ACA Reporting 2015: Looking Backward, Looking Forward

Thursday, July 21, 2016

Presented by:
Mark Holloway, JD
Scott Behrens, JD
Carrie Barth
Agenda

- ACA Reporting 2015 Common Challenges
- What Remains to Be Done?
  - Marketplace Notices to Employers
  - IRS Audits and Appeals
  - Rejected Filings and Those Accepted With Errors
- Changes Ahead for 2016
  - Due Dates
  - Transition Rules Including Good Faith Compliance
  - New Forms and Instructions
  - Affordability
  - Expat Reporting
- Vendor Relations
- More Fun on the Horizon
2015 Reporting Common Challenges – For 2016 Too?
Why Is This So Hard?

- Late release of final forms/instructions and at times contradictory guidance
- Complexities of the employer mandate—especially how to determine full-time employee status
- Tricky transition relief rules
- Massive data consolidation—including combining data from different systems
- Vendor capacity and lack of experience
- E-filing requires knowledge of IRS language and computer language
Confusion About Who Needed to Report

- Large employer status is determined on a controlled group/affiliated services group basis, but **reporting is done EIN-by-EIN.**
  - Each EIN separately filed a 1094-C.
  - The employer name and EIN identified on a particular 1095-C should have matched the common law employer, which wasn’t always the plan sponsor.
- Those eligible for the 50–99 FTE/Eq delay were still required to report.

### Large Employer Status

- **Parent**
- **Sub**

### How Many 1094-Cs?

1. **Parent**
2. **Sub**
M&A—Reporting

- Which entity reports what information will depend on the transaction type and the positions the parties take with respect to ALE and FTE status.

- The key for a buyer is to have access to information (e.g., hours).

- In a **stock deal**, the newly acquired entity will have its own reporting responsibility (remember, reporting is EIN-by-EIN).
  - If it becomes an ALE on close, the acquired entity will still report for the entire year; currently, there’s no Line 16 “excuse code” for “We weren’t an ALE for these months!”
  - If acquired company merges out of existence, it will still have a reporting obligation for the year, if it was an ALE for part of the year.
  - Different controlled group information might need to be reported (1094-C, Part IV)

- In an **asset deal**, both the buyer and seller might have a reporting obligation for the period of time they were employers.
  - What happens if the seller ceases to exist? Is it the buyer’s problem?
Who Did and Didn’t Need a 1095-C?

Who Needed a 1095-C?
- Full-time employees (FTEs) for *any month* of 2015
- Individuals covered by a self-funded plan for *any day* of 2015 even if not a FTE (part-time employees, retirees, COBRA beneficiaries, partners, directors, contractors)

Who Didn’t Need a 1095-C?
- Someone who was never a FTE, unless they are covered under a self-funded plan
  - Employees in a “limited non-assessment period” for the whole year were *not* FTEs
  - New employee in a waiting period
  - New employee in initial measurement period
  - First month of employment
- Self-employed individuals (e.g., partners) were *not* FTEs
- No need to report on a non-FTE who was offered and declined coverage
For reporting and penalty purposes, FTE status can only be determined using either (1) the *monthly measurement method* or (2) the *lookback measurement method*.
If Everybody Is Special, Then Nobody Is

- **New employees**
  - All boxes on Lines 14–16 of the 1095-C needed to be filled in.
  - Limited non-assessment periods might have made reporting unnecessary (e.g., new variable hour employee hired mid-year placed in a 12-mo IMP)

- Offers of **COBRA** were treated differently based on the recipient's employment status.
  - It didn’t help that the IRS website contradicted the guidance in the instructions.
  - Offers of COBRA to current employees (e.g., lost coverage due to reduction of hours or change in employment status) were treated like any other offer—likely the only change was the cost of coverage in Line 15.
  - Offers of COBRA to former employees were ignored.
Challenging rules re midyear *changes in status* and *leaves of absence* under the lookback measurement method.

- Status as FTE or not generally remains if change/leave occurred in a stability period.
- Plan eligibility and ACA FTE status do not always line up.
- *See May 2016 webcast*

Employees covered by *multiemployer plan* (bargained employees)

- Large employers were required to report on FTEs and could be subject to penalties for not offering sufficient coverage to FTEs
- Many of bargained-for employees were FTEs
- The problem is that the employer didn’t offer coverage; instead, it contributed to a multiemployer welfare plan on behalf of the bargained for FTE
- A special rule allowed employers to treat the multiemployer plan contribution as a coverage offer, *but only if the multiemployer plan was minimum value and affordable.*
- Many employers struggled to get proper certification from multiemployer plans.
To use 1A or 1E on Line 14 of Form 1095-C?

- 1E: MV coverage offered to employee, at least MEC offered to spouse and children
- 1A: MV coverage offered to employee, at least MEC offered to spouse and children 
  *AND employee only premium met federal poverty level safe harbor*

- In every instance 1A could be used . . . the employer could use 1E.
- Using 1A didn’t provide much relief, and employers using it needed to remember to not complete Line 15.
  - You could use an alternate reporting form for employees covered under insured coverage
  - But you still had to send a 1095-C to the IRS!
Affordability Calculations

- Last-minute IRS adjustment to affordability safe harbors (from 9.5% to 9.56%)
- **Wellness incentives** were treated as making the premium more affordable only if the wellness incentive related solely to nontobacco use.
The Infamous Line 22 of Form 1094-C

- Did you have to select anything?
- If you did select one, did you gain anything?
- The Reader’s Digest version:
  - Qualifying offer method: Did you use 1A on Forms 1095-C?
  - Qualifying offer method transition relief: Did you use 1I on Forms 1095-C?
  - Section 4980H transition relief: Are you subject to substantial penalties?
    - Some vendors automatically selected this
  - 98% offer method: Did you offer MV and affordable coverage to 98% of the people you sent a Form 1095-C to?
Mistakes Happened—Now What?
ACA Reporting Issues—1095-C Errors

- Errors on a 1095-C are largely inconsequential to employees.
  - No need to correct their tax returns.
  - Errors on Part II wouldn’t matter to the employee.
  - Errors on Part III were probably ignored by the employee.
  - STILL . . . should send the employee a corrected form.
  - Potential for $250 per return penalty for not filing or for not correcting on or before Oct. 1 for 1095-Cs to employees and other covered individuals; Nov. 1 for 1095-Cs to the IRS.
ACA Reporting Issues—1095-C Errors

- How to correct:
  - If 1095-Cs haven’t been filed with the IRS, simply send a new 1095-C to the employee/covered individual with “CORRECTED” written on the form.
  - If 1095-Cs have been filed with the IRS—more likely, given where we are today, on the calendar—enter “X” in the “CORRECTED” box at the top of the form, send to the employee/covered individual, and send to the IRS with a non-authoritative 1094-C.
  - The 1094/5-C instructions have detailed steps for making corrections.
ACA Reporting Issues—1094-C Errors

- Most employers were able to file on time.
  - March 31, 2016, for paper filers
  - June 30, 2016, for electronic filers (required if 250 or more forms)

- If your filings are late: File as soon as possible.

- If your filings were rejected: Fix the errors and resubmit.
  - IRS recently announced that previously rejected forms resubmitted within 60 days are treated as timely filed.

- If your filings were “Accepted with Errors”: Try to correct within 60 days, but there might be more leeway.
  - Big issue for incorrect or missing TINs (SSNs)
ACA Reporting Issues—1094-C Errors

How to Correct

- Does “good faith” standard for 2015 absolve employers from making corrections to erroneous forms?
  - Likely not, although some vendors think so.
    - Argument is free pass because tax withholding not implicated by errant information on 1095-C.

- Practical problem: Error message from IRS won’t indicate whether the errant SSN belongs to the employee or a covered family member.

- What’s an employer to do?
  - Employer verification process might include checking SSNs in employer’s records and soliciting SSNs from the employee. If error found, fix it and re-transmit Form 1095-C to IRS.
  - If no readily apparent error, IRS has a protocol for incorrect SSNs.
    - Initial solicitation of SSN, followed by two more (by December 31 and again in following year).
    - IRS allows use of DOB in lieu of SSN if three attempts fail.
    - Cumbersome process, to say the least.
ACA Reporting Issues—1094-C Errors

- Will IRS follow through with trying to assess penalties for errant 2015 Forms?
  - Notice 972CG “Notice of Proposed Civil Penalty”
    - Defenses include acted in a “responsible manner” both before and after the error occurred, and that (i) there were significant mitigating factors (for example, a history of the employer filing forms with correct SSNs), or (ii) the failure was due to events beyond the employer’s control.
  - IRS: “It is a best practice to document efforts to comply with the information reporting requirements for either Good Faith relief or Reasonable Cause waivers. Error correction is part of the good faith effort to file accurate and complete information returns.”
    - July 2016 IRS Webinar on ACA Reporting (AIR Working Group)
  - Stay tuned . . . .
Penalties
Health insurance exchanges—notice of employee’s eligibility for premium tax credit

- Employers have 90 days to dispute ruling.
- Do you need or want to respond?
  - Why might you NOT want to? Should you even open the notice from the Marketplace?
  - What can the Marketplaces do? Can they fine you? Levy employer mandate penalties?
  - Why might you want to reply?
  - If you want to reply, how do you demonstrate an offer of coverage? How do you demonstrate it was affordable and minimum value?
  - Should you communicate with the employee? What’s the message?

See our June 23 webcast or recently issued Benefits Insight and Guidance.
Appeals With the IRS

Here’s what the regulations tell us:

§ 54.4980H-6

a) In general. [Reserved]
b) Effective/applicability date. This section is applicable for periods after December 31, 2014
ACA Reporting Errors—Defenses to Penalties

- **Good faith**
  - The IRS says that it will not assess penalties as long as:
    1. The 1095-C was timely filed.
    2. The error was made in good faith.
  - It’s not clear what counts as “good faith.”
  - We doubt the IRS would say it is good faith to fail to fix a 1095-C the employer knows or should know was erroneous.

- **Inconsequential errors**
  - The IRS has some discretion here when the error is “inconsequential.”
  - Regulations specifically say a wrong or missing TIN is *not* inconsequential.

- **Reasonable cause and not willful neglect**
  - This is a historically difficult standard to meet, and “my vendor made a mistake” is rarely sufficient.
  - Efforts to correct and prevent the error from happening again are helpful.
Looking Ahead to 2016
## ACA Reporting Deadlines in 2017 (2016 CY Reports)

<table>
<thead>
<tr>
<th>ACA Employer Reporting Requirement</th>
<th>2017 Deadlines</th>
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<tbody>
<tr>
<td><strong>Forms 1095-C to Employees, etc.</strong></td>
<td></td>
</tr>
<tr>
<td>Forms 1095-C to full-time employees and to any other employees or primary insureds (retirees, partners, COBRA beneficiaries) with coverage under the employer’s self-insured plan</td>
<td><strong>Jan. 31, 2017</strong> (30-day extension available at the IRS’s discretion)</td>
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<tr>
<th><strong>Forms 1094-C and 1095-C to IRS</strong></th>
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<tbody>
<tr>
<td>Paper filing of Forms 1094-C and 1095-C</td>
<td><strong>Feb. 28, 2017</strong> (automatic 30-day extension available via Form 8809?)</td>
</tr>
<tr>
<td>Electronic filing of Forms 1094-C and 1095-C</td>
<td><strong>March 31, 2017</strong> (automatic 30-day extension available via Form 8809?)</td>
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</table>
Proposed forms were issued last week with few changes.

- 1095-C looks the same but the “Instructions for the Recipient” (not the full instructions) add two new codes (1J and 1K) for Line 14 relating to conditional spousal carve outs (e.g., spouse could be covered only if other coverage was not available to the spouse).
  - No indication about changes for line 16
- 1094-C removes a little-used option on line 22 for “Qualifying Offer Method Transition Relief.”

Draft instructions expected in the next several weeks (the draft 2015 instructions were issued in August).
Expiration of 2015 Transition Relief

What Transition Relief Expires?

- Non-CY Plan Relief for the 100+ FTE/FTEq Group
- 50-99 FTE/FTEq Groups in 2014*
- “Free 80” for Tier 1 violations (drops to Free 30*)
- Shorter period for determining ALE status
- Offers of coverage for January 2015
- No coverage for children, as long as effort underway to add it*
- Tier 1 threshold of 70% of FTEs and their children (increases to 95%*)
- Short transition measurement periods for stability periods starting in 2015

* For noncalendar year plans, transition relief might extend to the portion of the 2015-16 plan year that falls in 2016, but certain requirements might need to be satisfied.

What Transition Relief Lingers or Might Linger?

- Collectively bargained employee relief?
- Non-ALE grows into an ALE: the April 1 rule
- Good faith reporting?
Affordability Safe Harbors

- Flex credits, HRAs, and opt-out incentives are under scrutiny

**HRA**: Reduces premium to make coverage **MORE AFFORDABLE** if benefit may be applied **only** to pay premium, OR to pay premium and reimburse cost sharing.

**Flex Credits**: Reduce premium to make coverage **MORE AFFORDABLE** if
- Cannot be taken as cash, used to pay a taxable benefit, or contributed to an HSA.
- Can be used to buy minimum essential coverage or other tax free medical care like a health FSA or dental coverage.

**Cash Opt-Out Incentives**: Will increase premium to make coverage **LESS AFFORDABLE** **unless** . . . *Probably* . . . the employee attests that she and her family minimum essential coverage other than through the individual market.

- New rules for flex credits and opt-out incentives won’t apply until the 2017 plan year (at the earliest), **UNLESS** the program was newly established after Dec. 16, 2015.
Opt-Out Example: Ed is offered employee-only coverage at a monthly cost of $100. However, if Ed waives coverage, he receives $200 cash. Because the receipt of the cash opt-out credit depends on Ed waiving medical coverage, the IRS concludes that Ed’s “cost” for the medical coverage includes the cash he had to forego in order to enroll in the medical plan.

- Thus, in our example, Ed’s monthly cost for employee-only coverage is deemed to be $300 (the $100 per month contribution plus the $200 opt-out).
- This same rule applies even if Ed accepted coverage
- What if opt out incentive is PTO or percentage of salary?
If the expat carrier is a US insurer, that carrier will handle IRS tax reporting (1095-Bs to employee and transmittal to IRS).

Many *foreign* insurers won’t be equipped to handle US tax reporting.
- Foreign group coverage = MEC
  - but IRS tax reporting appears to apply to carrier.
- Foreign individual coverage and governmental coverage must follow HHS certification process to qualify as MEC.

Potential problem if US expat has to satisfy individual mandate.
- Can US employer file Forms 1095-B on behalf of entity providing the foreign insurance?
  - Regulators have not addressed.
Where Are We With Vendors?

- Options continue to abound for those not willing/able to do it themselves.
  - Stand-alone ACA vendor
  - Integrated solution with payroll/HR
  - Benefit admin
  - Payroll Provider offering ACA under a private label with a third-party

- Integration helps, but knowledgeable staff is crucial.

- Looking to make a change?
  - ACA vendor contracts average 2–3 years.
  - Historical data conversion is not always easy.
  - Consider the timing.
Working With Vendors

- Lockton survey shows that the biggest barriers to a good user experience included:
  - Data extracts.
  - Coding.
  - Vendor escalations.
  - Late IRS guidelines.
  - Compliance misunderstandings.

- What can you do to help?
  - Bad data in . . . bad data out.
  - Be prepared—the more information the better.
  - Understand what your responsibilities are versus those of your vendor partner.
More Fun on the Horizon
Future Topics to be Addressed in Future Webcasts

- **High Noon: The Evolving Clash Between Health Plans and Out-of-Network Healthcare Providers**
  - Thursday, August 4 at 2-3:30 p.m. Central time
  - Learn what's happening and why, who's at risk, and what to do about it.

- **Open Enrollment for 2017: What's On the Agenda?**
  - Thursday, September 22 at 2-3:30 p.m. Central time
  - Nondiscrimination rules relating to transgender benefits.
  - Proposed Changes to Form 5500.
  - Mental Health Parity.
  - Filing for Transitional Reinsurance Fee.
  - Affordability changes (e.g., cash opt-outs and flex credits).
  - And more!
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