

ACA REPORTING AND DISCLOSURE: THE COMPLEXITY CONTINUES (PART 2 OF 3)

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Welcome back to Part 2 in our 3-part discussion of the ACA reporting and disclosure forms. In Part 1, we focused on the basics: identifying the various forms, the reporting entities (focusing on employer as filers), and deadlines for filing. In Part 2, we will discuss the differences between the draft and final forms. In Part 3 we will focus on the penalties for failing to file.

Deviations from Draft Form: The forms themselves are unchanged from previous drafts. Instructions for the “B Forms” are likewise nearly the same. One minor change is that employers may list a TIN for an employee who does not have a SSN available.

Instructions for the “C Forms” include several changes and clarifications worth noting:

- As with the 1095-B, a TIN may be used where an SSN is not available.
- Employers that cover non-employees (e.g. COBRA, retirees) *may*, but are not required to, use the B Forms instead of 1095-C Part III.
- The C Forms require employers to count their total number of employees, in addition to just full-time employees. The two counting methods from the draft instructions (first or last day of the calendar month) remain, plus now employers may count on the first or last day of the payroll period starting in the calendar month.
- An employee working for multiple employer members in a calendar month is treated as an employee of only the member for which she worked the most hours that month (i.e. only that employer must file the 1095-C for her, though the employee may also receive the form from other members she worked for).
- Applicable large employers may use transition relief under which they are deemed to offer coverage to certain employees, even if they don't actually do it, in order to hit the 2015 70% threshold on 1094-C. However, only actual offers of coverage go on Form 1095-C Part II.
- With respect to *actual offers of coverage*.

- An employer may report offering coverage for a month only if it offers coverage for every day of that month.
- Offers to employee spouses, even if conditional, count so long as the condition is reasonable and objective (e.g. excluding spouses covered or offered coverage by their own employers).
- While the draft instructions said that providing each employee with a summary of the offered coverage was acceptable, the final instructions require that a self-insured employer give a copy of the 1095-C to each covered employee.
- An employer with 50 to 99 full-time employees, though exempt from the employer mandate for 2015, must still file forms 1094-C and 1095-C.
 - The final instructions do not offer further information on using third parties to facilitate reporting by employers.

Additional Guidance: For further details, employers may consult IRS Publication 5196, *"Affordable Care Act: Reporting Requirements for Applicable Large Employers."* Employers should also be on the watch for additional guidance, particularly the previously mentioned FAQs.

MEET THE TEAM



Lisa A. Van Fleet

St. Louis

lisa.vanfleet@bcplaw.com

[+1 314 259 2326](tel:+13142592326)

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