



# COMPLIANCE ALERT



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## Amending ACA Reporting Forms in the Era of Pay or Play Penalties

### Overview

The Internal Revenue Service (IRS) released information, in the form of Frequently Asked Questions, on the mechanics of how it will assess employer “Pay or Play” penalties under the Patient Protection and Affordable Care Act (ACA). The determination of whether an applicable large employer (ALE) may be liable for Pay or Play penalties (and penalty amounts) is based on information reported to the IRS on Forms 1094-C and 1095-C. The IRS will issue Letter 226J to an ALE if it determines that the ALE potentially owes Pay or Play penalties. These assessment letters have brought to light many early reporting errors that were common in 2015 and likely persisted through 2016. This Alert addresses how an employer can file amended 1094-C and 1095-C Forms to correct certain early reporting errors that are now being highlighted through the Pay or Play assessment process.

**If an employer has received an assessment from IRS (Letter 226J) it cannot file corrected forms but must respond through the assessment and appeal process. For more on that process see Alert 2017-10.**

### Correcting Errors

#### Form 1094-C

When correcting errors on a Form 1094-C authoritative transmittal (errors on Forms 1094-C not designated the authoritative transmittal cannot be corrected), only the corrected form should be filed (i.e., no Forms 1095-C should be included). The Form 1094-C should be completely filled out, not only the information being corrected, and the “CORRECTED” check box near the top of the first page should be marked.

The top three errors on Form 1094-C that may warrant a corrected filing:

1. Line 23 – did you mark “no” in the column (a) check box asking whether you offered Minimum Essential Coverage?
  - Under the new IRS assessment process this is an automatic Part (a) penalty.
  - If for 2015 you did offer Minimum Essential Coverage to 70% of your ACA full-time employees (a 30% margin of error) you should file a corrected Form 1094-C and check the “yes” box.
  - Note that for 2016 and later employers must offer coverage to 95% of their ACA full-time employees (a 5% margin of error) to check the “yes” box.
2. Line 22 – did you fail to check box C for “Section 4980H Transition Relief?”
  - Box C covers a broad range of transition relief including:
    - Smaller Employer Transition Relief – employers with 50-99 ACA full-time employees will not be assessed penalties for their 2015 plan year.

- Transition Relief for Some Non-Calendar Year Plans - certain ALEs with non-calendar year plans were eligible to delay the Pay or Play mandate until the start of their 2015 plan year.
  - Margin of Error Transition Relief – ALEs can avoid penalties if MEC offered to 70% of their full-time employees (instead of 95%).
  - Reduction in Part (a) penalties - 80 full-time employees can be removed from the part (a) calculation (instead of 30 full-time employees).
  - Plans that did not offer dependent coverage during 2013 or 2014 qualify for transition relief for 2014 and 2015 if they have taken steps to extend coverage to dependents.
  - Employers that never offered benefits are not assessed penalties for January if coverage is offered no later than the first day of the first payroll period in January of 2015.
- Employers that have not received Letter 226J, but need to take advantage of any of this relief – especially the 2015 70% margin of error - should file a corrected Form 1094-C.

3. Part III, column (e) – did you fail to indicate which transition relief applies?

- Enter Code A or B for either all 12 months (Line 23) or for the specific months for which the relief applies.
  - A = Small Employers (50-99)
  - B = All Other Transition Relief

### Form 1095-C

When correcting errors on a Form 1095-C, each form requiring correction should be completely filled out, not only the information being corrected. If the form being corrected was previously filed with the IRS, the “CORRECTED” check box should be marked and a copy of the corrected Form 1095-C must be furnished to the affected employee. A Form 1094-C must be used to transmit one or more corrected Forms 1095-C, but the “CORRECTED” checkbox should not be checked on the Form 1094-C. This Form 1094-C would be a pure transmittal and should not indicate that it is the authoritative transmittal or contain any information in Parts II, III, or IV.

The top three errors on Form 1095-C that may warrant a corrected filing:

1. Did you enter an incorrect code on Line 14 describing the offer of coverage?
  - If an employee is eligible for a 60% minimum value plan (or bronze plan), Line 14 should describe the offer of that MV plan.
  - Line 14 should **not** reflect the plan the employee actually elected (a less rich plan like a MEC only plan) as long as a bronze plan was offered.
  - Line 14 offer codes include:
    - 1A. Qualifying Offer: Minimum essential coverage providing minimum value offered to full-time employee with employee contribution for self-only coverage within federal poverty level safe harbor and at least minimum essential coverage offered to spouse and dependents.
    - 1B. Minimum essential coverage providing minimum value *offered to employee only*.

- 1C. Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) (not spouse).
  - 1D. Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to spouse (not dependent(s)).
  - 1E. Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse.
  - 1F. Minimum essential coverage **NOT providing minimum value** offered to employee; employee and spouse or dependent(s); or employee.
  - 1G. Offer of coverage to employee who was not a full-time employee for any month of the calendar year and who enrolled in self-insured coverage.
  - 1H. No offer of coverage (employee not offered any health coverage, which may include one or more months in which the individual was not an employee).
  - Use of codes 1H, 1B and 1F are potentially problematic and should be reviewed for accuracy.
2. Did you use a 1H “no offer” code in Line 14 and forget to enter a safe harbor code in Line 16?
- Employers should carefully review any 1H codes that were used in Line 14 without a Line 16 safe harbor code entered.
  - If the number of 1H “no offer” codes without a safe harbor code exceed the margin of error the employer will trigger a part (a) penalty.
  - Safe harbor coding is also critical for determining Exchange subsidy eligibility and potential part (b) penalties.
  - Safe harbor codes include:
    - 2A. Employee not employed during the month.
    - 2B. Employee not a full-time employee.
    - 2C. Employee enrolled in coverage offered.
    - 2D. Employee in a Limited Non-Assessment Period.
    - 2E. Multiemployer interim rule relief.
    - 2F. Section 4980H affordability Form W-2 safe harbor.
    - 2G. Section 4980H affordability federal poverty line safe harbor.
    - 2H. Section 4980H affordability rate of pay safe harbor.
    - 2I. Non-calendar year transition relief applies to this employee.
3. Did you enter incorrect cost sharing information in Line 15?
- Line 15 should **not** reflect the plan the employee actually elected but the cost of the least expensive minimum value plan offered at the *employee only* coverage tier.
  - Note that employers are only required to complete line 15 if code 1B, 1C, 1D, or 1E is used on line 14.
  - Incorrect dollar amounts may fall under a safe harbor for certain de minimis errors. The safe harbor generally applies if no single amount differs by more than \$100. If the safe harbor applies, you will not have to correct Form 1095-C to avoid penalties. However, if an error could affect employee Exchange subsidy eligibility filing a correction is recommended.

If corrections are required to both Form 1094-C and 1095-C Forms from the same original submission, the corrected filing must be done in stages. First, Form 1094-C is corrected, with no associated 1095-C Forms attached. Then a separate Form 1094-C submission is filed with the corrected 1095-C Forms. The separate Form 1094-C is not designated as a correction, and only certain fields need to be completed. If a Form 1094-C correction involves information also found on the associated Forms 1095-C, such as employer name and EIN, the IRS internal systems will associate that entity information with existing Form 1095-C records. There is no need to submit separate corrections to those data elements for all associated 1095-C Forms.

### Paper vs. Electronic Corrections

Any corrections should be made in the same paper or electronic format as the original filing. If the filer is filing fewer than 250 corrections, the corrections may be filed on paper even if the original returns were filed electronically. If the original returns were filed electronically and there are more than 250 corrected 1095-C Forms, for the employer to file corrections on paper they need a waiver from electronic filing. A waiver is obtained by filing Form 8508.

### IRS Guidance on Common Errors and Corrections

The Instructions for Forms 1094-C and 1095-C provide a summary of items that may need to be corrected and identify the basic correction steps. That summary is excerpted below but is not an exhaustive list of potential errors that require correction.

<b>Form 1094-C</b>	
<b>Error</b>	<b>Recommended Correction</b>
ALE Member or Designated Government Entity Name and/or EIN	<ol style="list-style-type: none"> <li>1. Prepare a new Authoritative Transmittal, Form 1094-C</li> <li>2. Enter an “X” in the “CORRECTED” box at the top of the form</li> <li>3. Submit the standalone corrected Form 1094-C with the correct information present</li> </ol>
Total Number of Forms 1095-C filed by and/or on behalf of ALE Member	
Aggregated ALE Group Membership	
Certifications of Eligibility (Line 22)	
Minimum Essential Coverage Offer Indicator (Line 23)	
Section 4980H Full-Time Employee Count for ALE Member	
Aggregated Group Indicator (Line 21)	
Other ALE Members of Aggregated ALE Group Name and/or EIN (Part IV)	
<b>Form 1095-C</b>	
<b>ERROR</b>	<b>Recommended Correction</b>
Name, SSN, ALE Member EIN	<ol style="list-style-type: none"> <li>1. Prepare a new Form 1095-C</li> </ol>

<p>Offer of Coverage (Line 14)</p> <p>Employee Required Contribution (Line 15)</p> <p>Section 4980H Safe Harbor and Other Relief Codes (Line 16)</p> <p>Covered Individuals Information (Self-funded plans only)</p>	<ol style="list-style-type: none"> <li>2. Enter an “X” in the “CORRECTED” box at the top of the form</li> <li>3. Submit corrected Form 1095-Cs with a non-authoritative Form 1094-C transmittal to the IRS</li> <li>4. Furnish a corrected Form 1095-C to the employee</li> </ol>
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**Conclusion**

If an ALE knows it made a mistake in its 2015 or 2016 ACA Reporting, it should review that mistake to determine its significance. A corrected filing may be required. Note that employers must file corrected forms before IRS issues an assessment letter. After IRS issues an assessment letter, employers must respond through the assessment and appeal process. IRS is currently only issuing assessments for 2015, which makes this a good time to review 2016 and 2017 filings for accuracy.

Alliant has significant resources designed to help employers with ACA reporting and with responding to IRS pay or play assessments (Letter 226J). Please reach out to your Alliant team member if you need additional assistance.

**Compliance Alert is presented by the Compliance Practice Group of Alliant Employee Benefits**

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