

Reporting Requirements Mandated Under IRC Sections 6055 and 6056 Webinar

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**For the National Association of Health Underwriters
Legislative Council Compliance Corner Committee**

Frequently Asked Questions Follow-Up

Thank you for participating in NAHU's recent webinar reviewing the new health coverage reporting requirements mandated by the Affordable Care Act. We appreciate the great level of interest the webinar generated. During and after the webinar, NAHU received almost 200 follow-up questions. This document contains answers to many of those questions.

We have attempted to index the question into a consistent format to make it easier to use. Some duplicative questions have been consolidated for brevity but some other similar questions are repeated where there may be a distinction that needs to be made.

Throughout the responses, instead of focusing on small or large group status or the number of employees, we refer to an employer's status as an Applicable Large Employer (ALE) member. The reporting obligations discussed hinge on that status as opposed to other classifications that health plans are often affected by.

Important Notice: The responses to the questions below are to assist NAHU members with understanding the compliance issues related to the reporting requirements mandated under Section 6055 and 6056 of the U.S. Internal Revenue Code. It is not intended as legal, financial or tax advice from NAHU, Admin America, Inc. or the author, and neither NAHU, Admin America, Inc. nor the author make any warranties concerning the contents. Employers should seek the advice of their independent legal and tax advisors to determine the application of Sections 6055 and 6056 to their own specific circumstance.

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Frequently Asked Questions Follow-Up

Definitions and Concepts

Q: ALEs stand for....? **A:** Applicable Large Employer

Q: Isn't an ALE defined as 50 or more employees? **A:** Generally ALEs are employers with 50 or more Full Time Equivalent employees during the previous calendar year but ALE members could be smaller as they could have less than 50 FTEs but belong to a controlled group of companies with 50 or more FTEs

Q: What is an ALE Member? **A:** An ALE Member is an employer that is an ALE, or if applicable, each employer that is a member of an Aggregated ALE Group.

Q: What is an Aggregated ALE Group? **A:** An Aggregated ALE Group refers to a group of employers treated as a single employer under section 414(b), 414(c), 414(m) or 414(o) of the Internal Revenue Code.

Q: Where and how is an employer able to determine if they are part of a control group? **A:** Groups should consult their owner. Every owner knows if they are owned by someone else because they must provide income tax information to their owner in some fashion each year.

Q: What % of ownership needs to be in place to be considered part of a control group? **A:** There are a couple of different ownership percentages that result in an organization being deemed to be "controlled by another group". The details are beyond the scope of this discussion but some structures to look out for are when another organization owns 80% or more of the employer or when the stock holdings of five or fewer individuals exceed 80% of multiple employers.

Q: How does the IRS know if an ALE is a part of a controlled group? Most of my clients don't know the whole list of their subsidiary or affiliated members. **A:** Part IV of Form 1094-C requires ALE members to identify their fellow members (or at least their 30 largest co-members, as measured by average employee count). In this way, most ALE members of any significant size will be identified for them.

Q: What if an employer doesn't become a large group, over 50, until May or August. Are they exempt until next year or would they have to start reporting on the month they are over 50? **A:** There is no mid-year exemption to the filing requirements, per se. However, a group that increases its headcount above 50 FTEs mid-year likely is not considered an ALE for the year in which such a headcount increase occurs. Generally, if an employer is not part of controlled group, its status as an ALE is determined on a calendar year basis. There are special rules for

determining the ALE status for new employers during their first of existence. If a small employer joins a controlled group mid-year, they would become subject to the reporting requirement for that year and would indicate on Form 1095-C, Part III, Column (d) which months it was an ALE member.

The Form Basics

Current Status

Q: From what I am seeing all the forms for the filings are still listed as a Draft. Have they finalized these forms? **A:** No, not yet. We don't have a date yet on the release of the finalized forms or instructions.

Q: What does the “Draft as of August 28, 2014” watermark on the Instructions mean? Is this just when the Instruction page was created? **A:** Yes, that was when the draft Instructions were released by the government. Neither the final Forms nor Instructions have been released yet..

Who Files and Distributes What?

Q: Please confirm that small employers do not have to file any form mentioned in this presentation. **A:** That is not accurate. Small employers that neither sponsor self-insured health plans nor ALE members do not have to file any form mentioned in the presentation.

Q: Is there any employer that will not have to file a form? **A:** Employers who neither are ALE members nor sponsor self-funded health plans are not required to file these forms. If they offer fully-insured coverage, their carrier will do a filing for their covered employees though.

Q: Please confirm that a group that is considered a small group (has less than 50 FTEs) during the calendar year 2014 should follow the rules of a small group for 2015 even if they expect hire a significant number of employee and will average over 100 in the calendar year 2015. **A:** This is correct. Assuming the group was not part of a controlled group and had less than 50 FTEs in 2014, they will not be considered to be an ALE member for 2015 (and therefore not have filing requirements in early 2016 unless they sponsor a self-insured plan).

Q: It was asked, but basically all that was talked about was common ownership companies. It has been 50 FTE's = Large. But I thought that changed to 100 FTE's to be deemed large. I think that was also what the other question that was asked, wanted answered. Wasn't there a new category of "mid-size?" **A:** In the webinar “mid-size employers” was used colloquially to discuss those employers that are entitled to the Section 4980H Transition Relief for Employers with 50-99 FTEs. It is not an official term.

Q: For 2015 Reporting are employers with 100+ subject to reporting? And in 2016 it goes down to 50+? **A:** That is not correct. The reporting requirement remains consistent for 2015 (with reporting in early 2016) and future years. Employers that are ALE members and/or that sponsor self-insured plans must report. The 50 FTE threshold for determining ALE status applies for 2015. The 100 FTE threshold is irrelevant for determining which employers report when.

Q: If small entity under 50 not part of a controlled group but self-funded do they need to complete the reporting? A. A non-ALE member employer with coverage that is self funded would complete Forms 1094-B and 1095-B.

Q: Do the self-insured reporting requirements apply to those employers that participate in a partial self-funded plan? A. Yes. Reinsurers are not subject to the filing requirements so employers must provide the information.

Q: The payroll companies will actually complete the forms, right? A. It would make sense that they would offer this as a service but so far that is not appearing in the marketplace and it is not their obligation. Regardless, the legal liability for filing the Forms lies with carriers and employers.

Q: What form do we give the employees? ALE Members will give their Full-Time employees a Form 1095-C. Employers that are not ALE Members that provide self-insured coverage will give their covered employees Form 1095-B. Covered employees of employers that are not ALE Members will receive a Form 1095-B from the insurance carrier.

Q: The B forms are only for self-insured groups or insurance carriers, correct? A. Yes, except government coverage (Medicare, Medicaid) will be reporting using them as well.

Q: Do companies over 50 that are fully-insured need to file these forms or will the carrier file them? A. Employers that are ALE members that offer coverage that is fully-insured will complete Forms 1094-C and 1095-C. Insurance carriers never complete the "C" forms.

Q: The chart shows the insurer for groups less than 50 are to file. Who is responsible to file the 1094 b and 1095 b for fully-insured groups over 50? A. The insurer files those forms in that instance also.

Q: Does a small under 50 employer need to do the affordability sections? A. The affordability sections are found in the Form 1095-C. Non ALE Members do not complete that form so they don't have to worry about those sections.

Q: Will self-insured plans fulfill the filing requirements by filing Forms 1094-C and 1095-C only? A. Yes. However if they are not ALE members, they should file 1094-B and 1095-B instead.

Q: If a business is a self-funded ALE do they do both the 1094 & 1095 B & C forms? A. No, you would only complete the 1094-C and 1095-C Forms.

Q: For self-funded groups can they satisfy both 6055 & 6056 on a single return form 1095-C? A. Not quite. If they are an ALE member, they would also need to file at least one Form 1094-C Transmittal along with their 1095-C forms. If they are not an ALE member, they would file Forms 1094-B and 1094-C instead.

Q: Please review the Insurance carrier responsibilities. Do they duplicate the ER forms?

A. Insurance carriers complete Forms 1094-B and 1095-C. ALE members complete Forms 1094-C and 1095-C.

Q: So employers prepare the Form 1095- B or the insurance company? A. For fully-insured plans, the insurance carrier will prepare them. For self-insured plans, the employer will prepare them.

Q: Will the carriers send the 1095-B Forms direct to each employee or will they send to the employer to disperse to their employees? A. The carriers are required to provide Forms 1095-B directly to the employees.

Q: Does Form 1095-B go to each employee or each person covered? A. Form 1095-B goes to each Policy Holder (the employee in group coverage situations) and will list each individual covered under that policy in Part IV.

Q: So with a family of 4, it would be 4 forms? Is every member of the family going to get a 1095-B? A. For group plans, all of the covered family members will be listed on the same 1095-B or 1095-C (depending on whether the plan is fully-insured or self-insured). For individual plans, it is possible family members will receive separate 1095-B forms or that they could be combined on the same form, depending on who the policy holder is.

Q: Can't you send the form to the primary insured? You really don't have to send it to each covered individual, i.e., dependents. A. Correct.

Q: I thought he said the "B" series forms were for individual reporting? Am I confused already? A. The 1094-B and the 1095-B are both related to enforcement of the Individual Mandate.

Q: Who is responsible to file the Form 1094-B and 1095-B for fully-insured groups over 50? A. The insurance carrier is responsible. However, if the group is an ALE member, they will be responsible for filing Forms 1094-C and 1095-C.

Q: Do employers with by fully-insured plans with over 50 employees have to complete anything or is this all done by their insurance carrier A. For fully-insured plans, insurance carriers will always complete Forms 1094 B and 1095 B related to Section 6055 compliance. ALE members will still complete Forms 1094 C and 1095 C related to Section 6056 compliance.

Q: If I am an ALE Member and fully-insured, I have to file the C forms, does the insurance company still file B forms? A. Yes

Q: So the small group employer is required to file? I thought in the beginning he said the insurance carrier for fully-insured plans. A. If the employer is an ALE member they must file Forms 1094-C and 1095-C regardless of their status a small group or large group.

Q: A fully-insured employer that is not an ALE member does not have to file the 1094-C and 1095-C, correct? These forms are to be filed by the insurance carrier only, correct? If so, will the employer have to provide them with a list of employees enrolled on the plan? Otherwise,

how will the insurance carrier know if an employee qualified for and obtained a subsidy from the marketplace? **A. For employers that are not ALE members, there is no 1094-C or 1095-C filing requirement. The insurance company does not need to know if the employee qualified for and obtained a subsidy from the marketplace. Instead, the IRS needs to know if such individuals also have other coverage. That information will be reported to the IRS by the carriers in the Form 1095-B filing.**

Q: To clarify, the insurance company only completes the 1095-B & -C forms and large employers over 100 have to complete the 1094-B & -C Forms. Does the insurance company complete if over 100 employees? **A. Insurance carriers will always complete Forms 1094 B and 1095 B. ALE members will always complete Forms 1094 C and 1095 C. A 100 employee threshold is irrelevant. ALE member status hinges on 50 or more Full Time Equivalent employees.**

Q: What are the responsibilities of filing for a mid size group that's sitting on the bubble of under 50 to over 50 employees throughout 2015? **A. If they are an ALE member, they must file Forms 1094-C and 1095-C. For 2015, ALE status will primarily be determined by their employee count in 2014.**

Q: We were under the impression that fully-insured ALE's were only responsible for the 1095C form, Part I & Part II - and NOT 1094-C. Is this incorrect? **A. No, this is not correct. The 1094-C basically serves as a cover page for all of the employer's 1095-C Forms.**

Q: I thought that a 1095-C was to be filed per Employee. **A. That is correct.**

Q: Does each Form 1095-C get sent to both the IRS and to the Employee? **A. Yes.**

Q: I have a client who offers coverage for employees who work 20+ hrs/week. How do they report for those working under 30 hrs/week if they have coverage? **A. If they are self-funded, they report all Employees who have coverage either on Form 1095-C (if they are an ALE member) or on Form 1095-B (if they are not an ALE member). If they are fully-insured, the carrier will report those individuals on Form 1095-B and the Employer does not report them on Form 1095-C.**

Q: He mentioned that self-funded employers will have to supply employees with 1095-B's because they are the insurer, but aren't self-funded clients that are also ALEs (which most are) supposed to combine their 6055 and 6056 reporting on 1095-C instead of 1095-B? **A. Correct. However those that are not ALE members will supply covered employees with Form 1095-B.**

Q: If a group has a partially self funded plan for a portion of 2015 and they have less than 50 FTEs, do they still have to file the 1094B and 1095 C to their employees for the 1 month they were self-insured? **A. They have to file the 1094-B and 1095-B Forms. Information on the forms will indicate which months the self-insured coverage was in place.**

Q: If children are on the Fed's CHIP (Child Health Insurance Program), do they omit them from the 1094-B filing? **A. Yes. CHIP will file a separate 1094-B for that child and issue the child a**

separate 1095-B.

Q: What about co-employment situations such as staffing firms or PEO's? Who is responsible for Filing and any tax penalties for compliance failures **A:** The answer will depend on who the agreement between the co-employers defines as the "Employer" for federal tax purposes. Absent clear language in the contract, one way to determine who the employer is really is which entity is responsible for paying FICA tax.

Q: You mentioned in a MEWA the employer must file. However, if the MEWA is self-insured, does the responsibility still fall to the employer? **A:** For MEWAs, the draft instructions indicate that each employer participating in a MEWA is responsible for filing for their own employees.

Q: We have clients who are fully-insured and provide coverage to their non-union employees, as well as some who contribute to a MEWA for their union employees. They are not the plan sponsor for the MEWA. Who provides the forms to the union employees in that instance? **A:** Each employer participating in a MEWA is responsible for filing for their own employees.

Q: Do association plans come under the ALE definition? **A:** Having coverage provided through an association plan does not affect the employer's status as an ALE.

Q: Can you address multiple employer groups again that are self-funded. Does each group need to file or does their only need to be one for every group? 1 filing for a captive? **A:** For the B Forms, if you are referring to a multiple employer plan (a plan maintained by more than one employer) each employer is responsible for filing. The same is true for a MEWA. If you are referring to a multiemployer plan (a union plan), the Board of the plan is responsible for filing. For the C Forms, each ALE member is responsible for their own filing regardless of the funding mechanism of the coverage.

Q: Does the Employer have to send the 1095-C to a terminated Employees or COBRA participants? **A:** If the employer is an ALE member and if the individual was a full-time employee at any time during the year, the employer must provide them with a Form 1095-C. If the plan is a self-funded plan, the employer must also provide the Form 1095-C to COBRA participants even if they weren't employed by the employer at any time during the year. If the Employer is not an ALE member, the insurance carrier (or the employer if the plan is self-insured) will provide Form 1095-B to terminated Employees who had coverage at any time during the year. Terminated employees who didn't have coverage at any time during the year won't receive either of the forms if the employer was not an ALE member.

Q: With individuals having to meet the mandate and the tax issues that will no doubt arise this spring, what is the employer's responsibility to report to these employees if they request information? **A:** The purpose of the 1095 Forms is to provide the individuals with the documentation they need to prepare their tax returns. No other information should be required unless an employee would be challenging the accuracy of one of the 1095 Forms. If they are inaccurate, employers do have an obligation to correct them. Otherwise, any other obligations to satisfy information requests would most likely arise out of ERISA (and those always have been very substantial).

Q: Carriers only have an obligation to provide the B forms to the covered employee/dependents and to the IRS. However, Employers are looking to the carriers to help them fill out the C forms already and for the W-2 information being completed for 2014. There is no requirement for carriers to provide and track the information that Employers are required to report, correct?
A. Correct.

Which Employees Receive Forms and Which Forms Will They Receive?

Q: Will each person that has any health coverage receive a 1095B from some source? **A. They should receive a 1095 from some source. If they have Marketplace coverage, it will be a 1095-A Form. If they have fully-insured coverage, government coverage or self-insured coverage sponsored by an employer that is not an ALE member, it will be a 1095-B. If they have self-insured coverage sponsored by an employer that is an ALE member, it will be a 1095-C.**

Q: Where does an individual get the required tax form showing coverage if their employer is a small group and not required to file the form? **A. If they are employed by a small employer and they have fully-insured coverage, the insurance company is required to provide a 1095-B. If they have self-insured coverage, the employer is required to provide that document. This applies to any size group, regardless how small.**

Q: Do we only complete for FTE that are enrolled or that are offered coverage? **A. Form 1095-C must be provided to all Full-Time Employees. If the plan is self-insured, it must also be provided to any Part-Time Employees who had coverage at any time during the year.**

Q: So an individual could get both a Form 1095-B (from the insurance carrier) and a 1095-C (from their employer)? **A. Yes, if their employer is an ALE member with a fully-insured plan.**

Q: Does the length of time a person is employed &/or covered by a Group Health plan matter? **A. Not in whether they must be included in the reporting. If they are covered for a day, they will receive a 1095-B or 1095-C Form. It will obviously affect the information contained in their reporting.**

Q: Please clarify what employees who are ELIGIBLE but not covered will receive? **A. If their employer is an ALE member, Full-Time employees will receive a 1095-C Form. If they were never Full-Time or their employer was not an ALE member non-covered employees won't receive anything even if they were eligible.**

Q: Do seasonal employees who work six or more months of the year need to be covered under health insurance or face a fine for not covering? If they are not eligible, then they don't need to be reported but if they are eligible??? **A. For the purposes of providing 1095-C Forms to Full Time Employees, the definition of Full-Time Employees is an employee who works more than 30 hours or more per week (or 130 hours in a given month). This applies regardless if the employee is considered seasonal or even if they only are a Full Time Employee during one month of the year.**

Q: How is the IRS going to know if the employee has coverage that is compliant and/or affordable with the 1095B? **A:** If the employee is covered under any coverage that is MEC, it doesn't matter if it is affordable. The only people listed in a 1095B will be those with some type of MEC plan.

Q: How will the IRS know if a small employer plan was affordable but the employee obtain a subsidy in the exchange and they were not eligible for this? **A:** If the Employer is not an ALE member, this information will not be reported as the forms currently are configured.

Q: So effectively there is no check and balance for 2014 reporting? **A:** No, other than Marketplace (Individual policies) reporting.

What About Other Types of Employee Benefits?

Q: Is the B form only for medical? **A:** Yes, the forms are only for medical plans.

Q: Does this only apply to Medical Plans? Not Dental or Vision **A:** Correct. These reporting requirements do not apply to dental, vision or other coverages that don't meet the ACA's definition of MEC.

Q: Does a HRA offered with the medical plan require a separate Form 1095-C? **A:** No the reporting requirements do not apply to HRAs that are integrated with group insurance coverage.

Q: If an employer funds an HRA that's wrapped around a high-deductible medical plan are they considered 'self-insured' for purposes of this filing, or are they considered a fully-insured plan? **A:** Assuming the high-deductible medical plan is fully-insured, the employer is considered fully-insured for the purposes of this reporting. HRAs are disregarded for this purpose.

Q: Does this also apply to our Medicare Supplement Plans? **A:** The instructions are not clear on this issue however reporting should not apply for these plans. The government will report via Form 1095-B regarding the individual's Medicare Part A coverage. The answer should not matter for employers as this would be the carrier's responsibility even if it applied.

When Are Filings Due

Q: The filings for fully-insured ALES members for the 1094-c and 1095-c will be due in 2016, not 2015, correct? **A:** Correct, however the reporting is for calendar year 2015.

Q: Since small group will be 2-100 in 2016, the employer who filed in 2016 for 2015 will not need to file anymore in 2017 for 2016, correct? **A:** No. Whether a group is considered small or large group does not affect the annual filing requirements. This is an annual filing requirement.

Q: Next year is a leap year and I believe the report should be filed on Feb 29th a Monday and not March 1st. can you confirm? **A:** You are correct. Paper filings would be due Monday February 29, 2016.

How To File

Q: How do you file electronically? Will there be an IRS upload by employer? **A:** Yes, it has not been released yet, though. It will be through the federal e-file system, much like Forms 5500 are done now.

What Are The Non-Compliance Penalties

Q: What are the penalties for not filing or filing late? **A:** The penalties are the same as for failing to file Form W2 or to provide Form W2 to employees. If you fail to file or to provide employees with the forms on time, the IRS can assess a penalty of \$30 per form if you file the correct form within 30 days of the due date with a maximum fine of \$250,000, or \$75,000 if you operate a small business. If you file between 30 days of the due date and August 1 the fine increases to \$60 per form with a maximum fine of \$500,000 or \$200,000 if you operate a small business. Failure to file forms by August 1 results in a fine of \$100 per form, or \$500,000 a year for small businesses and \$1,500,000 annually for others. Small businesses are those with gross receipts of \$5 million or less for the three most recent tax years.

Q: Would not complying with this IRS reporting requirements lead to a DOL/ERISA Audit? **A:** In addition to the specified dollar penalties for failure to file or late filings, DOL/ERISA audits are a likely outcome of employee complaints when they don't have the documentation necessary to file their personal tax returns.

Filling Out The Forms

Getting Ready During 2015 (and Earlier)

Q: How will ALEs get dependent information? **A:** Keep in mind, only ALE members with self-insured group health plans need to completed Part III of Form 1095-C and are therefore need to have dependent info to satisfy these reporting requirements. Those employers need to make sure that information is part of the annual enrollment information collected. That is one reason why it is important to understand these requirements now as opposed to next January when employers would have to scramble to fill in information holes, including from former employees.

Q: The dependent coverage SSN is only reported by the insurance carrier if fully-insured plan. The employer doesn't have to provide dependent SSNs on any of the forms, correct. **A:** That is only correct if the plan is fully-insured. If the plan is self-insured the employer must provide the dependent SSNs or alternatively, their birthdates.

Q: What if you have a large group that has an effective date of 9/1/15 would they complete the forms starting Sept 2015 (to submit to IRS) or would they include the prior months information also. **A:** They would complete the forms for all of 2015 with different entries for each month to reflect the changes in the offering (and the covered individuals if the plan is self-insured).

Form 1094-C

Q: Is there a requirement to get Social Security Numbers for employees and/or their dependents that waive coverage or is it only for those that have coverage? **A:** For Full-Time employees, the Employer is required to provide the SSN in box 2 of Form 1095-C even for those that waive coverage. However, if the employee waives coverage, there are no Covered Dependents to report in Part III so therefore no SSN's to report either.

Q: I thought the ER mandate penalties are contingent upon having a MVP @ 9.5%. Why are these forms addressing MEC only? **A:** This seems to be one of the areas in the Form 1094-C that seems likely to be modified in the final versions. NAHU commented on this issue in their official comment letter to the Treasury Department regarding the forms.

Q: Would groups that did not offer coverage select the "Transition Relief" option? **A:** Some would. For example, groups that did not offer coverage that have between 50 and 99 FTEs. Also groups with non-calendar year plans that are eligible for transition relief for the first months of 2015 until their annual renewal. It is possible for there to be no entry on Line 22 however.

Q: Please to review the "98% offer method" (Line 22) in more detail? **A:** To be eligible to use the 98% Offer Method, an employer must certify that it offered, for all months of the calendar year, affordable health coverage providing minimum value to at least 98% of its employees and their dependents for whom it is filing a Form 1095-C employee statement. The health coverage is affordable if the employer meets one of the section 4980H affordability safe harbors. If the employer uses this method, it is not required to complete the Full-Time Employee Count in Part III column (b).

Q: Do Medium sized (50-99) ALEs check Transition Relief on #22 on Form 1094-C? **A:** Yes.

Q: Can he clarify columns b and c on this form? **A:** On Form 1094-C, Part III column B is Full-Time Employees and column C is all employees. Full-Time Equivalent counts are not part of either item. The counts are as of either the first or last day of the month (the date chosen must remain consistent for all 12 months).

Q: Does Part III, Column C, "Total Number of Employees" on Form 1094-C count FTEs or the actual number of part-time plus full-time employees? **A:** Column C would be actual number of all employees (regardless of each employee's number of hours worked that month) as of either the first or last day of the month (the date chosen must remain consistent for all 12 months). Full-Time Equivalent counts are not part of this item.

Form 1095-C

Q: Are you required to list employees that are eligible but do not take coverage? **A. For Form 1095-B, no. For Form 1095-C if they are Full-Time Employees, then yes.**

Q: Does employer have to show employees that were offered coverage and waived it? Also I think it says that if not self funded employer doesn't have to complete the sections. **A. On the Form 1095-C, the Employer must show all Full Time employees whether they have coverage or not or even if they are not eligible for coverage. If the coverage is fully-insured, the employer should skip Part III of Form 1095-C. That information will be provided separately in Form 1095-B by the insurance carrier.**

Q: Is a form required if the EE hadn't fulfilled the full new hire waiting period and term before they came on the plan? **A. Yes. A Full-Time Employee in a waiting period is indicated by Code "2D" on line 16 of the Form 1095-C.**

Q: Do you have to report dependents that are NOT enrolled in the health insurance plan? **A. No.**

Q: If 30 hours is used to determine the mandate for FTE, but eligibility is for coverage is 40 hours is the ER only providing the Form 1095-C to the employees that work 40 hours? **A. For the purposes of providing 1095-C Forms to Full-Time Employees, the definition of Full-Time Employees is an employee who works more than 30 hours or more per week (or 130 hours in a given month).**

Q: I need to clarify the difference between the ALE's completion of Form 1095-C, Part III. I want to be sure I understood you correctly those ONLY Self-Funded Clients complete 1095-C Part III. For Fully-insured Plans Part III of 1095-C will be the "insurance carrier's" responsibility? **A. You are correct that employers with fully-insured plans won't complete Part III of Form 1095-C. It will remain blank. The insurance carrier will provide the same information that Part III provides in Form 1094-C.**

Q: What if an employee waives their coverage because they are covered under their spouses, but are a full time employee. What code would be used? **A. The employer would still complete Part II of Form 1095-C to describe the offer of coverage that the employer made. There just wouldn't be any covered individuals to list in Part III. For line 16, it is in the Employer's interest to use one of the Affordability Safe Harbor Codes if applicable. They are 2F (Form W2), 2G (Federal Poverty Line) and 2H (Rate of Pay). This would show why the employer is not subject to the employer mandate for this employee even if they don't elect coverage.**

Q: What is the code for a variable hour employee under Form 1095-C offered coverage due to averaging over 30 hours during measurement period? **A: If the Employee was offered coverage, the Code would depend on what type of coverage they were offered. The fact that they are a variable hour employee won't affect the Code if there was an offering. For example, if the offering was, MEC, MV, affordable based on poverty line with MEC coverage available to spouses and dependents, it would be Code 1A. However, the Codes are not finalized at this point**

and appear likely to change based on how confusing they are and some gaps that they still leave.

Q: If Code 1A is used on line 14, does the employer need to report anything on line 15? **A:** You would not enter anything on Line 15 in that case.

Q: If the premium amount is different per employee based on age rates (51-99 in 2016) how would the ER fill out the minimum cost for the employees? **A:** As each Form 1095-C is specific to each employee, the response to Item 15 may be specific to each employee as well.

Q: How can we determine affordability for reporting without knowledge of family income? **A:** It would be based on one of the 3 safe harbors as released in regulations.

Q: Does the form request cost for dependents, so that those dependents who qualified for a subsidy based on family income, have a confirmation? **A:** No. Dependent cost should not affect their subsidy eligibility. Subsidy eligibility for dependents only hinges on dependent eligibility and employee cost.

Q: Do you have to use the same safe harbor choice for affordable coverage for all employees? **A:** No. Different safe harbors can be used for different employees. However, for some of the safe harbors, if they are used for any month, they must be used for that employee for the entire year in lieu of a different affordability safe harbor.

Q: Is code 2d, line 16 - limited non assessment period where we indicate if in an initial measurement period? **A:** Yes among other uses for that code. For example, you would also use it for non-variable hour employees who are in their waiting period for a given month.

Q: How does self-funded ALE complete Part III of 1095-C if the employee has more than 5 dependents enrolled on the group coverage? Does the employer give this employee two 1095C forms to list all the dependents? **A:** If there are more than 6 covered individuals, complete one or more additional Forms 1095-C.

Employer Mandate Issues

Q: Why would an employer offering MV MEC coverage to employee and dependents only (not spouses) not satisfy the mandate? What Trey just relayed might seem to mean that this type of employer could still be subject to a penalty. I thought they could exclude spouses. **A:** You are correct. However the government also has an interest in knowing who the coverage is available to for the purposes of determining which family members would not be eligible for a premium subsidy.

Q: How are union employees (covered under a separate collectively bargained plan) effective the "SIZE" of an employer. IE If 40 non-union on a plan and employer also has 75 union employees - do the rules for 100+ apply? **A:** For the purposes of determining ALE status and whether the Employer Mandate applies in 2015 or 2016 and beyond, union employees are treated just like any other employee.

Q: I have a union group. One dept. opted NOT to take the employer coverage instead received an increase in salary. Since this was negotiated with the union contract will the employer still be compliant? **A. No. One of the stated reasons the Employer Mandate penalties were pushed back in 2014 was to give employers and unions time to renegotiate collective bargaining agreements to avoid penalties. .**

Q: I have a group with between 50-75 FTEs that is not offering a benefit plan, due to lack of participation requirements -- all the employees are covered elsewhere (i.e., spouse's employer plan) or waiving due to coverage already obtained on the Marketplace. When they file in 2016 for the 2015 tax year, will they pay a penalty? **A. So long as they qualify for the Section 4980 H Transition Relief for ALEs with Fewer Than 100 Full-Time Equivalent Employees, they will not incur a penalty. They would indicate their access to that relief on Form 1094-C, Line 22 Box C. Unfortunately, some employers with less than 100 FTEs have lost protection under the transitional relief by eliminating or materially reducing the health coverage they offered as of February 9, 2014.**

Q: If group offered coverage to all employees, but the employee denied the coverage is Employer compliant? **A. ALEs satisfy their employer mandate responsibility by offering Minimum Value coverage that is affordable. Whether the employee takes the coverage is irrelevant for the purposes of the mandate.**

The Role of the Agent in The Reporting Process

Q: Do we as brokers really need to worry about the Form 1095-B (unless we have self-funded MEWAs/Union plans for clients)? Wouldn't this otherwise be prepared by the insurer, and we only should care about the 1095-C (and b)? **A. For your employers, yes. However, your employee clients will be receiving 1095-B Forms from the carriers and may look to you (via their employers) for help in understanding what they mean and what to do with them.**

Q: Does any of this responsibility falls on the tax accountant? **A: It is the employer's legal responsibility to comply. Or course, they may contract with a vendor to do it, including CPAs, payroll vendors, etc. but the ultimate liability remains with the employer.**

Q: Are there any E & O concerns in assisting clients in filling out IRS forms? **A. Obviously the terms of your E & O insurance contract will dictate which activities the coverage provides protection for you. However, it is reasonable (and wisely cautious) to assume that the coverage would not apply to the activity of preparing tax returns.**

Resource Requests

Q: Can you recommend a good reference we could send to clients on this? **A. Not yet. However payroll companies are in a good position to assist ALE members with this reporting so it makes sense that they will develop a service to handle this reporting for a fee.**

Q: Do you know of any payroll vendors or any other organizations that are doing this reporting?
A. Not yet.

Q: Do you see payroll companies as the best source to assist and complete these forms or brokers? A: Payroll companies will likely be the best resource.

Q: Are CPAs well informed regarding these requirements? A: Many seem to be ramping up their knowledge in this area now just as agents are because of the timing of the requirement.

Discussion Questions and Follow-Up Musings

Q: This costs extra money. Do you think it is complicated enough to pay for? A. It only matters what your clients and your competition think.

Q: Do you think the reporting requirements will be "dismissed" for 2016.....I've been through the drill where we work our tails off to comply - then it is delayed! A. This process should be manageable but recent history supports your line of thinking.