

Affordable Care Act Compliance Update: Avoid the Confusion

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Convocation
The Spirit of Collaboration



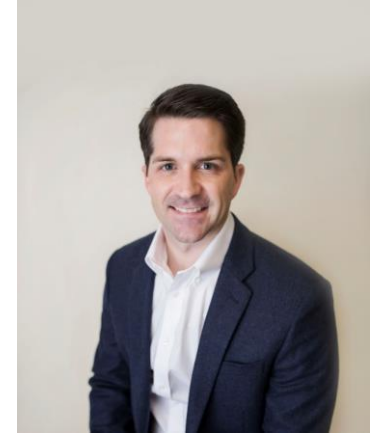
Wellness Activity

Presenter:



Insurance | Risk Management | Consulting

As Area Assistant Vice President, Compliance Counsel, **Michael Baker** is responsible for assisting clients with compliance questions related to health & welfare plans, including ERISA, PPACA, HIPAA, COBRA and cafeteria plans. Additionally, Michael is routinely invited to speak at seminars for Human Resource professionals, continuing legal education events and other professional organizations.



Michael is a graduate of Louisiana State University and received his Juris Doctor degree and Graduate Diploma in Comparative Law from Louisiana State University's Paul M. Hebert Law Center. He is a licensed attorney in the State of Louisiana

Presenter:



Craig Rees leads the ACA Reporter Software team at Points North as Product Owner.

As Product Owner for ACA Reporter, Craig Rees is responsible for gathering client-driven feedback and reviewing the technical requirements from the IRS and States for ACA requirements. In addition to ensuring a timely and efficient filing process, Craig is working to make it easy for clients to remain on top of ACA compliance requirements year-round.



Craig graduated from the University of Minnesota – Morris and received his Master's Degree from Minnesota State University

Agenda

Background

- Internal Revenue Code Section 6055
- Internal Revenue Code Section 6056

Penalties

State Reporting

Risk Mitigation and Solutions

Background

IRC Sections 6055 and 6056

Background

Section 6055

- Beginning in 2014 and extending through December 31, 2018, the Affordable Care Act (ACA) required all nonexempt individuals to either maintain minimum essential coverage (MEC) or pay a penalty
- Section 6055 reporting was necessary to determine whether individuals were maintaining MEC
- Entities required to report must furnish an information return with the IRS and furnish covered individuals with a statement
- This remains true even after the Tax Cuts and Jobs Act reduced the penalty for the Individual Mandate to \$0.00

Background

Section 6055

- Who Must Report?
 - Providers of MEC
 - Health insurers for insured coverage
 - Plan sponsors of self-insured group health plans
 - Government-sponsored programs (Medicaid, CHIP, TRICARE)

Background

Section 6055

- What Information is Required to be Reported?
 - The name, address, and employer identification number (EIN) of the reporting entity required to file the return (e.g., health insurance issuer);
 - The name, address, and taxpayer identification number (TIN) (or date of birth for certain individuals) of each responsible individual (primary insured, employee, etc.) covered under the policy or program;
 - The name and TIN of each individual covered under the policy or program (those other than the primary insured);
 - For each covered individual, the months for which, for at least one day, the individual was enrolled in coverage and entitled to receive benefits

Background

Section 6055

- What Forms Must be Submitted?
 - Most providers of MEC will be required to complete one set of forms, while employers that are both Applicable Large Employers (ALEs) under the Employer Shared Responsibility rules and are self-insured will be required to complete another set
 - Providers of MEC that are not both ALEs and self-insured are required to file Form 1095-B along with transmittal Form 1094-B
 - Providers of MEC that are both ALEs and are self-insured employers are required to file Form 1095-C, which will include the information necessary to comply with both Section 6055 and Section 6056 reporting, along with transmittal Form 1094-C

Background

Section 6055

- When to Submit to the IRS?
 - March 31 (electronically) of the year immediately following the calendar year in which MEC was provided
 - Extension available by filing written application to the IRS – Form 8809
- Statements to Individuals?
 - Statements must be provided to responsible individuals by January 31 of the year following the coverage year
 - 2022 contained relief and an extended deadline of March 2, 2022

Background

Section 6056

- The ACA requires ALEs (i.e., those with 50 or more FT and FTE employees) to file returns with the IRS containing information about health care coverage offered to full-time employees and furnish a statement to every full-time employee with the same information
- Section 6056 reporting is needed for the administration of the Employer Shared Responsibility requirement and the premium tax credits offered through the Marketplaces

Background

Section 6056

- Applicable Large Employers (ALEs)
 - ALEs are defined as employers with 50 or more full-time and full-time equivalent (FTE) employees. Whether an employer is an ALE is determined each calendar year, and generally depends on the average size of an employer's workforce during the prior year.
 - If an employer has fewer than 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is not an ALE for the current calendar year. Therefore, the employer is not subject to the Employer Shared Responsibility provisions or the employer information reporting provisions for the current year.
 - Employers should verify their ALE status annually

Background

Section 6056

- Determining Full-Time Employee Status
 - Under the ACA, an employer identifies its full-time employees based on each employee's hours of service. Generally, "hours of service" include any hour for which an employee is paid or entitled to payment when duties are not performed, such as vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence.
 - For purposes of the 4980H penalties, an employee is a full-time employee for a calendar month if he or she averages at least 30 hours of service per week or 130 hours of service for that month
 - Based on the final regulations, employers may determine the hours of service for hourly and non-hourly employees (e.g., salaried employees, per diem employees, etc.) using either the monthly measurement method or the look-back method.

Background

Section 6056

- Monthly Measurement Method
 - Using this method, an ALE will determine each employee's status by counting that employee's hours for each calendar month
- Look-Back Measurement Method
 - Under the look-back measurement method, an employer may determine the status of an employee as a full-time employee during a future period (referred to as a stability period), based upon the hours of service of the employee in a prior period (referred to as a measurement period). The look-back measurement method uses the measurement, administrative, and stability period safe harbors.

Background

Section 6056

- Back to Reporting - Who Must Report?
 - In general, each ALE | ALE member must satisfy the 6056 reporting requirement
 - ALE members may retain third-parties to assist with the preparation of their returns, but ultimately the ALE member retains the responsibility for reporting separate 6056 returns to the IRS

Background

Section 6056

- What to Report to the IRS under Section 6056?
 - The final regulations require that every ALE member provide the following information on the Section 6056 return to the IRS with respect to each full-time employee:
 - The name, address, and employer identification number (EIN) of the ALE member;
 - The name and telephone number of the ALE member's contact person (whether an employee or an agent of the ALE member);
 - The calendar year that the return is for;
 - A certification as to whether the ALE member offered its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer sponsored plan by calendar month;
 - The months during the calendar year during which coverage under the plan was available;
 - Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value that is offered to that full-time employee under an eligible employer-sponsored plan, by calendar month;
 - The number of full-time employees for each month during the calendar year;
 - The name, address, and taxpayer identification number (TIN) of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan

Background

Section 6056

- What Forms to Submit to the IRS under Section 6056?
 - Under the general reporting method, each ALE member is required to provide, for every full-time employee, an informational return, with a transmittal accompanying all the returns filed for a given calendar year. The 6056 return must be made using Form 1095- C. The transmittal form is Form 1094-C.

Form **1095-C** **Employer-Provided Health Insurance Offer and Coverage** ☐ VOID ☐ CORRECTED OMB No. 1545-2251 **2021**

Department of the Treasury
Internal Revenue Service
Go to www.irs.gov/Form1095C for instructions and the latest information.

Part I Employee **Applicable Large Employer Member (Employee)**

1 Name of employee (first name, middle initial, last name) 2 Social security number (SSN) 7 Name of employer 8 Employer identification number (EIN)

9 Street address (including apartment no.) 10 Contact telephone number

4 City or town 5 State or province 6 Country and ZIP or foreign postal code 11 City or town 12 State or province 13 Country and ZIP or foreign postal code

Part II Employee Offer of Coverage **Employee's Age on January 1** **Plan Start Month (enter 2-digit number):**

| | All 12 Months | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec |
|---|---------------|-----|-----|-----|-----|-----|------|------|-----|------|-----|-----|-----|
| 14 Offer of Coverage (enter required code) | | | | | | | | | | | | | |
| 15 Employee Required Contribution (see instructions) | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| 16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable) | | | | | | | | | | | | | |

17 ZIP Code

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60705M Form **1095-C** (2021)

Form **1094-C** **Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns** ☐ CORRECTED OMB No. 1545-2251 **2021**

Department of the Treasury
Internal Revenue Service
Go to www.irs.gov/Form1094C for instructions and the latest information.

Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer) 2 Employer identification number (EIN)

3 Street address (including room or suite no.)

4 City or town 5 State or province 6 Country and ZIP or foreign postal code

7 Name of person to contact 8 Contact telephone number

9 Name of Designated Government Entity (only if applicable) 10 Employer identification number (EIN)

11 Street address (including room or suite no.)

12 City or town 13 State or province 14 Country and ZIP or foreign postal code

15 Name of person to contact 16 Contact telephone number

For Official Use Only

17 Reserved

18 Total number of Forms 1095-C submitted with this transmittal

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions

Part II ALE Member Information

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member

21 Is ALE Member a member of an Aggregated ALE Group? ☐ Yes ☐ No

If "No," do not complete Part IV.

22 Certifications of Eligibility (select all that apply):

☐ A. Qualifying Offer Method ☐ B. Reserved ☐ C. Reserved ☐ D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature Title Date

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 61571A Form **1094-C** (2021)

Background

Section 6056

- When to Submit the 6056 Report to IRS
 - The final regulations provide that Section 6056 information returns must be filed on an annual basis with the IRS no later than February 28 (March 31 if filed electronically) of the year immediately following the calendar year in which health coverage was offered.
 - An extension for filing the return is available by filing a written application to the IRS with an explanation of the reasons for the extension.



Background

Section 6056

- Statements to Full-Time Employees under Section 6056
 - In addition to the return that must be filed with the IRS, as indicated above, ALE members must also provide a statement to each full-time employee. The employee statement can be made by furnishing a copy of the Form 1095-C.
 - The ALE member must provide each of its respective full-time employees, by January 31 of the year following the year to which the offer applies (March 2, 2022 for the 2021 reporting year)

Penalties ☹️

IRC Sections 6055 and 6056

Penalties

Sections 6055 and 6056

- If an employer fails to timely file complete and accurate returns under Section 6055 or 6056 (i.e., Forms 1095-B or 1095-C) with the IRS, or fails to timely furnish a correct statement to responsible individuals, then the employer could be subject to an indexed penalty up to a calendar year maximum
- For returns filed in 2022 for coverage provided in 2021, the indexed penalty was **\$280 per return with a maximum of \$3,426,000**
- The penalties will be doubled if the failure relates to both an IRS information return and an employee statement

Penalties

Sections 6055 and 6056

- The final instructions do not contain good faith relief for reporting entities that provide incorrect or incomplete information on a return or statement
- Ultimately, the penalty for failing to submit accurate returns and statements is \$290 per failure with a maximum penalty of \$3,532,000 (2022 – due in 2023)

Penalties

Enforcement

- The IRS has been enforcing the Sections 6055 and 6056 filing requirements against employers it believes failed to file Forms 1094-B or C and 1095-B or C
- **Letter 5699**
 - When the IRS believes an employer has failed to file, it will send a Letter 5699 to the employer indicating that the employer may have been an ALE required to file information returns for a particular year, and that the IRS has not yet received them
 - Upon receiving a Letter 5699, an employer should respond to the IRS using the form included in the letter within 30 days of the date of the letter

Penalties

Enforcement

- **Letter 5698**
 - If an employer fails to respond to a Letter 5699 within 30 days, the IRS will send a follow up, Letter 5698, along with a copy of the original Letter 5699, reminding the employer that it has not yet responded. Employers that receive this letter should respond as instructed in the Letter 5698 within 30 days of the date of the Letter 5698.
- **Letter 5005-A and Form 886-A**
 - Failure to respond to Letter 5699 or 5698 will result in the IRS sending a Letter 5005-A proposing penalties for failure to file. The IRS will include a Form 886-A explaining the proposed penalties.
 - Upon receiving a Letter 5005-A, an employer may agree with and pay the penalties by sending a copy of the letter and payment to the address listed in the letter. If the employer does not agree with the proposed penalties, the employer will have an opportunity to appeal the penalties after the IRS sends a formal request for payment.

Penalties

Enforcement

Form 972 CG

- If the employer responds to Letters 5699 or 5698 and indicates there was a late filing, or if the employer does not respond to either Letter and receives a Letter 5005-A, the IRS will send a Form 972 CG – Notice of Proposed Penalty with the proposed penalty amount and instructions on how to appeal the determination. The employer has 45 days to respond to the Form with payment or evidence to reduce or eliminate the penalty.



State Reporting



State Reporting

Overview

- After the Tax Cuts and Jobs Act (Act) effectively eliminated the Individual Mandate under the ACA by reducing the penalty for noncompliance to \$0, several states and the District of Columbia passed legislation creating individual mandates at the state level.
- The individual mandates under the various jurisdictions closely resemble the federal Individual Mandate and share a number of common elements: (1) defining qualifying coverage; (2) instituting penalties for not maintaining coverage; and (3) providing certain exemptions.
- Most, but not all, jurisdictions also include a reporting requirement
- Fortunately, most of the current jurisdictions accept Forms 1094 and 1095 for state reporting purposes. However, the timing of those reports may differ from the federal requirements.

State Reporting

| Location | Effective Date | Reporting Required | Use of Forms 1094-C and 1095-C Permitted | Filing Deadline | Links for More information |
|----------|----------------|--------------------|--|---|--|
| MA | 2006 | Yes | No | January 31 | Summary Information on Form MA 1099-HC |
| NJ | 2019 | Yes | Yes | March 31 | Summary State of NJ website |
| DC | 2019 | Yes | Yes | 30 days after IRS filing deadlines | Summary OTR Notice 2019-04 |
| VT | 2020 | No | N/A | N/A | Summary Text of amended law |
| CA | 2020 | Yes | Yes | March 31 | Summary State of California Franchise Tax Board |
| RI | 2020 | Yes | Yes | March 31 The Rhode Island Division of Taxation has extended, until March 31, 2022, the deadline by which employers must file with the Division certain reports involving Rhode Island's individual health insurance mandate. The deadline is normally January 31, 2022. The Internal Revenue Service has set its deadline as March 31, 2022, and the Division is following suit. | Summary Text of law |

Risk Mitigation Solutions





Keys to ACA Compliance Success

®



Powered By Points North

Key Themes

Process

- Process and Automation
- à Diocesan Population is special

Implement

- Implement a Year-Round Monitoring System

Avoid

- Avoid Common Mistakes

Leverage

- Leverage Automation

Leverage

- Leverage Expertise

Year-Round Process[®] (April – March)

January – March: Form Filing Execution

- Ensuring accurate system set up to include:
 - Organizational set up
 - Measurement period || Control Groups || Benefit Plans
- Partnering to ensure all set up is complete for the new calendar year
- Partnering to ensure that Employee data is set up accurately

October through December: Prepare for Filing and Final Data Review

- ☐ Strategic discussion for end-of-year filing – advising on best practice
- ☐ Review process for filing so client is prepared to file after the end of the calendar year
- ☐ Check-in with client to address any specific process questions
- ☐ Reviewing data to confirm accurate tracking

April – September: Monitor and Track New Calendar Year

- ☐ Quarterly check-in with Group 1 and Group 2 POC's to review data and dashboard insights
- ☐ Reviewing employee data to confirm eligibility status
- ☐ Reinforce best practice for stress/error-free tracking

Avoid 5 Common Mistakes

1. Considering All Rehired Employees to be New Hires
2. Discontinuing Coverage for Employees Who Change Status from Full to Part-time
3. Inaccurately Completing the 1095-C forms
4. Missing filing deadline, either state or federal
5. Not reviewing payroll and enrollment data regularly

Leverage Automation

You don't need
centralized nor
standardized payroll

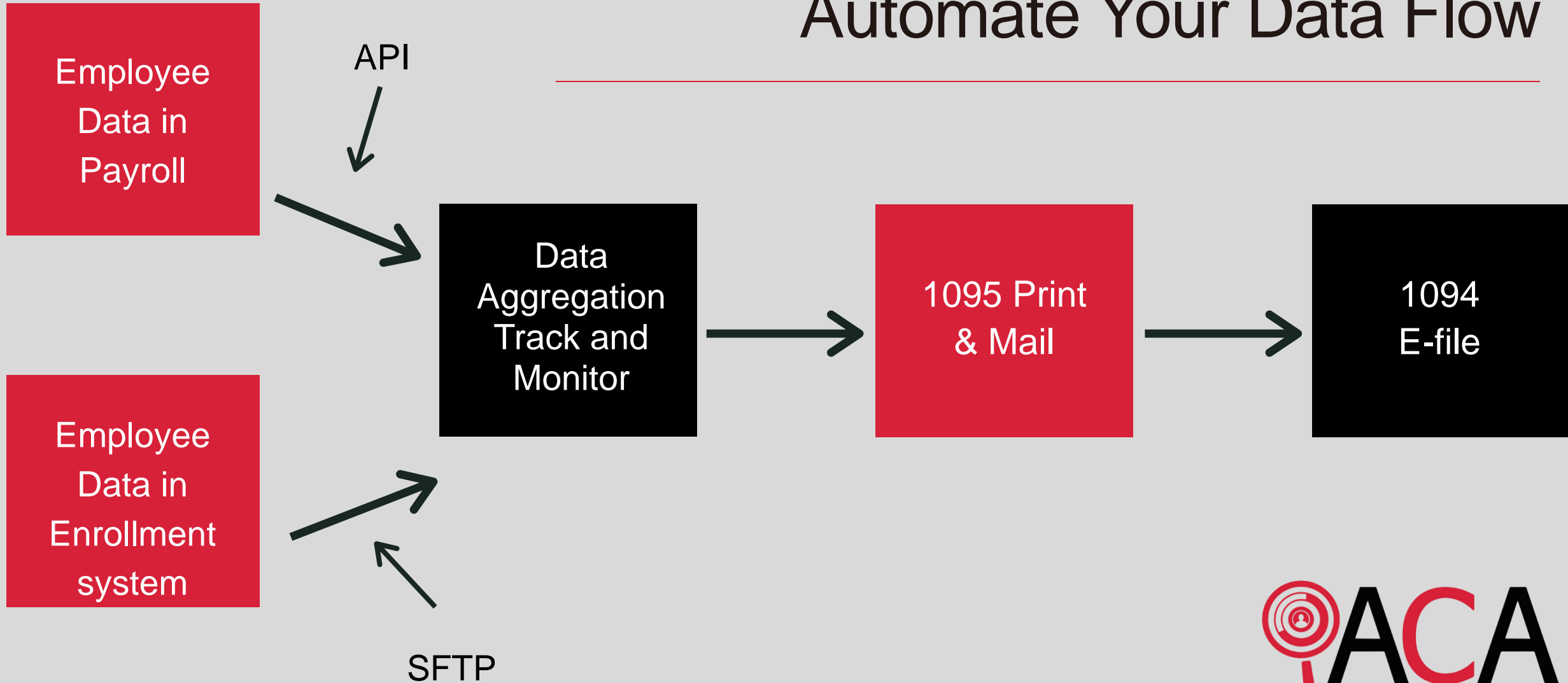
Use SFTP or APIs to
connect payroll to
ACA software

Automation keys

- Supports printing and filing of 1095-B & C forms
- E-File 1094's and State submissions

Avoid manual entry
and duplicative
efforts

Automate Your Data Flow



ACA Health Check in under 30 seconds

ACA Control Group Dashboard

2019 Control Group

Full-Time Equivalent Count of Control Group for 2018 55

Employee ACA Status Details

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--------------------------|------|------|------|------|------|-----|-----|-----|-----|-----|-----|-----|
| Calculated Full-Time | 30 | 30 | 30 | 30 | 30 | 30 | 38 | 38 | 38 | 38 | 38 | - |
| Offered | 30 | 30 | 30 | 30 | 30 | 28 | 36 | 36 | 36 | 36 | 36 | - |
| Not Offered | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | - |
| Percent Offered | 100% | 100% | 100% | 100% | 100% | 93% | 94% | 94% | 94% | 94% | 94% | - |
| Calculated Not Full-Time | 27 | 27 | 27 | 28 | 29 | 30 | 22 | 22 | 22 | 22 | 21 | - |
| Limited Non-Assessment | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | - |
| Total | 58 | 58 | 58 | 59 | 59 | 60 | 60 | 60 | 60 | 60 | 59 | - |
| Full-Time Equivalent | 55 | 55 | 55 | 56 | 56 | 55 | 54 | 54 | 54 | 50 | 49 | - |

Initial Period Details

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|----------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Initial Measurement Ending | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Initial Administrative | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Initial Stability Ending | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Monthly Limited | 0 | 0 | 0 | 1 | 1 | 2 | 1 | 1 | 0 | 0 | 0 | 0 |
| Total | 3 | 0 | 1 | 2 | 1 | 2 | 1 | 1 | 0 | 0 | 0 | 0 |

Standard Measurement Method Details

| | Start Date | End Date | All | Reached Full-Time | Projected Full-Time |
|----------------|------------|-----------|-----|-------------------|---------------------|
| Measurement | 5/1/2019 | 4/30/2020 | 59 | 0 | 2 |
| Administrative | - | - | - | - | - |
| Stability | 7/1/2019 | 6/30/2020 | 58 | 38 | - |

Initial Measurement Method Details

| | All | Reached Full-Time | Projected Full-Time |
|----------------|-----|-------------------|---------------------|
| Measurement | - | - | - |
| Administrative | - | - | - |
| Stability | 2 | 1 | - |

Measurement Method Settings

Organization - All Employees Lookback

| Ongoing Employees | Start Date | End Date |
|--------------------------------------|---|-----------|
| Measurement Period | 5/1/2019 | 4/30/2020 |
| Administrative Period | 5/1/2020 | 6/30/2020 |
| Stability Period | 7/1/2020 | 6/30/2021 |
| New Variable Employee | | |
| Measurement Period Length | 12 Months | |
| Start Date of the Measurement Period | First day of month following date of hire | |
| Administrative Period | 1 + partial Months | |
| Stability Period | 12 Months | |

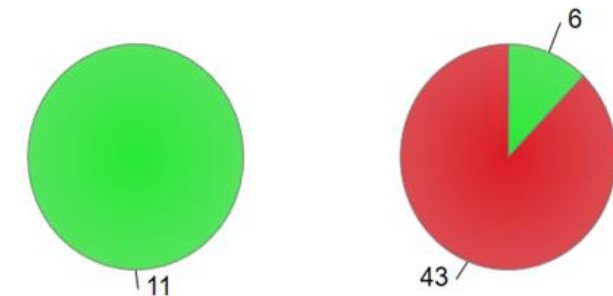
Employees Not Meeting Affordability Requirements

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--------------------------|-----|-----|-----|-----|-----|-----|---------|---------|---------|---------|---------|-----|
| Calculated Full-Time | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 4 | 4 | 4 | 4 | - |
| Calculated Not Full-Time | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 4 | 4 | 4 | 4 | - |
| Limited Non-Assessment | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | - |
| All | 0 | 0 | 0 | 0 | 0 | 0 | 8 | 8 | 8 | 8 | 8 | - |
| Potential Penalty | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$1,250 | \$1,250 | \$1,250 | \$1,250 | \$1,250 | - |

Potentially Miscategorized Employees

Part-Time Employees Trending Full-Time
Consecutive 130+ Hours

Full-Time Employees Trending Part-Time
Consecutive < 130 Hours



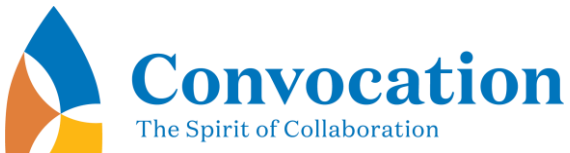
0-1 Months 2 Months 3+ Months

Thank you.

Contact Information

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