 report due to IRS on February 28, 2017 (March 31 if filed electronically) and individual statement for 2016 coverage is due on January 31, 2017 for coverage provided in 2016
  - These deadlines were extended for the 2015 reporting requirements
  - Limited transition relief is available for 2016 reporting

# Reporting of Minimum Essential Coverage on the Form 1095-C

- Items reported on the Form 1095-C related to minimum essential coverage
  - Name, address, and EIN of the reporting entity
  - Name, address, and taxpayer identification number (TIN) of the primary insured/employee/former employee and any other individual obtaining coverage under the plan or policy (the “responsible individual”)
  - The months during which the individual was covered during the calendar year
    - Month is reported even if the individual was covered for only one day during the month

# Reporting by Applicable Large Employers on the Form 1095-C

- Items reported on the Form 1095-C related to the shared responsibility requirements for applicable large employers
  - Name, address, and EIN of the applicable large employer member
  - Name and telephone number of the applicable large employer's contact person
  - A certification (by calendar month) as to whether the applicable large-employer member offered to its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan
  - Months during the calendar year for which minimum essential coverage under the plan was available

# Reporting by Applicable Large Employers on the Form 1095-C

- Items reported on the Form 1095-C related to the shared responsibility requirements for applicable large employers, continued
  - Each full-time employee's share of the lowest-cost monthly premium for self-only coverage for coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month
  - Name, address, and TIN of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan



# Reporting to Individuals – Minimum Essential Coverage

- Applicable large employers sponsoring self-insured health plans providing minimum essential coverage must provide a copy of the Form 1095-C to each “responsible individual” listed on the Form 1095-C
  - Insurers and small employers sponsoring self-insured health plans that provide minimum essential coverage must provide a copy of the Form 1095-B to each “responsible individual” listed on the Form 1095-B
- Notice to relevant individuals due on or before January 31 of the year following the calendar year for which the return was required to be made
  - Individual notice can be furnished in same mailing as Form W-2
  - Notice must be sent to individual’s last known permanent address (consent required to provide electronically)

- Applicable large employers offering coverage to full-time employees must provide a copy of the Form 1095-C to each full-time employee required to be reported on the Form 1095-C
- Notice to relevant individuals due on or before January 31 of the year following the calendar year for which the return was required to be made
  - Individual notice can be furnished in same mailing as Form W-2
  - Notice must be sent to individual's last known permanent address (consent required to provide electronically)

- Clarification that each applicable large employer member should file only one “authoritative” transmittal, even if multiple Forms 1094-C are filed by the applicable large employer member
- Updates to the list requiring corrections to the filing
  - Correction required for error in name or EIN of other applicable large employer members of the applicable large employer controlled group
- Instructions provide that for reporting full-time employee count, “full-time” means full-time as under the monthly measurement method or look-back measurement method, as applicable to the employer
  - Full-time does not refer to the meaning used by the employer

- Refers to “Employee Required Contribution” instead of premium amount
- Updates to the list requiring corrections to the filing
  - Correction required for error in employee required contribution
- Instructions refer to proposed regulations under 6055 regarding TIN solicitations for purposes of reporting health coverage information
- Substitute forms furnished to individuals may be in portrait format, but substitute paper forms filed with the IRS must be in landscape format
- 2015 interim guidance regarding multiemployer plans is continued

## ■ Various Coding Changes and Clarifications

- Adds new Codes 1J and 1K for Part II, Line 14, for “conditional offers of spousal coverage”
  - Offers subject to one or more reasonable, objective conditions, including an offer to cover an employee’s spouse only if the spouse is not eligible for coverage under Medicare or a group health plan sponsored by another employer
- For Part II, Line 14, clarification that Code 1G (regarding an offer of coverage to a non-employee or non-full-time employee who enrolled in self-insured coverage) can only apply for the entire year, or not at all
  - Must be used in the “All 12 Months” box or in every separate monthly box.
- For Part II, Line 16, clarification that if the “All 12 months” box is used, the separate monthly boxes should not be completed, and that Code 2C should not be used in a month where an employee enrolled in coverage that was not minimum essential coverage.

## ■ Reporting COBRA Coverage

- Offers of COBRA coverage to employee who remain employed after a reduction in hours should continue to be reported as in 2015
- If employee terminates, COBRA coverage is reported on Line 14 as 1H (no offer) for each month COBRA coverage applies, and on Line 16 as 2A (employee not employed)

## ■ Reporting Post-Employment (Non-COBRA) coverage


- Offers of post-employment coverage to a former employee (or his or her spouse or dependents) for coverage effective after the individual's termination should not be reported as an offer of coverage on Line 14
  - If required to file a Form 1095-C for the individual's period of employment, Codes 1H and 2A should be used on Lines 14 and 16 for months in which the post-employment offer of coverage applies

- Minimum essential coverage does not include coverage consisting solely of excepted benefits (e.g. vision and dental coverage not part of a comprehensive health insurance plan, workers' compensation coverage, and coverage limited to a specified disease or illness)
- Clarification that the 250 threshold for electronic filing applies separately to original and corrected returns
- Substitute forms furnished to individuals may be in portrait format, but substitute paper forms filed with the IRS must be in landscape format
- References IRS Publication 1586 for additional information on the reasonable cause penalty waiver

- Previous transition relief exempting employers with 50-99 full-time employees, and decreasing the coverage requirement from 95% to 70% of full-time employees, ONLY applies in 2016 to non-calendar year plans, and ONLY for the months in 2016 that fall within the plan year that commenced in 2015.
- Other previous transition relief is not available for 2016 reporting



- Employers failing to file the Form 1095-C to report the required information under Code Sections 6055 or 6056 may be subject to the following penalties
  - Failure to file correct information returns under Code Section 6721 (currently \$260 for each return for which the failure occurs, with an annual cap of \$3,193,000)
  - Failure to furnish correct payee statement under Code Section 6722 (currently \$260 for each statement for which the failure occurs, with an annual cap of \$3,193,000)
  - Special rules and waiver of penalty may apply under Code Section 6724 (and applicable regulations) for intentional disregard for the requirements
- Penalties may be waived if failure to file the return or furnish the statement was due to reasonable cause and not willful neglect



# Preparing Employers for 2016 ACA Information Reporting

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# Best Practices for Planning and Compliance

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- Start Early!
- No “universal” extensions this year
  - Deadline for furnishing forms:  
**January 31, 2017**
  - Deadline for filing forms:  
**March 31, 2017** (if filing electronic)  
**February 28, 2017** (if filing paper)

# Best Practices for Planning and Compliance

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- Obtaining extension to deadline for furnishing forms:
  - Must request by letter to IRS
    - Must be postmarked by deadline
    - Not automatically granted
    - If granted, extension is generally 30 days
    - See instructions to Forms for details
- Obtaining extension to deadline for filing forms:
  - Must request by filing Form 8809
    - Automatic 30-day extension will be granted
    - No explanation needed, but must be filed before deadline

# Best Practices for Planning and Compliance

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- Compiling Information Needed for Minimum Essential Coverage Reporting:
  - Did you offer minimum essential coverage to employees?
  - Was the plan insured?
    - If yes, the insurer will generally be responsible for performing minimum essential coverage reporting... BUT...
    - Don't forget supplemental coverage that also may need to be reported
  - Was the plan self-funded?
    - If yes, and you are an applicable large employer, combined reporting applies and minimum essential coverage reporting will be performed on Forms 1095-C
    - If yes, and you are not an applicable large employer, no combined reporting- minimum essential coverage reporting will be performed on Forms 1095-B

# Best Practices for Planning and Compliance

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- Compiling Information Needed for Employer Mandate Reporting:
  - Was the employer subject to the employer mandate in 2016?
    - If so, a Form 1095-C is needed for each full-time employee
  - If yes, does any transition relief apply?
    - **ONLY relevant to employers with a non-calendar year plan year, and only with respect to calendar months in 2016 that fell within the 2015 plan year**

# Best Practices for Planning and Compliance

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- Compiling Information Needed for Reporting-Information about the Employer
  - Basic information about employer (address, EIN)- who will be contact person?
  - If employer mandate applies:
    - Number of employees
    - Number of full-time employees
    - If in controlled group: names, EINs, number of full-time employees for each controlled group member

# Best Practices for Planning and Compliance

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- Compiling Information Needed for Reporting-Information about the Employees
  - Information about employees
  - Names, addresses, etc.
  - SSNs
  - If employer mandate applies:
    - Was employee a full-time employee for any given month in the year? If so, was there an exception to the requirement to offer coverage (e.g., initial measurement period)
    - If self-insured coverage offered, information about “covered individuals” (i.e. dependents)
  - How will you furnish forms? If furnishing electronically, has consent been obtained?



# Best Practices for Planning and Compliance

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- Compiling Information Needed for Reporting- If Employer Mandate Applies, Information about the Offers of Coverage
  - Was the offer “minimum value”?
  - Was the offer “affordable” under the employer mandate rules?
  - What was employee share of the lowest cost monthly premium for self-only minimum value coverage?
  - Were offers made to spouses and/or dependents?
  - Were “conditional offers” made to spouses?
  - Do you have information about offers of coverage under COBRA?
  - Was minimum essential coverage offered to a sufficient percentage of full-time employees to avoid potential 4980H(a) penalties?
  - Is “Qualifying Offer Method” or “98% Offer Method” available based on offers of coverage made? If so, does it make sense to use one of those methods?

# Best Practices for Planning and Compliance

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- Preparing for Missing / Incorrect Information
  - “Good Faith” relief is going away.... BUT
  - “Reasonable Cause” relief is still available (see 26 CFR 301.6724-1)

# Best Practices for Planning and Compliance

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- SSN Solicitations
  - In order to establish “reasonable cause” for errors related to missing / incorrect TINs, follow the IRS TIN solicitation rules.
    - **Missing TINs**
      - Solicitation 1: When the relationship is established (i.e. when individual applies for coverage)
      - Solicitation 2: No later than 75 days after date application for coverage received
      - Solicitation 3: By December 31 of year following the year the application for coverage received
    - **Mistaken TINs – only applies if you receive Notice 972CG**
      - Solicitation 1: Must have been done when the relationship was established (i.e. when the individual applied for coverage)
      - Solicitation 2: Generally December 31 of the year in which notified of the incorrect TIN (January 31 of the following year if notified of incorrect TIN in December)
      - Solicitation 3: If you are notified again in a year following the year of the initial notification of the incorrect TIN, by December 31 of that year (January 31 if the notified in December)

# Best Practices for Planning and Compliance

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- SSN Solicitations
  - Importance of Open Enrollment process
  - Importance of documentation
  - “AIRTN500” error messages do NOT trigger “Mistaken TIN” solicitation process; however, receipt of a Notice 972CG would
  - If error message received with respect to an employee, consider whether Forms W-2 may be incorrect as well