

# ACA Reporting: What We've Learned

**Presented by**

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## Slide 1

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**BF43**

Changed the company logo--clearer image, aligned in the corner, and it looks better with the top gradient in subsequent slides

Brad Farley, 7/19/2016



# Today's Agenda

- Overview of ACA Compliance
- ACA Full-Time Employee Definition
- Affordability under the ACA
- Other ACA Compliance Issues
  - Employer Payment Plans
  - Stand-Alone HRAs
  - Health FSAs
  - Annual Open Enrollment
- ACA Reporting



# ACA COMPLIANCE OVERVIEW



# ACA Compliance Overview

2015

- All applicable large employers (**ALE**) must offer coverage to at least 70% of its full-time employees to avoid \$2,000 penalty; \$3,000 penalty applies if coverage is not affordable or does not meet MV
- For employers with more than 100 FTEs, \$2,000 penalty applies after the first 80 FTEs if no insurance offered
- No penalties for employers with 50-99 FTEs
- **No penalties between January and Plan Year start for certain non-calendar year plans (2015 PY ending in 2016, certain conditions apply)**

2016

- **All employers with 50 or more FTEs must offer coverage** to at least 95% of its full-time employees to avoid penalties
- **\$2,000 no insurance penalty** is assessed after first 30 FTEs (no longer 80)
- **New 6055 and 6056 reporting requirements** for 2015 to be filed in 2016 with IRS

2020

- Cadillac Tax becomes effective (delayed from original effective date of 2018)
- 40% excise tax on high-cost health coverage



# ACA Compliance Overview

## Applicable Large Employers (ALEs) subject to the “pay or play” penalty

Definition	Status	Commonly-Owned Companies
Employers with 50 or more full-time employees	<b>Based on prior calendar year data</b>	Determined under controlled group rules, treated as single employer
Part-time and seasonal employees included in calculation	Must be evaluated annually	Each member responsible for own reporting

Small employer sponsors of self-funded group health plans are exempt from the “pay or play” penalty but **ARE** subject to the ACA reporting (includes level funded plans).

# ACA Compliance Overview

- ALEs must offer Minimum Essential Coverage (MEC) meeting Minimum Value (MV) to at least **95%** of its full-time employees and dependents
  - Subsection (a) penalty
- Offer of coverage must be **affordable**
  - Subsection (b) penalty
- Penalties triggered only **IF**:
  - FT employee purchases coverage through the Exchange and receives a premium tax credit/subsidy
- **NO** penalty for Medicaid eligible employees



**Slide 6**

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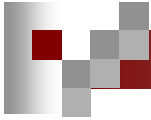
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Brad Farley, 7/19/2016



# **ACA: FULL-TIME EMPLOYEE**



# ACA Full-Time Employee Definition

- Full-Time Employee = 130 hours in a calendar month
  - Include all worked and non-worked hours if paid
    - Vacation, holidays, sick days, jury duty, paid leaves of absence
    - Must credit on-call hours if they: are paid (even at a reduced rate); are counted toward employee's required hours; or substantially restricts employee's activities
  - Disregard
    - Unpaid leaves of absence
    - Bona fide volunteers, even if they receive nominal pay
    - Students in government-subsidized work study programs
    - Hours for which compensation is treated as income from sources outside U.S.



# ACA Full-Time Employee Definition

- STD and LTD leaves

- Generally result in:

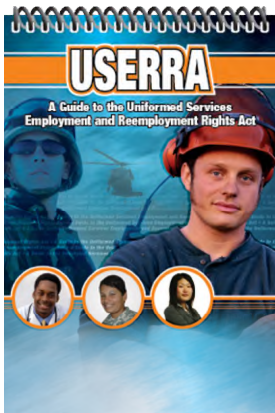
- Hours of service for periods where recipient retains employee status and,
    - Employee receives disability benefits directly or indirectly funded by employer
    - Note: Disability benefits from coverage paid for with after-tax dollars by the employee does **NOT** count as hours of service

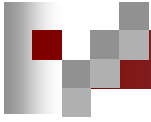




# ACA Full-Time Employee Definition

- FMLA and USERRA Leaves of Absence:
  - Employers must use an “averaging rule”
    - Prevents the unpaid leave from reducing the employee’s hours of service during a measurement period
      - Determine the employee’s average hours of service, ***excluding any periods of unpaid leave during the measurement period; or***
      - Impute hours of service during the period of unpaid leave at a ***rate equal to the average weekly hours actually worked.***



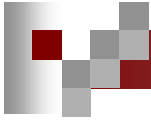


# ACA Full-Time Employee Definition

## ■ Seasonal Employees:

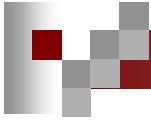
- Cannot be automatically excluded
- Employers may apply the same look-back measurement period to seasonal employees as variable hourly employees
- Final regulations define a “seasonal employee” as an employee who performs services in a position for which the customary annual employment is **6 months or less**





## ACA Full-Time Employee Definition

- Rehired Employees and Breaks in Service:
  - If an employee has a period of **13 consecutive weeks** during which the employee is not credited with an hour of service, employer may treat as new employee
  - “Rule of Parity” may be used
    - If an employee is rehired after at least four consecutive weeks of no credited hours
    - Example: Employee works five weeks and then has no credited hours for six weeks, employee may be treated as new employee
  - Period is extended to **26 weeks for educational institutions**



# ACA Full-Time Employee Definition

## ■ STEP 1:

- If a new employee is reasonably expected to work full-time hours:
  - Employer must offer coverage *at least 3 months* after date of hire (can extend up to 30 days if “bona fide” orientation period)
  
- Other considerations
  - Is the employee replacing a full-time employee?
  
  - Was the job advertised as requiring 30 or more hours of service per week?



# ACA Full-Time Employee Definition

## ■ STEP 2:

□ If unable to determine full-time status using Step 1:

■ Employer must establish “measurement periods” and “stability periods”

□ Applies to “variable hourly employees” (hours worked fluctuate from week to week)

□ Common industries affected: Restaurants, staffing agencies, hotels, construction companies





# ACA Full-Time Employee Definition

**Methodology 1**

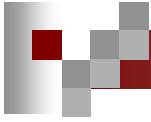


The monthly  
measurement period

**Methodology 2**



The look-back  
measurement period



# ACA Full-Time Employee Definition

## Measurement Period

- Period of time to measure average hours worked
- At least 3 but no more than 12 months



## Administrative Period

- Optional period for Employers to evaluate the eligibility of employees
- Maximum is 90 days



## Stability Period

- Period of time that an employee must be treated as "full-time and offered coverage"
- At least 6 consecutive months; but no shorter than measurement period





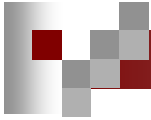
# **ACA: AFFORDABILITY**



# ACA Affordability in a Nutshell

Rate of Pay Safe Harbor	W-2 Safe Harbor	FPL Safe Harbor
9.5% (as indexed) times deemed monthly earnings	9.5% (as indexed) times Box 1 wages for the coverage period	9.5% (as indexed) of single-person Federal Poverty Level
If hourly: Hourly rate of pay x 130 hours/month If salaried: Monthly salary on 1 <sup>st</sup> day of coverage period	Employee contribution must be consistent or % of wages for entire period	FPL for 2016: \$11,880 Annual cost ≤ \$1,148 (higher in AK and HI)
Requires individual tracking; not available for tipped or commissioned employees	Requires individual tracking; best for stable workforce with predictable hours and wages	Easiest to apply, but requires largest employer subsidy

9.66% for 2016, 9.69% for 2017



## ACA Affordability in a Nutshell

- Measures employee contribution required for coverage
- Based on whether employee cost for **employee-only coverage** in lowest Minimum Value (MV) plan is  $\leq 9.5\%$  (as indexed) of household income
  - 9.66% for 2016, 9.29% for 2017
  - Trigger for subsection (b) penalty

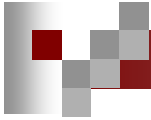




# ACA Affordability in a Nutshell

- HSA contributions do **NOT** count toward affordability
- HRA contributions:
  - Amounts newly made available for current PY under HRA will count **IF** can be used to help employee pay for cost of coverage
  - Even if can be used for other medical expenses
- Wellness incentives:
  - Only incentives related to tobacco use (and use that affects premiums) count

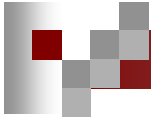




# ACA Affordability in a Nutshell

- Flex credits under a Section 125 Cafeteria Plan
  - Can be counted **IF**:
    - Employee cannot opt to receive credit as a taxable benefit (cash) or used to pay for non-health benefits (i.e., DCAP)
    - Employee may use credits to pay for MEC
    - Credits may be used only to pay for medical care (IRC 213)





# ACA Affordability in a Nutshell

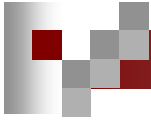
- Flex credits under a Section 125 Cafeteria Plan
  - Example: ABC's employees receive flex credits of \$480 (\$40/month), which may be applied towards the \$200/month cost for group health coverage or contributed to a health FSA
    - The \$480 flex credit is a "health credit" and reduces the employee's required contribution for purposes of the ACA
    - For purposes of the ACA (including 1095-C reporting), the employee's required contribution is \$160/month (\$200-\$40 flex credit)





# ACA Affordability in a Nutshell

- Unconditional opt-out payments
  - Proposed Regs issued on July 8, 2016 treat “opt-out” arrangements as **increasing** employee’s required contribution for employer sponsored coverage
    - **Limited exception** if opt-out payments are available only to employees who (1) decline coverage; and (2) provide reasonable evidence that they and their expected tax dependents have or will have MEC other than individual coverage (i.e., spouse’s GHP)
  - Effective for PY beginning on or after January 1, 2017
  - Until final regulations are issued, transition relief is available for arrangements adopted before December 16, 2015



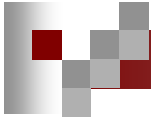
# ACA Affordability in a Nutshell

- Unconditional opt-out payments
  - Example: ABC's employees who elect group health coverage pay \$200/month toward the cost, while employees who decline coverage receive an additional \$100/month in taxable compensation
    - Per IRS, offering a \$100/month opt-out payment *increases* the required employee contribution to \$300/month (\$200+\$100)
    - Reason: Employees who elect coverage must forgo \$100/month in compensation in addition to paying \$200/month toward the cost



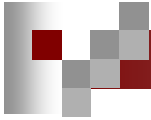


# **ACA: OTHER COMPLIANCE ISSUES**



## Other ACA Compliance Issues

- ACA prohibits the reimbursement of premiums for individual health insurance premiums by an employer “*pre-tax*”
  - Includes Section 125 Cafeteria Plans and HRAs
  - IRS Notice 2013-54, DOL Tech. Rel. 2013-3 and IRS Notice 2015-87
- ACA prohibits stand-alone HRAs for active employees
  - Permitted HRA plan designs:
    - HRA integrated with GHP coverage, including “other” GHP coverage
    - HRA reimbursing only HIPAA excepted benefits (i.e., dental and/or vision)
    - Retiree-only HRA
- Employees must have an annual open enrollment period to accept or decline coverage
  - Without, no offer of coverage is made

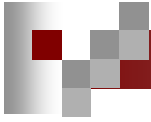


## Other ACA Compliance Issues

- ACA required General-Purpose Health FSAs to meet HIPAA definition of “excepted benefit”
  - Maximum Benefit Condition: The maximum benefit payable cannot exceed the GREATER of two times the participant’s salary reduction amount or \$500; and
  - Availability Condition: Other nonexcepted GHP coverage must be made available for the year to the same participants eligible for the Health FSA



Employers that do not offer GHP can no longer offer the Health FSA benefit unless it is limited to dental and vision expenses only



# Other ACA Compliance Issues

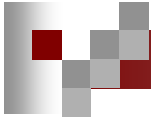
## Penalties for Noncompliance

- **\$100 per day per applicable employee**
- **Potential \$36,500 per employee per year**





# ACA REPORTING



# ACA Reporting Overview

- Reporting is intended to assist the IRS in enforcing:
  - The employer “pay or play” penalty
  - Reconciling eligibility for premium tax credits
- Taxpayers will need the individual statements (1095-B and/or 1095-C) to file their tax return
- Reporting applies to all ALEs and small employers who have self-insured plans
- Employers who are ALEs must report regardless of whether they offered coverage



# The ABC's of ACA Reporting

- Forms to Individuals or Employees
  - **Form 1095-A**, Health Insurance Marketplace Statement
  - **Form 1095-B**, Health Coverage
  - **Form 1095-C**, Employer-Provided Health Insurance Offer and Coverage
  
- Transmittal Forms to the IRS
  - **Form 1094-B**, Transmittal of Health Coverage Information Returns
  - **Form 1094-C**, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns



# The ABC's of ACA Reporting

**ALEs  
sponsoring self-  
insured plans**

Form 1095-C:  
Part I, II and III

Form 1094-C

**ALEs  
sponsored  
insured plans**

Form 1095-C:  
Part I and II  
only

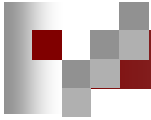
Form 1094-C

**Non-ALEs  
sponsoring self-  
insured plans**

Form 1094-B

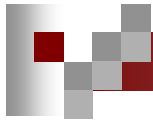
Form 1095-B

**Non-ALEs that sponsor insured plans are NOT required to report under either Section 6055 or Section 6056**



# The ABC's of ACA Reporting

- Information to be reported for each ALE include:
  - Whether MV coverage was offered and to whom
  - The total number of employees in each calendar month
  - Whether an employee's effective date of coverage was affected by a permissible waiting period
  
- Not required:
  - Waiting period length
  - Employer's share of premium cost
  - Premium for lowest cost plan by coverage type (i.e., employee only, family, etc.)
  - For fully insured plans, months that employee's spouse and/or dependents were covered by the plan



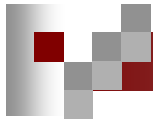
## The ABC's of ACA Reporting

- ALEs with Self-Insured Health Plan (SIHP):
  - Filing C Forms satisfies both IRC 6055 and 6056
    - Must complete for PT employees actually enrolled in SIHP
  - For non-employees, can file either B or C Forms
    - “Non-employee” means someone who was not employed on any day during tax year
    - Examples: Retirees, COBRA qualified beneficiaries, non-employee directors
  - Note: Non-ALE with SIHP uses B Forms



# The ABC's of ACA Reporting

- Health Reimbursement Arrangements (HRA):
  - HRAs are exempt from filing requirements ***IF*** employee only has access to HRA if enrolled in employer's major medical plan
  - Which HRAs are still subject to reporting?
    - HRA that allows current or former employees to spend down HRA balance even though *no longer enrolled in major medical coverage*
    - HRA plan design that allows current or former employees to elect HRA coverage *integrated with "other" group medical coverage (i.e. spouse's)*
    - *Retiree HRA* that can be used to pay premiums or reimburse qualified medical expenses even *if retiree is not enrolled in employer's major medical coverage*



# The ABC's of ACA Reporting

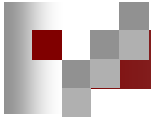
- Who must be reported?
  - Employees that were full-time for one or more months of the calendar year
- Employers with SIHP must complete Form 1095-C, Part III (includes covered spouse and/or dependents)





# The ABC's of ACA Reporting

- Determine if your Plan is affordable. Single premium for lowest cost plan must not exceed 9.66% for 2016:
  - W-2 method (box 1)
  - Federal Poverty Level
  - Hourly rate method (based on 130 hours per month)
- Track eligibility by month
- Track waivers and enrollments by month
- Track new hires and terminations by month
- If self-insured, track spouse and dependent coverage by month

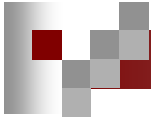


# ACA Reporting: 2016 Draft Forms

## ■ Additional “Offer of Coverage” Codes

- Code 1J** can be used if: (1) MEC providing MV was offered to the employee; (2) MEC was conditionally offered to the employee’s spouse; and (3) MEC was *not* offered to the employee’s dependent(s)
- Code 1K** can be used if: (1) MEC providing MV was offered to the employee; (2) MEC was conditionally offered to the employee’s spouse; and (3) MEC was offered to the employee’s dependent(s)





# ACA Reporting: Deadline for Individual Statements

**Employers MAY furnish statements electronically if certain requirements are met**

## Annual Deadline:

- Statements due on or before January 31

## 2016 Return Deadline:

- January 31, 2017

### General Rule

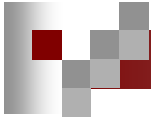
- Provide statements on paper by mail to last known address

### Electronic Statements

- Statements MAY be furnished electronically
- Notice, consent and hardware and software requirements apply

### Employee Consent

- May consent on paper or electronically (i.e. by email)
- Consent on paper must be confirmed electronically by the individual
- Statement may be furnished electronically by email or by informing the individual how to access the statement on the employer's website



# ACA Reporting: Deadline for IRS Filing

**Electronic filing is REQUIRED if filing 250+ returns**

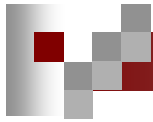
## Annual Deadline:

- Returns due on or before February 28 (March 31, if filed electronically)

## 2016 Return Deadline:

- February 28, 2017
- March 31, 2017, if filed electronically

**DEADLINE**



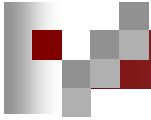
# ACA Reporting: How to Apply for Extensions

## Individual Statements

- Employers can apply for an extension of up to 30 days (Form 1095-B and/or Form 1095-C)
- Extension is NOT granted automatically
- Employers must submit a letter explaining the reasons for requesting the extension
- Letter must be sent to IRS on or before the due date
- Must be signed by the filer or authorized agent

## Filing Forms with the IRS

- Employers can file for an **automatic** extension by using Form 8809 (no signature or explanation is required)
- An additional 30 day extension can be requested by submitting another Form 8809 before the original extension expires (must include detailed explanation)
- Second extension granted when extenuating circumstances prevented filing by the first extended due date



# ACA Reporting: Penalties for Noncompliance\*

Penalty Type	Per Violation	Annual Maximum	Annual Maximum for Small Employers
General	\$250	\$3 million	\$1 million
Corrected within 30 days	\$50	\$500,000	\$175,000
Corrected after 30 days and before Aug 1 <sup>st</sup>	\$100	\$1.5 million	\$500,000
Intentional Disregard (no reductions apply)	\$500 (or if greater, 10% of aggregate amount)	None	N/A

*\*Penalty relief is not available for years after 2015*



# ACA Reporting: Electronic Reporting

- Employers planning to do their own electronic filings will need to develop process:
  - Returns filed using **new** ACA Information Returns (AIR) System
  - Employer must register with system, run a communications test, and submit forms in properly structured XML files
  - **Cannot** submit in PDF format
  - **Not** same system used to electronically file W-2s and 1099s





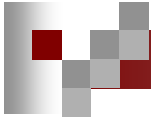


Form 1094-C (2014)

**Part III ALE Member Information – Monthly**

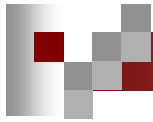
		(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
		Yes	No				
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan		<input type="checkbox"/>			<input type="checkbox"/>	
25	Feb		<input type="checkbox"/>			<input type="checkbox"/>	
26	Mar		<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"/>	

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# ACA Reporting: Challenges and Lessons Learned

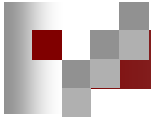
Challenges	Lessons Learned
Form 1095-C takes a lot of time	Start early in 2016
Coding lines 14 and 16 are confusing	Establish a thorough review process and choose service providers carefully
Errors are very common and penalties are large	Understand common errors and penalty triggers



# ACA Reporting: Common Errors in 2015

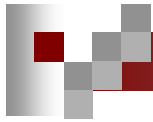
- Misclassification of employees
- Misuse of Code 2D – Limited Non-Assessment Period
- Blank months when unemployed
- Blank line 16 when a code is applicable
- Inappropriate use of Code 1A – Qualifying Offer
- Incorrect amounts on line 15 (or any amounts with line 14 as 1A)
- TIN Validation Errors





## ACA Reporting: TIN Validation Errors

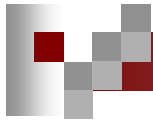
- If the name and social security number reflected on the 1095-B or 1095-C does not match the Social Security Administration's information, the individual record will be rejected
- Employers must make a “good faith effort” to obtain the correct information or face penalties
  - Initial attempt to obtain the social security number or correct name during the individual's first enrollment or, if already enrolled as of September 17, 2015 the next open enrollment season;
  - A second attempt must be made within a reasonable time thereafter;
  - A third attempt must be made by December 31<sup>st</sup> of the year following the first attempt.



# ACA Reporting: TIN Validation Errors

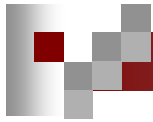
## ■ Best Practices:

- Ask for social security and resident alien cards to verify information
  - Do *not* keep copies, unless keep for all
- When error is received, first investigate whether there was a transposed number or some other typographical error on the 1095-B or 1095-C
- Contact the individual to verify the information
- Contact local Social Security Administration office to verify if information matches
- Document the steps taken to obtain accurate information



# ACA Reporting: Impact on HR Functions

- Data accuracy, aggregation and security
  - For many employers, multiple systems house the necessary data and/or some of the data may be held by third-parties
  - Aggregating the data on a month-by-month basis is a challenge
- Responding to Exchange Notices
  - Employers can expect to be receiving notices from Exchanges when their employees apply for a premium subsidy, possibly triggering employer penalties
- Responsible for determining who is/isn't eligible for coverage and when



# ACA Reporting: Employer Mandate Penalty Process

- IRS is still finalizing process
- IRS will contact employer *sometime* after individual tax filing deadline
- Process:
  - IRS reviews 3 data sources: Form 1094/1095-C, Individual Tax Forms of Employees, and Information about Exchange Subsidies
- Initial contact from IRS to inform about potential liability
- Opportunity for employer to respond
- IRS to send notice and demand for payment
- Payment made separately from other tax payments (non-deductible)



# Questions?



# Thank You!

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