

A decorative graphic on the left side of the slide consisting of three circles (blue, brown, and grey) and a vertical line to their right.

*The Affordable Care Act . . . . 2016 and Beyond*

*Employer Requirements*

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# BASIC ~ Compliance



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## **Fritz Teutsch, BASIC President & CEO.**

Fritz Teutsch, CFCI, President & CEO of BASIC, started in 1989 as a Section 125 Cafeteria Plan software provider and Administrator. He has continued to grow the company to include a full suite of compliance and regulatory services serving over 9,000 clients nationally. Through acquisition, BASIC has additional service offices in Grand Rapids, Akron, Tucson, and Sacramento. Fritz has an extensive background in the insurance business, starting with Aetna in 1975 including two and a half years with Blue Cross and Blue Shield in the early 1980s. Fritz has published several articles and taught numerous continuing education courses on Cafeteria Plans, COBRA, and Consumer Driven Health. He is considered an expert on Health Reform and Private Exchanges and a frequent guest speaker and panelist. Fritz is a lifelong resident of Michigan and graduate of Western Michigan University.

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Joe provides Business & HR client advisory services and HR out-source services nationally. He is a Human Resource professional with over twenty five years business management and HR consulting experience. He has worked with multi plant International Tier I Automotive Manufacturing, retail, food processing, health care, legal administration and professional services.

Mr. Aitchison is recognized as a leader in human resources and has obtained a lifetime certification as a senior professional in human resource management, SHRM – Senior Certified Professional and Healthcare Reform Specialist by the Healthcare Reform Center & Policy Institute. Mr. Aitchison Serves on several for profit and not for profit boards.



# AGENDA

... *The ACA 2016 Employer Reporting Overview*

## ACA Compliance ~ 2016

- Minimum Reporting Requirements under the ACA
- Common Mistakes & Best Practices
- What is on the horizon: ACA & ERISA

# The Patient Protection and Affordable Care Act (PPACA)

## Refresher:

- Commonly called Affordable Care Act (ACA) or Obamacare
- Signed into law March 23, 2010
- Introduced mandates, individual subsidies, and insurance exchanges
- Established new rules for insurance companies and expanded coverage requirement such as dependent coverage to age 26.
- It has come under attack from conservative advocacy groups, labor unions, employer groups, US Congress, state governments, and was tested in the US Supreme Court.
- Six and a half years later it still stands and we as employers still face the fall out.

# Minimum Reporting Requirements under the ACA



# Minimum Reporting Requirements (Employee Groups)

## Applies to Employers with 50 or more full-time employees

### **Full time Employee** – 30 hrs. weekly / 130 hrs. monthly

- Hours worked / Paid
  - PTO hours
  - FMLA
  - Jury Duty
  - Employer paid disability (STD/LTD) unless paid by employee w/after tax dollars
- 
- **Part-Time Employee** – Under 30 hrs. Weekly
  - **Variable Hour EE** - Hours vary weekly / Monthly
  - **Seasonal worker** – Less than 4 months annually during specified season(s)
  - **Seasonal Employee** – Typically less than 6 months of employment during a season. **Note- SEs are considered full-time employees to determine FTE Count**

# ACA Reporting Requirements Types

- There are two types of required reporting
  - Section 6055 reporting (individual mandate reporting)
  - Section 6056 reporting (pay or play reporting)
- Section 6055 requires annual reporting to the IRS and “responsible individuals” whether the coverage in which they are enrolled constitutes minimum essential coverage
- This reporting is intended to assist the IRS to enforce the individual mandate penalty under Health Care Reform





# ACA Reporting Requirements Types

- Section 6056 reporting only applies to large employers with 50 or more full-time employees and full-time equivalent employees
- The purpose of the 6056 reporting is to assist the IRS to enforce the employer pay or play penalty and to assist full-time employees determine whether they are eligible for a premium credit

# ACA Reporting Requirements Types

- **2016** - Less than 50 FTE's (Fully Insured or not offering Coverage) - Section 6056 reporting is not required with respect to group health plans sponsored by small employers that are not subject to the pay or play

# ACA Reporting Requirements Types

- Entities within a controlled-group of entities must complete Section 6056 on an entity-by-entity basis, but an entity may assist other entities within the controlled- group complete Section 6056 reporting
- Third parties may assist entities complete Section 6056 reporting, but liability for penalties related to reporting failures is not transferred to the third-party administrator

# Pay or Play

The employer pay or play penalty started in 2015, but was delayed...**No Waived Penalties and Extended Deadlines for the 2016 Reporting Year...**

- Beginning in 2016 the IRS will require employer reporting and will enforce the “Pay or Play Penalties”
  - An ALE member that **does not offer** minimum essential coverage to at least 95 percent of its full-time employees (and their dependents) will be liable for an employer shared responsibility payment *if at least one full-time employee receives the premium tax credit for purchasing coverage through the Marketplace*. On an annual basis, this payment is equal to \$2,000 (indexed for future years) for each full-time employee, with the first 30 employees excluded from the calculation. **This calculation is based on all full-time employees** (minus 30), including full-time employees who have minimum essential coverage under the employer’s plan or from another source .
  - An ALE member that **does offer** minimum essential coverage to at least 95 percent of its full-time employees (and their dependents) will be liable for the second type of employer shared responsibility payment *if at least one full-time employee receives the premium tax credit for purchasing coverage through the Marketplace*. Generally, a full-time employee will receive the premium tax credit because the minimum essential coverage offered was **not affordable**, **did not provide minimum value**, or because **the employee was not one of the at least 95 percent of full-time employees offered minimum essential coverage**. On an annual basis, this payment is equal to \$3,000 (indexed for future years) but only for each full-time employee who receives the premium tax credit.



# Pay or Play (Cont.)

- In addition to potential pay or play penalties (the \$2,000 and \$3,000 penalties), *The Trade Preferences Extension Act of 2015 (“Trade Bill”)*, signed into law by President Obama on June 29, 2015; Employers can face penalties of \$100 to \$250 per return for filing failures.
- **However**, there is a good faith standard from imposing 2015 reporting penalties for incorrect or incomplete filings

# Revised Penalties

... Trade Preferences Extension Act

Forms W-2, 1099 and Required ACA reporting forms.

| Penalty Description   | Current Penalty   | 2016 Revised Penalty  |
|---|---|---|
| Failure to file an information return or provide a payee statement                              | \$100 for each return with respect to which a failure occurs          | \$250 for each return with respect to which a failure occurs          |
| Annual penalty limit for non-willful failures   | \$1,500,000   | \$3,000,000   |
| Lower limit for entities with gross receipts not exceeding \$5M                                 | \$500,000   | \$1,000,000   |
| Failures corrected within 30 days of required filing date                                       | \$30  | \$50  |
| Annual penalty limit when corrected within 30 days  | \$250,000   | \$500,000   |
| Lower limit for entities with gross receipts not exceeding \$5M when corrected within 30 days   | \$75,000  | \$175,000   |
| Failures corrected by August 1  | \$60  | \$100   |
| Annual penalty limit when corrected by August 1   | \$500,000   | \$1,500,000   |
| Lower limit for entities with gross receipts not exceeding \$5M when corrected by August 1      | \$200,000   | \$500,000   |
| Failure to file an information return or provide a payee statement due to intentional disregard | \$250 for each return with respect to which a failure occurs (no cap) | \$500 for each return with respect to which a failure occurs (no cap) |

# Common Mistakes & Best Practices

# 2015 ACA Filing

- Some employers have experienced difficulty filing the 1094-C and 1095-Cs electronically with the IRS for 2015
  - The IRS announced that it is continuing to keep the AIR system up and running after the June 30 deadline
- IRS stated that employers can complete required filings after June 30
  - if any filings were rejected employers have 60 days to submit corrections and that this can occur after June 30
- The IRS stated that missing the June 30 deadline will generally not trigger late filing penalties as long as:
  1. The employer has made legitimate efforts to register with the AIR system and
  2. File the returns as soon as possible
- IRS will grant relief for incomplete or incorrect returns for first year if good faith effort



# 2015 ACA Filing – Corrected Forms

- IRS expects a corrected 1095-C to be prepared and filed for any of the following errors:
  - Individual's name or Social Security Number
    - If employer can verify as being correct – no need to resubmit
  - Employer's EIN
  - Indicator code in Lines 14 or 16
  - Cost in Line 15
  - Information about dependents in Part III (if offering a self-funded health plan)

# Reporting Regulations

- 1095 EE forms – March 31, 2016
- E filing – IRS is June 30, 2016
- IRS – 1094 Form - Rejected Filings (60 days to correct in 2016)

- Mismatch on EIN

|   |  |   |   |                   |
|---|--|---|---|-------------------|
| Form <b>SS-4</b><br>(Rev. January 2010)<br>Department of the Treasury<br>Internal Revenue Service |  | <b>Application for Employer Identification Number</b><br>(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)<br>▶ See separate instructions for each line. ▶ Keep a copy for your records. |   | OMB No. 1545-0003 |
|   |  |   |   | EIN               |
| Type or print clearly.  | 1 Legal name of entity (or individual) for whom the EIN is being requested |   |   |                   |
|   | 2 Trade name of business (if different from name on line 1)                |   | 3 Executor, administrator, trustee, "care of" name          |                   |
|   | 4a Mailing address (room, apt., suite no. and street, or P.O. box)         |   | 5a Street address (if different) (Do not enter a P.O. box.) |                   |
|   | 4b City, state, and ZIP code (if foreign, see instructions)                |   | 5b City, state, and ZIP code (if foreign, see instructions) |                   |
|   | 6 County and state where principal business is located                     |   |   |                   |
|   | 7a Name of responsible party   |   | 7b SSN, ITIN, or EIN  |                   |

- EE forms 1095 – Correction Required (on going)
  - Name / SSN Mismatch
- ACA / IRS / Homeland Security
  - Database – SSA Administration – validation improvement process



# Filing Reporting Deadlines – 2016

For 2016 and later years 1095-Cs must be distributed to employees by the first business day on or after January 31

- The 1094-C and 1095-Cs must be filed with the IRS
  - By the first business day on or after February 28 if filing by mail
  - By the first business day on or after March 31 if filing electronically



# Affordability – 2016

## Employee Maximum Contribution – Affordability

Employee's required contribution cannot exceed 9.5% of one of three affordability safe harbors

- **FPL (1A)** ~ \$95.63
- **Rate of Pay** – lowest of the
  1. Employee hourly rate of pay on the first day of the plan year times 130 days per month, multiplied by 9.66%
  2. Employee's lowest hourly pay rate during the calendar month times 130 days per month, multiplied by 9.66%
- **W2**
  - An employee's W-2 wages for an entire or part of a calendar year may also be used to calculate minimum ACA affordable coverage. Determine an employee's W-2 wages for the month and multiply 9.66%.

# Reporting – 2016

Forms for 2016 look similar fewer safe harbors

- No special reporting mid-size employers for full year
- No transition relief for non-calendar year plan
- Special qualifying offer relief for 2015 eliminated
- Plan start month still optional

## Spousal Offer of Coverage Indicator codes

- 2 new codes for 2016

*Note: Mid-size Employers make sure to maintain good records on FTE counts 2014 year for 2015 reporting – 2016 reporting is based on 2015 FTE count.*



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**Form 1095-C**  
 Department of the Treasury  
 Internal Revenue Service

**Employer-Provided Health Insurance Offer and Coverage**

VOID  
 CORRECTED

OMB No. 1545-2251

**2016**

Do not attach to your tax return. Keep for your records.  
 Information about Form 1095-C and its separate instructions is at [www.irs.gov/form1095c](http://www.irs.gov/form1095c)

| Part I Employee                            |  |                                |  | Applicable Large Employer Member (Employer)    |  |  |  |  |                      |  |   |  |  |
|--|--|--------------------------------|--|--|--|--|--|--|----------------------|--|---|--|--|
| 1 Name of employee                         |  | 2 Social security number (SSN) |  | 7 Name of employer                             |  |  | 8 Employer identification number (EIN) |  |                      |  |   |  |  |
| 3 Street address (including apartment no.) |  |                                |  | 9 Street address (including room or suite 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  | 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) |   |     |     |     |     |     |      |      |     |      |     |     |     |

| Part III Covered Individuals   |                      |  |                           |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |     |     |
|--|----------------------|--|---------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-----|-----|
| If Employer provided self-insured coverage, check the box and enter the information for each Individual enrolled in coverage, including the employee. <input type="checkbox"/> |                      |  |                           |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |     |     |
| (a) Name of covered individual(s)  | (b) SSN or other TIN | (c) DCB (if SSN or other TIN is not available) | (d) Covered all 12 months | (e) Months of Coverage   |                          |                          |                          |                          |                          |                          |                          |                          |                          |     |     |
|  |                      |  |                           | Jan                      | Feb                      | Mar                      | Apr                      | May                      | June                     | July                     | Aug                      | Sept                     | Oct                      | Nov | Dec |
| 17   |                      |  | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     |     |
| 18   |                      |  | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     |     |
| 19   |                      |  | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     |     |
| 20   |                      |  | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     |     |
| 21   |                      |  | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     |     |
| 22   |                      |  | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |     |     |

# Market Place Notice & Appeal

- Health Insurance Marketplace
  - Many Employer are receiving notices that in 2016, one or more employees enrolled in coverage on the exchange and received a premium tax credit
- This is not an IRS notice
  - No pay or play Penalties due based on Notice form the exchange.
- If an ALE Employer Receives an Notice
  - Appeal the notice if an offer of coverage was made the EE waived coverage and.....
  - If the Health Plan was a minimum value and affordable
    - Metal Plan (Bronze, Silver, Gold)
- Why Appeal
  - If the employee was eligible for Employer Coverage
    - Employee is not eligible for a premium tax credit
    - Employee will be required to repay
- Employee Impact
  - Correcting the Employee's subsidy error sooner rather than later minimizes this consequence for the employee on repayment.

# Market Place Notice & Appeal

- If you don't appeal
    - Market Place Reports information to the IRS - if the employee did receive a Tax credit and the Employer
  - If employer completes the appeal
    - Include:
      - Signed waiver of coverage
      - Copy of form 1095-C issued to the employee
      - Summary of Benefit Coverage ~ SBC (MEC/MV plan info)
- By completing the appeal employer may save time and effort at a later date (maybe up to years later)... when the IRS will issue a Pay or Play employer penalty*
- No need to appeal if Employee is not eligible for Health Benefits
    - Part Time EE / no offer of coverage – maintain records

**Appeal Form & Instructions:** <http://HealthCare.gov/marketplace-appeals/employer-appeals>





# Market Place Notice & IRS Assessment

## IRS may issue a pay or play penalty assessment Notice

- Assessment notice will be issued when:
  1. After the Employee files their personal tax return indicating that they received a premium tax credit
  2. Employer files its 1094-C and 1095-C with the IRS
- The employer will have an opportunity to respond before the IRS assesses penalties



## Update on Affordability

- Last December the IRS announced that it would issue regulations to require employers who provide additional compensation to employees who **opt out** of group health coverage to include that amount when measuring for affordability for pay or play penalty purposes
- In the notice, the IRS also indicated that there may be a special rule where the opt out is **conditioned on the employee having other group health coverage**



## Update on Affordability

- The IRS just announced that while it has not yet issued regulations to implement this new rule, the earliest the rule will apply is for plan years beginning on or after January 1, 2017
- In addition, in the new announcement the IRS indicates that opt out arrangements which require employees to provide reasonable evidence that the employee, spouse and dependents have other group health coverage will **not** be included in measuring affordability

# What is on the horizon:

**DOL (ACA & ERISA) Audits**

**Penalty Assessments**

**Cadillac Tax**

**5500 Filings**

**NDT**



*Thank You*