



Compliance Alert

How to Address ACA Reporting Mistakes and Failures

April 1, 2019

Quick Facts:

- The Affordable Care Act (ACA) requires Applicable Large Employers (ALE) to annually provide information to full-time employees and the Internal Revenue Service (IRS) about the health plan coverage they offered (or did not offer) in the prior calendar year.
- Plan sponsors must also report information about individuals covered under self-funded plans that provide minimum essential coverage (MEC).
- The IRS may impose severe penalties on an ALE that fails to comply with its ACA reporting obligations.
- The IRS offers relief from penalties for furnishing or filing incorrect or incomplete individual statements or forms.
- Correcting erroneous or late individual statements and forms within a short time after the applicable deadline can result in reduced penalties.

Background

Most ALEs know by now that the ACA imposes obligations to furnish individual statements about offers of health coverage (Forms 1095-C) to full-time employees as well as any individuals covered under self-funded health plans that provide MEC. ALEs and self-funded health plans sponsors generally use IRS Forms 1094-C and 1095-C to furnish this information, which applies to the prior calendar year. This information must also be reported annually to the IRS.

The ACA requires ALEs and self-funded plan sponsors to furnish individual statements annually by January 31 to report the previous year's coverage, and to file Forms 1094-C and 1095-C with the IRS annually by February 28 (if filing paper forms), or by March 31 if filing electronically (mandatory for ALEs who have to file at least 250 Forms 1095-C).

Potential ALE reporting penalties

Despite an ALE's good intentions and best-laid plans, reporting mistakes still can happen. Facts and circumstances often arise that result in an ALE either reporting inaccurate or incomplete information, or missing filing deadlines. Internal Revenue Code (IRC) Sections 6721 and 6722 impose severe penalties for such ALE reporting failures, so mistakes can prove costly.



IRC Section 6721 may apply to an ALE that files untimely information or fails to include all the required information (or includes incorrect information) on its returns. The penalties for 2018 IRS filing errors can be as high as \$270 per return with a \$3,275,500 cap.

Similarly, IRC Section 6722 may apply to an ALE that furnishes untimely required individual statements to full-time employees, or fails to include all the required information (or includes incorrect information) on its statements. The penalties for 2018 individual statement errors can be as high as \$270 per statement with a \$3,275,500¹ cap.

The foregoing penalties are cumulative, so one failure that affects the individual statement and the IRS filing for the same individual can result in a \$540 penalty, capped at \$6,551,000.

IRS relief

Fortunately all hope is not lost for entities that find themselves in an ACA reporting predicament. The IRS recognizes that reporting can be complicated and offers employers certain relief from penalties.

First, the IRS will grant automatic filing extensions in most cases, as long as an ALE makes a timely request for extension. If an ALE believes it might not make the deadline for furnishing individual statements, it should apply for an automatic 30-day extension. There is no specific form for this request, but the request should be in writing and must occur on or before the January 31 deadline.

However, for 2018 statements, the IRS again granted a blanket 30-day extension, which made this year's individual statement deadline March 4, 2019. Because of the blanket due date extension, the IRS will not grant additional specific requests for an automatic 30-day extension for 2018 statements.

If an ALE learns that it might miss the IRS filing deadline for Forms 1094-C and 1095-C, it should file Form 8809, *Application for Extension of Time to File Information Returns*, on or before the due date for filing those forms. Under certain conditions, the IRS might grant an extension to filers who submit Form 8809 after the filing due date but before the automatic 30-day extension period expires, if they can explain in detail why they need additional time.

Second, the IRS again this year issued guidance (Notice 2018-94) stating that it will not impose penalties under sections 6721 and 6722 on ALEs that can show that they have made good faith efforts to comply with reporting requirements. That is, the IRS generally will grant relief for incorrect or incomplete information reported on 2018 returns or statements furnished or filed in 2019. Relief provided under Notice 2018-94 applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on a return or statement.

¹ The cap is \$1,091,500 for so-called smaller entities, which the IRS defines as entities with under \$5 million in average annual gross receipts for the entity's three prior tax years.



The IRS will not grant relief when an ALE cannot show a good faith effort to comply with applicable reporting requirements or for failure to timely file. In determining good faith, the IRS will weigh whether an ALE made reasonable efforts to prepare for furnishing and reporting, such as gathering and transmitting necessary data to an agent to prepare to submit the data to the IRS, or testing the provider's ability to transmit information to the IRS.

Third, the IRS has a scaled penalty schedule for correcting erroneous or late individual statements and filings within a short time after the applicable ALE reporting deadline.

- *30-Day Rule.* If an ALE corrects a failure within 30 days after the required filing or furnishing date, the resulting penalty is just \$50 per return or statement, with a calendar-year cap of \$545,500².
- *August 1 Rule.* If an ALE corrects a failure after the aforementioned 30-day period, but on or before August 1, the IRS will reduce the attendant penalty to \$100 per return or statement, with a calendar-year cap of \$1,637,500 (\$545,500 for smaller entities).

Though the IRS has not stated specifically, neither of the foregoing late filing rules should be affected by the automatic extension the IRS granted to all ALEs to furnish 2018 individual statement by no later than March 4, 2019.

If an ALE must correct an incorrect or incomplete individual statement, it should furnish the affected full-time employee a new individual statement and handwrite or type the word "Corrected" at the top. If an ALE must file a corrected Form 1094-C or 1095-C with the IRS, it should check the box labelled "Corrected" on the applicable form(s). For specific details about particular corrected information, an ALE should refer to pages 4-5 of the 2018 Form 1094-C and Form 1095-C Instructions found [here](#).

Possible penalty waivers or increases

The IRS has instructed that, under IRC Section 6724 and related regulations, it may waive Section 6721 and 6722 penalties if an ALE can show reasonable cause for failure to timely furnish or file a statement or return. To establish reasonable cause, an ALE must demonstrate that it acted in a responsible manner and that the failure was due to significant mitigating factors or events beyond the ALE's control.

Finally, the IRS has authority to increase the per-statement and total penalties against any ALE that it determines has intentionally disregarded reporting and furnishing obligations. Special rules apply in these situations.

² The cap is \$191,500 for so-called smaller entities, which the IRS defines as entities with under \$5 million in average annual gross receipts for the entity's three prior tax years.



Conclusion

All ACA reporting obligations remain in full force and effect, so ALEs should have furnished 2018 individual statements to full-time employees by March 4, 2019. ALEs also should have filed either paper reports with the IRS by February 28, 2019 (March 30, if granted an extension), or electronic reports by March 31 (April 30, if granted an extension). If an ALE has missed one of these deadlines, it should file within 30 days or by August 1, 2019, to significantly reduce its IRS penalty exposure.

Now that the ACA's individual shared responsibility payment is reduced to zero for months beginning after December 31, 2018, ACA reporting obligations may change in the future. The Treasury Department and the IRS have stated that they are jointly studying whether and how the ALE reporting requirements under IRC Section 6055 should change (if at all) for future years. Until they issue further guidance, however, employers wishing to avoid steep penalties should continue to follow the current reporting requirements, including mandatory content and applicable deadlines.

If you have any questions regarding correcting late or incorrect ALE reports, please contact a member of your EPIC account team.

EPIC Employee Benefits Compliance Services

For further information on this or any other topics, please contact your EPIC benefits consulting team.

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