

January 21, 2020

## The Affordable Care Act's Employer Mandate: Part 4

### The Forms 1094/1095 Reporting Obligation

During the course of our Affordable Care Act (ACA) series covering the Employer Shared Responsibility provisions (or the “employer mandate”), we’ve gone over when an employer is an [applicable large employer](#) (“ALE”) or a small employer (“non-ALE”), who is an [ACA full-time employee](#) (“FTE”), and what [coverage must be offered](#) to full-time employees in order to avoid potential employer mandate penalties. In this Part 4, we’ll cover the basics of ACA reporting on Forms 1094/1095.

### What Must Be Filed?

The reporting obligations depend upon whether (1) you’re an ALE – which includes an employer known as an applicable large employer member (“ALEM”) that may not be an ALE by itself but is a member of a group of closely related employers known as an Aggregated ALE Group<sup>1</sup> – or a non-ALE and (2) whether coverage is fully insured or self-insured.

Category	1095-C Parts I & II By Employer	1095-C Part III By Employer	1095-B By Employer	1095-B By Insurance Carrier
ALE Fully Insured	Yes	No	No	Yes
Non-ALE Fully Insured	No	No	No	Yes
ALE Self-Insured	Yes	Yes	No	No
Non-ALE Self-Insured	No	No	Yes	No

### Who Must Report?

Non-ALEs who do not offer health coverage or offer only fully insured coverage do not have a reporting obligation.

### Forms 1094-B/1095-B (the “B Forms”)

The Forms 1095-B are primarily used by individuals to demonstrate compliance with the ACA’s individual mandate and by the IRS to determine whether individuals were eligible to receive premium tax credits toward the purchase of coverage in the Public Health Insurance Marketplace.

Insurance carriers must deliver Forms 1095-B to fully insured health plan enrollees and file the B Forms with the IRS. While less common, non-ALEs offering self-insured health plans – which includes level-funded coverage – must deliver Forms 1095-B to enrollees and file the B Forms with the IRS. The

<sup>1</sup> This was addressed in detail in our earlier article addressing [applicable large employer status](#).

governing bodies for self-insured multiemployer plans<sup>2</sup> are also responsible for delivering Forms 1095-B to enrollees and filing the B Forms with the IRS.

The B Forms may also be used by ALEs to report enrollment in self-insured coverage by individuals who were not employees during any month of the calendar year, such as retirees and COBRA participants in later years following their separation from employment. Many ALEs prefer to use the C Forms rather than using both the B and C Forms for reporting purposes.

**Note:** The IRS granted [reporting relief](#) for 2019 and will not assess penalties for failing to provide Forms 1095-B to enrollees if certain conditions are met. This relief was granted because Form 1095-B is no longer needed by participants to avoid the ACA's individual mandate penalty (which is now \$0). There was speculation that insurance carriers might abandon automatically providing Forms 1095-B to enrollees as a result, but it appears insurance carriers still plan to issue these for 2019 coverage.

## Forms 1094-C/1095-C (the “C Forms”)

The C Forms are used by ALEs to demonstrate their compliance (or non-compliance) with the [employer mandate](#). The Forms 1095-C are also used by individuals to demonstrate compliance with the ACA's individual mandate and by the IRS to determine whether individuals were eligible to receive premium tax credits toward the purchase of coverage in the Public Health Insurance Marketplace.

ALEs must deliver Forms 1095-C to all employees who were FTEs for any month during the calendar year, to non-FTEs who enrolled in self-insured health coverage for any month during the calendar year, and must file the C Forms with the IRS. ALEs who offer only fully insured health coverage<sup>3</sup> or who contribute toward a multiemployer plan for those employees do not complete Form 1095-C, Part III.

Each ALE is required to file its own set of C Forms, even if it is a member of an Aggregated ALE Group.<sup>4</sup>

**Note:** The IRS also granted relief for failing to provide Forms 1095-C to individuals who were enrolled in self-insured coverage but who were not FTEs for any month during the calendar year. Since ALEs are still required to provide Forms 1095-C to their FTEs, this relief may not be administratively practical.

## The B and C Forms with Instructions

The IRS recently released the 2019 B and C Forms and instructions, which are largely unchanged from 2018. The remainder of this article is dedicated to employers who must complete the C Forms. Please see *Ready, Set, File!* below for important deadlines for both B and C Form filers.

**What About the A Forms?** The Public Health Insurance Marketplace uses Form 1095-A to report information on enrollments in a qualified health plan in the individual market through the Marketplace.

<sup>2</sup> These are plans created by agreements between a union and two or more employers. An employer typically contributes to the plan based upon a formula found in the collective bargaining agreement. This is generally an employer's sole responsibility to the plan, although the employer may have a representative serving on the plan's governing body.

<sup>3</sup> An employer who offers fully insured medical coverage and an HRA is not required to complete Part III if an employee is required to enroll in the fully insured medical coverage to participate in the HRA.

<sup>4</sup> A very limited exception exists for governmental entities. We will not address this further in this article.

[Form B Instructions](#)[Form C Instructions](#)[Form 1094-B](#)[Form 1094-C](#)[Form 1095-B](#)[Form 1095-C](#)

## The Form 1094-C

Form 1094-C is the transmittal form for an ALE's C Form filing with the IRS. It provides certain information about the ALE and is a cover page for the accompanying Forms 1095-C. An ALE is permitted to file multiple Forms 1094-C with accompanying Forms 1095-C. Though uncommon, this may prove useful for an employer that has two or more business units using different human resources information systems.

One of the Forms 1094-C must be marked as the authoritative transmittal. The authoritative transmittal must complete all four parts of the Form 1094-C, and Parts II, III, and IV must reflect information for the entire ALE. Any additional Forms 1094-C filed by the ALE complete Part I only and must leave Parts II, III, and IV blank. Most ALEs will file one Form 1094-C, and it is the authoritative transmittal.

- **Part I** requires identifying information about the ALE, contact information, the number of Forms 1095-C filed with this 1094-C, and whether the 1094-C is the authoritative transmittal for the ALE.
- **Part II** identifies the total number of Forms 1095-C filed by the ALE, whether the ALE is a member of an Aggregated ALE Group, whether a reporting "short cut" is available, and the Form 1094-C's signature block.

Line #22 Certifications of Eligibility (the reporting "short cuts")	
<b>22 Certifications of Eligibility (select all that apply):</b>	
<input type="checkbox"/> <b>A. Qualifying Offer Method</b> <input type="checkbox"/> <b>B. Reserved</b> <input type="checkbox"/> <b>C. Reserved</b> <input type="checkbox"/> <b>D. 98% Offer Method</b>	
<b>A. Qualifying Offer Method</b>	<p>An ALE checks Box A to reflect the following:</p> <ul style="list-style-type: none"> <li>• Code 1A is being used to report an offer of coverage for one or more FTEs for one or more months in the accompanying Forms 1095-C, Part II, Line #14 (please see <i>The Basics to Completing Form 1095-C, Part II</i> below for more information);</li> </ul> <p>AND/OR</p> <p>The ALE provided an alternative statement addressing the offer of coverage instead of Form 1095-C to one or more FTEs who waived coverage and who could have received a Form 1095-C with Code 1A reported for the entire calendar year.</p> <p><b>Note:</b> The alternative statement approach is very rare. The ALE is still required to file a Form 1095-C with the IRS for each of the FTEs.</p>
<b>D. 98% Offer Method</b>	<p>An ALE can check Box D if it offered coverage to at least 98% of the employees it is required to provide with a Form 1095-C. The ALE is not required to identify how many of its total employees were FTEs on Form 1094-C, Part III, Column (b).</p>

- **Part III** reflects the following information for each month of the calendar year: (i) whether the ALE offered minimum essential coverage (MEC) to at least 95% of its FTEs, (ii) the ALE's total number of employees, (iii) the ALE's number of FTEs; and (iv) whether the ALE was a member of an Aggregated ALE Group.

**Hiding in Plain Sight.** It doesn't look like much, but the Yes/No boxes in Part III, Column (a) serve double duty. Marking Yes or No indicates the ALE did or did not offer MEC to at least 95% of its FTEs. Please note that the IRS interprets a blank as a No. A "No" leaves the ALE vulnerable to the large "No Offer" Section 4980H(a) penalty. We strongly recommend you review any "No" or blank response before filing.

		Part III ALE Member Information—Monthly	
		(a) Minimum Essential Coverage Offer Indicator	
		Yes	No
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>

- **Part IV** requires an ALE to list the names and EINs of the other members of its Aggregated ALE Group in order from largest to smallest based on the average number of FTEs (seriously). If an Aggregated ALE Group has more than 30 members, the ALE is required to identify the 30 largest. ALEs who are not members of an Aggregated ALE Group leave Part IV blank.

## The Form 1095-C

Form 1095-C provides identifying information for the employee and ALE, reports whether coverage was offered for each month of the calendar year, and reflects which months the employee and any spouse or dependent(s) were enrolled in coverage. Unlike the Form 1094-C, which is only filed with the IRS, the Form 1095-C must be provided to employees and filed with the IRS.

- **Part I** requires identifying information about the employee and ALE and includes the ALE's contact telephone number.
- **Part II** reports: (i) whether MEC was offered for each month of the calendar year, (ii) if coverage was offered, the employee's contribution toward employee-only coverage in the lowest cost health plan that qualifies as MEC and provides minimum value (MV); (iii) whether the employer has a defense against a potential employer mandate penalty.
- **Part III** reflects the months the employee and any spouse and/or dependent(s) were enrolled in coverage. In Part III, an individual is reported as having been covered during any month in which the individual was covered for at least one day.

**Note:** This is different than the rules for reporting offers of coverage and enrollment in Part II. Part II reporting will be addressed in more detail in *The Basics to Completing Form 1095-C, Part II* below.

## The Basics to Completing Form 1095-C, Part II

### Line #14, Offer of Coverage

Line #14 uses codes (known as "Code Series 1") to report whether the ALE offered coverage to the employee for each month during the calendar year. An ALE may only report an offer of coverage for a month if coverage was offered for **every day** of the month. If coverage began on any day other than the 1<sup>st</sup> or ended on any day other than the last day of the month, the ALE should report using Code 1H for

that month. Code 1H means no offer of coverage was made, but there are codes the ALE can use to avoid potential penalties in Line #16.

Line #14, Code Series 1	
1A	Qualifying Offer: MEC, MV offered to FTE that was affordable based on mainland federal poverty limit and MEC offered to spouse and children This is connected to the ALE checking Box A in Form 1094-C, Part II, Line #22
1B	MEC, MV offered to employee only
1C	MEC, MV offered to employee and MEC offered to children, but not spouse
1D	MEC, MV offered to employee and MEC offered to spouse, but not to children
1E	MEC, MV offered to employee and MEC offered to spouse and children
1F	MEC <u>not</u> providing MV offered to employee
1G	Coverage offered to individual who was not an FTE for any month and who enrolled in self-insured coverage
1H	No offer of MEC
1J	MEC, MV offered to employee and MEC conditionally offered to spouse, but not to children
1K	MEC, MV offered to employee and MEC offered to children; MEC conditionally offered to spouse

**Reporting Tip #1:** Do not leave Line #14 blank. If the individual was not offered coverage for any part of the month, enter Code 1H. You will have the opportunity to defend yourself from a potential employer mandate penalty in Line #16.

## Line #15, Employee's Monthly Contribution for Self-Only Coverage

Line #15 is only used if Code 1B, 1C, 1D, 1E, 1J, or 1K is reported in Line #14. If any other code is used in Line #14, Line #15 must be left blank.

An employer reports the employee's monthly contribution for employee-only coverage in the lowest cost health plan that qualifies as MEC and provides MV. It does not matter if the employee waived coverage, enrolled in a more expensive plan option, or enrolled in a tier of coverage other than employee-only. If the employee's cost is zero because the benefit is 100% employer-paid, the employer should enter "0.00" instead of leaving Line #15 blank.

The Effect of Certain Events on the Reported Cost of Coverage in Line #15	
Opt-Out Credits	<ul style="list-style-type: none"> <li>The value of an opt-out credit for waiving medical coverage is <b>added</b> to the cost of coverage reported in Line #15 unless the credit is conditioned on the employee's enrollment in other group health coverage.</li> <li>Opt-out credits implemented before December 15, 2015 are currently grandfathered from affecting the cost of coverage (IRS guidance seems to suggest all opt-out credits may currently be grandfathered).</li> </ul>

	<ul style="list-style-type: none"> <li>Opt-out credits for employees covered by the Service Contract Act or Davis-Bacon Act are also currently grandfathered under separate guidance.</li> </ul>
<b>Wellness Programs</b>	If wellness incentives can affect the employee's contribution toward coverage, employees <b>must</b> be treated as satisfying any tobacco-related incentive and failing all other incentives (no matter what the employee actually does).

## Line #16, Relief from Employer Mandate Penalties

Line #16 uses codes (known as "Code Series 2") to report additional information about the employee for each month during the calendar year. An employer is not liable for a potential employer mandate penalty for any month in which Line #16 is populated with a code in the FTE's Form 1095-C.<sup>5</sup>

Line #16, Code Series 2	
<b>2A</b>	Not employed during the month
<b>2B</b>	Not an FTE
<b>2C</b>	Enrolled in coverage for every day of the month
<b>2D</b>	Limited non-assessment period (includes waiting periods, look-back measurement periods, and any month in which coverage started after the first day of the month)
<b>2E</b>	Multiemployer plan relief
<b>2F</b>	Form W-2 affordability safe harbor (must be used for all months or not at all)
<b>2G</b>	Federal poverty limit affordability safe harbor
<b>2H</b>	Rate of pay affordability safe harbor

The reporting instructions state that an ALE may only report an employee was enrolled in coverage using Code 2C if the employee was enrolled for *every day* of the respective month. If coverage began mid-month, Code 2D should be used instead. Similarly, Code 2B should be used if coverage ends mid-month. In both instances, Codes 2D and 2B shield the employer from a potential employer mandate penalty for that month.

Codes 2F, 2G, and 2H are the affordability safe harbor codes an employer uses to show it offered affordable coverage to an FTE who waived enrollment. An employer may use both Code 2G (federal poverty limit) and Code 2H (rate of pay) affordability safe harbors in different months for the same employee during the calendar reporting year. This may prove useful for ALEs with non-calendar year plans to deal with changes in the cost of coverage that may occur during the calendar year. By contrast, if the Code 2F (Form W-2) affordability safe harbor is used for any month, it is the only affordability safe harbor that may be used for that employee for the entire calendar reporting year.

**Reporting Tip #2:** **Never** leave Line #16 blank if you can use a code to defend yourself unless Code 1G is used in Line #14. The instructions indicate Line #16 must be left blank when Code 1G is used. A blank otherwise indicates the employee was an FTE and was not offered affordable coverage. This exposes the ALE to a potential employer mandate penalty.

<sup>5</sup> Remember the Section 4980H(a) "no offer" penalty is triggered if an ALE fails to offer coverage to at least 95% of its FTEs and at least one FTE qualifies for a subsidy in the Public Health Insurance Marketplace.

The reporting instructions indicate that Line #16 may be left blank for employees who waive coverage when Code 1A is used in Line #14, because Code 1A already indicates affordable coverage was offered. The IRS has had difficulty processing this correctly and has assessed penalties when Line #16 is blank. While the IRS has waived these when the issue is brought to its attention, we recommend using an affordability safe harbor code to protect yourself if Code 1A is used and the employee waives coverage. If Code 1A is true, Code 2G must also be true.

## Lessons Learned – Form 1095-C, Part II Reporting

We will cover several common scenarios below and our recommendations for reporting. We will limit our examples to snapshots of a portion of Part II for space. Except where noted, assume the required monthly contribution for employee-only coverage in the lowest-cost MEC plan that provides MV is \$100 (the COBRA rate is \$400), and spouses and dependents are also eligible for coverage.

### Example 1

An FTE is hired May 8<sup>th</sup>, offered coverage that is effective as of the date of hire, and timely enrolls.

Part II Employee Offer of Coverage			
	May	June	July
14 Offer of Coverage (enter required code)	1H	1E	1E
15 Employee Required Contribution (see instructions)	-	\$100	\$100
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	2D	2C	2C

### Example 2

An FTE is hired May 8<sup>th</sup>, offered coverage that is effective the first of the month following 30 days of employment, and timely enrolls.

Part II Employee Offer of Coverage			
	May	June	July
14 Offer of Coverage (enter required code)	1H	1H	1E
15 Employee Required Contribution (see instructions)	-	-	\$100
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	2D	2D	2C

### Example 3

An employee is in a look-back measurement period and administrative period that ends June 30<sup>th</sup>. The individual measures as an FTE, is offered coverage as of July 1<sup>st</sup>, and waives coverage. Assume the coverage meets the Form W-2 affordability safe harbor.

Part II Employee Offer of Coverage			
	May	June	July
14 Offer of Coverage (enter required code)	1H	1H	1E
15 Employee Required Contribution (see instructions)	-	-	\$100
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	2D	2D	2F

### Example 4

An FTE is enrolled in coverage and terminates from employment on June 15<sup>th</sup>. Coverage terminates as of the last day of the month. The employee elects COBRA with an effective date of July 1<sup>st</sup>.

Part II Employee Offer of Coverage			
	May	June	July
14 Offer of Coverage (enter required code)	1E	1E	1H
15 Employee Required Contribution (see instructions)	\$100	\$100	-
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	2C	2C	2A

### Example 5

An FTE is enrolled in coverage, terminates from employment on June 15<sup>th</sup>, and coverage terminates on that date. The employee elects COBRA with an effective date of June 16<sup>th</sup>.

Part II Employee Offer of Coverage			
	May	June	July
14 Offer of Coverage (enter required code)	1E	1H	1H
15 Employee Required Contribution (see instructions)	\$100	-	-
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	2C	2B	2A



## Example 6

An FTE is enrolled in employee-only coverage, transitions to a benefits-ineligible position, and loses coverage with an effective date of May 30<sup>th</sup>. The employee elects employee-only COBRA coverage with an effective date of June 1<sup>st</sup>.

Part II Employee Offer of Coverage			
	May	June	July
14 Offer of Coverage (enter required code)	1E	1B	1B
15 Employee Required Contribution (see instructions)	\$100	\$400	\$400
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	2C	2C	2C

**Note:** When reporting an offer of COBRA coverage for an individual who is still employed, the reporting instructions indicate the code used in Line #14 should match the employee's tier of active coverage (employee-only or Code 1B in Example 5). COBRA will usually be unaffordable coverage, but ALEs should be able to use Code 2B (not an FTE) or 2C (enrolled) in many instances to avoid potential employer mandate penalties.

## Example 7

An ALE contributes to a multiemployer plan each month based on the number of hours worked (with a maximum cap) by employees covered by a collective bargaining agreement. An FTE would be reported on the ALE's Form 1095-C, Part II as follows:

Part II Employee Offer of Coverage			
	May	June	July
14 Offer of Coverage (enter required code)	1H	1H	1H
15 Employee Required Contribution (see instructions)	-	-	-
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	2E	2E	2E

**Helpful!** The reporting instructions indicate that Codes 1H and 2E are used to report in this situation. Conveniently, the use of Code 1H means the ALE does not have to report anything for the employee's required contribution toward coverage in the multiemployer plan. This saves the employer from needing contribution information from the union.

## Example 8

An ALE acquires a small employer (non-ALE) with a closing date of June 15<sup>th</sup>. The acquired employer continues to operate as a separate entity and becomes an ALE on the closing date as a member of an Aggregated ALE Group. The acquired employer's required monthly contribution for employee-only coverage in the lowest-cost MEC plan that provides MV is \$160, and spouses and dependents are also eligible for coverage.

Assume an employee who qualifies as an ACA FTE is enrolled in coverage both before and after the closing date. Based on IRS guidance, we recommend the acquired employer report as follows:

Part II Employee Offer of Coverage			
	May	June	July
14 Offer of Coverage (enter required code)	1H	1H	1E
15 Employee Required Contribution (see instructions)	-	-	\$160
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	2A	2A	2C

**And...**the information in the acquired employer's Form 1094-C, Part III will be blank before July. The acquired employer will reflect it is a member of an Aggregated ALE Group beginning in July. The buyer will also do this assuming it wasn't already a member of an Aggregated ALE Group. Both employers must also account for each other in Form 1094-C, Parts II and IV.

## Ready, Set, File!

The final versions of the B and C Forms were released in early December. Most ALEs use third party vendors to assist with the reporting process, although some ALEs complete the reporting process in-house. The reporting process frequently takes longer than many expect, and the deadlines have a way of sneaking up on employers.

There are two separate deadlines for 2019 B and C Form reporting:

### Distributing to Employees/Enrollees

The deadline to provide the Forms 1095 to individuals is extended to **March 2, 2020**. No additional extension is available.

### Filing with the IRS

The deadline to file the Forms 1094/1095 with the IRS depends upon whether you're filing by paper or electronically.

1. Paper returns – Employers filing less than 250 returns (1095s) may file paper returns with the IRS by **February 28, 2020**.

2. Electronic returns – Employers filing electronically must file with the IRS by **March 31, 2020**. An employer who files 250 or more returns (1095s) must file electronically.

Employers may request an automatic 30-day extension when reporting to the IRS using [Form 8809](#). An additional 30-day hardship extension may be available under certain circumstances.

## And Defend...

The last part in our employer mandate series will discuss what to do if and when the IRS assesses an employer mandate penalty, which includes penalties for failing to file or filing late. We recommend employers keep a “Reporting” file of the forms submitted, employee and hours worked data, any waiting period or measurement period information, and required plan contributions. Relying solely on a payroll and/or reporting vendor to maintain records for you to access at a later date does not always work out. In any event, your reporting forms are tax forms and they and the relevant data should be kept for 7 years.



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