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IRS Reporting in 2019
What Employers Need to Know

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Glossary Of Terms

- ACA — Affordable Care Act
- ALE — applicable large employer
- DGE — Designated Government Entity
- EIN — federal Employer Identification Number
- FPL — federal poverty level (also federal poverty line, federal poverty guideline, or federal poverty threshold)
- FT — full-time employee (not equivalent) under ACA
- LBMM — look-back measurement method

Glossary Of Terms

- LNAP — limited non-assessment period
- MEC — minimum essential coverage
- MMP — monthly measurement period
- MV — minimum value
- PT — part-time employee under ACA rules
- SSN — Social Security number
- TIN — taxpayer identification number
- TPA — third party administrator

ACA Reporting Basics

EMPLOYER MANDATE REPORTING	Minimum Essential Coverage (MEC) "Provider" Reporting
> Provide full-time employees and the IRS with information about an employer's compliance with the employer mandate, minimum value, and affordability for penalty purposes and premium tax credit eligibility for preceding calendar year	> Provide individuals and the IRS with information about MEC and whether an individual satisfied the individual mandate for the preceding calendar year

ACA Reporting Basics

EMPLOYER MANDATE REPORTING	Minimum Essential Coverage (MEC) "Provider" Reporting
➢ Applies to all ALEs, whether or not offer MEC to employees ➢ Common law employer (staffing arrangements should be reviewed with legal counsel) ➢ Multiemployer plans – may agree that plan sponsor reports for EEs participating – ALE responsible for others	➢ Applies to insurance carriers and plan sponsors of self-insured MEC ➢ MEWA: obligation of <u>each</u> participating employer with respect to its own employees. ➢ Multiemployer plan: obligation of association, committee, joint board of trustees, ➢ Union sponsored: obligation of the employee organization.

ACA Reporting Basics

EMPLOYER MANDATE REPORTING	Minimum Essential Coverage (MEC) "Provider" Reporting
➢ Reports using the "C" series (Forms 1094-C and 1095-C) ➢ Form 1094-C is the transmittal form to IRS ➢ Form 1095-C reports offer and coverage information for all FT ➢ Self-insured ALE must complete Part III for all enrolled employees (FT or PT) and their dependents/spouses	➢ Reports Using the "B" series (Forms 1094-B and 1095-B) ➢ Form 1094-B is the transmittal form to IRS ➢ Form 1095-B reports MEC coverage for all enrolled employees and dependents ➢ ALEs with self-insured MEC use "C" series to report self-insured MEC of all FT and PT, including dependents(See: Part III of Form 1095-C) ➢ ALEs with self-insured MEC can choose to use either "C" series or "B" series to report self-insured MEC of non-employees

ACA Reporting Basics

	Fully Insured < 50 FTEs	Fully Insured 50+ FTEs	Self-Funded < 50 FTEs	Self-Funded 50+ FTEs
Forms to employee	1095-B	1095-B / 1095-C (Parts I and II only)	1095-B	1095-C (all Parts)
Filed by	Insurer	Insurer / Employer	Plan Sponsor (generally the employer)	Plan Sponsor (generally the employer)
Forms to IRS	1094-B	1094-B (with copies of all 1095-Bs) / 1094-C (with copies of all 1095-Cs)	1094-B (with copies of all 1095-Bs)	1094-C (with copies of all 1095-Cs)
Filed by	Insurer	Insurer / Employer	Plan Sponsor	Plan Sponsor

ACA Reporting Basics

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2018 Reporting Due Dates

Action	ALEs – Including those that are self-insured	Self-insured employers that are not ALEs
Provide 1095-B to responsible individuals	N/A unless using B series to report for non-FT /non-EE	March 4, 2019
File 1094-B and 1095-B with the IRS	N/A unless using B series to report for non-FT/non-EE	Paper: February 28, 2019 E-file: April 1, 2019* * If filing 250 or more 1095-Bs must e-file
Provide 1095-C to FTs	March 4, 2019	N/A
File 1094-C and 1095-C with the IRS	Paper: February 28, 2019 E-file: April 1, 2019* * If filing 250 or more 1095-Cs must e-file	NA

Electronic Filing: IRS E-File

- If you are required to file 250 or more information returns, you must file electronically.
- The 250-or-more requirement still applies separately to each type of form filed and separately for original and corrected returns. For example, if you must file 500 Forms 1095-B and 100 Forms 1095-C, you must file Forms 1095-B electronically, but you are not required to file Forms 1095-C electronically.
- If you have 150 Forms 1095-C to correct, you may file the corrected returns on paper because they fall under the 250 threshold. However, if you have 300 Forms 1095-C to correct, they must be filed electronically.
- The electronic filing requirement does not apply if you apply for and receive a hardship waiver.
- The IRS encourages you to file electronically even though you are filing fewer than 250 returns. Looking ahead – IRS proposed rules, if implemented will require electronic filing if total forms, including Forms W-2 total 250 or more….stay tuned.

ACA Reporting Basics

Extensions For Furnishing Reports To Responsible Individual	Extensions For Filing Reports with the IRS
Must request by letter to IRS – Must be postmarked by deadline – Not automatically granted *(must show reasonable cause: significant mitigating factor or beyond control of reporting entity)* – If granted, extension is generally 30 days – See instructions to Forms for details ***Not available for 2018 due to automatic 30-day extension (Notice 2018-94)***	Must request by filing Form 8809 – Automatic 30-day extension will be granted – No explanation needed, but must be filed before deadline – mail, fax or submit online through the FIRE System – See instructions to Forms for details

ACA Reporting Basics

What is employer-sponsored MEC?	What is excluded from MEC?

Eligible employer-sponsored coverage is:
• A self-insured group health plan under which coverage is offered by or on behalf of an employer to an employee, or
• Group health insurance coverage offered by or on behalf of an employer to an employee that is –
  • a governmental plan,
  • a plan or coverage offered in the small or large group market within a state, or
  • a grandfathered health plan offered in a group market.
Eligible employer-sponsored coverage includes COBRA coverage and retiree coverage.
	Excepted Benefits
	• Most health FSAs
	• Dental and Vision offered separately from group medical
	• EAPs if limited counseling (beware of "free" EAP add ons to LTD or other benefits with unlimited counseling)
	• On-site health clinics
	• QSEHRAs
	Supplemental Coverage Exception for reporting purposes

Planning and Compliance

- Compiling Information Needed for Reporting- If Employer Mandate Applies, Information about the Offers of Coverage
  - Was the offer “minimum value”?
  - Was the offer “affordable” under the employer mandate rules?
  - What was employee share of the lowest cost monthly premium for self-only minimum value coverage?
  - Were offers made to spouses and/or dependents?
  - Were “conditional offers” made to spouses?
  - Do you have information about offers of coverage under COBRA?
  - What is the COBRA Qualifying Event?
  - Was MEC offered to a sufficient percentage of full-time employees to avoid potential 4980H(a) penalties?
  - Is “Qualifying Offer Method” or “98% Offer Method” available based on offers of coverage made? If so, does it make sense to use one of those methods?

FOCUS ON C-SERIES FOR ALE MEMBERS

FORM 1094-C

FORM 1094-C Completing Part I

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

Aggregated ALE Groups

Reporting obligation applies to each "employer"

- Single employer
- Each ALE member of an Aggregated ALE Group:
  - Same rules as for other employee benefit plan rules, focusing on ownership and voting control
  - Disaggregate the group for reporting purposes
    - Each separate ALE member in the aggregated ALE group has an independent reporting obligation even if < 50 FT employees
    - EINs are a good starting point, but some employers have different EINs based on operations (not separate legal entities)
    - No provision for consolidated filing by aggregated ALE group
    - Employer with no employees is not an ALE member
    - Filing exception: ALE member with no FT employees for any month in a tax year (unless employees enrolled in SIHP)

Governmental ALE Members

- Separate reporting requirement applies to each governmental employer, including those in aggregated ALE group
  - Example: State treats executive agencies, judiciary, and legislature as three separate employers in state government
    - Each employer is an ALE member in aggregated ALE group
    - Each employer must file under its own EIN
  - Example: Within executive branch, state has separate administrative and transportation departments (separate EINs for each department)
    - A separate Form 1094-C is filed for each department, using that department's EIN in the employer field (line 2)
- If a DGE is filing on behalf of government ALE member, complete Lines 9 through 16. DGE can file B series and/or C series on behalf of governmental employer.

Form 1094-C: Authoritative Transmittals

Only 1 Per ALE Member

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 . . . . . ▶

Form 1094-C: Authoritative Transmittals

- Lines 18 and 20: Number of Forms 1095-C
  - If authoritative transmittal is the only transmittal, number of forms reported on lines 18 and 20 will be the same
  - If ALE member files non-authoritative transmittals, line 20 of authoritative transmittal equals total of lines 18 from the authoritative and all non-authoritative transmittals

Form 1094-C: Line 22 Certifications of Eligibility

- Line 22: Certifications of eligibility
  - Many ALE members will not check any boxes
  - Some might check one of the Offer Methods (simplified reporting)
    - Qualifying Offer: MV and FPL offer to FT (plus MEC offer to spouse and dependents) for all months EE is FT (Use Code 1A on 1095-C Line 14, leave 15 and 16 blank (optional))
    - 98% Offer: certification that for all months, 98% of EEs for whom employer is filing a Form 1095-C (whether FT or PT) received an offer of MV and Affordable coverage (MEC to dependents) (Not required to identify which are FT and do not complete FT EE count in Part III, column (b) – but must provide 1095-C to all FT)

Form 1094-C: Part III Full-Time Employees

Part III ALE Member Information—Monthly

		(a) Minimum Essential Coverage Offer Indicator		(b) Section 4980H 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	☐	☐			☐	
24	Jan	☐	☐			☐	
25	Feb	☐	☐			☐	
26	Mar	☐	☐			☐	
27	Apr	☐	☐			☐	
28	May	☐	☐			☐	
29	June	☐	☐			☐	
30	July	☐	☐			☐	
31	Aug	☐	☐			☐	
32	Sept	☐	☐			☐	
33	Oct	☐	☐			☐	
34	Nov	☐	☐			☐	
35	Dec	☐	☐			☐	

Form 1094-C: Part III Full-Time Employees

Column (a): Whether offer MEC to 95% of FT and dependents

Column (b): FT employees

- Use either the monthly or look-back measurement method
- Remember to exclude employees in LNAP

Column (c): Total employees

- FT, PT, and in LNAP
- Must take count on same day for each month (5 options)
- Not everyone in pay system is necessarily an employee (e.g., partners in a partnership) – confirm count accurate

- Instructions clarify that "full-time" means full-time as under the monthly measurement method or look-back measurement method under 4980H final regulations.

Form 1094-C: Part IV Aggregated Group Members

- **Part IV: List of aggregated ALE group members**
  - Must be completed if answered "yes" on line 21, but information is relevant only if ALE member is liable for subsection (a) penalty under IRC Sec. 4980H
  - Must indicate in Part III Column (d) the months in which part of an aggregated ALE group or “all 12 months”
  - Employer to correct Form 1094-C if any name or EIN of any ALE Member information is incorrect

2018 UPDATES TO "B" SERIES Forms 1094-B and 1095-B

B Series – Changes for 2018

- Employers using the B-series forms for reporting will see no significant changes
- Formatting change for entering names
- Remember, employers only use B-series if
  - Not an ALE and offering self-insured MEC
  - ALE opting to use B-series to report self-insured MEC for non-EE or PT (coverage for FT reported on C-series).

2018 UPDATES TO "C" SERIES Forms 1094-C and 1095-C

C Series – Changes for 2018

- Employers using the B-series forms for reporting will see no significant changes
- Formatting change for entering names
- And existing interim relief for multiemployer plans continues for another year—meaning ALEs qualifying for this relief will not need to obtain eligibility and other information from multiemployer plans for 2018 filings

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FOCUS ON C-SERIES FOR ALE MEMBERS

FORM 1095-C

FORM 1095-C

Reporting applies on a monthly basis during calendar year (regardless of PY)

Proper use of Codes requires an understanding of underlying ACA regulations regarding Affordability, MV, MEC, MMP, LBMM, etc.

Part II **Employee Offer of Coverage**							**Plan Start Month** (Enter 2-digit number):						
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Required Contribution (see instructions)	$	$	$	$	$	$	$	$	$	$	$	$	$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)													

FORM 1095-C

Line 14 Code	Minimum Coverage Offered	FT EE Cost
1A	"Qualifying Offer"	Leave 15 blank
1B	MV MEC offered to FT Only	Complete Line 15
1C	MV MEC to FT; MEC to Dependent	Complete Line 15
1D	MV MEC to FT; MEC to Spouse	Complete Line 15
1E	MV MEC to FT; MEC to Dependent and Spouse	Complete Line 15
1F	Non-MV MEC to any combination of FT, Spouse and Dependent	Leave 15 blank
1G	Self-insured only: MEC to NON-FT (PT, partner, 1099, etc.)**	Leave 15 blank
1H	No Offer of Coverage	Leave 15 blank
1I	Reserved (in 2015 indicated Qualifying Offer Transition Relief)	Leave 15 blank
1J	MV MEC offered to EE and MEC conditionally offered to spouse; no dep	Complete Line 15
1K	MV MEC offered to EE; MEC offered to dep and MEC conditionally offered to spouse.	Complete Line 15

** Code 1G applies to all months or not at all

FORM 1095-C

Line 16 Code	Safe Harbor Codes – Use When	
2A	EE not employed any day in the month	
2B	• EE not FT and did not enroll in offered coverage OR • EE is FT and offer or coverage ended before the last day of the month b/c termed and coverage would have continued to end of month if employed	
2C	EE enrolled**	
2D	LNAP/ use for IMP rather than 2B	
2E	Multiemployer interim rule relief – Always use 2E if applicable!	
2F	W-2 Affordability Safe Harbor***	
2G	FPL Safe Harbor***	
2H	Rate of Pay Safe Harbor***	
2I	Reserved (in 2015 indicated non-calendar year transition relief)	

** Where 2C applies, instructions say it applies over any other Code for Line 16 – not necessarily true

*** Must offer MEC to at least 95% of FT to use a safe harbor code – consistent with elections on Form 1094-C, Part II, Column (a)

Form 1095-C: Coding Issues

- Instructions say 2C takes priority for any month when employee enrolled in MEC, but not quite true
  - Do not use 2C if 1G was entered on line 14 (leave blank)
  - Do not use 2C for post-termination COBRA coverage (2A)
  - Do not use 2C if using 2E (multiemployer interim relief)
- There is no code for employee's waiver of coverage
- Multiemployer interim relief (2E) takes precedence over any other series 2 code (including 2C and affordability safe harbor codes)
  - Combines with 1H (no offer) on line 14
  - ALE member must be obligated to contribute to plan that offers A/MV offer to employees and MEC to dependents

Proper Coding of LNAP

- First year as an ALE (January through March, but only for non-covered employees in prior year
- Waiting Period for coverage under MMP or LBMM (but cannot go beyond last day of 3rd full calendar month)
- Initial Measurement Period and Associated Administrative Period (PT, variable hour, seasonal new hires)
- Period following change in status that occurs during initial measurement period under LBMM
- First calendar month of employment if first day of employment is not first day of month
- The LNAP only applies if the employee is offered MV coverage at the end of the applicable period!!!

FT Employees and LNAPs

- Under look-back method, employee's status during stability period continues while an employee is on
  - An unpaid leave of absence—regardless of length
  - But if employee terminates, then status also terminates
    - Will *be* restored if employee returns within 13 weeks (subject to rule of parity or 26 weeks for educational organizations)
- Only one waiting-period based **LNAP** per period of employment
  - If continuing employee (under break in service rules) is subjected to a new waiting period after unpaid leave, do not use the LNAP code on line 16

Form 1095-C: COBRA Reporting/Employees

- Reporting depends on type of COBRA QE
  - If QE is termination of employment—
    - Line 14: Treat COBRA offer as "no offer," and use code 1H for any month COBRA applies
    - Line 15: Code 1H on line 14 requires line 15 to be left blank
    - Line 16: Use Code 2A (not employed) and 2B (coverage terminated in a month), not 2C (even if COBRA is elected)
      - If coverage lost mid-month, use 2B for that month
  - If QE is reduction in hours—
    - Line 14: Use code describing coverage actually offered
    - Line 15: Lowest-cost self-only MV COBRA premium (less 2%)
    - Line 16: Same as for any other active employee
  - Employee and family members reported on same C form if self-insured
    - Unless a QB independently elects COBRA

Form 1095-C: COBRA Reporting/Employees

Fully Insured Plan Example
QE = Term of Employment on 2/10/2018
EE elects COBRA coverage
$104.99 is lowest cost EE only required contribution for MV
Insurer provides Form 1095-B for active and COBRA coverage

Part II **Employee Offer of Coverage** | **Plan Start Month** (Enter 2-digit number): 01

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1E	1H	1H	1H	1H	1H	1H	1H	1H	1H	1H	1H
15 Employee Required Contribution (see instructions)	$	$ 104.99	$	$	$	$	$	$	$	$	$	$	$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)		2C	2B	2A	2A	2A	2A	2A	2A	2A	2A	2A	2A

Form 1095-C: COBRA Reporting/Employees

Fully Insured Plan Example
QE = Reduction in hours to PT on 2/10/2018
MMP (COBRA may not apply if using LBMM)
EE elects COBRA coverage (if chose not to enroll, likely use 2B)
$104.99 is lowest cost EE only required contribution for MV
$343.10 is cost of COBRA minus 2% admin fee
Insurer provides Form 1095-B for Jan - Dec

Part II **Employee Offer of Coverage** | **Plan Start Month** (Enter 2-digit number): 01

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1E	1E	1E	1E	1E	1E	1E	1E	1E	1E	1E	1E
15 Employee Required Contribution (see instructions)	$	$ 104.99	$ 343.10	$ 343.10	$ 343.10	$ 343.10	$ 343.10	$ 343.10	$ 343.10	$ 343.10	$ 343.10	$ 343.10	$ 343.10
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)		2C	2C	2C	2C	2C	2C	2C	2C	2C	2C	2C	2C

COBRA Reporting: Dependent's Election

- Self Insured Plan: active employee and enrolled spouse divorce 9/16
  - Employee continues active enrollment for self, and ex-spouse separately elects COBRA effective 10/1
    - Spouse will be reported on Part III of employee's Form 1095-C for 1/1 through 9/30
    - ALE member furnishes ex-spouse with separate form to reflect coverage for Oct. through Dec.
    - ALE member can use Form 1095-B or 1095-C
      - if Form 1095-C, it appears Code 1G should be used on line 14, and lines 15 and 16 left blank
  - If COBRA coverage is fully insured, insurer reports ex-spouse's coverage on Form 1095-B

REPORTING PENALTIES

Letter 226J, an "Initial Proposal"

- Letter 226J is a proposed penalty assessment letter that the IRS began sending in November of 2017
- An ALE may receive a Letter 226J if the IRS has reviewed your Form 1094/1095-C filings and determined that your company may owe money based on the information that you provided in the forms

Why me?

- Reporting errors – Still assessing for 2015 and 2016
- Failure to use safe harbor for affordability
- Confused employees
- Failure to provide adequate coverage
  1. Didn't offer minimum essential coverage (MEC) to at least 70 % of full-time employees (and their dependents) (2015 PY) and at least one of your full-time employees received a premium tax credit (or subsidy) on the Marketplace exchange; or
  2. Offered MEC to at least 70 % of your full-time employees (and their dependents) (2015 PY), but at least one of your full-time employees received a subsidy on the Marketplace exchange because the coverage was either unaffordable or didn't provide minimum value
- Controlled group problem

Responding to Letter 226J

- Detailed instructions on how to respond can be found in the letter and on the IRS Website
- You will respond in writing by either agreeing or disagreeing with the proposed ESR payment using a Form 14764 (included with initial Letter)
- If you disagree, then you must provide a full explanation of your disagreement using Form 14765 (consider including backup info)

Responding to Letter 226J

- Extensions
- Reporting
- SBCs, pricing, waivers
- Affidavits
- Appeals

IRS Letter 227

- After you file Form 14764 or Form 14765 (or both) the IRS responds by sending a **Letter 227** to either close your case or explain next steps
- There are 5 types:
  1) Letter 227-J - acknowledges receipt of response and that the penalty will be assessed. After the IRS issues this letter, the case will be closed. No response required
  2) Letter 227-K acknowledges receipt of the information provided and shows the penalty has been reduced to zero. After the IRS issues this letter, the case will be closed. No response required
  3) Letter 227-L acknowledges receipt of the information provided and shows the penalty has been revised. Includes an updated Form 14765 and revised calculation table. Employer can agree or request a meeting with the manager and/or appeals
  4) Letter 227-M acknowledges receipt of information provided and shows that the penalty did not change. Provides an updated Form 14765 and revised calculation table. Employer can agree or request a meeting with the manager and/or appeals
  5) Letter 227-N acknowledges decision reached in appeals and shows the penalty based on the appeals review. After IRS issues this letter, the case will be closed. No response required

IRS Letter 227

- Read your letter and attachments carefully. These documents explain the next steps available and provide information on how the case will be resolved
- If appropriate, complete response Form 14764 indicating your agreement or disagreement
  - If you disagree with the proposed ESR payment, you must provide an explanation of why you disagree and/or indicate changes needed on Form 14765
  - If you agree with the proposed ESR payment, follow the instructions to sign the response form and return it with full payment in the envelope provided
- Return all documents as instructed in the letter by the response date. If you do not respond to a Letter 226-J or Letter 227, the IRS will assess the payment amount against you by sending a payment demand (Notice CP220J)
- Keep a copy of the letter and any documents you submit

IRS Letter 5699

- "Request for Employer Reporting of Offers of Health Insurance Coverage (Forms 1094-C and 1095-C)"
- Sent if the IRS believes that there is an incomplete or non-existent filing
  - If the IRS rejected your filing, they consider it to be not sent until they have either accepted the filing with revisions or accepted it outright
  - If you have not submitted your filing, the sooner the better to minimize penalties
- IRS requires one of the following responses within 30 days from the date of the letter:
  - I was an ALE for calendar year 2015 and already filed Form 1094-C and Forms 1095-C with the IRS using <name> and <employer identification number> on <date>
  - I was an ALE for calendar year 2015 and my Form 1094-C and Forms 1095-C are included with this letter
  - I was an ALE for calendar year 2015 and will file my Form 1094-C and Forms 1095-C with the IRS using <name> and <employer identification number> by <date> (if more than 90 days from the letter, the response must explain why)
  - I was not an ALE for calendar year 2015
  - Other (must explain)

Reporting Penalties

- Notice 2018-94 extends "good faith" relief for timely filed/furnished but incomplete or incorrect 2018 Employee Statements and Returns
  - incomplete/incorrect forms may trigger pay or play and information return penalties
- Penalties for failure to file/furnish Forms may be up to $260 per employee statement, up to $3,218,500.
- "Reasonable cause" relief also available if late and not due to willful neglect (may need to show steps taken to comply and that on track for future reporting).

Social Security Number Solicitations

Missing/incorrect SSN/TIN a common issue and the IRS continues to point to guidance indicating that employers generally won't be subject to penalties for failure to report a correct SSN if:

- The initial solicitation is made at an individual's first enrollment or, if already enrolled, the next open season
- The second solicitation is made at a reasonable time thereafter
- And the third solicitation is made by December 31 of the year following the initial solicitation

Employers should document these solicitation requests throughout the year to help reduce the potential risk of penalties. "Good faith" relief from penalties under Notice 2018-94 applies to missing and inaccurate TIN and DOB

Marketplace Notices

- "Marketplace Notices" come from Health Insurance Marketplaces, not the IRS
- The notice generally informs the employer that:
  - An employee has been determined to be eligible for a subsidy and has enrolled in Marketplace coverage;
  - The Employer is receiving the notice because it may have to pay an ESR penalty to the IRS; and
  - The employer has the right to appeal the determination
- Employer may file an appeal to the Marketplace if it believes a mistake has been made about an employee's eligibility for a subsidy
- Marketplace Notices do not necessarily lead to an IRS Letter 226J, and may serve as a potential 1st line of defense against wrongful ESR penalty assessments
  - Only the IRS can determine if an employer owes an ESR penalty under Code Section 4980H, not the Marketplaces. However, a Marketplace appeal decided in an employer's favor may cause the Marketplace to either

    a) not report to the IRS that the employee received a subsidy or

    b) reduce the period for which the employee is reported as being eligible for a subsidy

Final Questions
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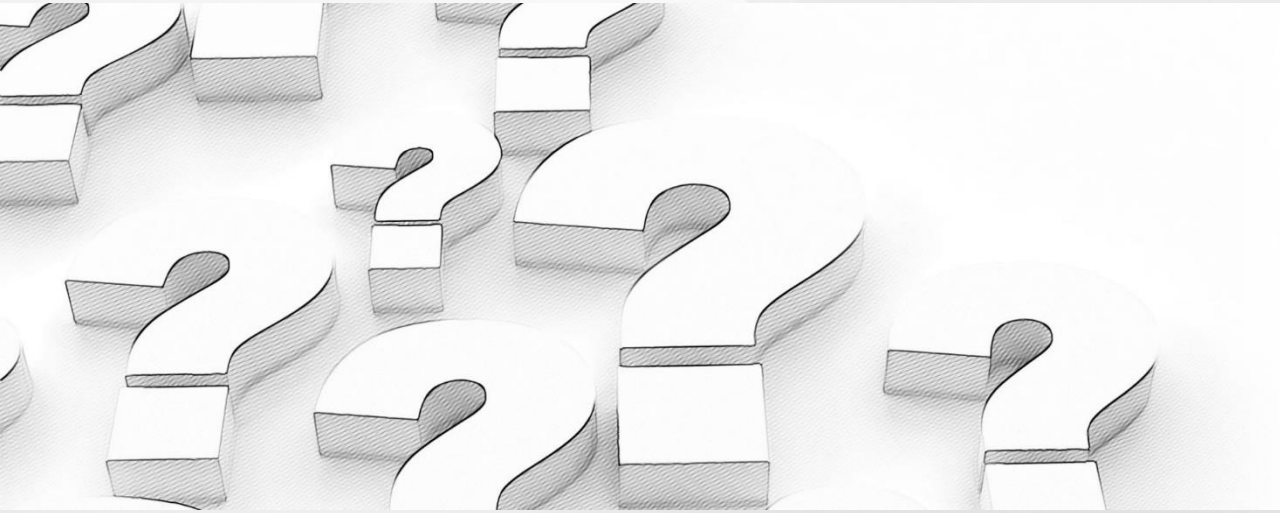

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