ACA in 2015: What’s Next for Employers

Mary Weaver, J.D., AIRC
Program Director—Tax Product Group
First Advantage
Indianapolis, Indiana
Disclaimer

This presentation contains general information and is intended for educational purposes only. The information provided herein is not intended to provide, and should not be relied upon as accounting, tax, or legal advice. While First Advantage believes this information to be up-to-date and accurate, federal, state and local laws are subject to legislative changes and governmental entity/program administrator interpretation. First Advantage shall not be responsible for any loss, liability or action due to any person relying on the material contained in this presentation.

Before making any decision or taking any action that may affect your business, you should first consult with those within your organization and or your qualified professional advisor.
Agenda

- Employer Mandate
- Changes
  - King vs. Burwell
  - Republican Congress
- Reporting
- Best Practices
Employer Mandate

- Applicable Large Employer
- Full-Time Employees
- Employers Offer
  - Minimum essential coverage
  - Affordable coverage
  - Minimum Value (MV)
  - Employees and dependents
- Shared responsibility payment (penalty)
  - No offer of coverage—$2,000 x all FT employees
  - Not affordable/MV—$3,000 per involved FT employee
Applicable Large Employer (ALE) Determination

Controlled Group

50 or more full-time+full-time equivalent
• 50-99 FT/FTE—transition relief 2015
  – No shared responsibility penalties—Must report

Full-Time
• Employed an average of 30 hours of service per week
• 130 hours in a month—equivalent to 30 hours per week

Full-time equivalent
• Aggregate number of hours of service for calendar month
  (cap 120 per employee)
• Divide by 120
• Example:
  – 20 FT and 40 PT
  – PT average 90 hrs /calendar month
  – 90 x 40 = 3,600/120 = 30 FTE
  – 20ft = 30 fte = 50 = ale
Employee Status Determination

- Employee—common law standard
- Reasonable expectation—FT
  - Monthly measurement/actual hours of service
- PT/Variable—ongoing determination—30 hours or under 30 hours
  - Look-back measurement method (a key to Reporting!)
    - Measurement period—4 months to 12 months
    - Administrative period—not more than 90 days
    - Stability period—6 months to 12 months
- New employees
  - Initial measurement period; initial administrative period; initial stability period
- Transition to ongoing employees
  - Initial to standard measurement; administrative; stability periods
- Complex issues
  - Hours of Service; Rehire/Break in Service
  - Leave of Absence; Exchange Notices
Employer Shared Responsibility Payment (Penalties!!)

Reporting to the IRS is the mechanism for penalties.

- **Not Offering Health Insurance (MEC)**
  - Just have to offer coverage to all full-time employees
  - $2,000 x FT employees
  - Assessed on all full-time employees if just one full-time employee is not offered insurance AND goes to the exchange
    - 30 employees are excluded from the calculation

- **Not Offering Affordable and MV Health Insurance**
  - Just has to be affordable/MV based on tests.
  - $3,000 per ft employee
  - Assessed just on those FT employees that go to
    - Marketplace and receive tax credit.
  - Max = $2,000 x # of ft employees (less 30)

"Pay" ≠ No Reporting!
2014 Elections

Before

Senate—100 seats
- Democrats 55
- Democrat MAJORITY

House—435 seats
- Republican 233
- Republican MAJORITY

Democratic Control
- Republican House
- Democrat Senate
- Republican efforts to repeal or make change to ACA

After

Senate—100 seats
- Republicans +9 = 54
- Republican MAJORITY

House—435 seats
- Republicans +13 = 246
- Republican MAJORITY

Republican Majority
- In both houses
Legislation—Possible Repeal?

NOT SO FAST!

Veto proof = 2/3 majority both houses

Repeal ACA?

House needs 290 seats

President could veto attempt to repeal

Senate needs 66.7 (67) seats

Sampling of Legislation since 2014 election: as of July 7, 2015
H.R. 370—Repeal ACA—Intro 1/14/15—Still in committee
H.R. 596—Repeal ACA—Intro 1/28/15—H.Res 70 Passed House
H.R. 160—Repeal medical device tax—Intro 1/6/15—Passed House—To Senate
Supreme Court

King v Burwell

- Legality of tax credits—federal exchanges
- 4th Circuit—found legal
- Supreme Court heard arguments March 3 2015
- June Opinion—found in favor of Administration

Any Change?
Reporting Penalties + Whistleblower

**Failure to Report/Incorrect Reporting**
- Unintentional failure—$200 (1 to IRS and 1 to employee)
- Intentional failure—$250
- To max of $3,000,000

**Whistleblower Protection—Affordable Care Act §1558**
- Employer must not discharge or discriminate against employee who has:
  - Received tax credit or subsidy
  - Provides information relating to any violation of the ACA
  - Testifies or assists in a proceeding concerning such violation
- Employee may seek relief under 15 USC 2087(b)—Whistleblower Protection
  - Reinstate complainant—back pay with interest
  - Provide compensatory damages
  - to include all costs and expenses incurred (including attorney fees)

**Award to Whistleblowers—26 USC § 7623—(IRS)**
- IRS pays for assistance in detecting violations of the internal revenue laws
- Award—15% to 30% of the collected proceeds
- Amount determined by Whistleblower Office
What Does an ALE to Do?

Be able to identify
- Variable hour employees
- Part-time employees (less than 30 hours)
- Full-time employees (30 hours or more)

Offer coverage to full-time
- Minimum essential coverage
- Minimum value
- Affordable
- Employee and dependents

Report to IRS as required
- All full-time
- All offered
- Forms 1095 and 1094 at www.irs.gov Forms and Pubs
Form 1095-C

Part I identifies EE/primary insured and employer.

Part II is used to confirm employer compliance with 4980H(b) and to calculate 4980H(b) penalties, if applicable.

Part III is used to confirm individual shared responsibility compliance.
Form 1095-C—2015

**Plan Start Month**—Enter 2-digit number

<table>
<thead>
<tr>
<th>All 12 Months</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Covered Individuals**

<table>
<thead>
<tr>
<th>Name of covered individual(s)</th>
<th>SSN</th>
<th>Covered all 12 months</th>
<th>Coverage from Jan to Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
# Form 1095-C—Part II

## Employee Coverage—Line 14

Enter “Series 1” code that appropriately describes coverage offered, if any, to EE and to spouse and/or dependent(s) for each month of the calendar year. If same code is applicable for entire year, enter only once in “All 12 Months” column. Otherwise, enter appropriate code for every month, even if EE was not employed during the month.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A</td>
<td>Qualifying Offer: MV MEC with self-only contribution ≤ 9.5% mainland single FPL offered to ‘ee and at least MEC offered to spouse and dependents</td>
</tr>
<tr>
<td>1B</td>
<td>MEC providing MV offered to ‘ee only</td>
</tr>
<tr>
<td>1C</td>
<td>MEC providing MV offered to ‘ee and at least MEC offered to dependents</td>
</tr>
<tr>
<td>1D</td>
<td>MEC providing MV offered to ‘ee and at least MEC offered to spouse</td>
</tr>
<tr>
<td>1E</td>
<td>MEC providing MV offered to ‘ee and at least MEC offered to dependents and spouse</td>
</tr>
<tr>
<td>1F</td>
<td>MEC not providing MV offered to ‘ee, or ‘ee and spouse or dependents, or ‘ee, spouse and dependents</td>
</tr>
<tr>
<td>1G</td>
<td>Offer of coverage to ‘ee who was not FT or individual who was not an ‘ee for any month and who enrolled in self-insured health plan for one or more months</td>
</tr>
<tr>
<td>1H</td>
<td>No offer of coverage (‘ee not offered coverage or non-MEC coverage)</td>
</tr>
<tr>
<td>1I</td>
<td>2015 Qualified Offer Method Transition Relief: ‘ee (and spouse/dependents) received no offer of coverage, received an offer that is not qualified or received a qualified offer for less than 12 months.</td>
</tr>
</tbody>
</table>
**Form 1095-C—Part II**

**Employee Coverage—Line 16**

Enter “Series 2” code that appropriately describes applicable safe harbor, if any, for each month of the calendar year.

If same code is applicable for the entire year, enter code only once in “All 12 Month” column. Otherwise, enter code(s) monthly, as applicable.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2A</td>
<td>‘ee not employed on any day during the month</td>
</tr>
<tr>
<td>2B</td>
<td>‘ee not a FT ‘ee for the month and not enrolled in MEC; ‘ee was FT but offer of coverage ended before last day of month due to termination of employment; or ‘ee was FT but January 2015 transition relief applies</td>
</tr>
<tr>
<td>2C</td>
<td>‘ee enrolled in coverage offered</td>
</tr>
<tr>
<td>2D</td>
<td>‘ee in a Section 4980H(b) Limited Non-Assessment Period</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2E</td>
<td>Multiemployer interim relief</td>
</tr>
<tr>
<td>2F</td>
<td>Section 4980H(b) affordability Form W-2 safe harbor</td>
</tr>
<tr>
<td>2G</td>
<td>Section 4980H(b) affordability FPL safe harbor</td>
</tr>
<tr>
<td>2H</td>
<td>Section 4980H(b) affordability rate of pay safe harbor</td>
</tr>
<tr>
<td>2I</td>
<td>Non-calendar year transition relief applies to ‘ee</td>
</tr>
</tbody>
</table>
**Form 1094-C—Part I**

**ALE Member General Information**

<table>
<thead>
<tr>
<th>Lines 3–16 applies to Designated Government Entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part I Applicable Large Employer Member (ALE Member)</td>
</tr>
<tr>
<td>Employer info—match 1095-C’s submitted</td>
</tr>
<tr>
<td>Enter # of 1095-C’s being submitted with this form.</td>
</tr>
</tbody>
</table>

![Image of Form 1094-C—Part I](image)
Form 1094-C—Part II

ALE Member General Information

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

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. Qualifying Offer Method Transition Relief
   - 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

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
### Form 1094-C—Part III

#### ALE Member Monthly Information

<table>
<thead>
<tr>
<th></th>
<th>(a) Minimum Essential Coverage Offer Indicator</th>
<th>(b) Full-Time Employee Count for ALE Member</th>
<th>(c) Total Employee Count for ALE Member</th>
<th>(d) Aggregated Group Indicator</th>
<th>(e) Section 4980H Transition Relief Indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>All 12 Months</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Jan</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Feb</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Mar</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Apr</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>May</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>June</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Picture only shows through June, actual form goes to December on Line 35.

**Note:**
- Used to determine Section 4980H(a) compliance and penalties, if applicable!
Form 1094-C—Part IV

ALE Member—Other ALE Members of Aggregated 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).

<table>
<thead>
<tr>
<th>Name</th>
<th>EIN</th>
<th>Name</th>
<th>EIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td></td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td></td>
<td>52</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td></td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td></td>
<td>54</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td></td>
<td>55</td>
<td></td>
</tr>
<tr>
<td>41</td>
<td></td>
<td>56</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td></td>
<td>57</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td></td>
<td>58</td>
<td></td>
</tr>
</tbody>
</table>

If Line 21 of Part II is “YES”, list other members of Aggregated ALE Group.
**Form 1095-B**

Coverage for Non-Employees (COBRA, Retiree, etc.)

Self insured plan only

### Part I - Responsible Individual

1. Name of responsible individual
2. Social security number (SSN)
3. Date of birth (if SSN is not available)
4. Street address (including apartment no.)
5. City or town
6. State or province
7. Country and ZIP or foreign postal code

### Part II - Employer Sponsored Coverage

10. Employer name
11. Employer identification number (EIN)
12. Street address (including room or suite no.)
13. City or town
14. State or province
15. Country and ZIP or foreign postal code

### Part III - Issuer or Other Coverage Provider

16. Name
17. Employer identification number (EIN)
18. Contact telephone number
19. Street address (including room or suite no.)
20. City or town
21. State or province
22. Country and ZIP or foreign postal code

### Part IV - Covered Individuals

<table>
<thead>
<tr>
<th>Name of covered individual</th>
<th>SSN</th>
<th>Did (or could not) provide consent to HIPAA</th>
<th>Covered (or could not) consent to HIPAA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **Self-insured** HP enter "B"  
- **Self-insured** don’t complete part II  
- **Employer info** match 1094-B transmittal form  
- List each individual covered at anytime during the year.  
- Check boxes for each month individual was covered for at least one day in month. If covered all 12 months, just check column (b).  

---

3A-21
Form 1094-B

Transmittal of Health Coverage Information Returns

Information about the filer. Match information on all Form 1095-B’s submitted with this form.

Enter # of 1095-B’s

For Official Use Only

Signature

Title

Date
### Extension of Time Revised Form 8809

**Draft forms:** [http://apps.irs.gov/app/picklist/list/draftTaxForms.html](http://apps.irs.gov/app/picklist/list/draftTaxForms.html)

---

**Form 8809**

Application for Extension of Time To File Information Returns

(For Forms W-2, W-2G, 1042-S, 1095-B, 1095-C, 1097, 1098, 1099, 3921, 3922, 5498, and 8027)

This form may be filled out online. **See How to file below.**

**Do not use this form to request an extension of time to (1) file Form 1040 (use Form 4868), (2) file Form 1042 (use Form 7004), or (3) furnish statements to recipients (see Extensions under part M in the General Instructions for Certain Information Returns).**

1. **Payer/filer’s Information:** Type or print clearly in black ink.

   - **Name:**
   - **City:**
   - **State:**
   - **ZIP Code:**
   - **Contact name:**
   - **Telephone number:**

2. **Taxpayer Identification number (TIN):** Enter the payer/filer nine-digit number. Do not enter hyphens.

3. **Check your method of filing information returns:**
   - [ ] electronic
   - [ ] paper

4. **If you are requesting an extension for more than one payer/filer, enter the total number of payers/filers and attach a list of names and taxpayer identification numbers. See How to file below for details.**

5. **Check this box only if you already requested the automatic extension and you now need an additional extension. See instructions.**

6. **Check only the box(es) that apply. Do not enter the number of returns.**

<table>
<thead>
<tr>
<th>Form(s)</th>
<th>[ ] here</th>
<th>Form(s)</th>
<th>[ ] here</th>
<th>Form</th>
<th>[ ] here</th>
</tr>
</thead>
<tbody>
<tr>
<td>W-2</td>
<td>5498</td>
<td></td>
<td></td>
<td>8027</td>
<td></td>
</tr>
<tr>
<td>1097, 1098, 1099, 3921, 3922, W-2G</td>
<td>5498-ESA</td>
<td></td>
<td></td>
<td>1095-B, 1095-C</td>
<td></td>
</tr>
<tr>
<td>1042-S</td>
<td>5498-SA</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

DRAFT AS OF April 29, 2019

DO NOT FILE

3A-23
Who Sends What Forms to Whom?

**Self-insured**
- 1095-C for each applicable employee to the IRS
- One 1094-C with all 1095-Cs to the IRS
- 1095-C to each applicable EMPLOYEE
  - All eligible FT + any offered PT

**Fully-insured**
- 1095-C for each applicable employee to the IRS
- One 1094-C with all 1095-C to the IRS
- 1095-C to each applicable EMPLOYEE
  - All eligible FT + any offered PT
- NOTE: employees will also receive 1095-B

**Insurance Issuers**
- 1095-B for each policyholder (under fully insured plan) to the IRS
- One 1094-B with all 1095-B to the IRS
- 1095-B to each POLICYHOLDER
When

- Employer Mandate effective 1/1/2015
- Reporting will not occur until 2016
  - Employee statements by January 31st
  - ACA returns to IRS by February 28th
    - March 31st if filed electronically
- No relief for non-calendar year plans
- Employers between 50-99
  - Transitional relief from penalties
  - Reporting not included in transitional relief!

Every Year of ACA Compliance = at least 4 years of work, maybe MORE!
With the IRS, audits can come up down the road and can take a long time to resolve. The best practice is to compile information throughout the process and have this material ready before the audit.

- Have accurate, detailed and complete records showing hours worked during the measurement period
- Have monthly backup documentation for employee counts and the Large Employer determination
- Have detailed full-time Safe Harbor schedules
- Have information regarding Employee Coverage
- Have Insurance Plan information on MEC and costs
# Affordable Care Act “Employer Checklist”

## Plan Design
- Grandfather status
- Annual Limits
- Pre-existing Condition
- Dependent Coverage
- Waiting Periods
- Cost-sharing Limits
- And More!

## Employer Mandate
- Track Employee Hours
- Determine Employee Status
- Offer Coverage
- Provide Coverage

## Reporting
- IRC § 6055
- IRC § 6056

---

### Who is handling each piece?

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### What is needed to accomplish each piece?

- Benefit plan(s)
- Company Information
- Wage feed including every employee
- Employer Mandate parameters
- Employer Mandate data
- Wage feed data
- Insurance data

---

*When we talk to employers, many people think someone else is handling it.*

*Do you know who is handling each piece? Do they have or will have access to what is needed to comply?*

---

3A-27
Questions?