



## An Overview of the ACA Reporting Requirements

Benefit Advisors Network

Stacy H. Barrow

[sbarrow@marbarlaw.com](mailto:sbarrow@marbarlaw.com)

January 11, 2017

Benefit Advisors  
NETWORK  
smart partners



# Agenda

---

- Pay-or-Play Mandate
- ACA Reporting
  - Provider Reporting (Section 6055)
  - Employer Reporting (Section 6056)
  - Form Detail
  - Reporting for COBRA Participants
  - Simplified Reporting
  - Common Questions

# Pay-or-Play Mandate

---

- Applies to applicable large employers (ALEs)
- Company is an ALE if it employs, on average, 50 or more full-time equivalents (FTEs) in preceding year
  - ALE determined on a controlled group basis
- Was effective January 1, 2015
  - Delayed until 2016 for most employers with 50 – 99 FTEs on average in 2014

# Pay-or-Play Mandate

---

- **Incoming Trump Administration**
  - May make changes to the ACA, including employer mandate and reporting
  - Any changes likely to be phased in and will not be effective immediately
  - Stay the course for now

# Pay-or-Play Mandate – \$2,000 Penalty

---

“No Offer” Penalty – Employers that do not offer coverage

- Employers that do not offer health coverage to at least 95% of all full-time employees (and their children under age 26) are subject to a penalty
- Annual penalty is \$2,000 (as indexed) × all full-time employees reduced by 30 if one or more full-time employees receive a federal premium subsidy
- Penalty is assessed monthly
- Assessment is entity-by-entity within a controlled group

# Pay-or-Play Mandate – \$3,000 Penalty

---

“Unaffordability” Penalty – Employers with “unaffordable” coverage

- Coverage is “affordable” if:
  - Employee’s cost for single coverage does not exceed 9.5% (as indexed) of household income (or W-2 wages or another permitted safe harbor), and
  - Plan provides “minimum value”
- Annual penalty is \$3,000 (as indexed) for each full-time employee who receives a federal premium subsidy, not to exceed the “no offer” penalty
- Penalty is assessed monthly
- Assessment is entity-by-entity within a controlled group

# What is Affordable Coverage?

---

- Cost for employee-only coverage under lowest cost plan that provides minimum value cannot exceed 9.5% (as indexed) of:
  - **W-2 (Box 1)**
    - Must wait to end of year to confirm
  - **Rate of Pay** (monthly cost cannot exceed 9.5% of hourly rate of pay × 130)
    - E.G.: \$10 per hour—affordable if employee not charged more than \$125.97 per month in 2017 for employee-only coverage ( $\$10 * \$130 * 9.66\%$ )
  - **Federal Poverty Level (FPL)**
    - Use FPL based on the state in which employee is employed
    - In 2016, employee-only coverage is affordable under the FPL safe harbor if it does not exceed \$95.93 / month ( $\$11,880 / 12 * 9.69\%$ )
      - Based on current 2016 FPL; 2017 will be available soon
- Indexed thresholds: 9.66% (2016) / 9.69% (2017)

# Indexed Pay-or-Play Penalties

---

- Annual pay-or-play penalties are indexed to increase each calendar year after 2014
  - 2014: \$2,000 / \$3,000
  - 2015: \$2,080 / \$3,120
  - 2016: \$2,160 / \$3,240
  - 2017: \$2,260 / \$3,390
- IRS expects to begin notifying employers of potential employer shared responsibility payments for the 2015 calendar year “in early 2017”



# ACA Reporting

---



# ACA Reporting Overview

---

- **Provider Reporting** – Code Section 6055
  - Used to enforce the Individual Mandate
  - Applies to:
    - Insurance Companies
    - Employers with Self-Insured Plans
    - Multiemployer Plans
    - Governmental Plans
- **Employer Reporting** – Code Section 6056
  - Used to enforce the Employer Mandate and administer Premium Tax Credit program
  - Applies to:
    - Applicable Large Employers — 50+ full-time equivalents on average in prior calendar year
      - Employers report full-time employees under §6056; however, if self-insured, employer must report on all covered employees to comply with §6055

# ACA Reporting Overview

---

- Employer mandate penalties and reporting apply at EIN/tax ID level
  - Each entity with its own tax ID reports separately for its own employees
- However, ALE status is determined on a controlled group basis
  - Section 6056 reporting (Form 1094-C) requires disclosure of controlled group members
- Employers will need to report related entities:
  - Parent-Subsidiary controlled group
  - Brother-Sister controlled group
  - Affiliated Service Groups
  - Familial attribution rules apply
- Talk to ERISA counsel if analysis is needed

# 2016 Due Dates

---

- Forms 1095-C must be furnished to individuals by **March 2, 2017**
  - Requests for an extension of time to furnish employee statements will not be granted, given the extension of the deadline from January 31, 2017
- Forms 1094-C and 1095-C must be filed with the IRS by February 28, 2017, or March 31, 2017, if filing electronically
  - An automatic 30-day extension of time to file with the IRS is available by completing Form 8809
  - No signature or explanation is required for the extension; however, it must be filed on or before the due date of the returns
  - Under certain hardship conditions an additional 30-day extension may apply; however, requests for additional extensions of time to file information returns are not automatically granted

# ACA Reporting Quick Reference Chart

	Fully Insured Plan	Self-Insured Plan
Insurance Carrier	Forms 1094-B and 1095-B	Not Applicable
Non-ALE (Small Employer: Fewer than 50 full-time equivalent employees on average in prior calendar year)	Not required to file	Forms 1094-B and 1095-B
ALE (Applicable Large Employer: 50 or more full-time equivalent employees on average in prior calendar year)	Forms 1094-C and 1095-C <i>(Parts I and II only)</i>	Forms 1094-C and 1095-C <i>(Parts I, II and III)</i>  <i>Either B-Series or C-Series Forms for non-employees</i>

# 2016 Final Forms & Instructions

---

- Changes and Highlights for 2016
  - Various changes have been made to reflect that certain forms of transition relief no longer apply
  - Instructions provide more detail and examples on how Applicable Large Employer Members should prepare the forms
  - Two new indicator codes are available for Line 14 of Form 1095-C
    - New codes used to indicate whether a conditional offer was made to a spouse
  - “Plan Start Month” on Form 1095-C remains optional for 2016
  - Interim Rule for Multiemployer plans remains in place for 2016 (Codes 1H/2E)

# Section 6055 – Provider Reporting

---

- All Employers offering fully insured plans:
  - No filing requirement under Section 6055—carriers will provide/file
  - 1095-**B** is provided to participants (and sent to IRS)
  - 1094-**B** is the transmittal form sent to the IRS
- Small Employers (<50 FTE) sponsoring self-insured plans:
  - Report using 1094-**B** and 1095-**B** for covered employees
- Large Employers (≥50 FTE) sponsoring self-insured plans:
  - Report using 1094-**C** and 1095-**C** for covered employees
  - Will also use C-Series forms to complete Section 6056 reporting
  - May use B-Series forms to report covered non-employees
    - COBRA participants & retirees in the year following termination

# Section 6055 – Provider Reporting

---

- Provider reporting not required for HSAs, on-site medical clinics, wellness programs, dental/vision, most HRAs, and plans supplemental to Medicare
- Forms and instructions
  - Form 1094-B (transmittal to IRS): [www.irs.gov/pub/irs-pdf/f1094b.pdf](http://www.irs.gov/pub/irs-pdf/f1094b.pdf)
  - Form 1095-B (an employee statement): [www.irs.gov/pub/irs-pdf/f1095b.pdf](http://www.irs.gov/pub/irs-pdf/f1095b.pdf)
  - Instructions: [www.irs.gov/pub/irs-pdf/i109495b.pdf](http://www.irs.gov/pub/irs-pdf/i109495b.pdf)



## Section 6055 – Reporting for HRAs

---

- No reporting for HRA coverage is required when an employee is covered under the HRA in connection with coverage under that employer's fully insured major medical plan
- However, if an employer offers HRAs to employees who are enrolled in their spouse's plan, the employer must report on employees covered under their HRA
- New "Qualified Small Employer HRAs" not subject to reporting

# Section 6056 – Employer Reporting

---

- Always requires the C-Series forms be completed for employees
- Forms and instructions
  - Form 1094-C (transmittal to IRS): [www.irs.gov/pub/irs-pdf/f1094c.pdf](http://www.irs.gov/pub/irs-pdf/f1094c.pdf)
  - Form 1095-C (an employee statement): [www.irs.gov/pub/irs-pdf/f1095c.pdf](http://www.irs.gov/pub/irs-pdf/f1095c.pdf)
  - Instructions: [www.irs.gov/pub/irs-pdf/i109495c.pdf](http://www.irs.gov/pub/irs-pdf/i109495c.pdf)

# Form 1094-C Detail

Each entity with its own EIN will have 1 and only 1 "authoritative" 1094-C



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

- A. "Qualifying Offer"—Highly affordable offer (FPL safe harbor) to FT employees
- B. Reserved.
- C. 50-99 Transition Relief (Code A in column (e) of 1094-C) or 100+ Transition Relief (Code B)
- D. For all months of the year, employer offered affordable, MV coverage to at least 98% of employees for whom it is filing a Form 1095-C

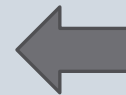
# When to Check Box C in Line 22

---

- Box C is checked when an employer qualifies for transition relief from penalties under the employer mandate **based on size**
  - Employers do not need to check box C unless they are relying on 50-99 FTE transition relief or need 80-employee reduction from the \$2,000 penalty
- Employers relying on transition relief based on size must insert an “A” or “B” in lines 23-35 of column (e) of form 1094-C
  - Size determination is made on a controlled group basis
  - Code A: Employers who had 50-99 FTEs on average in 2014
    - Relief from pay-or-play penalties until start of 2016 plan year
  - Code B: Employers who had 100+ FTEs on average in 2014
    - 30 employee reduction increased to 80 for purposes of the \$2,000 penalty

# Form 1095-C Detail

<b>Part II Employee Offer of Coverage</b>				
	All 12 Months	Jan	Feb	Mar
<b>14</b> Offer of Coverage (enter required code)				
<b>15</b> Employee Required Contribution (see instructions)	\$	\$	\$	\$
<b>16</b> Section 4980H Safe Harbor and Other Relief (enter code, if applicable)				



All ALEs complete Parts I & II (Part II shown; Part I is Employer and Employee information)



Self Funded ALEs also Complete Part III

<b>Part III Covered Individuals</b>								
If Employer provided self-insured coverage, check the box and enter the information for each covered individual								
	(a) Name of covered individual(s)	(b) SSN	(c) DOB (If SSN is not available)	(d) Covered all 12 months				
					Jan	Feb	Mar	Apr
17				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# Line 14 Codes for Offers of Coverage

---

- **1A** – Qualifying Offer (discussed later)
- **1B** – Minimum Essential Coverage providing minimum value to employee only
- **1C** – MEC providing Minimum Value to employee and dependents (not spouse)
- **1D** – MEC providing MV offered to employee and spouse (not dependents)
- **1E** – MEC providing MV offered to employee, spouse and dependents
- **1F** – MEC NOT providing MV offered to employee
- **1G** – Offer to employee who was not a FT employee for any month and who enrolled in self-insured coverage
- **1H** – No offer of coverage
- **1I** – Reserved (not applicable after 2015)
- **1J** – MEC providing MV offered to employee and at least MEC conditionally offered to spouse (coverage not offered to dependent children).
- **1K** – MEC providing MV offered to employee; at least MEC offered to dependent children; and at least MEC conditionally offered to spouse.

## Line 15 – Cost of Coverage

---

- Complete line 15 only if code 1B, 1C, 1D, or 1E, 1J or 1K is entered on line 14 either in the "All 12 Months" box or in any of the monthly boxes
- Note that this amount may not be the amount the employee is paying for the coverage, for example, if the employee chose to enroll in more expensive coverage such as family coverage

# Opt-Out Payments

---

- **Guidance on Opt-Out Payments for purposes of ACA reporting / determining cost of coverage**
- “Unconditional” opt-out payments increase the employee’s cost of coverage, unless transition relief applies
- “Conditional” opt-out payments do not increase the cost of coverage
  - Under a conditional opt-out, payment is available only if the employee can demonstrate enrollment in other coverage



# Opt-Out Payments

---

- Transition relief for arrangements in effect prior to December 16, 2015
  - Employers not required to treat unconditional opt-out payments as increasing cost of coverage
  - IRS encourages employers not to reduce the amount of the employee's required contribution on Line 15 of Form 1095-C by the amount of an opt-out payment or non-health flex credit, as treating the payment as an employer contribution may affect an employee's eligibility for a premium subsidy
    - Eligible employers can claim penalty relief under Notice 2015-87
- Transition relief applies for 2016 and 2017 reporting, and subsequent years until final regulations are issued

# Line 16 Codes to Report Safe Harbors

---

- **2A** – Employee not employed during the month
- **2B** – Employee not FT employee; not enrolled entire month
  - Use if employee terminated during the month
- **2C** – Employee enrolled in coverage offered
  - Use regardless of whether any other Code applies
  - Except if 2E applies or terminated employee has enrolled in COBRA (use 2A)
- **2D** – Employee in a Limited Non-Assessment Period
- **2E** – Multiemployer interim relief applies to the employee
- **2F** – W-2 Safe Harbor applies for the year
- **2G** – Federal Poverty Level safe harbor applies
- **2H** – Rate of Pay safe harbor applies
- **2I** – Reserved (not applicable after 2015)

# Section 6056 – Reporting for COBRA

---

- Coding for COBRA offered due to [Termination of Employment](#)
- COBRA offered due to termination is reported as "no offer" (Code 1H) on Line 14 of Form 1095-C, regardless of whether COBRA is elected
  - 2A is used in line 16 regardless of whether the employee elects COBRA
  - 2B in the month of termination
- Instructions clarify that this applies for other post-employment coverage, such as retiree coverage, when the former employee was a full-time employee for at least one month of the year

# Section 6056 – Reporting for COBRA

---

- Coding for COBRA offered due to a [Reduction in Hours](#)
  - Instructions treat the offer of coverage at open enrollment and the offer of COBRA as two separate offers
    - For coding purposes, employer must determine who had the opportunity to enroll at each offer
    - For example, assume employee is offered family coverage at open enrollment but elects employee-only
  - Also assume employee reduces hours and experiences COBRA event 7/1
    - Until the reduction in hours and loss of coverage, the coding should be 1E in Line 14
    - After the reduction in hours the coding should be 1B (offer to employee only) in Line 14

# Section 6056 – Reporting for Union EEs

---

- Final instructions for 2016 continue last year's treatment for employers with collectively bargained employees
  - Employers enter code 1H in line 14 and code 2E in line 16 for any month for which the multiemployer relief applies for that employee, regardless of whether any other code in Series 2 (including code 2C) might also apply
  - Multiemployer relief: An employer is treated as offering coverage to an employee if the employer is required by a CBA to contribute for that employee to a multiemployer plan that offers, to individuals who satisfy the plan's eligibility conditions, health coverage that is affordable and provides minimum value, and that also offers health coverage to those individuals' dependents

# Simplified Reporting: Qualifying Offer

---

- A Qualifying Offer (QO) is an offer of minimum value coverage to the employee that costs no more than 9.5% (as indexed) of the federal poverty level
  - Employee-only cost cannot exceed \$95.63/month in 2016
  - Offer must include offer of MEC to spouse and children
- Employer reporting for employees who receive a QO for the entire calendar year is "simplified"
- Employers making a QO will only need to report names, addresses, and tax IDs for employees who receive a QO for the entire year
  - Indicator Code 1A used in line 14 on 1095-C to report a QO
  - Lines 15 and 16 are blank

# Alternative Statement to 1095-C

---

- If an employee (A) is not covered under a self-insured plan, and (B) receives a Qualifying Offer for the entire calendar year, the employer may provide an "alternative statement" in lieu of Form 1095-C
- Limited usefulness, as employer must still provide 1095-C to IRS
- An employer may report that it made a Qualifying Offer to an employee in certain months, even if the employee did not receive one for the entire year; however, use of the alternative statement is not permissible unless the Qualifying Offer was made for the entire calendar year

# Alternative Statement – Content

---

- Employer name, address, and EIN
- Contact name and telephone number at which the employee may receive information about the offer of coverage and the information on the Form 1095-C filed with the IRS for that employee
- A statement indicating that, for all 12 months of the calendar year, the employee and his or her spouse and dependents, if any, received a Qualifying Offer and therefore are not eligible for a premium tax credit
- A statement directing the employee to see Pub. 974, Premium Tax Credit (PTC), for more information on eligibility for the premium tax credit



# Simplified Reporting: 98% Offer

---

- "Option to Report without Separate Certification of FT Employees"
- Employers that offer affordable, minimum value coverage to at least 98% of employees (and dependents) included on the report may certify the offering without identifying which employees are full time
- All the 98% Method does is allow the employer to report on an employee without identifying FT/PT status

# Simplified Reporting: 98% Offer

---

- When might the 98% Method be useful?
- When an employer with a self-insured plan offers coverage to FT and PT employees and does not want to have to identify FT/PT status when reporting covered employees on 1095-C
  - Employers using this method are not required to complete the FT employee count in Part III, column (b) of Form 1094-C

# Penalties for Reporting Failures

---

- IRS granted short-term relief from accuracy-related penalties for 2015 and 2016 for employers that can show a good faith effort to comply
- However, after 2017, penalties may be waived only if the failure was due to reasonable cause and not willful neglect
- Standard penalties for reporting failures can be **\$260** per return, up to **~\$3M** per year
  - **\$520** per return with no cap for willful failures
  - Reduced penalties apply for failures corrected on or before 30 days after the required filing date (\$50 per return) or after the 30th day but on or before August 1 (\$100 per return)

# Common Questions

---



# Common Questions

---

- How do I report for all members of the controlled group?
  - **You don't.** Reporting is performed on a per-EIN basis
  - Each entity completes its own Authoritative 1094-C
  - Provides a summary to the IRS of aggregate employer-level data
- What line 16 code (Form 1095-C) should I use for an employee who declines to enroll?
  - There's no code for an employee who declines the employer's plan – leave the entry blank or use any other code that applies (e.g., 2F, 2G or 2H if one of the affordability safe harbors apply)

# Common Questions

---

- Do we report on every employee who worked 130 hours in one or more months of the year?
  - Employees in a limited non-assessment period (LNAP) are not full-time employees
    - LNAPs include waiting periods and initial measurement periods
    - Employees who terminates during an LNAP will not receive a Form 1095-C



## Questions?

---

Stacy H. Barrow

[sbarrow@marbarlaw.com](mailto:sbarrow@marbarlaw.com)

(617) 830-5457

The information provided in this slide presentation is not, is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the firm, our lawyers or our clients. No client-lawyer relationship between you and the firm is or may be created by your access to or use of this presentation or any information contained on them. Rather, the content is intended as a general overview of the subject matter covered. Marathas Barrow & Weatherhead LLP is not obligated to provide updates on the information presented herein. Those viewing this presentation are encouraged to seek direct counsel on legal questions. © Marathas Barrow Weatherhead Lent LLP. All Rights Reserved.