



*National Payroll Reporting Consortium*

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October 24, 2016

Commissioner John Koskinen  
Internal Revenue Service  
3000 IR; N:C  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Commissioner Koskinen:

Thank you for hosting the Affordable Care Act (ACA) Information Reporting meeting on September 21, 2016 to discuss the results of the first filing season, and to make recommendations for enhancements. Overall, private sector participants were pleasantly surprised with the first-year functioning of the AIR system.

The National Payroll Reporting Consortium (NPRC) is a non-profit trade association whose member organizations provide payroll processing and related services, including electronic filing of federal employment tax and IRS Information returns, to over 1.4 million employers nationwide, covering over one-third of the private sector work force. Payroll service providers have long served an important role in our nation's tax collection system as a conduit between employers and government authorities, improving tax collection efficiency and improving compliance.

We appreciate that the IRS has made extraordinary outreach efforts to help the private sector prepare for ACA compliance elements. The September 21<sup>st</sup> discussion of the ACA initial filing season was itself exemplary, as are the IRS technical webinars and similar efforts. In the following pages, NPRC members offer recommendations in the following areas:

- Name/Taxpayer Identification Number (TIN) Errors
- AIR Systems Enhancements
- Support Enhancements
- Streamline the Process for Extensions of the Deadline to Furnish Forms

Again, thank you for your invitation to assess the first ACA Form 1094-C/1095-C return filing season. We look forward to continuing our collaboration with the IRS to improve the Affordable Care Act information reporting systems. Please let us know if we can be of service.

Sincerely,

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## **Name/Taxpayer Identification Number (TIN) Errors and Potential Accuracy Penalties**

As explained in our letter of June 27, 2016, the greatest AIR system concerns are in the area of name/TIN errors and potential accuracy penalties under Sections 6721/6722. These name/TIN validation errors represented the vast majority of “accepted with errors” responses for 2015. Any significant volume of such errors could cause the IRS difficulties in administering the relevant provisions of the ACA, including reconciliation of Premium Tax Credits and enforcement of the Individual and Employer Shared Responsibility mandates.

Employers and service providers are eager to take appropriate actions to ensure that their IRS Information Returns are accurate. Employers may be liable for penalties of as much as \$520 per Form 1095-C, up to a maximum of roughly \$6.3 million per year, but they have no way to identify and prevent such errors prior to submission. Employers cannot use the SSA’s Social Security Number Verification system, or the IRS’s TIN Matching System, or the Department of Homeland Security’s E-Verify system. Each of these is restricted to the specific purpose intended, and use otherwise may constitute a federal crime. Further, self-insured employers are reporting the names and TINs of employees’ dependents and spouses. These systems are not applicable for dependents and spouses. There should be a way to identify error conditions prior to filing Information Returns.

We believe that the following alternatives are feasible, would leverage existing IRS systems, and would require minimal programming and/or regulatory changes:

### **1. Optional “Pre-check” Feature to Identify Errors on a Pre-filing Basis**

- AIR system responses for 2016 will identify which instance of a name/TIN reported on a particular Form 1095-C had a problem. This will enable self-insured employers to ask affected employees to verify the specific names/TINs that did not match the IRS database. With this enhancement, the existing AIR system can identify and prevent errors *before the information returns are due*.
- The IRS should permit employers and service providers to file partial Forms 1095-C in November-December to report names/TINs of individuals to be reported on Forms 1095-C. The AIR system is already programmed to generate error messages for names/TINs that don’t match the IRS database. Doing so in the closing months of the year would give employers time to correct them prior to filing the actual Forms 1095-C.
  - We do not believe that this would pose difficult legal questions, since the IRS would merely be doing what it already does, just a few weeks earlier.
  - This proposal may require minor modifications to the AIR system, such as a new filing status (e.g., “pre-check”) to distinguish files from test and production files. The AIR system would respond to each return as it would a production return, but the return would not post to any “downstream” IRS database.



- IRS development may be needed to suspend content business rules for the new filing status, which would otherwise reject Form 1095-C records containing only names and TINs. Otherwise, no programming changes would seem necessary. The existing AIR system and existing Form 1095-C electronic filing schemas could be used. Alternatively, the IRS could publish an abbreviated format.
- IRS participants asked how to control and minimize volume and related workload. We recommend that the IRS establish an agreement similar to the TIN Matching Terms of Service to outline the terms under which the program would be offered.
  - The agreement could restrict filers to submission of names/TINs that have not previously been reported or that have changed. (This would prevent employers from submitting their entire employee base annually, for example.)
  - The agreement could also define the time period during which the system would be offered, such as October through December.

## **2. No Penalty for First-Instance Errors**

- Provide through regulations a clear grace period for first-instance errors; i.e., no information reporting penalties would apply for an individual's first name/TIN error.
- This would be analogous to the IRS "first time abatement" approach for errors in Federal Tax Deposits, which is well understood and effective in enhancing tax compliance without being overly punitive.
- Employers would then have several months after receiving an error notice to solicit corrected names/TINs before filing the next report. For example, an error notice received in March 2017 for 2016 would give the employer nine months in which to perform TIN solicitations for the 2017 return.
  - A second instance of the same name/TIN error reported by the same employer would be subject to normal penalty provisions, as well as existing standards for good faith efforts to comply and reasonable cause for penalty abatement.
  - This alternative would apply to all employers automatically, versus only those who made an effort to "pre-check" names/TINs through the AIR system prior to the filing season (as outlined in the first alternative above).
  - No changes to the AIR system would be needed; however, regulatory guidance may be necessary, as well as programming to modify information return penalty calculations.

## **3. Permit Use of the IRS TIN Matching System (or Maintain a Level Playing Field)**

- We understand that the IRS cannot currently permit access to the TIN Matching system for Forms 1095-C. IRS Publication 2108A explains that the TIN Matching program is limited to payers of Form 1099 income subject to backup withholding provisions.



- If the TIN Matching system is not available for Form 1095-C reporting, we would ask that the IRS maintain a “level playing field” by contacting organizations that are inappropriately offering the TIN Matching system as a service related to Forms 1095-C and/or 1095-B. NPRC members notified the IRS of a firm that openly advertises their use of the TIN Matching system for Forms 1095-C. We also warned the firm directly of the conflict. The company in question continues to offer such services, and other organizations appear to offer TIN Matching for Forms 1095-C.
- Obviously if use of the IRS TIN Matching system is permissible, NPRC member firms would be pleased to be able to offer an existing solution to clients.

We appreciate the IRS’s need for highly accurate information returns, as well as the concerns of employers, who sincerely want to produce high quality information returns. We would appreciate the opportunity to assist the IRS in considering alternatives in this area.

### **AIR Systems Enhancements**

Several perceived concerns and recommendations for the system were discussed at the September 21 meeting, such as acknowledgements, error handling and response time.

- Acknowledgements
  - Acknowledgements should be generated more quickly. Problems were experienced in which submission status was not obtainable; e.g., the A2A connection to IRS timed out after transmission but before the acknowledgement/receipt ID were returned.
  - Add FEIN to Level 1 and/or level 2 acknowledgements to facilitate confirmation of submission receipt for each employer.
  - A transmitter-level summary of submissions with status would be helpful.
- Improvement is needed on the Correction/Rejection/Replacement process
  - Some rejections and corrections were rejected as duplicates, requiring a difficult workaround, such as adding a hyphen or space to the address, so that the check digit would not be identical.
- Improve the systems by which filing organizations maintain current and correct information on the ACA Application for Transmitter Control Code
  - Permit delegation of administrative functions to authorized contacts to facilitate maintenance of information contained in the application. Currently, only responsible officials have access to view and update information on the application, which is burdensome given the level of executive required to qualify as a responsible official.
- Clarify which business name to report if a name change follows a tax period. For example, if an ALE changes their name in February, should the ALE report the current name or the



name on file for the tax period ended December 31? This is a minor point but caused some difficulties in 2016 (for 2015 reporting).

### **Dedicated Support Resources for High Volume Filers**

- We believe that the 13 NPRC member firms and a few similar organizations originated at least half of all Forms 1095-C that were filed for 2015, and that this proportion is expected to continue or expand in the future.
- Members noted that the AIR system support resources were largely not available or not effective. When members were able to reach an IRS official, their level of technical knowledge was often insufficient. NPRC members have typically exhausted all available resources before calling the IRS (such as regulatory guidance, internal Legal staff and AIR system guidance). Our questions often require more senior level technical support.
- Emails to the AIR mailbox often result in a standard “7 business days to process” reply; often followed by further delays and referrals to other areas. Such delays reduce the time available for development and testing, ultimately resulting in less refined private sector programming, more error conditions and so on.
- We believe that dedicated support resources for high volume filers, including opportunities for direct developer-to-developer communication in defined circumstances, would be in the IRS’s best interests, in terms of improving accuracy, minimizing errors and making the most efficient use of appropriately trained staff.
- Further, as with employment tax administration, the IRS is likely to find that high volume filers can serve as an early warning measure for problems that may otherwise affect all employers. Senior industry technical staff are intimately familiar with the systems and data conditions and can offer rapid feedback on apparent or evolving problems.
- As a next step, we would suggest a one-time industry call between a limited number of senior industry technical staff and their senior IRS technical staff and AIR systems management counterparts. The call would be intended to propose and consider the case for offering such support; criteria and so on.

### **Webinars and Similar Support Resources for Advanced Level Filers**

- As noted, we recognize and appreciate that the IRS has made extraordinary outreach efforts, including webinars, to help employers prepare for ACA reporting. However, members noted that AIR calls can be inefficient because topics may include technical and non-technical questions. AIR webinars also often serve to review information that has already been published (again, to meet the demand from the vast majority of participants who are in need of introductory-level information.)



- Advanced-level support, such as developer calls and webinars would be a significant improvement. One approach could be submission of scenarios that existing IRS guidance does not appear to address. This could both establish a valuable source of frequently asked questions, while effectively clarifying regulatory intent.
- Several NPRC members similarly suggested adding a resource option for non-technical questions, noting that there is no ACA mailbox for non-technical questions (which are often scenario-based). While this would require IRS resources, such an approach could yield valuable insights into issues that remain unclear. Questions could be considered for future searchable FAQs, improving the overall level of understanding and compliance. As a next step, NPRC would be pleased to compile a number of example scenarios.

### **Streamline the Process for Extensions of the Deadline to Furnish Forms 1095-C**

- Employer groups have suggested that employers may have difficulty meeting the January 31 deadline to furnish employee Forms 1095-C. We believe that clients of NPRC member companies are less likely to experience this difficulty. However, we agree that there may be a substantial demand from employers for extensions of the requirement to furnish Forms 1095-C by January 31, 2017 for 2016, and that it would make sense to offer a more predictable, streamlined process similar to the electronic submission of Form 8809.
- One contributing factor is that employers will, for the first time, be challenged to meet a January 31, 2017 deadline for filing Forms W-2 with the SSA. The same technical resources are involved. Employer workload and coordination associated with the accelerated Form W-2 due date may affect Form 1095-C preparations.
- The IRS and employers may have difficulty administering extension requests as currently defined; i.e., unformatted letters sent after January 1, with the unknown results pending an IRS response. (Would the IRS be able to respond to each letter by January 31?)
- We recommend a streamlined electronic-only process similar to the Form 8809 electronic submission system, to enable immediate electronic response. The Form 8809 electronic submission could also be modified to include extensions of the January 31 deadline to furnish Forms 1095-C.