



How to Avoid an ACA Reporting Penalty

And What to Do if You Get One





Agenda





IRS Enforcement of Employer Mandate

IRS Enforcement – “A” Penalty

Applies when:

- A large employer fails to offer coverage to at least 95% (70% in 2015) of full-time employees and their dependent children, and at least one full-time employee receives a premium tax credit to help with the cost of coverage.
- The annual penalty for failing to meet this target is \$2,000 per full-time employee, less the first 30 (first 80 in 2015), indexed annually.

IRS Enforcement – “B” Penalty

- A large employer offers coverage to at least 95% (70% in 2015) of full-time employees and their dependent children, but at least one full-time employee receives a premium tax credit to help with the cost of coverage that was not offered, was inadequate, or was unaffordable.
- The penalty for failing to meet this target is \$3,000 per full-time employee who receives a premium tax credit and no safe harbor applies.

IRS Enforcement

4980H(a) Penalty

2015 \$2,080 annually or \$173.33/mo.

2016 \$2,160 annually or \$180.00/mo.

2017 \$2,260 annually or \$188.33/mo.

2018 \$2,320 annually or \$193.33/mo.

2019 \$2,500 annually or \$208.33/mo.

4980H(b) Penalty

2015 \$3,120 annually or \$260.00/mo.

2016 \$3,240 annually or \$270.00/mo.

2017 \$3,390 annually or \$282.50/mo.

2018 \$3,480 annually or \$290.00/mo.

2019 \$3,750 annually or \$312.50/mo.



Date:

02/13/2018

Tax year:

2016

Employer ID number:

12-34567

Person to contact:

Tax Mann

Employee ID number:

5021548A

Contact telephone number:

(212) 555-1234

Contact e-fax number:

(212) 555-3456

Response date:

03/05/2018

ESRP Summary Table

Information Reported to IRS							
Month	a. Form 1094-C, Part III, Col (a) Minimum essential coverage offer indicator offered to at least [70% or 95%]	b. Form 1094-C, Part III, Col (b) Full-time employee count for ALE member	c. Allocated reduction of full-time employee count for IRC Section 4980H(a)	d. Count of assessable full- time employees with a PTC for IRC Section 4980H(a)	e. Count of assessable full-time employees with a PTC for IRC Section 4980H(b)	f. Applicable IRC Section 4980H provision	g. Monthly ESRP amount
January	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
February	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
March	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
April	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
May	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
June	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
July	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
August	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
September	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
October	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
November	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
December	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
						Total Proposed ESRP	\$0

Available at <https://www.irs.gov/pub/irs-pdf/f14765.pdf>



Form 14765 (April 2017)		Department of the Treasury - Internal Revenue Service Employee Premium Tax Credit (PTC) Listing													
Any month not highlighted is a month that the employee received a PTC and no safe harbor or other relief from the ESRP was applicable. The employee is an assessable full-time employee for that month.															
Employer name Township Company										Employer ID number 87-8787878			Tax year 2016		
Employee Name (last, first)	SSN (last 4 digits)	All 12 months Indicator Codes (Form 1095-C, lines 14 and 16 combined)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Additional Information Attached
Noname, Jesse	9845		1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	<input type="checkbox"/>
Noname, Jesse															
															<input type="checkbox"/>



Steps to Respond to Proposed Penalty



Steps to Respond

Step 1:

Employer receives IRS Letter 226-J and Form 14765 (Employee Premium Tax Credit Listing)

Step 2:

Employer responds using IRS Form 14764 (Employer Response); makes corrections on Form 14765 and attaches additional documentation (as necessary)

Step 3:

IRS responds using Letter 227



Steps to Respond

Step 4:

Optional pre-assessment conference w/ IRS Office of Appeals

Step 5:

Notice CP 220J issued if IRS determines an assessment will be made

Step 6:

Employer can submit questions, request abatement, or challenge the assessment in court



Common Reporting Mistakes



What causes mistakes?

- Brand new law required employers to develop new processes to comply
- Complexity of IRS guidance
- Technology and/or software snafus

What causes mistakes?

- Data presents challenges
- Bad data in = bad data out
- Necessary information may be in multiple systems
 - Hours in a payroll system
 - Offer information in a benefits administration system, paper file or elsewhere
 - Enrollment data may only be available via the carrier; reliance on payroll deductions presents challenges



What causes mistakes?

- Different timeframes for different purposes
 - Measurement period for lookback
 - Offer and coverage information for tax year
 - Non-calendar plan years
 - Multiple measurement periods
 - Offer and coverage information for multiple medical plan years
- New hires, terminations, position changes, dropping/picking up new coverage

What causes mistakes?

- Breaks in employment present special challenges
- Summer employment breaks for employees of educational organizations require special handling
- 13 week (26 weeks education) minimum break in service before a rehired employee can be treated as “new” for measurement and stability period purposes

What causes mistakes?

Unique employee populations can also create complexity.
Examples include:

- Substitutes
- Adult school
- Outdoor ed
- Interns
- Paraprofessionals
- Head Start
- Life Guards



Areas to Review



Areas to Review

- Did you offer coverage to 95% (70% in 2015) of your full-time workforce?
- Did you answer “Yes” on Part III, Column A of Form 1094-C?

Information Re	
Month	a. Form 1094-C, Part III, Col (a) Minimum essential coverage offer indicator offered to at least [70% or 95%]
January	Yes
February	Yes
March	Yes
April	Yes
May	Yes
June	Yes
July	No
August	No
September	No
October	No
November	No
December	No



Areas to Review

- Did you enter the correct full-time employee count on Part III, Column B of Form 1094-C?

Information Reported to IRS		
Month	a. Form 1094-C, Part III, Col (a) Minimum essential coverage offer indicator offered to at least [70% or 95%]	b. Form 1094-C, Part III, Col (b) Full-time employee count for ALE member
January	Yes	115
February	Yes	98
March	Yes	120
April	Yes	105
May	Yes	108
June	Yes	112
July	No	262
August	No	264
September	No	268
October	No	265
November	No	261
December	No	263

Areas to Review

- Did you claim all applicable transition relief on Form 1094-C?
 - 50-99 midsize employer relief
 - Large employer relief
 - Non-calendar plan year relief
- For the 2015 plan year, employers with 100 or more full-time employees (including full-time equivalents) could claim large employer transition relief. Using this transition relief, if an ESRP is owed, it is calculated after reducing the ALE's full-time employee count by 80 instead of 30.

c. Allocated reduction of full-time employee count for IRC Section 4980H(a)
30
30
30
30
30
30
30
30
30
30
30



Areas to Review

- Did you send Form 1095-C to employees who weren't supposed to receive one?
- As a general rule, only full-time employees should be issued a Form 1095-C (unless you sponsor a self-insured plan or are eligible to use the 98% offer method).

Areas to Review

Potential issues with “over-reporting” include:

- Wrong employees receive Form 1095-C
- Incorrect full-time employee count on Form 1094-C
- Penalty calculation may be impacted
- IRS reports will be incorrect

FAQ: the employees listed on Form 14765 were not full-time and should never have received a form. What do we do?



Areas to Review

- Did you remember to enter the applicable safe harbor on Line 16 of the employee's Form 1095-C?
 - In some cases, there was no offer to a full-time employee, or there was an offer, but coverage was not affordable
 - If a safe harbor or other relief applies, the employer may be protected from an ESRP assessment
 - Leaving off the applicable safe harbor code could result in a penalty assessment

Areas to Review

Did you enter the correct offer code on Line 14 of the Form 1095-C?

Verify accuracy carefully. Certain codes are automatic penalty triggers if a full-time employee receives a Premium Tax Credit and no safe harbor or other relief applies:

- Code 1H (no offer of coverage)
- Codes 1B, 1D, and 1J (offer that did not include dependent children)
- Code 1F (offer of coverage that did not meet the ACA's "minimum value" adequacy standard)

Areas to Review

Missing Line 16 Safe Harbor Codes:

- Code 2A (not employed)
- Code 2B (not full-time)
- Code 2C (enrolled in the coverage offered)
- Code 2D (permissible waiting period or initial measurement period for a new part-time, seasonal or variable hour employee)
- Code 2E (multiemployer interim rule relief for certain union plans)
- Codes 2F, 2G, and 2H (affordability safe harbors)
- Code 2I (2015 non-calendar plan year transition relief)

For more information: <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>

IRS Letter 5699

- Inquiry letter from IRS to employers to verify the reason no Forms 1094-C and 1095-C were filed
- Will indicate the tax year(s) in question
- Informs employer that the IRS believes the employer may have been an Applicable Large Employer (ALE) yet no reporting was received by IRS
- Includes a discussion of the rules
- 30 days to respond



5 Possible Responses to Letter 5699

- The employer was an ALE for the tax year(s) in question but filed its Forms 1095-C under a different entity;
- The employer was an ALE for the tax year(s) in question and is including the Forms 1094-C and 1095-C with its response to the Letter 5699 (note this is only an option if the employer has fewer than 250 Forms 1095-C);
- The employer was an ALE for the tax year(s) in question and will be filing the Forms 1094-C and 1095-C with the IRS by a specified date (not more than 90 days from the date on the Letter 5699);
- The employer was not an ALE for the tax year(s) in question; or
- Another reason with a statement explaining why the employer has not filed the Forms 1094-C and 1095-C and the actions the employer plans to take to remedy the situation.

Next Steps and Tips

- First step is to determine whether or not the employer was an ALE for the tax year(s) in question
- Controlled group rules apply when calculating ALE status
- Review rules for calculating ALE status
- Review the IRS transition relief for an employer determining ALE status for tax year 2015
- Determine whether the Forms 1095-C were filed with a different ALE member in the controlled group (when applicable)
- Consult with legal counsel for assistance

Potential Penalties for Incorrect Reporting

- Penalties can be assessed for up to \$270 per return (per 1095-C) not filed with the IRS
- Penalties can also be assessed for up to \$270 per return (per 1095-C) for not timely furnishing to the employee
- For 2015-2018, the government has elected not to impose penalties for incorrect or incomplete information on employers that could demonstrate they made a good-faith effort to comply with the reporting requirements. This good-faith effort does not extend to employers who fail to file their return, or who failed to meet the deadline for furnishing a Form 1095 to their employees. It is important to note that this good-faith standard may not be extended in future years.



Tips

- Don't panic
- Engage qualified tax and legal counsel
- Request an extension if necessary
- Respond timely to all correspondence

Thank you!

American Fidelity Administrative Services
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Contact us: 877-302-5073 or HCR@americanfidelity.com

This is only a brief summary that reflects our current understanding of select provisions of the law, often in the absence of regulations. All of the interpretations contained herein are subject to change as the appropriate agencies publish additional guidance.

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