

1094s, 1095s, Now Penalties...Oh My!

Are you ready for ACA Employer

Information Reporting Penalties?



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EMPLOYER INFORMATION REPORTING

NEW DRAFT INSTRUCTIONS FOR 2017

- No Section 4980H transition relief for 2017
 - Instructions remove discussion
 - Form 1094-C, line 22, box C is designated “Reserved”; Part III, column (e) is designated “Reserved”; and the entry rows in Part III, column (e) are shaded
- Clarifies there is no specific code for Line 16 on the Form 1095-C for an employee who waives coverage
 - Consistent with previous interpretation that the line either be left blank or completed with an affordability safe harbor code, as applicable



EMPLOYER INFORMATION REPORTING

NEW DRAFT INSTRUCTIONS FOR 2017

- New de minimis exception for mistakes on Line 15
 - Does not need to be corrected if <\$100 annually and does not impact affordability calculation
 - Unless employee requests revised form
- No relief from penalties for good faith compliance
- New inflation adjustments for affordability calculation:
 - 9.69% for plan years beginning in 2017
 - 9.56% for plan years beginning in 2018
 - 9.86% for plan years beginning in 2019



EMPLOYER INFORMATION REPORTING

IRS Q&AS ON EMPLOYER SHARED RESPONSIBILITY PAYMENTS

- Issued on November 2, 2017
- Provide some detail on how IRS assessment and collection of employer shared responsibility payments
- IRS will issue Letter 226J if it determines that, for at least one month in the year, one or more full-time employees was given a premium tax credit and the employer did not qualify for an affordability safe harbor or other relief for the employee
- This is contrary to the President's Executive Order signed on inauguration day

EMPLOYER INFORMATION REPORTING

IRS Q&AS ON EMPLOYER SHARED RESPONSIBILITY PAYMENTS

- Letter 226J will include:
 - A response form, Form 14764, “ESRP Response”
 - A description of the actions the employer should take if it agrees or disagrees with the proposed employer shared responsibility payment in Letter 226J
 - A description of the actions the IRS will take if the employer does not respond in a timely manner to Letter 226J
- Response to Letter 226J will be due by the response date shown on Letter 226J (generally will be 30 days from the date of Letter 226J)

EMPLOYER INFORMATION REPORTING

IRS Q&AS ON EMPLOYER SHARED RESPONSIBILITY PAYMENTS

- If the employer responds to Letter 226J, the IRS will respond with further actions the employer may need to take
- If the employer disagrees with the proposed or revised employer shared responsibility payment, the employer may request a pre-assessment conference with the IRS Office of Appeals
- If the employer does not respond, the IRS will assess the amount of the proposed employer shared responsibility payment and issue a notice and demand for payment, Notice CP 220J



EMPLOYER INFORMATION REPORTING

IRS Q&As ON EMPLOYER SHARED RESPONSIBILITY PAYMENTS

- If the employer is liable for any employer shared responsibility payment, the IRS will assess the employer shared responsibility payment and issue a notice and demand for payment, Notice CP 220J
- Notice CP 220J will instruct the employer how to make payment, if any
- IRS has begun issuing Penalty Notices for the 2015 calendar year
- Penalty Notices for the 2016 and 2017 calendar years are expected soon



WHAT WE ARE SEEING...

PENALTY NOTICES ISSUED FOR ALL SIZES OF EMPLOYERS

- Large penalty amounts
- Currently focused on 4980H(a) penalty
- Most are due to error rather than actual failure to provide required coverage:
 - IRS error in processing filing, or
 - Employer 1094-C/ 1095-C submission error
- Most Employers never received Marketplace notice advising of employee receipt of premium subsidy
- Most employers don't have hard copies of IRS filings



WHAT SHOULD YOU DO IF YOU RECEIVE A PENALTY NOTICE?

1. **DON'T PANIC!**

- Most of these penalties are being rescinded once correct information is provided to the IRS

2. Engage counsel or assistance from payroll provider/ submission vendor

- Obtain copies of 1094-C filed and 1095-Cs of identified employees

3. Respond to IRS timely with correct information

- May need to submit proof of offer of coverage/ waiver
- Failure to correct 1095-Cs could result in assessment of 4980H(b) penalty



WHAT SHOULD I DO IN THE FUTURE?

1. Review service agreements with payroll provider/
submission vendor
 - Make sure you have access to hard copies of filed forms
 - Secure indemnification for filing/submission errors
2. Be sure correct information is communicated to payroll
provider/ submission vendor and included in IRS filings
3. Review future IRS submissions for accuracy
4. Review existing ACA policies/ plan documentation to
ensure compliance

THANK YOU!



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