



# ACA Employer Reporting Review: What's New, What's Confusing

**Presented by Trey Tompkins  
Admin America, Inc.**

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# TODAY'S PRESENTER

## **Trey Tompkins, President of Admin America, Inc.**



Trey Tompkins serves as President of Admin America, Inc. Admin America is based in Alpharetta, Georgia and is an independent administrator and consultant for ERISA plans including Section 125 Flexible Benefit Plans, Section 105 Health Reimbursement Arrangements and COBRA. Admin America works primarily with small to medium-sized employers. In addition to managing Admin America's 20 full-time benefit professionals, Trey's area of expertise is providing plan design and compliance consulting services for clients and their benefits advisors. Prior to taking on his current position in 2007, Trey served as the in-house legal counsel for Admin America beginning in 1996.

Trey is a native of Atlanta. He earned an undergraduate degree from Vanderbilt University, a J.D. degree from the University of Georgia School of Law and an MBA degree from Georgia State University's J. Mack Robinson College of Business. Prior to joining Admin America, Trey worked in private legal practice in metropolitan Atlanta.

Trey is a frequent Continuing Education presenter to health insurance professionals around the country regarding federal rules governing group health plans, including the effects of federal health care reform within the small group health plan marketplace. Additionally, Trey's role at Admin America has allowed him to present employee benefit plans to thousands of employees through their employers' open enrollment education meetings.

Trey has previously served as President of NAHU's Georgia and Atlanta Chapters and other various board positions within the organization's state and local chapters and currently serves as the Georgia Chapter's Ethics Chairman. Trey is a past Chairman and Treasurer of the Political Action Committee affiliated with NAHU's Georgia Chapter (GAHUPAC). He currently serves on NAHU's national Legislative Council and its Employer Based Plans Subcommittee and has been a contributor to the America's Health Insurance Plans (AHIP) published series on Employee Healthcare Benefits.

# ACA Employer Reporting Review: What's New, What Confusing

1. Review of Current (and Past) Due Dates and Related Issues
2. Considerations For Groups That Failed To File in Prior Years
3. Extensions (?)
4. Status of Penalty Notices from Prior Years
5. 2017 Plan Year Form Changes
6. The Most Important Rule Change – Good Faith Compliance
7. Offer of Coverage Code Issues (Form 1095-C, Line 14)
8. Required Contribution Issues (Form 1095-C, Line 15)
9. Safe Harbor Issues (Form 1095-C, Line 16)
10. Other Miscellaneous Recommendations

# What Are The Due Dates For The Filings?

- As the rules currently stand, forms must be delivered to individuals by the end of January 2018
- Forms must be filed with the IRS by the end of February 2018 (paper) or by the end of March 2018 (electronic)
- Deadlines are subject to extensions until the next business day if the deadline falls on a non-business day (applies to the March 31 deadline so it is really April 2)
- Last year's deadlines – just to review
  - The deadline for delivery to individuals was March 2, 2017
  - The filing deadline with the IRS was March 31, 2017 for electronic delivery and February 28, 2017 for paper submissions via mail

# The Main Problem With This Year's January 31 Deadline

- Employers who need utilize the W-2 affordability safe harbor can't finalize their filings until they receive their W-2 data
- Some employers don't receive this data until late January
- The relevant data is Box 1 of each employee's W-2
  - Box 1 is an employee's actual earnings reduced by retirement plan withholdings and Section 125 deductions so it's not easy to calculate in advance
  - The W-2 safe harbor generally allows employers to charge employees the most for coverage while remaining affordable so its often necessary to wait for this data
- Accurate information is imperative because Good Faith Penalty relief no longer applies for inaccurate submissions

# Recommendations Regarding W-2 Data

- Employers need to know when they will have access to their W-2 data
  - If a third party payroll vendor is involved, find out in advance when delivery is expected
- Evaluate the possibility of using the Federal Poverty Line or Rate of Pay Safe Harbors instead of the W-2 Safe Harbor
- If the W-2 Safe Harbor will be needed, identify the employees in advance for whom exact data is needed and complete the forms for other employees in advance
- If data will not be available until too close to the January 31 deadline, file a request with the IRS for an extension of time to deliver forms to employees before January 31



# What If We Still Haven't Filed For Last Year?

- Employers who simply did not file for 2015 or 2016 are currently facing penalties of **\$250 and/or \$260 per form** (depending on the year) for failure to deliver to employees as well as duplicate penalties for failure to file the forms with the IRS
  - The penalty is only \$50 per form if the delinquency is corrected within 30 days of due date (but doubled to account for failure to deliver and failure to file)
  - The penalty is only \$100 per form if the delinquency is corrected more than 30 days after the due date but before August 1 of that year (but doubled to account for failure to deliver and failure to file)



# Late Filing Considerations

- Obviously filing now brings the tardiness of an employer's filing to the IRS's attention
- Penalties for failure to file do not increase over time after August 1 of the year for which they were due... except
- Filing now avoids possible exposure to an even higher penalty reserved for employers who willfully refuse to comply with their reporting obligation **(\$520 per form)**
- Employers who are counting on a lack of enforcement by the IRS should consider the recent guidance regarding penalty assessments related to 2015 employer shared responsibility non-compliance

# What If We Need More Time Year?

- For Statements Due To Employees on January 31, 2018...
  - Extensions are requested via letter mailed to IRS prior to January 31
  - There is not a specific form to be used
  - Reason for extension request must be provided (no access to W-2 data)
  - Approved extensions are valid for 30 days but are not automatic
  - You don't know if an extension request is denied until it's too late
- IRS Filings (Due February 28 or April 2)
  - **Form 8809** mailed to IRS by applicable deadline date
  - Automatic 30 day extension to file Forms 1094-C and 1095-C

# Prospects For Automatic Extensions This Year

- NAHU staff recently met with Treasury/IRS officials and asked about the possibility of another extension this year
  - the officials refused to say one way or the other
  - NAHU staff had the feeling more information might be coming
- For reference, the extensions announced in prior years were:
  - for 2015's filings in 2016, IRS Notice 2016-4 issued on **December 28, 2015** granted a 2 month extension
  - For 2016's filings in 2017, IRS Notice 2016-70 issued on **November 18, 2015** granted a 1 month extension
- Remember that this is a different Presidential administration

# What Is The Status of IRS Penalty Notices?

- For failure to meet Employer Shared Responsibility obligations:
  - On Thursday November 2, the IRS updated its online Employer Mandate guidance to indicate it would be notifying employers in late 2017 regarding penalties that it believes are owed for 2015
  - Notices will be sent via **Letter 226J**
  - Employers will be given 30 days to contest the IRS's findings before liability is assessed and a notice and demand for payment is issued
- For failure to comply with Employer Reporting obligations:
  - No update

# What If We Receive A Notice From A Marketplace Regarding An Employee Receiving A Subsidy?

- The notices employers receive from the Marketplace through which your employee received a subsidy are not penalty assessments.
  - Penalties can only be assessed by the IRS through **Letter 226J**
- They are only notices that an employee has received a subsidy which may in turn trigger a penalty.
- Employers can appeal inappropriate employee subsidies directly to the Marketplace in order to prevent likelihood of a future IRS assessment
- Appeal forms can be obtained online at:  
<https://www.healthcare.gov/downloads/marketplace-employer-appeal-form.pdf>

# How Did The 1094 and 1095 Forms Change For This Year?

- 1094-C Form
  - Removal of Box C on Line 22 (“Section 4980H Transition Relief”) as there is no available Transitional Relief for 2017
    - Box B (“Qualifying Offer Method Transition Relief”) was removed last year as that relief was only for 2015
  - Column (e) for Lines 23-35 in Part III has been removed for same reason as Line 22, Box C
- 1095-C Form
  - “Plan Start Month” box remains optional for 2017 although it had been reported last year that it would be mandatory this year
- There are no changes to the 1094-B or 1095-B Forms

# Form 1094-C (Page 1)

120118

Form **1094-C**Department of the Treasury  
Internal Revenue Service**Transmittal of Employer-Provided Health Insurance Offer and  
Coverage Information Returns**▶ Go to [www.irs.gov/Form1094C](http://www.irs.gov/Form1094C) for instructions and the latest information.☐ CORRECTED

OMB No. 1545-2251

**2017****Part I Applicable Large Employer Member (ALE Member)**

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)	
3 Street address (including room or suite no.)			
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	
7 Name of person to contact		8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)	
11 Street address (including room or suite no.)			
12 City or town	13 State or province	14 Country and ZIP or foreign postal code	
15 Name of person to contact		16 Contact telephone number	
17 Reserved			

**For Official Use Only**

18 Total number of Forms 1095-C submitted with this transmittal ▶

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions ☐

**Part II ALE Member Information**

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member ▶

21 Is ALE Member a member of an Aggregated ALE Group? ☐ Yes ☐ No

If "No," do not complete Part IV.

**22 Certifications of Eligibility (select all that apply):**

☐ A. Qualifying Offer Method ☐ B. Reserved ☐ C. Reserved ☐ D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature Title Date

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 61571A

Form **1094-C** (2017)



# Form 1094-C (Page 2)

120218

Form 1094-C (2017)

Page 2

## Part III ALE Member Information—Monthly

	(a) Minimum Essential Coverage Offer Indicator		(b) Section 4980H Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Reserved
	Yes	No				
23 All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24 Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25 Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26 Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27 Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28 May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29 June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30 July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31 Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32 Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
33 Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
34 Nov	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
35 Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

Form 1094-C (2017)

# Form 1095-C

600117

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

## Employer-Provided Health Insurance Offer and Coverage

Do not attach to your tax return. Keep for your records.

Go to [www.irs.gov/Form1095C](http://www.irs.gov/Form1095C) for instructions and the latest information.

☐ VOID

☐ CORRECTED

OMB No. 1545-2251

**2017**

### Part I Employee

1 Name of employee		2 Social security number (SSN)		7 Name of employer				8 Employer identification number (EIN)			
3 Street address (including apartment no.)				9 Street address (including room or suite no.)				10 Contact telephone number			
4 City or town	5 State or province	6 Country and ZIP or foreign postal code		11 City or town		12 State or province	13 Country and ZIP or foreign postal code				

### Part II Employee Offer of Coverage

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Required Contribution (see instructions)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)													

Plan Start Month (Enter 2-digit number):

### Part III Covered Individuals

If Employer provided self-insured coverage, check the box and enter the information for each individual enrolled in coverage, including the employee. ☐

(a) Name of covered individual(s)	(b) SSN or other TIN	(c) DOB (if SSN or other TIN 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"/>
19			<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"/>
20			<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"/>
21			<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"/>
22			<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"/>

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form **1095-C** (2017)

# What Is The Biggest Rule Change That Affects This Year's Filings?

- The penalty relief protections offered for **Good Faith Compliance** were extended to last year's filings by IRS Notice 2016-70 (issued in November)
- No such announcement has been made for this year (so far)
- Under Good Faith Compliance relief, penalties will not be assessed for incorrect or incomplete information when employers can show they made good faith efforts to comply with the reporting requirements.
  - The relief applies to missing and inaccurate TINs and dates of birth and other required information.
  - Evidence of good faith efforts may include:
    - gathering necessary data and transmitting it to a third party
    - testing the ability to transmit data to the IRS, and
    - taking steps to ensure compliance for the following year

# Line 14 Offer of Coverage Codes

- Code List:
- 1A – MEC, MV, **FPL Affordable**, Family Eligibility
  - 1B – MEC, MV, Employee Only (**typically COBRA situations**)
  - 1C – MEC, MV for Employee; MEC for Dependents
  - 1D – MEC, MV for Employee; MEC for Spouse (**unconditioned**)
  - 1E – MEC and MV for Employee; MEC for Spouse and Deps.  
(**also unconditioned**)
  - 1F – MEC only offered to Employee and anyone else
  - 1G – Offer of self-insured coverage enrolled in by a non-full-time employee (**could be a part-time employee, a contractor, a self-employed individual or a retiree**)  
(applies only on a full-year basis)
  - 1H – No offer of coverage (or coverage that is not MEC)
  - 1I – Reserved
  - 1J – MEC, MV for Employee with conditional MEC offer to spouse (with no coverage offer to dependents)
  - 1K – MEC, MV for Employee, MEC for Dependents and conditional MEC offer to spouse

# Other Tricky Line 14 Offer of Coverage Issues

- COBRA Participants
  - For terminated employees (and their dependents), use Code 1H (No offer of coverage) with Code 2A on line 16
  - For current employees eligible for COBRA (and their COBRA eligible Dependents) use the appropriate Code for the offer (i.e. who was actually eligible to elect COBRA for those months)
- Retiree coverage is not reported as an offer of coverage (1H on Line 14 and 2A on Line 16).

# Line 15 Required Contribution Issues

- Only complete Line 15 if the Line 14 response is 1B, 1C, 1D, 1E, 1J or 1K
- The reporting rules allow for smoothing reported premiums evenly across months within a plan year for employees who pay for coverage on a weekly or bi-weekly basis
- A common data collection issue is employers often struggle to report an eligible employee's required contribution when they waived coverage is a plan that utilizes age rating. Extra advance effort needs to be planned for these groups
- Wellness Program Incentives
  - Discounted contributions for participating are generally not considered (i.e., you report the contribution as if the wellness incentive was not earned)
  - Unless the program is designed to prevent tobacco use

# Other Line 15 Required Contribution Issues

- IRS Notice 2015-87 covers additional situations that affect required contributions
  - Flex Credits generally reduce the reported cost of coverage unless:
    - the credits can be used to purchase non-health coverage (such as DCAP or GTL) or can be cashed out or contributed to a HSA
    - the Plan Year began before 1/1/17 (under Transitional Relief)
  - Opt Out Payments generally increase the reported cost of coverage unless:
    - they are conditioned on providing other coverage
    - they are part of a CBA entered into before 12/16/15
    - the unconditional arrangement began before 12/16/15
  - Prevailing Wage Laws
    - amounts paid to satisfy these laws are considered to reduce the cost of coverage even if they are paid in cash to employees who waive coverage



# Line 16 Safe Harbor Codes

- 2A – Employee not employed during the month
- 2B – Employee not a full-time employee
- 2C – Employee enrolled in health coverage offered
- 2D – Employee in a Limited Non-Assessment Period
- 2E – Multiemployer interim rule relief (Union employees)
- 2F – W-2 Safe Harbor
- 2G – Federal Poverty Line Safe Harbor
- 2H – Rate of Pay Safe Harbor
- Usage priority (2A, 2B, 2E, 2C, then whichever of the others apply)

# Line 16 Safe Harbor Code Considerations

- Line 16 can be blank (and sometimes should be) but when it is, it predicts a penalty assessment for the employer
- No affordability safe harbor code (2F, 2G, or 2H) can be used for months the employer did not offer MEC to 95% of their full-time employees and dependents
- There is no specific code to enter for a waiver of offered coverage but typically one of the affordability safe harbor codes will apply (sometimes not though)
- Code 2B is use for mid-month employment terminations (when coverage eligibility ends as of the date of employment termination)
- Do not use Code 2C (enrolled in coverage) for ex-employee COBRA continuees and do not use Code 2C if the coverage was not for the entire month
- Use Code 2D for all Limited Non-Assessment Periods except for employees to which Code 2E Multiemployer Interim Rule Relief applies (union employees)

# Review of Current Limited Non-Assessment Periods

- Limited Non-Assessment Periods are only applicable if at the end of the period the employer offers coverage as of the first of the month following the period
- Additionally, all but the first LNAP requires that the offered coverage meet the Minimum Value standard in order to qualify
- The available Limited Non-Assessment Periods are:
  - The first calendar month of employment
  - January – March of the first year the employer is an ALE (and only if the employee was not offered coverage at any time during the prior year)
  - Waiting Period under the Monthly Measurement Period
  - Waiting Period under the Look-Back Measurement Period (for non-variable hour employees only)
  - Initial Measurement Period and Associated Administrative Period under the Look-Back Measurement Period (for variable hour employees only)
  - Period Following Change In Status Occurring During Initial Measurement Period Under the Look-Back Measurement Method (up to 3 calendar months)

# Other Affordability Considerations

- The affordability threshold percentage for 2017 is 9.69%
  - It was 9.66% in 2016 and will be 9.56% in 2018
  - The percentage is based on the rate of projected premium growth relative to the rate of projected personal income growth.
- If the W-2 Safe Harbor is used for an employee, it must be used for each month the employee was offered coverage
- For partial year employees, the W-2 safe harbor can be applied using a fraction of the employee's W-2 wages compared to the cost of their coverage for the months they would have been eligible
  - The fraction is the number of months the employee was eligible divided by the number of months the employee was employed (In either case, a single day equal a full month)

# Maintaining Documentation of Reported Data

- Employers should prepare and maintain detailed records to support the information reported on their 1094 and 1095 filings.
  - Maintaining complete records will help the employer in the event of an IRS examination regarding the accuracy of its filings
  - Well maintained records may also help the employer in the event they must dispute a penalty calculation presented in a Letter 226J
- IRS guidance is that the records should be maintained for at least three years from the due date of the filings (late filers should maintain their records at least three years from their filing date)

# Recommended Documents To Retain

- Employers should retain documentation their selection of which affordability safe harbor they applied to their eligible employees
- They should also retain records of any calculations regarding the benefits eligibility of variable hour employees
- In addition, employers should retain the necessary payroll, open enrollment and demographic records needed to document the data reported in the individual 1095 filings as well as their 1094 transmittal

# One Final Recommendation

- Invest time in making sure employee names match Social Security records
- To the extent possible, make sure employees are providing accurate information to the employer
  - Exact names
  - Name changes following marriages and divorces
  - Correct Social Security numbers



# Employer Reporting – Next Steps

1. Determine your company's filing requirements for 2017 now.
2. Identify required data collection needed to complete required forms.
3. Determine your organization's likely best affordability safe harbor and take appropriate steps particularly if you will be using a W2 safe harbor.
4. Address any shortfall in current data collection immediately.
5. Implement necessary data retention process.
6. Identify Form preparation providers or resources: payroll company, CPA, software product.
7. Determine with your preparation provider if AIR Registration is necessary.
8. Schedule preparation, employee distribution and filing of returns with the IRS for early 2018 as appropriate.

# Presenter Contact Info



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**Please visit our website at:**

**[www.adminamerica.com](http://www.adminamerica.com)**

The logo for NAHUI is located in the bottom left corner. It consists of the letters 'NAHUI' in a bold, sans-serif font, with a stylized blue and red wave graphic underneath the letters.

# Questions?