

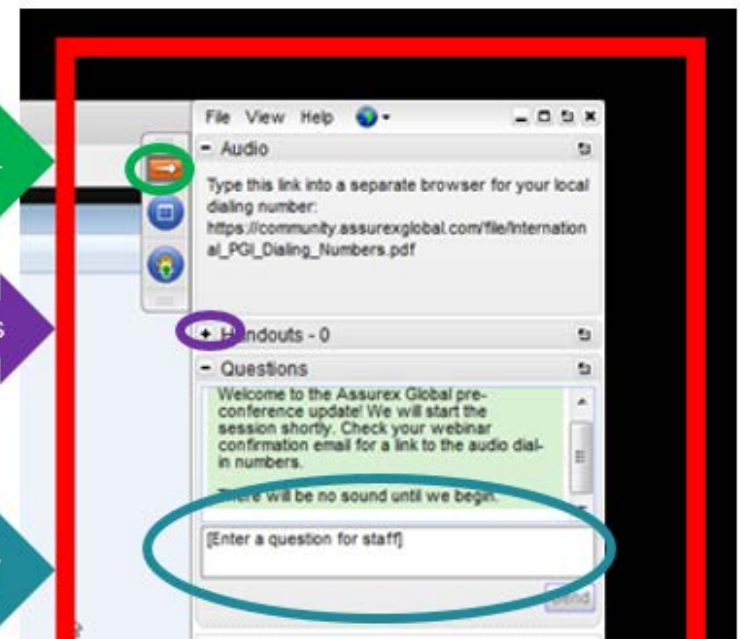
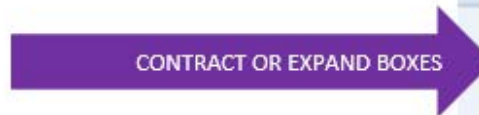
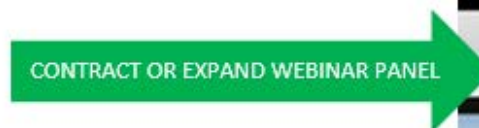
January 25, 2018

IRS §4980H Penalty Collection Efforts & Why Employer Reporting Still Matters

Presented by Benefit Comply

IRS §4980H Penalty Collection Efforts & Why Employer Reporting Still Matters

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
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Agenda

- IRS Letter 226 – §4980H Collection Efforts
- §4980H – Applicable Large Employers (ALEs)
- §4980H – Full-Time Employees
- §4980H (Employer Mandate) Requirements
- §6056 Employer Reporting

IRS Letter 226J - §4980H Collection Efforts

IRS Letter 226J - §4980H Collection Efforts

- IRS “Employer Mandate” Penalty Collection
 - The IRS has begun to send Letter 226Js to employers to begin the collection process for employers who failed to meet 2015 §4980H requirements
 - The first letter is a “proposed assessment,” not an actual collection letter
 - Proposed assessment based on data provided on Forms 1094-C and 1095-C
 - Information included in Letter 226J:
 - Proposed Employer Shared Responsibility Payment (ESRP) and a summary table illustrating which months an ESRP may apply
 - Instructions for how to respond within 30 days from the date of the letter
 - Form 14764 – Response to IRS
 - Must sign and return to the IRS to pay or dispute proposed assessment
 - Form 14765 - Employee Premium Tax Credit (PTC) Listing
 - Lists employees who received a premium tax credit and how the employer coded Lines 14 and 16 of the 1095-C for each such employee

IRS Letter 226J - §4980H Collection Efforts

- Letter 226J Observations
 - So far, we have only seen letters assessing penalties under §4980H(a)
 - IRS may have decided to start with assessing §4980H(a) penalties and then move to §4980H(b) at a later date
 - Upon appeal of §4980H(a) penalties proposed in the Letter 226J, the IRS then looks to assess §4980H(b) penalties if applicable
 - Many proposed assessments are due to mistakes made in employer reporting rather than to an actual violation of §4980H(a) requirements
 - Failure to mark “Yes” in Part III, Column (a) indicating coverage was offered to at least 70% of full-time employees each month
 - Failure to check Box C of Line 22 indicating Section 4980H transition relief for 2015

IRS Letter 226J - §4980H Collection Efforts

- What Should You Do If you Get a Letter 226J?
 - Call the number included on the top of Form 14764 and request an extension
 - Employer has 30 days to respond unless an extension is granted
 - IRS will initiate a collection process if employer fails to timely respond
 - Contact the entity (accounting firm or law firm) that you use to communicate directly with the IRS for tax-related issues
 - Contact your benefits advisor or firm you used for ACA reporting to help collect data necessary to respond to the IRS
 - Complete and sign Form 14764 and assemble all supporting materials
 - If choosing to dispute the assessment, include:
 - A signed statement explaining why the assessment is being disputed;
 - A revised Form 1094-C to illustrate appropriate changes;
 - Coding changes, if any, on Form 14765 for the employees listed; and
 - Any other supporting documentation

§4980H – Applicable Large Employers (ALEs)

Applicable Large Employers (ALEs)

- Definition of an Applicable Large Employer (ALE)
 - “...employers that had 50 or more full-time employees, including full-time equivalent employees, during the prior year”
 - Considers whether or not the employer averaged 50 or more FTEs over all 12 months of the previous calendar year
- Example 1 = ALE Next Calendar Year:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	AVG FTEs
55	53	53	51	52	54	52	46	47	49	52	53	51*

* Once calculations are done for each month and the total is divided by 12, round down to the nearest whole number

- Example 2 = Not an ALE Next Calendar Year:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	AVG FTEs
47	48	48	49	51	49	50	48	46	47	46	48	48*

* Once calculations are done for each month and the total is divided by 12, round down to the nearest whole number

Applicable Large Employers (ALEs)

- Tips for Determining ALE Status
 - Count all employees (including seasonal and union employees)
 - Seasonal worker exception, if applicable, is considered after the average is performed including all employee hours of service
 - For each month, count all hours of service for any employee employed for at least one day during the month
 - “Hours of service” generally include all hours paid or payable with U.S.-source income
 - When there is more than one entity or employer involved due to common ownership or shared services (i.e. a controlled group or affiliated service group under §414 rules), the entities must aggregate FTEs to determine the average for the previous calendar year. If together the entities average 50 or more FTEs, then each entity is considered an ALE

§4980H – Full-Time Employee Status

Full-Time Employee Status

- §4980H Definition of Full-Time =
 - 30 or more hours of service per week (or 130 or more per month)
 - “Hours of service” generally include all hours paid or payable with U.S.-source income
- Choosing a Measurement Method
 - Employers have the option to determine full-time status on a monthly basis or by using the look-back measurement method (averaging hours of service over a 3-12 month measurement period)
 - An employer may only differentiate measurement methods for the following categories of employees:
 - Hourly vs. salaried employees
 - Union vs. non-union employees (or employees under separate collectively bargained agreements)
 - Employees in different states
 - Different entities within a controlled group or affiliated service group

Full-Time Employee Status

- Monthly Measurement Method
 - Full-time status is measured on a monthly basis
 - If employee achieves 130 or more hours of service during the month, employee is considered full-time
 - If employee achieves less 130 hours of service during the month, employee is considered part-time
 - Each month, employer needs to assess who is full-time and part-time and offer coverage accordingly
 - This method is most appropriate for employers with most employees remaining full-time or part-time from month-to-month rather than changing back and forth
 - Challenging to track and administer if more than a handful of employees change status from month-to-month (enroll/terminate coverage...offer COBRA)

Full-Time Employee Status

- Look-Back Measurement Method
 - Employers may average hours of service over a period of 3-12 months (the employer's choice) to determine full-time status.
 - 6 or 12 months is the most common
 - If employee achieves full-time status, employee must be offered coverage for a corresponding stability period (generally matches length of the measurement period)
 - If employee does not achieve full-time status, employee is not offered coverage for a corresponding stability period (generally matches length of the measurement period)
 - This method is generally most appropriate for employers with numerous variable hour and/or seasonal employees

Full-Time Employee Status

- Look-Back Measurement Method

- Example – Employer using 12 month measurement and stability periods with a calendar year plan
 - Plan Year and Standard Stability Period = Jan 1 – Dec 31
 - Administration Period = Nov 1 – Dec 31
 - Standard Measurement Period = Nov 1 – Oct 31
- Employees achieving 1560 or more hours of service offered coverage during entire corresponding stability period



- Standard Measurement Period
- Stability Period - Eligibility guaranteed regardless of # of hours of service
- Administrative Period

Full-Time Employee Status

- Look-Back Measurement Method
 - New Hires
 - Full-time new hires must be offered coverage within 90 calendar days (waiting period rule)
 - Measured monthly until employed for one full standard measurement period
 - Variable hour, seasonal and part-time employees may be subjected to an initial measurement period based on date of hire
 - Allows employer to measure employees for up to 12 months to determine whether the employee is full-time before an offer of coverage is required
 - All employees are then transitioned into the standard measurement/stability cycle with the rest of the ongoing employees

Full-Time Employee Status

- Plan Eligibility Strategies
 - §4980H rules define who must be considered full-time and offered coverage to avoid potential penalties
 - Employers can always choose to be more generous
 - Employers also have the option to not offer coverage at all or to use different eligibility rules (not aligned with §4980H requirements), and take the chance of potential penalties
 - Sometimes makes more sense financially and/or administratively
 - If an employer is choosing to offer coverage, it is important to ensure that the employer offers coverage to 95% of full-time employees to avoid the bigger penalty under §4980H(a)
 - Doesn't make sense to both offer coverage and pay the penalty under §4980H(a), which is generally multiplied by the total full-time employee count (minus the first 30)

§4980H (Employer Mandate) Requirements

§4980H (Employer Mandate) Requirements

- §4980H(a) –
 - ALEs must offer minimum essential coverage (MEC) to at least 95% (or all but 5, if greater) of full-time employees and their dependent children each month
 - Penalty is multiplied by the total number of full-time employees, not counting the first 30, if any full-time employee enrolls through a public Exchange and qualifies for a tax subsidy (receives a PTC)
- §4980H(b) –
 - ALEs must offer coverage that provides minimum value AND is affordable to all full-time employees each month
 - Penalty applies for each full-time employee who enrolls through a public Exchange and qualifies for a tax subsidy (receives a PTC)

§4980H (Employer Mandate) Requirements

- **Minimum Essential Coverage (MEC) –**
 - Most employer-sponsored group health plans will be considered MEC
 - Includes any coverage under an “eligible employer-sponsored plan”
 - Group health plan or group health insurance coverage offered by an employer to an employee that is (a) a governmental plan, or (b) any other plan or coverage offered in a state’s small or large group market
 - Self-funded employer coverage
- **Minimum Value**
 - Minimum value is a higher standard than the requirement to offer a MEC plan
 - A plan provides minimum value if the plan’s share of the total allowed cost of benefits provided to an employee is at least 60% (actuarial value of 60% or better)
 - Whether or not a plan provides minimum value is required content in the summary of benefits and coverage (SBC)

§4980H (Employer Mandate) Requirements

- **Affordable –**
 - Affordability is generally determined by applying the particular affordability percentage (see below) to an individual's household income. However, because an employer will not know household income, the employer is protected from any potential penalties under §4980H(b) so long as the coverage is affordable under 1 of 3 safe harbors:
 - Federal poverty level (FPL) safe harbor;
 - Rate of pay safe harbor; or
 - Form W-2 safe harbor
 - Affordability percentages

2015	2016	2017	2018
9.56%	9.66%	9.69%	9.56%

§4980H (Employer Mandate) Requirements

- Affordable – Which Affordability Safe Harbor(s) to Use?
 - Varies by employer
 - Not required, but usually in the best interest of the employer
 - May be used prior to the beginning of plan year to help set employee contributions, or chosen at the end of the year when reporting
 - Different safe harbors may be used per category of employees
 - Employers may switch between safe harbors, but if using the Form W-2 safe harbor, “it must be used for all months of the calendar year for which the employee is offered health coverage”
 - 2-step process
 - Step 1: Start with the federal poverty level (FPL) safe harbor
 - Step 2: If the employer does not meet the FPL safe harbor, determine whether the rate of pay or Form W-2 safe harbors apply

§4980H (Employer Mandate) Requirements

- §4980H Penalties

- Penalties apply on a monthly basis (1/12 of the annual penalty for each month the employer fails to satisfy §4980H requirements)
- Employer will not be subject to both (a) and (b) penalties in any one month
 - If the (a) penalty applies, that is the maximum penalty; but
 - If the employer is in compliance with (a) and fails to satisfy (b), there may be a (b) penalty for each full-time employee who receives a PTC
- Penalties are based on self-reporting via Forms 1094-C and 1095-C

	2015	2016	2017	2018
§4980H(a)	\$2,080 (\$173.33/mo.)	\$2,160 (\$180/mo.)	\$2,260 (\$188.33/mo.)	\$2,320 (\$193.33/mo.)
§4980H(b)	\$3,120 (\$260/mo.)	\$3,240 (\$270/mo.)	\$3,390 (\$282.50/mo.)	\$3,480 (\$290/mo.)

§4980H (Employer Mandate) Requirements

- Important 2015 §4980H Transition Rules
 - §4980H only applied to employers with at least 100 FTEs in 2015
 - Shared responsibility rules were delayed until 2016 for employers with <100 FTE
 - Margin of error rule was 70% for 2015 only
 - No §4980H liability for employers with 100 or more FTEs as long as coverage was offered to at least 70% of all full-time employees (95% beginning in 2016)
 - §4980H(a) payment not applied to first 80 full-time employees for 2015
 - When payments under §4980H(a) are calculated, the first 80 full-time employees are ignored (30 beginning in 2016)
 - Non-calendar year plans
 - Employers with a non-calendar plan year did not have to comply until the beginning of the plan's 2015 plan year
 - Offering dependent coverage
 - No penalty for plans that did not offer coverage to dependents

§6056 Employer Reporting

Reporting Timeframes

- 2017 Reporting (Due in Early 2018)
 - Reporting is always handled on a calendar year basis, regardless of plan year
 - Applicable large employers use the “C” forms – Form 1094-C and 1095-C
- Individual Statements
 - Form 1095s must be provided to employees and participants by Mar. 2 (delayed from Jan. 31)
 - Forms may be delivered by hand, mail, or electronically if consent is given
- IRS Reporting
 - Form 1094 and Form 1095s must be filed with the IRS by Feb. 28 (Apr. 2, if filed electronically)
 - Employers filing less than 250 Form 1095s may submit by mail or electronically. Employers filing 250 or more Form 1095s are required to submit forms electronically

Reporting Offers of Coverage

- **Must Report for All Full-Time Employees**
 - Must report offer of coverage information for any employee who is full-time for at least 1 month under either the monthly measurement method or the look-back measurement method
- **Must Provide the Following Data:**
 - Whether coverage was offered for the month (Line 14)
 - If coverage was offered, the employee contribution for single coverage (Line 15)
 - Whether a safe harbor applies (Line 16)

Form 1095-C, Part II

- Line 14 (Offer of Coverage Codes)

Code	Description
1A	Qualifying Offer
1B	MV offered to EE only
1C	MV offered to EE, at least MEC offered to dependent (not spouse)
1D	MV offered to EE, at least MEC offered to spouse (not dependents)
1E	MV offered to EE, at least MEC offered to spouse & dependents
1F	MEC that is not MV offered to employee
1G	Part-time EE or non-employee covered under self-funded plan
1H	No offer of coverage
1I	Reserved
1J	MV offered to EE, at least MEC conditionally offered to spouse (not dependents)
1K	MV offered to EE, at least MEC offered to dependent and conditionally offered to spouse

Form 1095-C, Part II

- Line 14 (Offer of Coverage Codes)
 - There must be a code for all 12 months
 - Offer of coverage valid only if available for the entire month
 - If coverage becomes effective mid-month, or ends mid-month, the month should be coded as no offer of coverage (Code 1H)
 - Time during a waiting period, when coverage is not yet effective, should be coded as no offer of coverage (Code 1H)
 - Code used for Line 14 is not affected by whether or not the employee enrolled or waived the coverage
 - Most employers will use only two codes – one to indicate an offer of coverage (1A and 1E are most common), and one to indicate no offer of coverage (1H)
 - Exception when coding an offer of COBRA following a reduction in hours

Form 1095-C, Part II

- **Line 15 (Employee Contributions)**
 - Only enter an amount on Line 15 if Code 1B, 1C, 1D, 1E, 1J or 1K used on Line 14 (indicating an offer of minimum value coverage)
 - To determine the monthly employee contribution, divide the total employee contribution for single coverage for the plan year by the number of months in the plan year
 - Enter the employee contribution for employee-only coverage for the lowest cost minimum value plan offered
 - When the employee contribution varies by employee (e.g. age-banded rates or contributions based on salary), report the employee contribution that applies for each full-time employee
 - Other things such as wellness incentives, HRA contributions, opt-out credits and flex credits may need to be taken into consideration

Form 1095-C, Part II

- Line 16 Code (Safe Harbor Codes)

Code	Description
2A	Not employed any day that month
2B	Part-time or termination month when not covered all month
2C	Enrolled in coverage (use over any other code if applicable, except 2E)
2D	EE in non-assessment period (e.g. waiting period or initial measurement period)
2E	Multi-employer plan interim relief (use over any other code if applicable)
2F	W-2 affordability safe harbor
2G	FPL affordability safe-harbor
2H	Rate of pay affordability safe harbor
2I	Reserved

Form 1095-C, Part II

- Line 16 (Safe Harbor Codes)
 - Not necessary to enter a code if no code applies
 - Code 2C is always used when the employee enrolled
 - Unless the employer is using 2E to indicate multiemployer transition relief
 - No specific code for when an employee waived
 - Code 2B if part-time
 - An affordability safe harbor code (i.e. Code 2F, 2G or 2H), if applicable

Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

► Information about Form 1094-C and its separate instructions is at www.irs.gov/form1094c

CORRECTED

Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)	
3 Street address (including room or suite no.)			
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	
7 Name of person to contact		8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)	
11 Street address (including room or suite no.)			
12 City or town	13 State or province	14 Country and ZIP or foreign postal code	
15 Name of person to contact		16 Contact telephone number	
17 Reserved <input type="checkbox"/>			



18 Total number of Forms 1095-C submitted with this transmittal ►

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions

Part II ALE Member Information

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member ►

21 Is ALE Member a member of an Aggregated ALE Group? Yes No

If "No," do not complete Part IV.

22 Certifications of Eligibility (select all that apply):

A. Qualifying Offer Method B. Qualifying Offer Method Transition Relief C. Section 4980H Transition Relief D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature _____ Title _____ Date _____

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"/>	

Most Common 1094-C Reporting Mistakes

- **Part III Column (a) – Coverage Indicator Code**
 - We are seeing employers who checked “No” even though they offered coverage to 95% (or 70%) of full-time employees
- **Wrong Monthly Full-Time Employee Counts**
 - Listing wrong number of full-time employees in Part-III Column (b) of 1094-C can lead IRS to believe employer did not offer coverage to 70% of their employees
- **Transition Rule Coding**
 - If employer did not report transition rules on 1094-C correctly, IRS will assume employer does not qualify
 - Employers should have checked Line 22 Box C in Part II of Form 1094-C if any §4980H transition relief applied

Most Common 1094 Reporting Mistakes

- Transition Rule Coding (cont.)
 - Employers with less than 100 FTEs
 - Employer should have added code “A” to Part III Column (e) if coverage was not offered to 70% of full-time employees
 - Employers with 100 or more FTEs
 - Part III Column (a) – Coverage Indicator Code
 - Employer should have checked “yes” for months coverage was offered to 70% of full-time employees
 - Employer should have checked “yes” for months of non-calendar year transition relief even if coverage was not offered to 70%
 - Part III Column (e)
 - Employer who failed to offer coverage to 70% of full-time employees should have added code “B” to Column (e) in Part III to take advantage of not counting the first 80 (rather than 30)

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