

## How to Meet ACA Reporting Requirements

Properly prepare forms and file reports to avoid potential penalties

BY ROBERT S. SHEEN



**T**he Affordable Care Act resulted in several sections being added to the Internal Revenue Code that require employers to prepare and file certain reports related to the ACA. At the beginning of each year, employers must complete, furnish to their employees and file with the IRS forms in the 1094 and 1095 series.

These forms enable the IRS to reconcile subsidies to individuals who obtain health coverage through the Health Insurance Marketplace with information reported by employers and to verify whether their employers are subject to penalties under the Employer Mandate provisions of the ACA.

These subsidies, in the form of premium tax credits or cost-sharing assistance, are granted to lower-income individuals who obtain health coverage through a marketplace. If these individuals are employed and are not offered minimum essential coverage by their employers, or that coverage does not meet minimum value or affordability thresholds, the employer can be subject to penalties.

Employers who do not offer their full-time employees coverage that meets these thresholds may be subject to Employer Mandate penalties. For 2015, these include a non-tax-deductible penalty of \$2,080 for each full-time employee who is not offered minimum essential coverage if at least one such employee obtains a subsidy. There is also a penalty of \$3,120 for every full-time employee who obtains a subsidy and is not offered affordable and minimum value coverage.

When a subsidy is issued to an employed individual, a notice is sent to the employer about the potential penalty. The employer then has 90 days to appeal a subsidy that was erroneously granted.

### REPORTING PENALTIES

The ACA can also trigger reporting penalties. For example, failure to file the 1094/1095 schedule forms can result in hefty penalties. Penalties can be imposed for failing to file correct and complete information in a return, or for failing to

furnish complete and correct information in statements. These penalties were substantially increased as a result of a change in the law that went into effect on June 29.

The penalty for failing to file forms on time or failing to file correct, complete information is \$250 per return. The cap on all such failures is now \$3,000,000. This increase also applies to penalties for the failure to furnish complete, correct information in statements.

Reporting penalties can be reduced if the employer files corrected returns by certain dates. If the corrections are made within 30 days after the required filing date, the penalty of \$250 is reduced to \$50 per return, with a maximum of \$500,000. If the corrections are made by August 1, the penalty is \$100 per return, with a maximum of \$1,500,000.

The cap on total penalties is lower for employers with gross revenues of no more than \$5,000,000. This cap is \$1,000,000 for failing to timely file correct, complete information, \$175,000 for corrections made within 30 days of filing deadline and \$500,000 for corrections made by August 1. If an employer is found to have intentionally disregarded ACA reporting requirements, penalties are up to \$500 per return. There is no cap on total penalties.

## DATA REQUIREMENTS

So, what kind of information will you have to collect in order to complete these 1094/1095 schedules? Generally, you will need data pulled from your company's human resources, payroll and employee benefits departments. HR data required will include information about the company's policies regarding eligibility for health care coverage, such as waiting periods and orientation periods. Payroll data should include each employee's hours of service, wages, hire and termination dates and the dates of any unpaid leave. Employee benefits should provide the type of health insurance coverage the company offered, when it provided each employee with notice of an offer of coverage, whether spouses and dependent(s)

are covered, the specific benefits provided under the offered coverage and the costs for this coverage to the employee.

## IRS FORMS

As an employer, you will have to fill out and file forms in the 1094 and 1095 series. Forms 1094-B and 1095-C must be distributed to all applicable individuals by January 31, 2016. These forms, along with the corresponding transmittals consisting of Forms 1094-C and 1094-B, must be filed with the IRS. The deadline for filing is February 29, 2016, if you file on paper, or March 31, 2016, if you use electronic filing. Employers with 250 or more returns must file electronically.

For employers, the requirements for filing forms in the 1094 and 1095 series will vary depending on whether the employer's health plan is fully funded or self-funded and whether the employer is deemed to be an Applicable Large Employer (ALE). An ALE is an employer with at least 50 full-time or full-time-equivalent employees (FTEs).

Both fully funded and self-funded ALEs need to file the 1094-C and 1095-C forms. The 1094-C form is a transmittal that identifies the filer, the full-time employee count, the offer of coverage made and whether any transitional relief applies on a monthly basis under Section 4980H of the Internal Revenue Code. It must also detail the members of an aggregated ALE—that is, if your company is part of a “controlled group,” meaning two or more companies that are connected through common ownership. There are several allowable types of coverage offers to employees, including:

1. The Qualifying Offer Method and Qualifying Method Transition Relief, both based on offers that meet the federal poverty level safe-harbor
2. The Section 4980H Transition Relief Method, which applies to ALEs with fewer than 100 FTEs and to larger ALEs that offer coverage to at least 70 percent of all full-time employees
3. The 98 Percent Offer Method, which applies to ALEs that offer coverage that satisfies both affordable and

minimum value requirements to 98 percent of all full-time employees

The transition relief only applies for the 2015 tax year. Form 1095-C is both filed with the IRS and distributed to each applicable employee. The return must include identifying and contact information for each full-time employee, identification and nature of the Qualifying Offer, and any application of Section 4980H safe harbor for each month. The identification and nature of the Qualifying Offer for each full-time employee requires the following information:

- Whether an offer was made to the full-time employee, his/her spouse and his/her dependent(s)
- Whether the offer satisfied minimum essential coverage
- Whether the offer meets the federal-poverty-level safe-harbor
- Whether the coverage provides minimum essential coverage and whether the coverage satisfies minimum value as to the full-time employee, his/her spouse and dependent(s)
- Amount of the lowest cost monthly premium for self-only, minimum value coverage
- Whether an offer was made to an employee who was not full time and who enrolled in self-insured coverage

If the employer claims safe harbor relief under Section 4980H, the following is required for each full-time employee:

- The months each employee was employed and the months in which the employee was offered affordable and minimum value coverage
- Whether the employee was enrolled in minimum essential coverage
- Whether the employee was offered minimum essential coverage but did not enroll
- Whether the employee was in a limited, non-assessment period, such as the initial measurement period
- Whether coverage ended due to termination of the employee
- If a safe harbor applies and which one
- Whether non-calendar-year plan

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- transitional relief applies
- Whether coverage is through a multi-employer plan and the details of that plan

Self-insured ALEs have the additional requirement of providing identifying information about each covered individual, including an employee's spouse and dependents. This includes each person's social security number or, if unavailable, his/her date of birth and months of coverage. Insurers and self-insured non-ALEs must file Forms 1094-B and 1095-B forms. 1094-B is a transmittal identifying the filer and the number of 1095-B forms submitted to the IRS with the transmittal. 1095-B is a disclosure form that must be provided to each insured employee. Required disclosures include the identification of the plan, each covered individual, his/her information, his/her covered spouse and dependent information and the months of coverage for each covered individual and his/her spouse and dependents.

The disclosures, consisting of Forms 1094-B and 1095-C, must be distributed to all applicable individuals by January 31, 2016. These forms, along with the corresponding transmittal Forms 1094-C and 1094-B, must be filed with the IRS by February 29, 2016, if filed on paper or March 31, 2016, if filed electronically. Employers with at 250 or more returns must file electronically. Yet another ACA reporting-related form is 1095-A, which employers should be aware of, but do not have to prepare. Form 1095-A is filed by the Health Insurance Marketplaces.

### IRS AUDIT AND EXCHANGE NOTICES

The 1094/1095 schedules are intended to enable the IRS to reconcile with an individual's reporting of health care coverage, including whether the individual properly obtained a premium tax credit. These premium tax credits can trigger the imposition of Employer Mandate penalties. If the IRS audits your ACA-related filings, it is important for you to have documentation supporting your 1094/1095 schedules. Potential proofs of offer of coverage may include such documents as a form acknowledging the offer, a summary of benefits and coverage and a payroll summary. On the acknowledgement form, the timing of the date of the offer and the date when coverage will take effect are both important. The form should also include the cost for self-only coverage and whether spouses and dependents are covered.

The summary of benefits and coverage should include a statement by the insurer that the coverage satisfied the minimum value requirement. A payroll summary may be necessary to show that the cost of coverage satisfied the affordability threshold.

Notably, prior to an IRS audit, an Exchange is expected to send the employer a notice indicating that an employee has claimed a premium tax credit because the employer failed to provide the requisite offer of coverage, the coverage did not meet minimum value or it was not affordable. The employer has only 90 days to dispute the claim with the Exchange. It is important to have documents ready to prove that an offer was made to the employee that satisfied these ACA requirements. **CBO**

*This article is the fifth in a five-part series in which Robert Sheen provides essential information about the Affordable Care Act and what it means for your company's business operations.*

*Robert S. Sheen is founder and president of First Capital Consulting Inc., which advises employers nationwide on issues related to the Affordable Care Act. He is also editor-in-chief of The ACA Times ([acatimes.com](http://acatimes.com)), an online news and information journal about the law.*





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