



## Compliance Corner Webinar:

### Fuzzy on ERISA Required Disclosures?

November 9, 2017

**Q: Can you repeat what you just said about avoiding the "willfully delinquent filings"?**

A: The rules defining the penalties for failure to file and failure to furnish notices to employees provide for a doubling of the applicable penalties upon a showing of willful failure to comply.

**Q: Are penalties still totaled minus the first 30 full-time employees?**

A: Penalties for failure to file the 1094 and 1095 forms are not subject to the same 30 full-time employee reduction as the Employer Share Responsibility (Part A) coverage mandate penalties.

**Q: If a client gets a 226J notice what should they do? As agents we have a limited ability to advise clients on such matters. Is the proper course to offer assistance within your means and refer them to their attorney?**

A: I believe agents should make clients aware that if they receive the notices they have 30 days to respond and advise them to obtain the assistance of an attorney or tax advisor experienced in representing clients before the IRS.

**Q: What is the code for covering everyone AND meets MEC and MV, but we're basing it on 9.56% and NOT FPL?**

A: 1E and 2F or 2H (depending on whether you are measuring affordability on W-2 reported income or rate of pay respectively).

**Q: To avoid penalty, coverage is only mandated to be offered for the Du26, not spouses. You mentioned it was mandatory while speaking to the Code List slide.**

A: I did not intend to imply that spousal coverage offerings are mandatory, only that they must be reported if they are made (and likewise reported as not being made when they are not – or being reported as conditional when appropriate).

**Q: Do you think penalties will apply for incorrect information if more information than needed is provided? For example, If line 15 is completed with code 1A on line 14 even though it's not needed, will they consider that an incorrect form? Another example would be if Dates of Births are listed in Part III even if SSN is listed.**

A: I don't believe this will result in any penalties.

**Q: What's the diff between 1C and 1 E?**

A: 1C does not include a coverage offering to the spouse while 1E does.

**Q: Are you calling dependent children or spouse/children?**

A: I don't know the context this was exactly asked but usually I don't mean spouses when I reference dependents.



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**Q: Would good faith apply if the codes on the forms are incorrect?**

A: It's possible that the good faith compliance standard would apply but that would depend on the steps taken by the filer to provide as accurate information as possible. Qualification for good faith compliance is a subjective standard so you can't know for sure if your efforts will suffice. However, I think people can reasonably know when they've put forth a good faith effort vs. haphazardly running through the motions.

**Q: If using code 1A, do you still need a safe harbor code? (If you are trying NOT to flag the IRS)**

A: If you use Code 1A, you should be using the Code 2G on line 16.

**Q: Are you required to provide a 1095 form to a person on COBRA if your plan is fully insured?**

A: If the individual was a full-time employee for one or more months of the year, yes. If not, no.

**Q: If a new ALE has a non-calendar plan year do they still get a 3-month limited assessment period or can an ALE only take advantage of that limited assessment period if they have a calendar plan year?**

A: The Limited Non-Assessment Period for new ALEs presumes there was no plan in the prior calendar year so I think the question is moot. However, if a new ALE sets up a non-calendar year plan that begins in February, March or April, they would be entitled to utilize this LNAP.

**Q: Should corrected forms be filed if an error in the 14 or 16 code was made in past filings?**

A: This is a question for their tax advisor. We should not be endeavoring to answer this.

**Q: Can an employer who does not offer coverage use code 2D, in the same LAP that an employer offering coverage can use**

A: If the employer does not offer coverage, the only Limited Non-Assessment Period for which they can use Code 2D is the first calendar month of employment (which is only available if the employee's first day of employment is a day other than the first day of a calendar month).