



# ACA NOTICES AND PENALTIES... NOW WHAT?

**Presented by:**

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December 2019

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# QUESTIONS?

You may ask your question in the questions box at any time. Any questions that we do not answer during the webinar will be posted on the compliance corner webpage in the coming weeks.

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*This presentation is not to be duplicated or distributed.*

# TODAY'S PRESENTERS

## **Jennifer Spiegel Berman, JD, MBA**

- CEO and co-founder of MZQ Consulting, LLC
- Employee benefits attorney specializing in ERISA, COBRA, HIPAA, IRS code, the ACA, and other wellness plan rules and statutes
- NAHU roles
  - Compliance Corner

## **Annette Bechtold, CIC, ChHC**

- SVP, Regulatory Affairs and Reform Initiatives, OneDigital
- 35 years in benefits insurance industry
- NAHU roles
  - NAHU, Legislative Council and past chair
  - NAHU, Principal's Council
  - GAHU, current legislative chair and immediate past president
  - AAHU, past president, legislative chair, and education chair
  - Compliance Corner
  - Futures Advisory Council

# AGENDA

- Brief review of ACA reporting rules
- Failure to file penalties
- Late or incorrect filing penalties
- ESRP tax assessments
- Questions

# ACA Reporting: Background

Effective 2015, Applicable Large Employers (ALEs) had to begin complying with the Affordable Care Act's (ACA) IRS reporting requirements.

ALE: Employer with an average of 50 or more full-time employees (including full-time equivalent employees) on business days during the preceding calendar year.

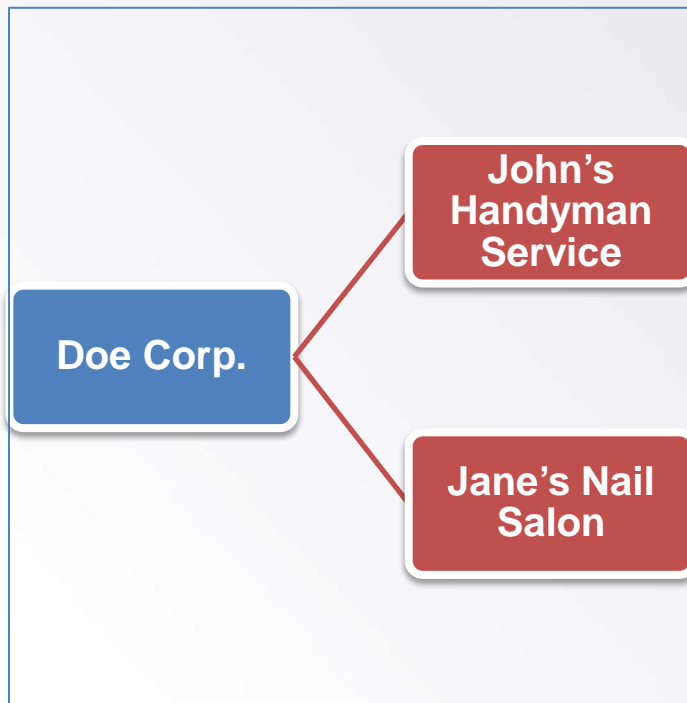


50+



# ACA Reporting: Calculating ALE Status

Employees must be counted on a controlled group basis:



	123 Co.	456 Co.	Identical Ownership
AMY	20%	20%	20%
BOB	15%	15%	15%
CARL	10%	10%	10%
DAVE	30%	25%	25%
EMILY	25%	30%	25%
TOTAL	100%	100%	95%

# Employer Reporting Determination FAQs

My group has affiliated companies. How do we know whether these aggregate or not?

It depends on whether these “affiliated” groups satisfy any of the controlled group rules, i.e. §414(b), (c), (m), or (o). These are parent-child, brother-sister, or affiliated service groups as defined under the code. Obtain determination from their tax professional.

If I’m a small employer but part of a PEO, do I have to report?

Entities in a PEO typically do not satisfy the definition of a controlled group because there is no common ownership among the entities and a PEO does not take ownership in its entities

If my group goes over 50 employees in the middle of the year, do I have a reporting obligation for that year?

Only if the average full-time and full-time equivalent for the whole calendar year exceeds 50.

Example:

*# of employees >50 during 2019 → average for 2019 = 48 employees → no report required*

*# of employees >50 during 2019 → average for 2019 = 57 employees → reporting required*

What if a brand new ALE doesn’t have enough time to enroll for January 1?

If the ALE offers coverage on or before April 1 of the first year in which the employer becomes an ALE, the employer will not be subject to either the (a) or (b) penalty for the months of January through March. [Does not apply during subsequent ALE qualification years.]

What happens if we join and association plan? Can that change my ALE status?

Participation in an association health plan (AHP) does not usually effect whether an individual employer or controlled group of employers is an ALE unless there is a certain level of common or related ownership

# ACA Reporting: The Employer Mandate

## ALE Obligations

- Offer medical coverage
- Medical coverage should be affordable and offer minimum value
- Penalties triggered if employee receives government-subsidized coverage through an exchange

# ACA Reporting: The Forms

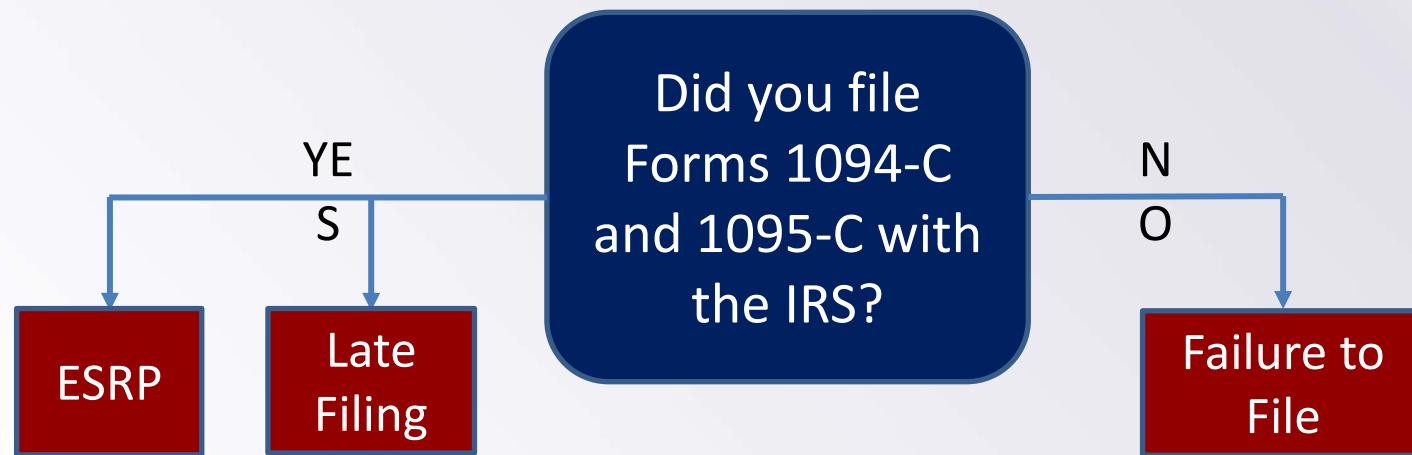
1094-C: The company-level form

- One per EIN

1095-C: The employee-level form

- Fully-Insured: One for each full-time employee
- Self-Insured: One for each full-time employee *and* any other employees enrolled in medical benefits

# ACA Penalties



# Failure to File

- IRS has started identifying ALEs who neglected to file Forms 1094-C and 1095-C
- Address failures to file immediately
- Three escalating IRS notices:
  - Letter 5699
  - Letter 5698
  - Penalty Letter 5005-A & Form 886-A

# Letter 5699: Main Components

## The Front Page

“ We have not received those returns for the taxpayer ID number shown at the top of this letter.”



Department of the Treasury  
Internal Revenue Service  
Group 2219  
7300 Turfway Road, Suite 410  
Florence, KY 41042

Date:  
05/26/2017  
Taxpayer ID number:

Tax year:  
2015  
Person to contact:

Employee ID number:

Contact telephone number:

Contact e-fax number:

### Request for Employer Reporting of Offers of Health Insurance Coverage (Forms 1094-C and 1095-C)

Dear Taxpayer:

A review of our records shows you may have been an Applicable Large Employer (ALE) in 2015 and therefore required to file certain information returns for 2015. We have not received those returns for the taxpayer ID number shown at the top of this letter.

Internal Revenue Code (IRC) Section 6056 requires employers that are ALEs to file information returns with the IRS and provide statements to their full-time employees relating to the health insurance coverage, if any, the employer offered its full-time employees. These information reporting requirements first went into effect for 2015, and the deadlines for 2015 information reporting were earlier in 2016. ALEs meet these reporting requirements using Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return*, and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*.

# Letter 5699: Main Components

## The Response Page

- Response deadline
- Four response options
- Preferred filing deadline

### What you must do

Check the box below that applies and mail your response to us to the address shown at the top of this letter within 30 days from the date of this letter.

- ☐ I was an ALE for calendar year 2015 and already filed Form 1094-C and Forms 1095-C with the IRS using the following name \_\_\_\_\_ and employer identification number (EIN) \_\_\_\_\_ on date \_\_\_\_\_.
- ☐ I was an ALE for calendar year 2015 and my Form 1094-C and Forms 1095-C are included with this letter. (Do not use this box if you are required to file electronically.)
- ☐ I was an ALE for calendar year 2015 and will file my Form 1094-C and Forms 1095-C with the IRS using the following name \_\_\_\_\_ and employer identification number (EIN) \_\_\_\_\_ by date \_\_\_\_\_.  
(If more than 90 days from the date of this letter, explain below under "Other.")
- ☐ I was not an ALE for calendar year 2015.
- ☐ Other (Indicate below or attach a statement explaining why you have not filed the required returns and any actions you plan to take.)



# Responding to Letter 5699

## Response Options

1. We already filed
2. We did fail to file and have included our missing forms with this response
  - Only applies to employers with fewer than 250 forms
3. We did fail to file and will e-File our forms by “x” date
  - Must justify if more than 90 days from letter date
4. We weren’t an ALE during that tax year

Responses should include daytime phone and best call window

Fax or certified mail with return receipt acceptable

# Responding to Letter 5699

## Phase 1

- Respond to Failure to File letter
- 30 days from date of letter

## Phase 2

- Prepare and submit missing filing
- 90 days from date of letter
- Form count < 250 = paper file; form count > 250 = e-File

# Letter 5698: Follow-Up to 5699

- Issued when IRS does not receive a response to Letter 5699
- Distributed ~ 45 days after initial Letter 5699
- Response deadline: 30 days after new mailing date
- New cover letter; otherwise, formatting identical to Letter 5699
  - Original Letter 5699 included in mailing
- Identical response guidelines (2 phase process - letter followed by submission of forms)



# Letter 5698: The Details

“Please complete the section under ‘What you must do’ on the enclosed copy of Letter 5699 and return it to us within 30 days from the date of this letter.”

 Department of Treasury  
Internal Revenue Service  
1973 North Rulon White Boulevard  
Ogden, UT 84201-0062

Date: 7/8/2019  
Taxpayer ID number (last 4 digits): [REDACTED]  
Tax year: 2017  
Person to contact: 498011 Response Unit  
Employee ID number: Letter 5699  
Contact telephone number: 866-379-6176  
Contact e-fax number: 877-792-2723

[REDACTED]

Dear [REDACTED]

We haven't received your response to our Letter 5699, Missing Information Return Form 1094/1095-C, which we sent on May 17, 2019. We need your response so we know how to correctly proceed.

Please complete the section under "What you must do" on the enclosed copy of Letter 5699, and return it to us within 30 days from the date of this letter. When you respond, include a name and telephone number of the person we can contact if we have questions about your response.

# Failure to File: Letter 5005-A & Form 886-A

- Proposed penalty letter
- Issued when response not received for Letter 5699 and 5698, or if employer failed to resolve filing error
- Two penalties
  - Failure to File, aka e-File/mail to IRS
  - Failure to Furnish, aka distribute to employees

# Letter 5005-A & Form 886-A: Main Components

## Penalty Indicators

### REMINDER:

B-Form and C-Form penalty liability

**Form:**  
1094/1095-C

**Person to contact:**  
498011 Response Unit

**Contact telephone number:**  
866-379-4176

**Contact fax number:**  
877-792-2723

**Employee ID number:**  
Letter 5699

**Last date to respond by:**  
5/15/2019

WASHINGTON, DC 20001-5600

Dear [REDACTED]

☒ We're proposing penalties for failure to timely file the following forms as required by Internal Revenue Code Section (IRC) 6056. IRC Section 6721 imposes a penalty for such failures.

- ☐ Form 1094-B, Transmittal of Health Coverage Information Returns
- ☐ Form 1095-B, Health Coverage
- ☒ Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns
- ☒ Form 1095-C, Employer-Provided Health Insurance Offer and Coverage

☒ We're proposing penalties for failure to timely provide the following forms to individuals as required by Internal Revenue Code Section (IRC) 6056. IRC Section 6722 imposes a penalty for such failures.

- ☐ Form 1095-B, Health Coverage
- ☒ Form 1095-C, Employer-Provided Health Insurance Offer and Coverage

# Letter 5005-A & Form 886-A: Main Components

## Response Instructions

We enclosed an explanation of items, including the amount of the penalty and why it's been charged.

If you agree with the penalties, send a copy of this letter and payment payable to the U.S. Treasury to the address listed above. If you agree but can't pay the full amount now, pay as much as you can to avoid interest, and then contact us using the information above.

If you disagree with the penalties, you'll have the opportunity to appeal the penalties after we send you a formal request for payment.

If you have questions, you can call or write to the information above.

# Letter 5005-A & Form 886-A

## Misleading Deadlines

Letter  
Header



VS

Letter  
Instructions

### OUR GUIDANCE

- Respond as **SOON** as possible
- Ideal: respond with e-File receipt ID

If you disagree with the penalties, you'll have the opportunity to appeal the penalties after we send you a formal request for payment.



# Letter 5005-A & Form 886-A: Main Components

## Penalty Explanation

### GOVERNMENT POSITION:

Since there was no response from the Employer to the inquiry letters showing that the returns were either filed or the employer was not required to file the information returns, penalties under IRC 6721 and 6722 are being proposed for 2016:

IRC 6721- Failure to File: [REDACTED]

IRC 6722 - Failure to Furnish: [REDACTED]

The Service determined the employer filed [REDACTED] Form(s) W-2 for 2016.

The failure to file penalty is calculated using the number of Form(s) W-2 filed since we do not have information indicating how many full-time employees should have received a Form 1095-C, plus one for the failure to file the Form 1094-C Transmittal.

The failure to furnish penalty is calculated using the number of Form(s) W-2 filed by the employer.

# Letter 5005-A & Form 886-A Penalties

Calculated using tax year W-2 count

- Additional \$260 for Failure to File to account for missing 1094-C
- NO CAP for Intentional Disregard penalties

Tax Year	Penalty Per Return	Penalty Cap	Intentional Disregard Penalty Per Return
2015	\$260	\$3,178,500	\$520
2016	\$260	\$3,193,000	\$530
2017	\$260	\$3,218,500	\$530
2018	\$270	\$3,275,500	\$540
2019	\$270	\$3,339,000	\$550

## Example: 100 W-2s

### Failure to File

$\$260 \times 101 =$   
**\$26,260**

### Failure to Furnish

$\$260 \times 100 =$   
**\$26,000**

Combined Penalty:  
**\$52,260**

A woman with red hair is peeking over a white desk. In the background, there is a silver laptop and a blurred office setting with shelves. A red curved line is at the top of the image.

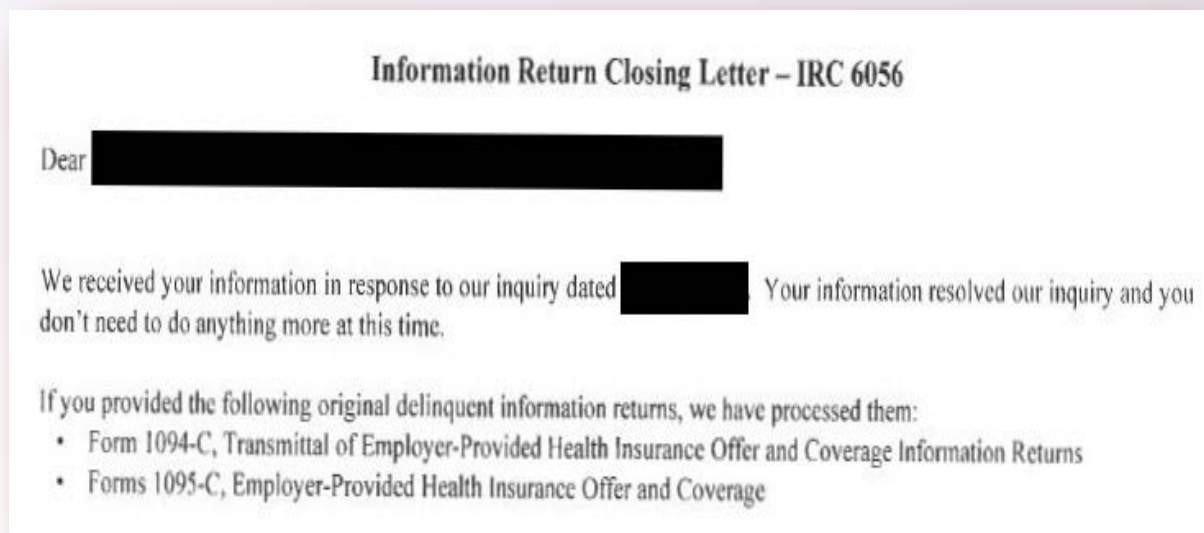
**NEVER IGNORE**  
**CORRESPONDENCE FROM**  
**THE IRS**

# Failure to File: Submitting the Missing Filing

- Prepare Forms 1094-C and 1095-C with urgency
- Maintain internal copies
- Document IRS receipt information
  - Confirm that filing was “Accepted” or “Accepted with Errors,” NOT “Rejected”
- Should copies of the Forms 1095-C go to employees?

# IRS Feedback to Letters 5699/5698/5005-A

- Inquiry and penalty feedback available after employer responds to applicable letter and submits filing
- ~30-day IRS response time



# Failure to File General Guidance

- IRS Radar: proactively submit any additional missing filings
- Maintain all filing receipts
- Only respond to inquiries via fax or certified mail with return receipt
- Confirm ALE calculations



# Late/Incorrect Filing: Notice 972-CG

- IRS began distributing in July 2019 for 2017 tax year
- Civil penalty for late/incorrect filings
- Difficult to remediate
- May include penalties for subsection of “non-authoritative” forms filed after deadline
- Tiered penalty schedule
- **Seek Legal Counsel**

# Notice 972-CG 2017 Penalty Tiers

- Same penalties as Failure to File; different enforcement division

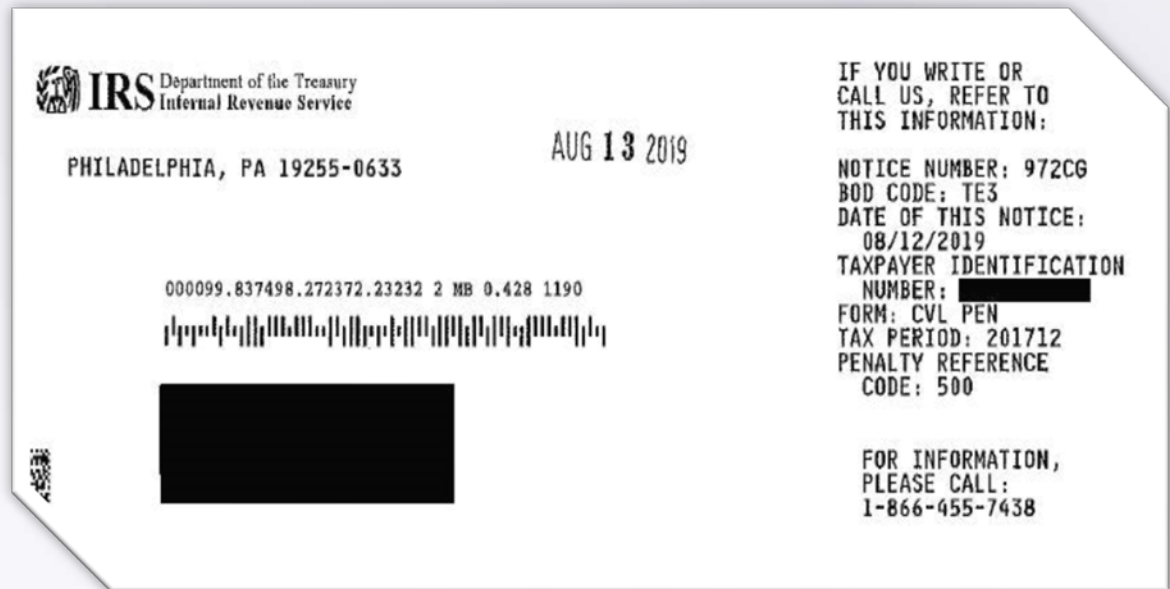
Within 30 Days after Deadline	+ 30 Days-August 1	After August 1
<ul style="list-style-type: none"><li>• \$50/late return</li><li>• \$536,000 cap</li><li>• \$187,500 small business cap</li></ul>	<ul style="list-style-type: none"><li>• \$100/late return</li><li>• \$1,609,000 cap</li><li>• \$536,000 small business cap</li></ul>	<ul style="list-style-type: none"><li>• \$260/ late return</li><li>• \$3,218,500 cap</li><li>• \$1,072,500 small business cap</li></ul>
NO CAP FOR INTENTIONAL DISREGARD		



# Notice 972-CG: Main Components

## IRS Details

- Notice Number
- Notice Date
- IRS Contact Info

The image shows a white IRS Notice 972-CG card. At the top left is the IRS logo and the text "Department of the Treasury Internal Revenue Service". Below this is the address "PHILADELPHIA, PA 19255-0633". To the right of the address is the date "AUG 13 2019". In the center, there is a long alphanumeric string "000099.837498.272372.23232 2 MB 0.428 1190" followed by a barcode. Below the barcode is a large black rectangular redaction box. At the bottom left is a small QR code. On the right side of the card, there is a section titled "IF YOU WRITE OR CALL US, REFER TO THIS INFORMATION:" followed by several lines of text: "NOTICE NUMBER: 972CG", "BOD CODE: TE3", "DATE OF THIS NOTICE: 08/12/2019", "TAXPAYER IDENTIFICATION NUMBER: [REDACTED]", "FORM: CVL PEN", "TAX PERIOD: 201712", "PENALTY REFERENCE CODE: 500". At the bottom right, it says "FOR INFORMATION, PLEASE CALL: 1-866-455-7438".

IRS Department of the Treasury  
Internal Revenue Service

PHILADELPHIA, PA 19255-0633

AUG 13 2019

000099.837498.272372.23232 2 MB 0.428 1190

IF YOU WRITE OR  
CALL US, REFER TO  
THIS INFORMATION:

NOTICE NUMBER: 972CG  
BOD CODE: TE3  
DATE OF THIS NOTICE:  
08/12/2019  
TAXPAYER IDENTIFICATION  
NUMBER: [REDACTED]  
FORM: CVL PEN  
TAX PERIOD: 201712  
PENALTY REFERENCE  
CODE: 500

FOR INFORMATION,  
PLEASE CALL:  
1-866-455-7438

# Notice 972-CG: Main Components

## Notice Overview

- Notice description
- Proposed penalty

A PENALTY IS PROPOSED FOR YOUR 2017 INFORMATION RETURNS

### ACTION REQUIRED

OUR RECORDS SHOW THAT YOU DIDN'T FILE CERTAIN INFORMATION RETURNS CORRECTLY AS REQUIRED BY INTERNAL REVENUE CODE (IRC) SECTION 6721 FOR THE TAX PERIOD SHOWN ABOVE. THE LAW ALLOWS FOR A PENALTY FOR FILING INFORMATION RETURNS INCORRECTLY. A PENALTY IS PROPOSED IN THE AMOUNT OF [REDACTED]. INTEREST ON THIS PENALTY WILL NOT BE CHARGED UNTIL AFTER YOU RECEIVE A BILL.

PLEASE READ THIS NOTICE CAREFULLY. IT EXPLAINS THE PROPOSED PENALTY AND WHAT YOU SHOULD DO IF YOU AGREE OR DISAGREE WITH THE PROPOSAL. THIS PENALTY WILL BE CHARGED IF YOU DON'T RESPOND TO THIS NOTICE. THE PROPOSED PENALTY IS EXPLAINED UNDER THE "EXPLANATION OF PENALTY" SECTION.

# Notice 972-CG: Main Components

## General Response Instructions

### HOW YOU SHOULD RESPOND TO THIS NOTICE

PLEASE REVIEW YOUR RECORDS RELATED TO FILING THE RETURNS LISTED ON PAGE 2.

-- IF YOU AGREE TO THE FULL AMOUNT OF THE PROPOSED PENALTY, DO ALL OF THE FOLLOWING:

1. CHECK BOX (A) ON THE RESPONSE PAGE OF THIS NOTICE.
2. SIGN AND DATE THE CONSENT OF PENALTY ASSESSMENT.
3. ENCLOSE YOUR PAYMENT IN FULL. MAKE YOUR CHECK OR MONEY ORDER PAYABLE TO THE UNITED STATES TREASURY.
4. ENCLOSE THE APPROPRIATE MAILING STUB TO INDICATE WHETHER A PAYMENT IS INCLUDED.
5. ENSURE THE ADDRESS ON THE STUB APPEARS IN THE ENVELOPE WINDOW.

-- IF YOU DON'T AGREE WITH ALL OR PART OF OUR FINDINGS OR BELIEVE YOU HAVE A REASON ALL OR PART OF THIS PENALTY SHOULD NOT BE CHARGED, DO ALL OF THE FOLLOWING:

1. CHECK BOX (B) OR (C) ON THE RESPONSE PAGE OF THIS NOTICE.
2. ENCLOSE A SIGNED STATEMENT EXPLAINING WHY YOU DISAGREE.
3. INCLUDE ANY SUPPORTING DOCUMENTS YOU WISH TO HAVE CONSIDERED.
4. IF YOU AGREE TO PART OF THE PENALTY, ENCLOSE YOUR PAYMENT. MAKE YOUR CHECK OR MONEY ORDER PAYABLE TO THE UNITED STATES TREASURY.
5. ENCLOSE THE APPROPRIATE MAILING STUB TO INDICATE WHETHER A PAYMENT IS INCLUDED.
6. RETURN THE RESPONSE PAGE OF THIS NOTICE WITH YOUR STATEMENT AND DOCUMENTS IN THE ENCLOSED ENVELOPE (ENSURE THE ADDRESS APPEARS IN THE ENVELOPE WINDOW). PLEASE INCLUDE A TELEPHONE NUMBER, INCLUDING THE AREA CODE, AND THE BEST TIME TO CALL.

IT'S IMPORTANT THAT YOUR COMPLETED RESPONSE BE RECEIVED WITHIN 45 DAYS FROM THE DATE OF THIS NOTICE. YOU HAVE 60 DAYS TO RESPOND IF YOU LIVE OUTSIDE THE UNITED STATES.

# Notice 972-CG: Main Components

## Response Options

1. We agree with the penalty assessment
2. We partially disagree with the penalty assessment
3. We entirely disagree with the penalty assessment

RESPONSE TO PROPOSED PENALTY FOR YOUR TAX YEAR 2017 INFORMATION RETURNS

PLEASE CHECK THE BOX THAT APPLIES TO YOU AND RETURN THIS PAGE IN THE ENCLOSED ENVELOPE. PLEASE REMEMBER TO INCLUDE THE APPROPRIATE MAILING STUB AND INSERT IT IN THE ENCLOSED ENVELOPE SO THE ADDRESS APPEARS IN THE ENVELOPE WINDOW.

PLEASE CHECK ONLY ONE BOX:

☐ (A) TOTAL AGREEMENT WITH THE PROPOSED PENALTY - I CONSENT TO THE IMMEDIATE ASSESSMENT AND COLLECTION OF THE PENALTY AMOUNT SHOWN IN THIS NOTICE, PLUS ANY APPLICABLE INTEREST.  
I HAVE ☐ HAVE NOT ☐ ENCLOSED A PAYMENT.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

☐ (B) PARTIAL AGREEMENT WITH THE PROPOSED PENALTY - I AGREE WITH PART OF THE PROPOSED PENALTY SHOWN IN THIS NOTICE. I HAVE ATTACHED A SIGNED STATEMENT AND SUPPORTING DOCUMENTS EXPLAINING WHICH ITEMS I DISAGREE WITH AND WHY I DISAGREE, OR WHY I FEEL YOU SHOULDN'T CHARGE PART OF THE PROPOSED PENALTY.  
I HAVE ☐ HAVE NOT ☐ ENCLOSED A PAYMENT.

☐ (C) TOTAL DISAGREEMENT WITH THE PROPOSED PENALTY - I DISAGREE WITH THE ENTIRE PROPOSED PENALTY SHOWN IN THIS NOTICE. I'VE ATTACHED A SIGNED STATEMENT AND SUPPORTING DOCUMENTS EXPLAINING WHY THE PROPOSED PENALTY IS INCORRECT, OR AN ACCEPTABLE REASON WHY YOU SHOULDN'T CHARGE THIS PROPOSED PENALTY.

TELEPHONE NUMBER: ( \_\_\_\_\_ ) \_\_\_\_\_ BEST HOURS TO CALL: \_\_\_\_\_  
(INCLUDE AREA CODE)

# Responding to Notice 972-CG

- Deadline: 45 days from date of letter
- Follow each step of the instructions as indicated in the notice
- Include all required response components
  - Signed statement of disagreement
  - Completed response form
  - Telephone number and call window
  - Applicable mailing slip
  - Optional: supporting documents
  - Optional: Form 2848

# Notice 972-CG: Establishing Reasonable Cause

## Reminder: Consult with Legal Counsel

- Late filing penalties can be disputed *if* due to “reasonable cause” and *if* employer acted in a “reasonable manner”
  - Demonstrate “significant mitigating factors,” such as an established history of compliance; or
  - Show that late filing was “beyond their control”—i.e., caused by a mistake, such as the unavailability of business records or actions taken by other parties

# ESRP Tax Assessments

- Penalty for failure to file = no filing received by the IRS
- Penalty for inaccurate/incomplete filings => good faith compliance standard applies
- Tax assessment for non-compliance = information filed indicates employer failed to comply with the Employer Mandate



# ESRP Tax Assessments

- If employer failed to comply with stipulations of ACA according to information filed on 1094-C and 1095-Cs, will likely find themselves in receipt of an Employer Shared Responsibility Penalty letter.
- IRS began assessing proposed penalties for 2015 filing in late 2017.
- 2016 penalty letters mailed beginning November 2018
- 2017 penalty letters mailed mid-2019





# ACA Reporting: Important Codes

## 1094-C

- Part III(a): Minimum essential coverage
- Part III(e): Transition Relief
  - Non-calendar year transition relief
  - 50-99 transition relief

Form 1094-C (2014) Page **2**

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"/>	

# ACA Reporting: Important Codes

## 1095-C

- Line 14: Offer of Coverage
- Line 16: Safe Harbor

<b>Part II Employee Offer and Coverage</b>													
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>14</b> Offer of Coverage (enter required code)													
<b>15</b> Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>16</b> Applicable Section 4980H Safe Harbor (enter code, if applicable)													

# ACA Reporting: Line 14

## Offer Codes

- 1A. Qualifying offer to e'ee, self-only < 9.5% of poverty line, MEC to spouse and dependents
- 1B. MEC & MV to e'ee only
- 1C. MEC & MV to e'ee & dependents
- 1D. MEC & MV to e'ee & spouse
- 1E. MEC & MV to e'ee, spouse & dependents
- 1F. MEC only to e'ee
- 1G. No F-T e'ee enrolled in S-I coverage
- 1H. No offer
- 1I. Qualified offer transition relief

# ACA Reporting: Line 16

## Safe Harbor Codes

- 2A. E'ee not employed during month
- 2B. E'ee not F-T and not enrolled
- 2C. E'ee enrolled (If MEC, use 2C)
- 2D. Limited non-assessment period
- 2E. Multi-employer interim rule
- 2F. Form W-2 safe-harbor
- 2G. Federal poverty line safe-harbor
- 2H. Rate of pay safe-harbor
- 2I. Non-calendar year transition relief

# Employer Reporting FAQs

What reporting is required for groups that are level-funded?

Level-funded are typically self-funded plans. As such, the employer will report using either forms 1094-C and 1095-C if they are an ALE or 1094-B and 1095-B if they are not an ALE

My group was fully-insured and then moved to self-funded mid-year, how do we report?

If the group was an ALE and had reporting responsibilities prior to the change to self-funded, they would continue to report on form 1094-C and 1095-C and complete Part III of the 1095-C for the months that they offered a self-funded plan. If they were not an ALE prior to the change in plan/ funding, then they would report the self-funded plan months on Forms 1094-B and 1095-B

What forms do we use to report in individual mandate states like CA, DC, MA, NJ, RI, and VT?

States accepting the federal IRS Forms 1094 and 1095 = CA, DC, NJ, RI  
MA requires a HIRD form for employers with 6 or more MA employees  
VT does not require reporting unless it is required under the ACA

What is the penalty if an employer offers affordable, minimum value coverage but then can't offer a plan?

This scenario often happens when the group can't meet participation. According to the IRS, an ALE makes an offer of coverage to an employee if it provides the employee an effective opportunity to enroll in health coverage, or to decline that coverage, at least once per year. If they can't enroll, there is no offer.

# ESRP Letter: Main Components

## The Front Page

- Penalty amount: Move past the sticker shock!
- Letter Date
- IRS Contact Info
- Response Due Date

Department of the  
Treasury Internal Revenue  
Service

IRS

Taxpayer Name  
Taxpayer Address  
City, ST Zip code

Date:  
02/13/2018

Tax year:  
YYYY

Employer ID number:  
#####

Person to contact:  
Contact Name  
Employee ID number:  
#####

Contact telephone number:  
(###) ###-####

Contact e-fax number:  
(###) ###-####

Response date:  
03/05/2018

Dear Taxpayer:

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.  
Proposed ESRP \$0.00

# ESRP Letter: Main Components

## The Summary Table

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

# 4980H(a): The “Awful” Penalty

- Failure to offer MEC to full-time employees
- 2015: \$173.33 per full-time employee
- 2016: \$180.00 per full-time employee
- 2017: \$188.33 per full-time employee
- 2015: 80 employee allocated reduction (if claimed)
- 2016 & later: 30 employee allocated reduction



# 4980H(b): The “Bad” Penalty

- Premium Tax Credit (PTC) for exchange coverage
- 2015: \$260.00 per PTC/month
- 2016: \$270.00 per PTC/month
- 2017: \$282.50 per PTC/month
- No allocated reduction

# Form 14764: Extension

Form <b>14764</b> (April 2017)	Department of the Treasury - Internal Revenue Service <b>ESRP Response</b>
<ul style="list-style-type: none"><li>Complete both sides of this form and return it to the address below so that we receive it by [MM/DD/YYYY]. An envelope has been enclosed for your convenience. To request more time to respond, call us at 1-[XXX-XXX-XXXX].</li></ul>	
Return form to: Department of the Treasury Internal Revenue Service Group 2219 7300 Turfway Road, Suite 410 Florence, KY 41042	

EXTENSION LANGUAGE REMOVED EFFECTIVE 2016  
FORM 14764

# Form 14764: Response Indicator

Indicate Your Agreement or Disagreement	
<b>Agreement with proposed assessment</b>	
<input type="checkbox"/> I consent to the assessment and collection of the of the proposed assessment of the ESRP in the amount of [\$0.00]	
Signature	Date
<div></div>	<div></div>
Print name and title of the person who signed above	
<div></div>	
<b>Partial/Total disagreement with proposed assessment</b>	
<input type="checkbox"/> I disagree with part or all of the proposed assessment of the ESRP	
<b>Indicate Your Payment Option (check all that apply)</b>	
<input type="checkbox"/> Full payment using EFTPS on <div></div>	
<input type="checkbox"/> Partial payment using EFTPS on <div></div>	
<input type="checkbox"/> Enclosed full payment of \$ <div></div>	
<input type="checkbox"/> Enclosed partial payment of \$ <div></div>	
<input type="checkbox"/> No payment	
<ul style="list-style-type: none"><li>• Write your employer ID number ([NN-NNNNNN]), the tax year ([2015]) and ESRP on your payment and any correspondence.</li><li>• Make your check or money order payable to the United States Treasury.</li></ul>	

# Form 14764: Authorized Representative

Page 2			
<b>Authorization (optional)</b>			
<p>If you would like to authorize someone, in addition to you, to contact the IRS concerning this proposed ESRP matter, please include the person's information, your signature, and the date.</p> <p>The authority granted is limited as indicated by the statement above the signature line. The contact may not sign returns, enter into agreements, or otherwise represent you before the IRS. If you want to have a designee with expanded authorization, see IRS Publication 947, Practice Before the IRS and Power of Attorney.</p>			
Full name of authorized person			
Address			
City	State	Country	Zip code
Primary telephone number		Best time to call	
Secondary telephone number		Best time to call	
I authorize the person listed above to discuss and provide information to the IRS about this letter.			
Signature			Date
Print name and title of the person who signed above			

# Form 14765: PTC Listing

- Includes name, SSN, and Line 14 & 16 codes from employee 1095-C

Form <b>14765</b> (April 2017)		Department of the Treasury - Internal Revenue Service <b>Employee Premium Tax Credit (PTC) Listing</b>													
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										Employer ID number			Tax year		
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
															<input type="checkbox"/>
															<input type="checkbox"/>

# Preparing the Response: Request an Extension

- Response Deadline: 30 calendar days
- Call contact telephone number on page 1 to request an extension
- Record IRS representative information
- Only one 30-day extension granted
- More difficult to obtain as time passes
- IRS restrictions on who permitted to make request



# Preparing the Response: Identify 1094-C Errors

- Erroneous Minimum Essential Coverage (MEC) indicator
  - Confirm that MEC was offered
- Miscalculated monthly full-time employee counts
- Missing transition relief indicators

# Preparing the Response: Identify 1095-C Errors

- Offer code blanks in Line 14
- Safe harbor blanks in Line 16
- 1095-Cs generated for part-time, variable hour, or unemployed employees
- Misuse of union employee code
- Offer code and safe harbor code combination errors



# Compiling the Response Packet: Components

- Cover sheet (fax only)
- ESRP Response
- Completed Form 14764
- Completed Form 14765
- Form 2848
- Any supporting materials



# Compiling the Response Packet: The ESRP Response

- Include all disagreements with penalty
- List desired filing adjustments, if applicable
- Add all required indicators: EIN and tax year in top right corner
- Must be signed by company corporate officer (also applies to Form 14764)

# Compiling the Response Packet: Form 14765

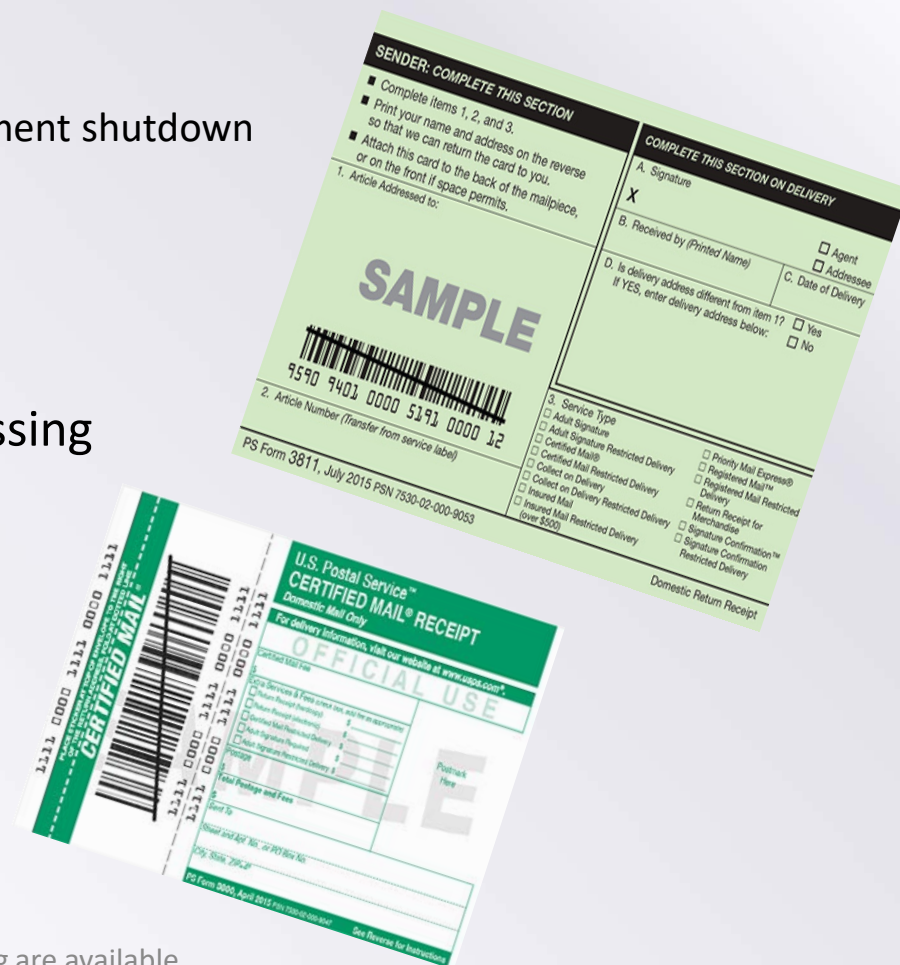
- Make code corrections in row 2 for each PTC listing
- Include both Line 14 and 16 codes, even if only one needs to be updated
- Fill in blanks whenever possible

# Compiling the Response Packet: Optional Form 2848

- Power of Attorney form
- Limit authorization to ESRP matters
- Not required, but beneficial
- Recommended if consulting with third-party vendor to submit response
- Immediately accessible by ESRP department if included with response
- ESRP department will require confirmation of POA details prior to divulging company information

# Submitting Your Response

- Fax recommended by the IRS
  - Fax system inaccessible during government shutdown
- Certified mail with return receipt
- Duplicate submissions delay processing
- Always confirm receipt of response



# IRS Feedback

## Possible Outcomes

### Penalty Reduced: Letter 227-L

- Partially complied with ACA
- Liable for reduced ESRP assessment detailed in new ESRP letter
- Request an appeal if disagree with revised penalty

### Penalty Eliminated: Letter 227-K

- Will receive confirmation letter that ESRP has been eliminated
- Case closed



# IRS Feedback

## Possible Outcomes

### Penalty Confirmed without Appeal Opportunity: Letter 227-J

- Employer *agreed* to assessment in ESRP response; liable for full penalty
- Case closed; no additional appeal opportunity

### Penalty Confirmed with Appeal Opportunity: Letter 227-M

- No penalty adjustment
- Updated Form 14765 (PTC listing) included
- Request an appeal if disagree with penalty confirmation

### Appeal Processed: Letter 227-N

- Reflects appeal decision
- Case closed; no additional appeal opportunity

# Moving Forward

- IRS assessing ESRP letters one reporting year at a time
- IRS is issuing 2017 ESRP letters, but has indicated a hold on processing employer responses until 2015 and 2016 are closed
- Penalty phases: “A” first, “B” second

## Options:

- Proactively correct future year filings
- Anticipate additional ESRP letters and respond accordingly





# QUESTIONS?

# THANK YOU!