



March 4, 2019

Let's check those Forms 1094-C *before* filing with the IRS: A few seconds now can save you headaches - and maybe millions - later

For 17 months the IRS has been actively enforcing the Affordable Care Act's employer mandate for the 2015 and 2016 calendar years. The IRS' efforts have relied exclusively on the Forms 1095-C and 1094-C submitted by employers for those years. Employers use those forms to demonstrate compliance with the mandate.

Many employers have received letters from the IRS assessing massive penalties related to those years, some penalties into the tens of millions of dollars. *Most* of those letters were triggered by simple and easily detectable mistakes the employers or their ACA reporting vendors made on Form 1094-C.

Lockton comment: For more on ACA reporting by employers, the due dates and common mistakes check out our latest [podcast](#). Subscribe to our podcast series, [ERISA is a friend of mine](#), and stay up to date with the latest in the employee benefits compliance world, with news and other trends delivered with a touch of humor.

While Lockton has had great success in helping our clients have those penalties rescinded, double-checking the Form 1094-C before filing can help employers avoid a great deal of consternation, angst and additional effort later.

Form 1094-C is the transmittal form that accompanies the employer's Forms 1095-C submitted to the IRS. But in addition to serving as a transmittal form, like a W-3, the employer also uses Form 1094-C to demonstrate compliance with the "95 percent" component of the ACA's employer mandate. This is the obligation to offer at least minimum essential coverage to 95 percent or more of the employer's full-time (as defined by the ACA) employees and their children.

Lockton comment: That component carries a massive potential penalty for failure to comply: \$2,320 per year (for 2018; the penalty is indexed for inflation) multiplied by nearly *all* the employer's full-time employees, even the ones who received an offer of coverage. We have referred to this as the "nuclear penalty."

The most common mistakes, resulting in the most massive penalties, are on Page 2 of Form 1094-C, in Part III, column (a), where the IRS simply asks whether the employer met the 95 percent test.

Many employers (or their ACA reporting vendors) answered "no" to that question (or left the answer boxes blank, which the IRS construes as a "no" answer) when, in fact, they *did* offer coverage to at least 95 percent of their full-time employees and their children. *The employers simply failed to check the vendor's work, or*

failed to recognize what the question was asking and that a "no" answer (or no answer at all) in that column was an inaccurate answer.

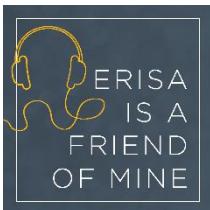
Part III ALE Member Information—Monthly		(a) Minimum Essential Coverage Offer Indicator	(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
		Yes	No			
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
28	May	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
29	June	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
30	July	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
31	Aug	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
32	Sept	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
33	Oct	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
34	Nov	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
35	Dec	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	

The moral of the story: *Check those Forms 1094-C before pressing the "submit" button to the IRS, or before directing the reporting vendor to do so.* A few seconds now can help avoid headaches – and additional effort – later.

Lockton comment: Forms 1095-C, with the accompanying Form 1094-C, are due to the IRS by April 1 for employers filing them electronically. A 30-day extension is available by submitting Form 8809 electronically through the IRS' [FIRE portal](#). Paper submissions were due to the IRS by Feb. 28. Copies of Forms 1095-C are due to employees by today, March 4.

*Edward Fensholt, J.D.
Compliance Services*

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The [Lockton Benefits Blog](#) is your source for breaking benefits news and essential information.



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Lockton Benefit Group | 444 West 47th Street | Suite 900 | Kansas City | MO | 64112