



July 14, 2015

New Trade Act Quietly Increases ACA Reporting Penalties

President Obama recently signed into law the Trade Preferences Extension Act of 2015, which contained several tax provisions in addition to the trade measures that were the focus of the bill. Among the tax provisions were changes that increase the penalties associated with failure to file or furnish correct “information returns and payee statements,” which include standard information returns, such as Forms W-2 and 1099, as well as the new annual reporting forms required by the Affordable Care Act (ACA).

Background

As discussed in previous editions of Trion’s *HCRAlert!*, the ACA imposes annual information reporting requirements on employers, health plan sponsors, and insurers. This reporting, known as section 6055 and section 6056 reporting, will assist the Internal Revenue Service (IRS) in administering compliance with the individual and employer shared responsibility mandates of the ACA and confirming individuals’ eligibility for marketplace subsidies.

- Section 6055 requires health insurance issuers, self-insured plan sponsors, and others that provide minimum essential coverage (MEC) to report information about all individuals covered during the calendar year and during which month(s) each individual was covered.
- Section 6056 requires applicable large employers (ALEs) (50 or more full-time/ full-time equivalent employees) to report, for each employee who was full-time status at any time during the calendar year, information about health care coverage offered to the employee, if any.

Reporting entities must complete a form for each individual for which reporting is required. In addition, at least one transmittal cover form with summary information about the reporting entity must accompany the individual forms. The following table summarizes the forms that must be filed by employers in various circumstances:

	FT Employees Enrolled in Insured Plan & FT Employees Not Enrolled	All Employees Enrolled in Self-Insured Plan & Non-Employee Primary Insureds Enrolled in Self-Insured Plan (e.g. Retiree, COBRA)
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Employers with 50+ full-time and/or full-time equivalent employee average in prior calendar year (Applicable Large Employers)	Form 1095-C individual statement (Parts I & II) for each employee Form 1094-C transmittal cover form	Form 1095-C individual statement (Parts I, II & III) for each employee Either Form 1095-C individual statement (Parts I, II & III) or Form 1095-B individual statement for each non-employee primary insured Form 1094-C transmittal cover form
Employers with <50 full-time and/or full-time equivalent employee average in prior calendar year	None	Form 1095-B individual statement for each primary insured (employee & non-employee) Form 1094-B transmittal cover form

The first returns are due in early 2016 for 2015 calendar year reporting. A reporting entity must provide a copy of each individual statement (Form 1095-C or Form 1095-B) it completes to the IRS as part of its information return and must also provide a copy to the individual. Statements must be provided to individuals by January 31 following the end of the reporting year and returns are due to the IRS by March 31 if filing electronically (required if filing 250+ forms) or by the last day of February if filing by paper.

Penalties for Non-Compliance

Penalties are applicable for a reporting entity’s failure to provide timely, complete, and correct returns. Because reporting entities must provide reporting to both the IRS and individuals, there are separate penalties for failure to satisfy either of those requirements. Thus, a failure that relates to both the IRS information return and individual statement may result in double penalties. The table below reflects the original and revised penalty structure:

Penalty Description	Original Penalty	Revised Penalty
Non-willful failure to file an information return or provide a payee statement		
Penalty per return with respect to which a failure occurs	\$100	\$250
Annual penalty limit – entities with gross receipts \$5M+	\$1,500,000	\$3,000,000
Annual penalty limit – entities with gross receipts ≤\$5M	\$500,000	\$1,000,000
Non-willful failure corrected within 30 days of due date		
Penalty per return with respect to which a failure occurs	\$30	\$50
Annual penalty limit – entities with gross receipts \$5M+	\$250,000	\$500,000
Annual penalty limit – entities with gross receipts ≤\$5M	\$75,000	\$175,000
Non-willful failure corrected by August 1		
Penalty per return with respect to which a failure occurs	\$60	\$100
Annual penalty limit – entities with gross receipts \$5M+	\$500,000	\$1,500,000
Annual penalty limit – entities with gross receipts ≤\$5M	\$200,000	\$500,000

Failure to file an information return or provide a payee statement due to intentional disregard		
Penalty per return with respect to which a failure occurs	\$250 (no cap)	\$500 (no cap)

For 2015 reporting, the IRS has stated it does not intend to impose accuracy-related penalties on reporting entities that complete the filings timely, as long as they were acting in good faith.

Filing Extensions

Employers should be able to obtain automatic extensions of time to file the ACA returns with the IRS; however, extensions of time to provide the individual statement are more limited. It is our understanding that the IRS intends to revise form 8809—the existing extension form for W-2s and 1099s—to include the ACA returns as eligible for extension with regard to the due for filing with the IRS. Reporting entities filing form 8809 before the IRS returns are due are granted an automatic 30-day extension. An additional 30-day extension may be requested by submitting a second Form 8809 before the end of the first extension period. Generally, requests for additional time are granted only where it is shown that extenuating circumstances prevented filing by the date granted by the first request.

Reporting entities that require additional time to prepare the individual statements may request an extension of up to 30 days from the original due date of January 31 by submitting a letter to the IRS that contains certain information. There is not an automatic approval process for these types of extensions. The IRS is expected to release further information on the extension process for individual statements.

In the meantime, employers should be working to determining how their organization will address these new requirements. If you have not already begun to develop a plan for tracking and reporting the required information, we recommend employers begin by reviewing the IRS reporting forms and draft instructions and reaching out to their benefits administration, payroll, HRIS, and/or electronic tax filing providers to discuss what solutions they may have developed to support fulfillment of the reporting requirements.

Your Trion Strategic Account Managers are here to answer any questions you might have as you prepare to comply with upcoming ACA requirements. If you are not currently a Trion client and would like assistance navigating the changes required by health care reform, please contact us today by emailing trionsales@trion-mma.com.

ACA REGULATIONS & GUIDANCE ISSUED IN THE LAST THREE MONTHS

Jul. 2015:	Agencies Issue <u>Final Rules on Coverage of Preventive Care</u>
Jun. 2015:	<u>Trade Preferences Extension Act of 2015</u> Increases ACA Reporting Penalties
Jun. 2015:	HHS Issues <u>Guidance on Election of a Federally-administered External Appeal Review Process</u>

	<u>for Health Plans</u>
Jun. 2015:	IRS Issues <u>Notice 2015-43 Expatriate Health Coverage Clarification Act of 2014, Interim Guidance</u>
Jun. 2015:	IRS Issues <u>Draft 2015 Form 1095-C</u> and <u>Draft 2015 Form 1094-C</u>
Jun. 2015:	Agencies Issue Final <u>SBC Regulations</u> and <u>Fact Sheet</u>
May 2015:	ACA FAQs XXVII – <u>Cost Sharing Limits and Provider Nondiscrimination</u>
May 2015:	IRS Issues Q&As on <u>Section 6056 Rules</u> and <u>Completing Forms 1094-C and 1095-C</u>
May 2015:	ACA FAQs Part XXVI – <u>Preventive Care</u>

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