

ERIC FocusOn: ACA Reporting Pitfalls

The ERISA Industry Committee
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Agenda

- Completing and Filing Forms 1095-B and 1095-C
- ACA Reporting Pitfalls

COMPLETING AND FILING FORMS 1095-B AND 1095-C

Which Form Needs to Be Filed?

- Form 1095-A – Filed by an exchange for individuals who enroll through an exchange
- Form 1095-B – Filed by providers of minimum essential coverage to individuals who did not enroll through an exchange and who are not required to be reported on Form 1095-C
- Form 1095-C – Filed by Applicable Large Employers

Which Form Needs to Be Filed?

Entity	1095-B	1095-C
Large employer that self-funds coverage	No (but can be filed by the employer for individuals who were not employees during any month)	Yes, by the employer (Parts I, II, and III)
Large employer that sponsors insured coverage	Yes, by the insurer	Yes, by the employer (Parts I and II)

Which Form Needs to Be Filed?

Entity	1095-B	1095-C
Insured MEWA	Yes, by the insurer	Maybe (Parts I and II for each ALE whose employees participate)
Self-funded MEWA	Maybe (for each non-ALE whose employees participate)	Maybe (Parts I, II, and III for each ALE whose employees participate)

Which Form Needs to Be Filed?

Example: Widgets, Inc. is an applicable large employer that offers MEC to its employees. It provides a self-funded health plan in which all of its employees are eligible to enroll. Employees in California may also enroll in a fully insured plan underwritten by Acme Insurance Co.

Which Form Needs to Be Filed?

- Full-time employees enrolled in self-funded coverage
 - Parts I, II, and III of Form 1095-C filed by Widgets, Inc.
- Part-time employees enrolled in self-funded coverage
 - Parts I and III of Form 1095-C filed by Widgets, Inc. (Part II coded for not a full-time employee)

Which Form Needs to Be Filed?

- Full-time employees enrolled in insured coverage
 - Parts I and II of Form 1095-C filed by Widgets, Inc.
 - Form 1095-B filed by Acme Insurance Co.
- Part-time employees enrolled in insured coverage
 - Form 1095-B filed by Acme Insurance Co.

Which Form Needs to Be Filed?

- Full-time employees who do not enroll in any coverage
 - Parts I and II of Form 1095-C filed by Widgets, Inc.
- Part-time employees who do not enroll in any coverage
 - No reporting

Completing Form 1095-B

Form 1095-B Department of the Treasury Internal Revenue Service	Health Coverage ▶ Information about Form 1095-B and its separate instructions is at www.irs.gov/form1095b .	<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED	560115 OMB No. 1545-2252 2015
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Part I Responsible Individual			
1 Name of responsible individual	2 Social security number (SSN)	3 Date of birth (if SSN is not available)	
4 Street address (including apartment no.)	5 City or town	6 State or province	7 Country and ZIP or foreign postal code
8 Enter letter identifying Origin of the Policy (see instructions for codes): ▶ <input type="checkbox"/>			9 Small Business Health Options Program (SHOP) Marketplace identifier, if applicable

Part II Employer Sponsored Coverage (see instructions)			
10 Employer name			11 Employer identification number (EIN)
12 Street address (including room or suite no.)	13 City or town	14 State or province	15 Country and ZIP or foreign postal code

Part III Issuer or Other Coverage Provider (see instructions)			
16 Name		17 Employer identification number (EIN)	18 Contact telephone number
19 Street address (including room or suite no.)	20 City or town	21 State or province	22 Country and ZIP or foreign postal code

Part IV Covered Individuals (Enter the information for each covered individual(s).)																
(a) Name of covered individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of coverage												
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
23			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Completing Form 1095-C

Form **1095-C**
Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

► Information about Form 1095-C and its separate instructions is at www.irs.gov/form1095c

VOID
 CORRECTED

OMB No. 1545-2251
2015

Part I Employee

1 Name of employee

3 Street address (including apartment no.)

4 City or town

5 State or province

Applicable Large Employer Member (Employer)

7 Name of employer

9 Street address (including room or suite no.)

11 City or town

12 State or province

2 Social security number (SSN)

6 Country and ZIP or foreign postal code

8 Employer identification number (EIN)

10 Contact telephone number

13 Country and ZIP or foreign postal code

Part II Employee Offer and Coverage

14 Offer of Coverage (enter required code)

15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage

16 Applicable Section 4980H Safe Harbor (enter code, if applicable)

Plan Start Month (Enter 2-digit number):

All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

Part III Covered Individuals

If Employer provided self-insured coverage, check the box and enter the information for each covered individual.

	(a) Name of covered individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
					Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ACA Transmittal

- Forms 1095-B must be accompanied by a Form 1094-B transmittal when filed with the IRS
- Forms 1095-C must be accompanied by a Form 1094-C transmittal when filed with the IRS

ACA Transmittal

- Who can file with the IRS on behalf of the employer?
 - ALE members are permitted to contract with and use third parties to facilitate filing returns and furnishing employee statements to comply with section 6056.
 - ALE members remain responsible for reporting under section 6056, with the exception of certain governmental unit applicable large employers.
 - To the extent the other party that prepares returns or statements required under section 6056 is a tax return preparer, it will be subject to the requirements generally applicable to return preparers.
- Form 1094-C must be signed under penalties of perjury
 - Who can sign the form on behalf of the employer?

ACA Transmittal Tips

- Each employer may file multiple groups of Forms 1095-C with multiple Forms 1094-C
- However, each employer subject to 4980H must file at least one Form 1094-C
- One “authoritative” Form 1094-C must be filed for each employer subject to 4980H
- Parts II, III, and IV of Form 1094-C should only be completed on the authoritative Form 1094-C

ACA REPORTING PITFALLS

ACA Reporting Pitfalls: TIN Solicitation

- Notice 2015-68 acknowledges that the current TIN solicitation rules are not tailored to enrollment, application, and renewal process for health care and do not easily translate to Section 6055 and 6056
 - For written annual solicitations, must a separate Form W-9 be included for each covered individual with a missing TIN?
 - Must annual solicitations be made to each covered individual or to the responsible individual for all covered individuals?
 - What about children? Spouses? Former spouses?
 - Can insurers solicit TINs from employers?
 - Can employers solicit spouse and dependent TINs from employees?
- Expanded TIN Matching Program is needed

ACA Reporting Pitfalls: Who is the Employer?

- The reporting entity for purposes of Section 6056 is the common law employer, even if a third-party (such as another member of the controlled group) actually does the reporting.
- The common law employer must be identified in Part I of Form 1095-C as the employer, and each common law employer must file a Form 1094-C.
- This differs from many common payroll practices. Many companies may use a “common paymaster” to consolidate employment tax reporting for multiple entities. Similarly, they may use a designated agent under section 3504 to report for all of the employers within a controlled group.

ACA Reporting Pitfalls: Who is the Employer?

- The common-law employer is determined under a 20-factor test under IRS Rev. Rul. 87-41.
- It is unclear how strictly the IRS will apply this in the ACA context.
- Application to workers hired through staffing firms is particularly challenging.
- Treas. Reg. § 54.4980H-4(b)(2) permits the common law employer to treat an offer of coverage by a staffing firm as an offer of coverage by the employer. Does making use of this provision obligate the worksite employer to report under Section 6056?

ACA Reporting Pitfalls: Who is the Employer?

- In the future, the IRS intends to match Forms 1095-B and Forms 1095-C filed for insured coverage.
- The key to this will be the employer identified in Part II of Form 1095-B by the insurer.
- Insurers are unsure whose information to report in Part II (Employer-Sponsored Coverage) of Form 1095-B
 - Common law employer of each individual receiving coverage through a MEWA or association plan
 - Common law employer of each individual receiving coverage sponsored by a single-member of a controlled group

ACA Reporting Pitfalls: Multiple Employers

- Mistakes can occur when an employee works for more than one employer within an ALE group at a time or moves between companies within the year
- One form 1095-C for each employee of each employer
 - If a full-time employee works for two different ALE members during the year, each ALE member may have to file a Form 1095-C
 - If the full-time employee works for two different ALE members during the same month, the employee is treated as an employee of only the employer for whom the employee performs the most hours
 - The employer for whom the employee worked the most is required to report for the month. As a result, employees may move back and forth between two different Forms 1095-C during the year.

ACA Reporting Pitfalls: COBRA Troubles

Reporting for COBRA enrollees has changed

- Previously, the correct reporting depended upon the reason the employee was eligible for COBRA coverage, whether the employee enrolled in coverage, and who was enrolled in coverage (employee only, employee and spouse, etc.).
- An offer of COBRA coverage to a *former employee* is no longer reported as an offer of coverage in Part II of Form 1095-C (Code 1H indicating no offer of coverage is used)
- An offer of COBRA coverage to an *active employee* is reported in the same manner as an offer of regular coverage
- Even if Code 1H is used in Part II of Form 1095-C, coverage must be reported in Part III if the coverage is self-funded

ACA Reporting Pitfalls: Supplemental Troubles

Reporting is not required for MEC that is supplemental to other MEC coverage, but:

- Only if the supplemental coverage and the other MEC have the same sponsor, i.e. an HRA and group health plan coverage through the same employer.
- Or if the coverage is designed to be supplemental to Medicare or TRICARE supplements and Medicaid coverage providing benefits only to an individual enrolled in other coverage. In other words, a Medicare supplement provided to a post-65 retiree is not required to be reported, but an HRA for a post-65 retiree *is required to be reported*.

ACA Reporting Pitfalls: Correction Troubles

- Corrections are required throughout the limitation period (generally, three years).
- This can result in the need to correct returns in multiple years, when the error is discovered long after the initial mistake.
- Corrections will routinely be required for retroactive enrollments and changes as a result of status events, *e.g.*, new dependents.
- Corrections must be filed at least every 30 days to show that a filer acted in a responsible manner.

ACA Reporting Pitfalls: Data Troubles

- Section 6056 reporting will require coordination between numerous parties: employer, TPAs, insurers, multiemployer plans, etc.
- The tight reporting deadline (January 31 for copies furnished to employees) makes this even more challenging.
- Insurers will be soliciting TINs from employees for insured coverage and coordination will be required to ensure that correct TINs in their systems are not overridden by the employer during open enrollment.

ACA Reporting Pitfalls: M&A Troubles

Lack of guidance concerning mergers and acquisitions

- When do non-ALEs become ALEs as a result of a merger or acquisition?
- Example 1:
 - Company A and Company B, each with 30 FTEs, merge with only Company A surviving. Is Company A subject to 4980H and 6056 reporting for the year of the merger?
 - Assume instead that both entities survive the merger with Company B becoming a subsidiary of Company A. Is the result different?
- Example 2:
 - Company A is an ALE member and acquires Company B, which has 30 employees, on July 1, 2016. Company B was not an ALE member before the merger. When does 4980H apply to Company B? What is the correct reporting for section 6056? Does it matter if Company B offered MEC before the merger?

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