



# ACA Employer Reporting Review: 10 Common Questions Heading Into The Second Year of Filing

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

November 2016

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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 has also previously served on NAHU's national Legislative Council, Compliance Corner Subcommittee and Consumer Driven Health Care working group and has been a contributor to the America's Health Insurance Plans (AHIP) published series on Employee Healthcare Benefits.



# 10 Common Questions Heading Into The Second Year of Filing

1. What If We Still Haven't Filed For Last Year or Last Year's Filing Was Rejected or "Accepted With Errors"?
2. If We No Longer Have 50 Employees Do We Report This Year?
3. What Are The Due Dates For Next Year's Filings?
4. What If We Need More Time Next Year?
5. Did The Forms Change For This Year?
6. What Is The Biggest Rule Change That Affects This Year's Filing?
7. What Were Common Issues From Last Year To Focus On This Year?
8. Which Types of Transitional Relief Have Expired and Which Still Apply?
9. How Do We File Electronically?
10. What Do We Do If We Receive A Notice From The Marketplace Regarding An Employee Receiving A Subsidy

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

- Employers who simply did not file are currently in the third of three tiers of penalties **(\$260 per form)**
  - Filing now avoids possible exposure to a fourth tier reserved for employers who willfully refuse to comply with their reporting obligation **(\$520 per form)**

# Employer Reporting Non-Compliance Penalties

(For 2015 Year Filings)

Type of Failure	Per Form Penalty	Annual Maximums Large Business / Small Business
Submitted or Corrected less than 30 days late	\$50	\$500,000 / \$175,000
Submitted or Corrected before November 1	\$100	\$1,500,000 / \$500,000
Submitted or Corrected November 1 or later	\$260	\$3,000,000 / \$1,000,000
Intentional Disregard	\$520	No Cap

Small Businesses are those with less than \$5 Million in gross receipts during each of the previous three years

# What If Last Year's Filing Was Rejected?

- The IRS's ACA Information Returns (AIR) Program could not keep up with processing demand in the days leading up to the June 30, 2016 deadline
- Many employers simply could not get their returns to transmit
- On June 30, the IRS issued guidance indicating the AIR system would continue to accept returns after the deadline
- Filers with rejected submissions had 60 days from the date of a rejected submission **(August 29 at the latest)**
- Late filing penalties will not be assessed against employers who have made "legitimate efforts to register with the AIR system and file its information returns" so long as the employer "continues to make such efforts and completes the process as soon as possible".
- The IRS also indicated that filers that are assessed penalties may still meet the criteria for a reasonable cause waiver from the penalties.



# What If Last Year's Filing Was "Accepted With Errors"?

- The IRS's June 30<sup>th</sup> guidance also instructed employers who received "Accepted With Errors Notifications" that they could continue to submit corrections after June 30.
- Employers may have received very little or no guidance from the IRS regarding the nature of the errors
- Many errors were data mismatches with the Social Security Administration regarding Social Security Numbers
- If the error is indicated as a SSN error, the Employer must solicit the correct SSN from the applicable individual
  - If corrected information is provided to the employer, the corrected 1095 Form must be refiled ASAP
  - Sometimes employers can not verify that the SSN was wrong – there is no prescribed remedy for this – possibly submit corrected 1095 Form with birthdays instead?



# If We No Longer Have 50 Employees Do We Report This Year?

- ACA Employer Reporting Requirements Apply To Two Types of Employers
  1. Employers Who Sponsor Self-Funded Group Health Plan
  2. Applicable Large Employer Members
- Self-Funded Group Health Plan Sponsor reporting obligations are not affected by the size of the Employer
- Applicable Large Employer status is determined based on the prior calendar year
  - Determined by whether the employer averaged 50 or more Full-Time Equivalent employees over all 12 months of 2015
  - 120 hours per month is the threshold for determining FT status
  - Controlled Group rules apply to this measurement

# What Are The Due Dates For Next Year's Filings?

- As the rules currently stand, forms must be delivered to individuals by the end of January 2017
- Forms must be filed with the IRS by the end of February 2017 (paper) or by the end of March 2017 (electronic)
- All deadlines are subject to extensions until the next business day if the deadline falls on a non-business day (does not affect 2017 deadlines)
- This year's deadlines were extended by the IRS on December 29, 2015
- The Presidential election and a new incoming administration may affect the IRS's willingness to grant another extension
  - There is historical reticence by administrative agencies to make decisions that affect new administrations without their approval
- The Trump administration takes office January 20, 2017

# What If We Need More Time Next Year?

- Statements to Employees (Due January 31, 2017)
  - Extensions requested via letter postmarked to IRS prior to January 31
  - No specific form at this time
  - Reason for extension request must be provided
  - Approved extensions are valid for 30 days
- IRS Filings (Due February 28 or March 31)
  - Form 8809 postmarked to IRS by applicable deadline date
  - Automatic 30 day extension to file Forms 1094-C and 1095-C
  - Second extension is possible for cause
  - Does not extend due date to deliver statements to Employees

# Did The Forms Change For This Year?

- No significant changes to the 1094 or 1095 Forms
- 1094-C Form
  - Removal of Box B on Line 22 (“Qualifying Offer Method Transition Relief”)
  - Section “4980H Transition Relief” box remains for some non-calendar year plans they may still be able to take advantage
- 1095-C Form
  - New Codes for Conditional Offers of Spousal Coverage – Line 14
    - Codes 1J (no dependent coverage) and 1K (dependent coverage)
  - “Plan Start Month” box remains optional for 2016

# Form 1094-C (Page 1)

120117

Form **1094-C**Department of the Treasury  
Internal Revenue Service**Transmittal of Employer-Provided Health Insurance Offer and  
Coverage Information Returns**► Information about Form 1094-C and its separate instructions is at [www.irs.gov/form1094c](http://www.irs.gov/form1094c)☐ CORRECTED

OMB No. 1545-2251

**2016****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. Section 4980H Transition Relief ☐ 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** (2016)

# Form 1094-C (Page 2)

120217

Form 1094-C (2016)

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) Section 4980H Transition Relief Indicator
		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 (Page 3)

120316

Form 1094-C (2016)

Page **3**

## **Part IV** Other ALE Members of Aggregated ALE Group

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

Name	EIN	Name	EIN
36		51	
37		52	
38		53	
39		54	
40		55	
41		56	
42		57	
43		58	
44		59	
45		60	
46		61	
47		62	
48		63	
49		64	
50		65	

Form **1094-C** (2016)



# 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.

Information about Form 1095-C and its separate instructions is at [www.irs.gov/form1095c](http://www.irs.gov/form1095c)

☐ VOID

☐ CORRECTED

OMB No. 1545-2251

**2016**

Part I Employee			Applicable Large Employer Member (Employer)		
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		Plan Start Month (Enter 2-digit number):											
	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)													

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. <input type="checkbox"/>															
(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** (2016)

# Form 1095-C (Page 3)

600317

Form 1095-C (2016)

Page 3

Name of employee

Social security number (SSN)

**Part III Covered Individuals — Continuation Sheet**

(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	Jun	Jul	Aug	Sept	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"/>
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"/>
25			<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"/>
26			<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"/>
27			<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"/>
28			<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"/>
29			<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"/>
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32			<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"/>
33			<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"/>
34			<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"/>

Form 1095-C (2016)

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

- Other than the deadlines...
- ... and other than the absence of “Good Faith Compliance” standard
- Form 1095-C, Line 15 –Employee’s Required Cost of Coverage
  - Regulations now bring in other elements into the cost calculation beyond the amount employee has withheld from pay to pay premium
    - Certain wellness program incentives
    - Certain employer contributions to HRAs
    - Certain employer contributions to FSAs
    - Certain opt-out incentives for employees not electing coverage
  - The types of plans that must be included are those that the employee must forego in order to elect coverage (their true cost)

# What Were Common Issues From Last Year To Focus On This Year?

- Uncertainty regarding which forms groups needed to file;
  - Assuming carriers were filing on behalf of employers
- Groups filing for individuals for whom filing was not required;
  - Filing for individuals who were not “Full-Time Employees” as defined by the Instructions
- Misuse of the Code related to “Qualified Offers” – Code 1A
  - Only applicable when the Federal Poverty Line Safe Harbor applied

# Employer Reporting Requirements for Various Employer and Coverage Types

Plan Type / Employer Size	Non-ALE Members	ALE Members
Fully Insured	No Employer Reporting <sup>1</sup>	1094-C and 1095-C
Self Insured <sup>3</sup>	1094-B and 1095-B	1094-C and 1095-C <sup>2</sup>
No Coverage	No Employer Reporting	1094-C and 1095-C

## Footnotes

1. Insurance Carrier Files Forms 1094-B and 1095-B
2. Self-Insured ALE Members are permitted to use a single combined form for Sections 6055 and 6056 reporting
3. May Include HRAs in limited circumstances

# Defining “Full-Time Employees”

- Generally employees who worked more than 130 hours in a month
- Does not include individuals who were either not employed or were in a Limited Non-Assessment Period for all 12 months
- Limited Non-Assessment Periods include:
  - January – March of Employer’s First Calendar Year as an ALE
  - Waiting Periods
  - Initial Measurement Period and Associated Administrative Period Under the Look-Back Measurement Period
  - First Calendar Month of Employment

Note: Items in red qualify for LN-AP status only if coverage offered at the end of the period meets the Minimum Value standards

# Which Types of Transitional Relief Have Now Expired and Which Still Apply?

- Good Faith Compliance Standard Does Not Apply for 2016 Year Filings
- No longer available are certain types of Transitional Relief for employers not offering coverage to Full-Time Employees during parts of a non-calendar year plan where significant numbers of other employees were covered.
- Also Transitional Relief for failure to offer coverage in January expired.
- Non-calendar year Transition Relief (from the Part A “Sledgehammer” penalty” can still apply for:
  - employers with 50-99 FTEs
  - offers of Health Coverage made to at least 70 percent of Full-Time employees (instead of 95%)
  - offers of Health Coverage to employees but not dependents



# How Do We File Electronically?

- **Option 1:** Service providers will often manage this part of the process without any required input from the employer.
- **Option 2:** Employers working with some payroll vendors, self-service software or otherwise developing their own filing system will need to follow these steps to utilize the [ACA Information Return \(AIR\) System](#)
  1. Register with the IRS's e-services website including submission of personal information about the person registering on behalf of the entity
  2. Obtain an [AIR Transmitter Control Code \(TCC\)](#), a unique identifier authorizing each Submitting Entity to submit the reporting forms
  3. Pass a series of technical/system tests to ensure that Reporting Forms will be properly submitted when due

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

- The notices employers are currently receiving are coming from the Marketplace through which your employee received a subsidy
- These are not notices of an actual penalty but rather that an employee has received a subsidy which may in turn trigger a penalty.
- Penalties can only be assessed by the IRS
- The presumption is that the IRS will compare subsidy data against 1095 filings to determine possible penalties.
- Employers can appeal inappropriate employee subsidies directly to the Marketplace in order to prevent likelihood of an IRS assessment
- Appeal forms can be obtained online at:  
<https://www.healthcare.gov/downloads/marketplace-employer-appeal-form.pdf>
- If an IRS assessment eventually comes, that will be appealable through the standard tax appeals processes

# Employer Reporting – Next Steps

1. Determine your company's filing requirements for 2016 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 2016 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 arc passing through the letters.

**Questions?**