



ACA Audit Preparation

Your annual ACA reporting requirements is complete. Now, it's time to prepare for the possibility of an IRS audit. Employers who prepare now for an ACA audit are well-positioned to avoid disruption, possibly escape penalties, and resume operations as quickly as possible. Start your planning by reviewing this list, and then contact your legal advisor to fill in the gaps.

1. Establish a Fiduciary File

Maintaining solid, documented evidence of your ACA-compliance efforts is the most important defensive strategy to avoid possible audit penalties. The IRS may request a large number of health plan(s) and HR documents, so gather all relevant materials that showcase and substantiate your efforts. Advanced preparation will help you to flag potential weaknesses and minimize gaps in documentation before the IRS detects a problem. Your Fiduciary File should include the following:

1. A formal benefits plan document (not simply an insurance certificate/COC or EOC)
2. Statements of your plan's measurement, administrative, and stability periods
3. Documentation of affordability safe harbor used and premium calculations
4. A completed worksheet or "memo to file" to explain your organization's approach to classifying positions under the ACA and your plan management strategy
5. Records supporting eligibility determinations including hours tracking and calculations
6. Employee communications regarding eligibility/an offer of coverage (as well as any electronic or signed paper waivers)
7. Employee classification records – designating variable hour, seasonal, or full-time status

2. Designate a Leader and Form a Response Team

You need an action plan that clearly states who will spearhead the audit internally and how key people will communicate with each another. Your plan should list the members of your response team – including the details of who copies and compiles the requested documents and who reviews the desk audit response – the first set of documents you submit to the IRS. It's equally important to designate someone to oversee an on-site audit if the government requests that step – to greet the on-site auditor, set ground rules, arrange HR or benefit staff interviews, and discuss open issues. You need a clear policy and approach to an on-site audit.

The audit leader should fully understand his or her responsibilities in the event of an audit, and be responsible for:

1. Organizing content from records and your fiduciary file
2. Serving as the official point of contact to the IRS and as the single, designated avenue to deliver any requested material
3. Forming and fulfilling a response plan including:

- a. Creating a timetable of future internal audit meetings
- b. Outlining the process to gather content
- c. Communicating instructions and expectations when tasks are delegated
- d. Reviewing team responses and final submissions

The ACA audit response process requires an entire team across your enterprise — with the authority and support of senior management to prepare complete and timely responses. The IRS may request a wide array of documents that cross departmental boundaries so be sure the team you name can promptly respond to such requests. Think beyond your HR department — keep everyone involved and informed by selecting members from the following teams or roles:

1. Legal
2. Finance
3. Payroll
4. C-suite Leadership (senior executives/management)
5. Human Resources
6. Information Technology
7. Benefits Advisor/Insurance Broker

3. Create your Notification Plan

Your organization will need to disseminate audit notification and instructions, so creating a notification plan now can ensure that the process goes smoothly in the event of an audit. It is suggested you make sure the following individuals are aware of their roles if an audit should occur, and notify individuals in the following order:

1. Senior leadership
2. Legal counsel
3. Benefits advisor/Insurance broker
4. Accounting or CPA firm
5. Response team

Any audit-related materials and support documents should be drafted in collaboration with legal counsel and to the extent possible, protected by work-product or attorney-client privilege. Make sure the key people in your organization know that the first point of contact should be your lawyer or internal legal counsel as he/she may be aware of legal circumstances unrelated to the audit that requires a specialized, strategic response.

4. Prepare an Audit Briefing Strategy

An audit briefing strategy can be populated with facts and inquiries from the audit notification. This should provide critical summary details to organization leadership regarding the nature and scope of the audit. The worksheet also operates as the response timetable, sets the agenda for the internal audit kick-off meeting and captures response steps taken and any open issues. The following materials and documents should be prepared in advance and presented at the meeting:

1. Original IRS notification letter
2. Discovery and/or demands from the IRS

3. Deadlines outlined in the notification letter
4. Indication of any red flags that triggered the audit
5. Names and contact information for all people who will be involved in the response
6. Specific assignment of all follow-up responsibilities/action items
7. Internal deadlines for each item
8. Dates of expected formal conference calls for the response team

5. Establish a Communication Process

It's essential that electronic communications are avoided when communicating about an IRS ACA audit. For example, the use of emails for distributing and sharing audit response content may create complications that inadvertently incriminate you or other team members. For a smooth and efficient communication plan, consider the following steps:

1. Plan to communicate in writing in a manner advised by your counsel to ensure privilege – remember all emails, texts, and notes may be discoverable and may imply things you don't mean.
2. Discuss with legal counsel how to best communicate with your outside advisors (legal, accounting, insurance broker/benefits advisor).
3. Prepare for in-person response team meetings to minimize the reliance on email communications.

6. Create a Template for Response Elements to the Audit

Your goal should be to avoid an on-site audit by thoroughly fulfilling the IRS's initial information requests. Be ready now to make the auditor's job as easy as possible by:

1. Furnishing all IRS-requested items in a clear and attractive way – keep in mind the IRS may request a zip file or flash drive.
2. Determining what issues or documentation are not applicable to your organization and therefore, not required.
3. Ensuring the team member responsible for compiling, copying, and creating your response electronically has the skills to organize your organization's response appropriately so that it's easy for the auditor to review. Best practices include using divider tabs, a table of contents, and perhaps even including your own checklist showing all requested and provided documents.
4. Keep copies of your response for your own records of all communications and submissions to the IRS and provide a copy to legal counsel and other audit response partners so any follow-up questions can be easily addressed.

As an employer, you must demonstrate that you have worked in good faith to meet your ACA reporting responsibilities. For more information on the actions you should take **before, during and after** an IRS audit, contact your legal advisor.

PLEASE NOTE: This list is for information only and does not constitute legal advice; consult with legal, tax, and other advisors before applying this information to your specific situation.