

# ACA: FAQs FOR EMPLOYER REPORTING UNDER SECTIONS 6055 AND 6056

## RESPONSIBILITY FOR REPORTING

### Q1. Which ACA reporting forms must be completed by applicable large employers (ALEs)?

**A:** ALEs with fully insured plans are subject to Section 6056 reporting (Forms 1094-C and 1095-C, except that they do not need to complete Part III of Form 1095-C). They do not need to complete Forms 1094-B and 1095-B, which correlate to the individual mandate and are completed by the insurer. ALEs with self-insured (including level-funded) plans are subject to both Sections 6055 and 6056 reporting rules. Such ALEs must therefore complete Forms 1094-C and 1095-C, including Part III of Form 1095-C. ALEs with self-insured (including level-funded) plans do not have to complete Forms 1094-B and 1095-B. For further information about ACA reporting responsibilities for both large and small employers, see the NFP publication [ACA: Employer Mandate Reporting Requirements](#).

### Q2. Which ACA reporting forms must be completed by small employers?

**A:** Small employers (those with fewer than 50 full-time equivalents (FTEs)) that sponsor fully insured plans have no ACA reporting obligations. Small employers that sponsor self-insured (including level-funded) plans are subject to Section 6055 reporting rules, which require small self-insured plans to complete Forms 1094-B and 1095-B. Forms 1094-B and 1095-B must be filed with the IRS, and a copy of Form 1095-B must be distributed to all covered individuals. Beginning in 2020, employers can forgo distributing Form 1095-B to individuals as long as they post a notice on their website advising that the document is available upon request and then fulfill any such request within 30 days.

### Q3. If a company is sold at the end of the calendar year, is the new company responsible for reporting under Sections 6055 and 6056?

**A:** If the new employer is considered the successor employer, the new employer is responsible for ACA reporting for the year in which the acquisition occurred.

### Q4. If a subsidiary company with a different Federal Employer Identification Number (FEIN) has fewer than 50 employees, does the parent company still have to report under Sections 6055 and 6056 for that subsidiary?

**A:** Yes. If the companies are commonly owned (under common control per Section 414), all employees of all member employers are counted together to determine employer size for purposes of ACA reporting. If the combined group has 50+ FTEs, all members are subject to the employer mandate reporting requirements, even if some or all of the member employers don't have 50+ FTEs on their own.

### Q5. Is a parent company with several subsidiaries and Forms W-2 issued for all locations under one FEIN responsible for reporting as if it were a single employer?

**A:** No. If the parent company and its subsidiaries are commonly owned (under common control per Section 414), each separate entity under the controlled group – each subsidiary – is responsible for reporting on its own, as is the parent company. The parent and each subsidiary would file separate Forms 1094-C, and each Form 1094-C would be marked as the “authoritative transmittal” for that entity.

However, the parent company can choose to perform reporting on behalf of its subsidiaries, and that may be more practical if the parent company is already creating and distributing Forms W-2 for its subsidiaries. A parent company generally assumes the liabilities for its subsidiaries anyway, since all profits and losses affect the parent company. So the ACA reporting can be done by either the parent company (on behalf of itself and all subsidiaries) or by each entity separately, but the subsidiaries are liable for a failure if the parent company assumes the reporting responsibility and fails to complete it properly.

**Q6. For staffing agencies that offer coverage on behalf of clients that are ALEs, does the staffing agency complete each ALE's information on the reporting forms, or does the staffing agency pass the employee information to the ALE for the ALE to place on the ALE's form?**

**A:** The answer depends on which entity is the "common law employer." That determination examines which entity has more control over the employee. If the staffing company provides coverage, it would likely be required to report under Section 6055 (if self-insured or level-funded), but the Section 6056 reporting obligation depends on whether the employer or the staffing company is the common law employer. Employers in this situation should engage outside counsel to assist in determining which entity is the common law employer.

**Q7. Does a self-insured ALE that closes its business have ACA reporting obligations for the year in which the business was closed?**

**A:** There is no known Sections 6055 and 6056 reporting relief for an employer that experiences a complete reduction in workforce and is dissolved. Thus, assuming the employer mandate applied to the employer prior to the closure, the employer has final ACA filing obligations for the year of the closure, similar to its other final federal income, employment, or other tax filing obligations.

## DETERMINING WHICH EMPLOYEES TO INCLUDE IN ACA REPORTING

**Q8. Do ALEs have to complete Forms 1095-C for employees who are in an initial look-back measurement period?**

**A:** No. Employees in an initial look-back measurement period – generally used for variable-hour or seasonal employees – are not yet considered FTEs or non-FTEs; their full-time status has not yet been determined. Therefore, Forms 1095-C are not produced for these employees until they complete the measurement period and are determined to be FTEs (i.e., averaging 30+ hours per week over the measurement period).

**Q9. Do ALEs with a 90-day waiting period have to complete Forms 1095-C for employees who worked fewer than 90 days in the prior calendar year?**

**A:** No. Generally, employers must provide Forms 1095-C to all employees who had full-time status for any full calendar month in the prior calendar year. However, if an employee was not employed for part of the year and/or was in a limited non-assessment period (such as a waiting period or measurement period) for the remainder of the year, then a Form 1095-C is not required.

**Q10. Do ALEs with FTEs who are not benefits eligible (such as temps, seasonal, or student workers) have to complete ACA reporting for those employees?**

**A:** It depends. The general rule is that employers must report on all FTEs, regardless of whether the FTEs are temporary, seasonal, or student workers. But employers could report that such employees were in a limited non-assessment period (for the first three months of employment) if they weren't offered coverage. For employers that use look-back measurement periods for those employees, the limited non-assessment period is the entire initial measurement period, which could be up to a year. Beyond the limited non-assessment period, if the employees are working full-time hours, employers must report them as FTEs and indicate that they were not offered coverage.

**Q11. In Part III of Form 1094-C, how do ALEs report on employees who are in their waiting period for benefits?**

**A:** In column (b) of Part III of Form 1094-C, employers should include all FTEs except those in a waiting period or other limited non-assessment period; that is, employees who are not yet eligible for benefits should not be included in column (b). In column (c) of Part III of Form 1094-C, employers should include all employees — part-time, full-time, variable-hour, or seasonal, including those in a waiting period or other limited non-assessment period.

**Q12. Do employers (both large and small) that employ incarcerated persons through a court/work release/safe house program include those individuals as employees in the FTE count for ACA reporting?**

**A:** Yes. There is no provision under the employer mandate to exclude such employees. If they are employees, they should be counted and offered coverage.

## DETERMINING WHICH EMPLOYEES MUST RECEIVE ACA REPORTING FORMS

**Q13. Do ALEs need to distribute Forms 1095-C indicating zero months of coverage to FTEs who are ineligible for coverage or who waive coverage?**

**A:** Yes. Employers must distribute Forms 1095-C to all FTEs, regardless of whether the employees were eligible for or enrolled in coverage.

**Q14. Do employers need to complete Forms 1095-C or 1095-B for part-time employees?**

**A:** If the employer sponsors a self-insured (including level-funded) plan that covers part-time employees, Section 6055 reporting rules apply and require the employer to report all covered individuals, including part-time employees, on Part III of Form 1095-C (if an ALE) or on Form 1095-B (if a small employer). However, if the employer sponsors a fully insured plan that covers part-time employees, Section 6056 is the only ACA reporting obligation that applies, and it requires only that the employer report on FTEs.

**Q15. Do employers need to distribute Forms 1095-C or 1095-B to partners who enroll in the group health plan and pay their own premium?**

**A:** It depends on the partners' status and whether the plan is fully insured or self-insured (including level-funded). Individuals treated as self-employed are not considered employees, and partners are generally considered "self-employed." Partners who receive a Form K-1 rather than a Form W-2 are not issued a Form 1095-C under a fully insured plan. Further, such partners are not counted when determining the employer's size or for purposes of determining ALE status, and they do not trigger a penalty for failure to provide affordable minimum-value coverage. By contrast, for a self-insured (including level-funded) plan, an employer must distribute Forms 1095-C (if an ALE) or Forms 1095-B (if a small employer), to everyone covered under the plan, including partners or other self-employed owners.

**Q16. Do employers that provide retiree health coverage need to complete Forms 1095-C or 1095-B for retirees?**

**A:** It depends on whether the plan is fully insured or self-insured (including level-funded). ALEs with fully insured plans complete Forms 1095-C only for FTEs who were active employees for some or all of the prior calendar year. (Small employers with fully insured plans have no ACA reporting obligations; see Q2 above.) By contrast, all employers with self-insured (including level-funded) plans must complete Forms 1095-C (if an ALE) or Forms 1095-B (if a small employer), for all employees or former employees (including retirees) who were covered under the plan.

**Q17. Does every dependent, regardless of age, receive a Form 1095-C or 1095-B?**

**A:** ALEs with fully insured plans are required to distribute Forms 1095-C only to FTEs and not also to the FTEs' enrolled dependents. ALEs with self-insured (including level-funded) plans must report on all covered individuals, including dependents and those who are not common-law employees (e.g., spouses, domestic partners, part-time employees, COBRA enrollees, retirees, etc.). However, employers can satisfy this requirement by completing Part III of Form 1095-C (which lists all covered individuals, including spouses, domestic partners, and dependents), and distributing a copy of that Form 1095-C to the FTE or primary subscriber. Since the FTE/primary subscriber is the individual responsible for enrolling their dependents, distributing Form 1095-C to the FTE/primary subscriber satisfies the reporting requirement. Small employers with self-insured (including level-funded) plans must report on all covered individuals, including dependents and those who are not common-law employees (e.g., spouses, domestic partners, part-time employees, COBRA enrollees, retirees, etc.).

## COBRA

**Q18. How do employers report on an employee who is offered COBRA and enrolls?**

**A:** The answer can be broken down by employer size and funding arrangement, i.e., fully insured or self-insured (including level-funded):

- **Large employer, fully insured:** Employer includes the COBRA participant for Section 6056 reporting on Form 1095-C for the year in which the COBRA triggering event occurred, but not for subsequent years. This rule applies only for COBRA participants who are still employed following the COBRA event, such as employees who lose eligibility for benefits as a result of a reduction in hours (i.e., switching from full-time to part-time status). It doesn't apply to employees who have terminated employment. The insurer will include the COBRA participant who terminated employment for Section 6055 reporting on Forms 1094/1095-B for any subsequent years in which the individual is not an active employee. The insurer (rather than the employer) is responsible for reporting via Form 1095-B on non-employee COBRA beneficiaries (e.g., spouses, domestic partners, or dependents who independently elect COBRA).
- **Large employer, self-insured (including level-funded):** Regardless of the COBRA triggering event, the employer includes the COBRA participant for Sections 6055 and 6056 reporting on Form 1095-C for the year in which the COBRA triggering event occurred. Section 6056 reporting ends with the final month of non-COBRA coverage. Importantly, and in contrast to the rules for large employers with fully insured plans, large employers with self-insured (including level-funded) plans must include these participants in Part III on all Forms 1095-C for all following years in which the former employee remains a COBRA participant, since such reporting is still required under Section 6055. Subsequent Section 6055 reporting for these non-employees/COBRA participants will generally be done on Forms 1094/1095-B.

- **Small employer, fully insured:** Insurer includes the COBRA participant for Section 6055 reporting on Form 1095-B for the year in which the COBRA triggering event occurred and in subsequent years (to the extent the individual remains covered). Likewise, the insurer (rather than the employer) is responsible for reporting via Form 1095-B on non-employee COBRA beneficiaries (e.g., a spouse, domestic partner, or dependent who independently elects COBRA). Section 6056 reporting does not apply.
- **Small employer, self-insured (including level-funded):** Employer includes the COBRA participant as well as any other covered individuals (e.g., part-time employees, retirees, etc.) for Section 6055 reporting on Form 1095-B for the year in which the COBRA triggering event occurred and in subsequent years (to the extent the individual remains covered). Section 6056 reporting does not apply.

#### **Q19. Does the COBRA premium have to be affordable under any measures of ACA affordability?**

**A:** No. The ACA requirement to offer affordable coverage applies only to FTEs. Because COBRA participants are no longer FTEs, the coverage doesn't have to be affordable. The same concept applies to the affordability of coverage for other non-FTEs (e.g., part-time employees, retirees, etc.).

## **UNION EMPLOYEES**

#### **Q20. Do employers count union employees (collectively bargained employees) when determining whether there are 50 FTEs/equivalents?**

**A:** Yes. If an employer otherwise pays Form W-2 compensation to union employees, the employer must include them in its determination of employer size and, if the employer is an ALE, must report them under Sections 6055 and 6056, as applicable. Special coding on Form 1095-C indicates that a union employee receives coverage from a union plan (code 1H on line 14, leave line 15 blank, and code 2E on line 16).

#### **Q21. Which party is responsible – the employer or the union – for ACA reporting on collectively bargained employees?**

**A:** The employer is responsible for reporting on union employees. However, the administrator of a multiemployer (union) plan may complete the individual Section 6056 reports (Forms 1095-C) for the collectively bargained employees who are eligible for the multiemployer plan. In other words, the union may complete Forms 1095-C for its covered members, and that would satisfy the employer's obligation in regards to those employees. However, the employer remains responsible for completing Forms 1095-C on non-union employees and for completing Form 1094-C (the transmittal) on all employees if the union does not complete Forms 1094/1095-C.

## **DEADLINES AND PENALTIES**

#### **Q22. When must Forms 1094/1095-B/C be submitted to the IRS, and when must Forms 1095-B/C be distributed to employees?**

**A:** Employers must submit their Forms 1094/1095-B/C to the IRS on or before February 28 (March 31, if filing electronically) of the year following the calendar year to which the reporting relates. In addition, employers must distribute the corresponding employee statements (Forms 1094/1095-C) by March 2 (March 1 in leap years; in late 2022, the original January 31 deadline for distributing ACA reporting forms to employees was permanently extended by 30 days). The dates for submitting forms to the IRS and furnishing employees with a copy of the relevant form apply regardless of the policy year or ERISA plan year of the employer-sponsored coverage. When a due date falls on a weekend or federal holiday, the due date is extended to the next business day.

Beginning in 2024, employers that file 10 or more returns of any type (i.e., counting Forms 1094-B/1095-B, 1094-C/1095-C, W-2, and 1099 together) to the IRS in a calendar year must do so electronically. This means nearly all employers must file ACA reports electronically. Employers may also use third-party administrators to file on their behalf, although the employer remains liable for any reporting failures.

#### **Q23. What are the penalties for an employer's failure to meet the Sections 6055 and 6056 reporting deadlines?**

**A:** In addition to penalties that large employers may incur for their failure to offer affordable, minimum-value coverage to substantially all of their FTEs, IRC Sections 6721 and 6722 contain penalties for employers of all sizes that fail to execute their Sections 6055 and 6056 reporting obligations, including providing individual statements to employees and filing forms with the IRS. For calendar 2022 statements (i.e., due to employees in 2023), the penalty is generally \$280 per failure, with a maximum penalty of \$3,426,000. For calendar 2023 statements (i.e., due to employees in 2024), the penalty is generally \$310 per failure, with a maximum penalty of \$3,783,000.

In addition, employers that willfully ignore their filing obligations or fail to file electronically (if required) may be subject to a separate penalty (\$280 per form for forms due in 2023; \$310 per form for forms due in 2024) unless the employer can establish reasonable cause or otherwise received a hardship waiver. Previously, there was penalty relief for employers that made a good faith effort to comply with the ACA reporting requirements. However, that relief is no longer available for reports submitted in 2022 and beyond.

**Q24. What are the implications of Sections 6055 and 6056 reporting for ALE entities that aren't normally required to report to the IRS, such as tribal governments?**

**A:** All types of employers are subject to the employer mandate and reporting requirements, including nonprofits, governments, tribes, churches, and others. If an employer fails to comply with the employer mandate, Penalty A and Penalty B assessments could also apply. For further information about Penalties A and B, see the NFP publication [ACA: Employer Mandate Penalties and Affordability](#).

## MISCELLANEOUS QUESTIONS

**Q25. Do ALEs that were fully insured for part of a calendar year and self-insured (including level-funded) for the other part of the same calendar year have to file two separate sets of ACA reporting forms?**

**A:** No. Such ALEs would complete only one set of forms: Forms 1094-C and 1095-C. Part III of Form 1095-C would not be completed for any fully insured month(s) but would be completed for any self-insured month(s).

**Q26. Is an HRA integrated with a medical plan considered a stand-alone self-insured plan for ACA reporting purposes?**

**A:** Employers that sponsor a group medical plan along with an HRA have the following ACA reporting requirements:

- Employers that sponsor a fully insured medical plan and an HRA have no Section 6055 reporting requirement specific to the HRA for employees that elected coverage under both plans. If an employee waived coverage under the medical plan but elected the HRA (for example, because they're enrolled in the medical plan of a spouse or domestic partner), the employer has a Section 6055 reporting requirement for the HRA coverage for that employee. Employers with fewer than 50 FTEs/equivalents report the HRA coverage on Form 1095-B, while employers with 50 or more FTEs/equivalents report the HRA coverage on Part III of Form 1095-C.
- Employers that sponsor a self-insured (including level-funded) medical plan and an HRA have a Section 6055 reporting requirement for any employee who elected coverage under either plan. Obviously, they have a reporting requirement for any employee who elected coverage under the self-insured medical plan. They must also remember to report any employee who waived the medical coverage but elected the HRA (for example, because they're enrolled in the medical plan of a spouse or domestic partner). Employers with fewer than 50 FTEs (including equivalents) report the HRA coverage on Form 1095-B, while employers with 50 or more FTEs (including equivalents) report the HRA coverage on Part III of Form 1095-C.

**Q27. How do employers report on dependents who don't have Social Security numbers (SSNs)?**

**A:** Employers may use the dependent's date of birth instead of the SSN. However, employers must document at least three requests for the SSN — at initial enrollment, in December of the first year of enrollment, and in December of the second year of enrollment. Employers should memorialize the steps they take to obtain dependent SSNs and then use the dependent's date of birth if the employee doesn't respond.

**Q28. If an employer has multiple sites with various numbers of employees, but all sites are part of the same entity (part of the same controlled group), can the employer combine all employees for purposes of fulfilling reporting obligations under Sections 6055 and 6056?**

**A:** If the employer maintains separate divisions or sites within the same ALE member, then combined reporting is allowed. But if the sites are separate ALE members, each separate ALE member must file its own Form 1094-C and complete Forms 1095-C for each of its FTEs.

## RESOURCES

[IRS FAQs on Section 6055 Reporting](#)

[IRS FAQs on Section 6056 Reporting](#)