



Presents:



# ACA Compliance: Step-by-Step for 2023 (Forms completion for 2022 filing)

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# Your Presenter Today

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# Agenda

- The Affordable Care Act (ACA): Overview and Impact
- The §4980H Shared Responsibility Penalties and Forms 1094/1095 Reporting: Step-by-Step
  - Step 1: Who Is an ALE?
  - Step 2: Determining Who Is an Employee and Measuring Hours
  - Step 3: The §4980H Penalties
    - **New!** The Family Glitch
  - Step 4: IRS Forms 1094/1095 Reporting
  - Next Steps (Consequences)
- Resources
- Questions



# New Developments

- We will talk about:
  - Forms 1095-C adjusted to accommodate individual coverage health reimbursement arrangements (ICHRAs)
  - No more good faith penalty relief, and what that means to employers (**getting it right!**)
  - Extension of time to furnish forms—adopted
  - Alternative distribution method for Forms 1095-B—adopted
  - Modified IRS electronic filing rules—proposed
  - State reporting mandates

# The Affordable Care Act: Overview and Impact



# ACA Overview

- The Affordable Care Act (ACA) was signed into law in 2010
- The ACA is implemented, administered, and enforced by the Department of Labor (DOL—specifically, EBSA), Department of Health and Human Services (HHS), and Department of the Treasury (specifically, the IRS)
- Implementation of the ACA has rolled out over time as regulations, guidance, and FAQs have been issued by the Departments
- Changes have been made to the ACA by new laws passed by Congress and amendments to previously issued regulations
- The ACA impacts insurers/HMOs, individuals, small employers, and applicable large employers
  - **Note:** When a small employer becomes large enough to qualify as an “applicable large employer” (ALE) new obligations kick in

# Overview: How the ACA Impacts You (Hint: They All Interrelate)

## ■ Individuals

- Individuals must have coverage or pay an individual shared responsibility penalty (**until 2019**)
- Some individuals may qualify for a “premium tax credit” (PTC or APTC) to help pay the cost of individual coverage purchased from a marketplace (such as Covered California)
- **Note to Employers:**
  - If an employee receives a PTC, this could result in a \$4980H penalty for an ALE
  - **But:** CA variation: S.B. 78 (eff. 1/1/20): Individual mandate and reporting requirement (+ other states) (more later)

## ■ Small employers

- Employers with fewer than 50 employees do not have to offer coverage
- Small employers do not have to furnish and file IRS Forms 1094/1095 (unless they self-fund)
- Small employer plans are guarantee issue and renewable, must cover 10 “essential health benefits,” are subject to rating rules, and typically must satisfy minimum participation and employer contribution rules

## ■ “Applicable large employers” (ALEs) (our focus today)

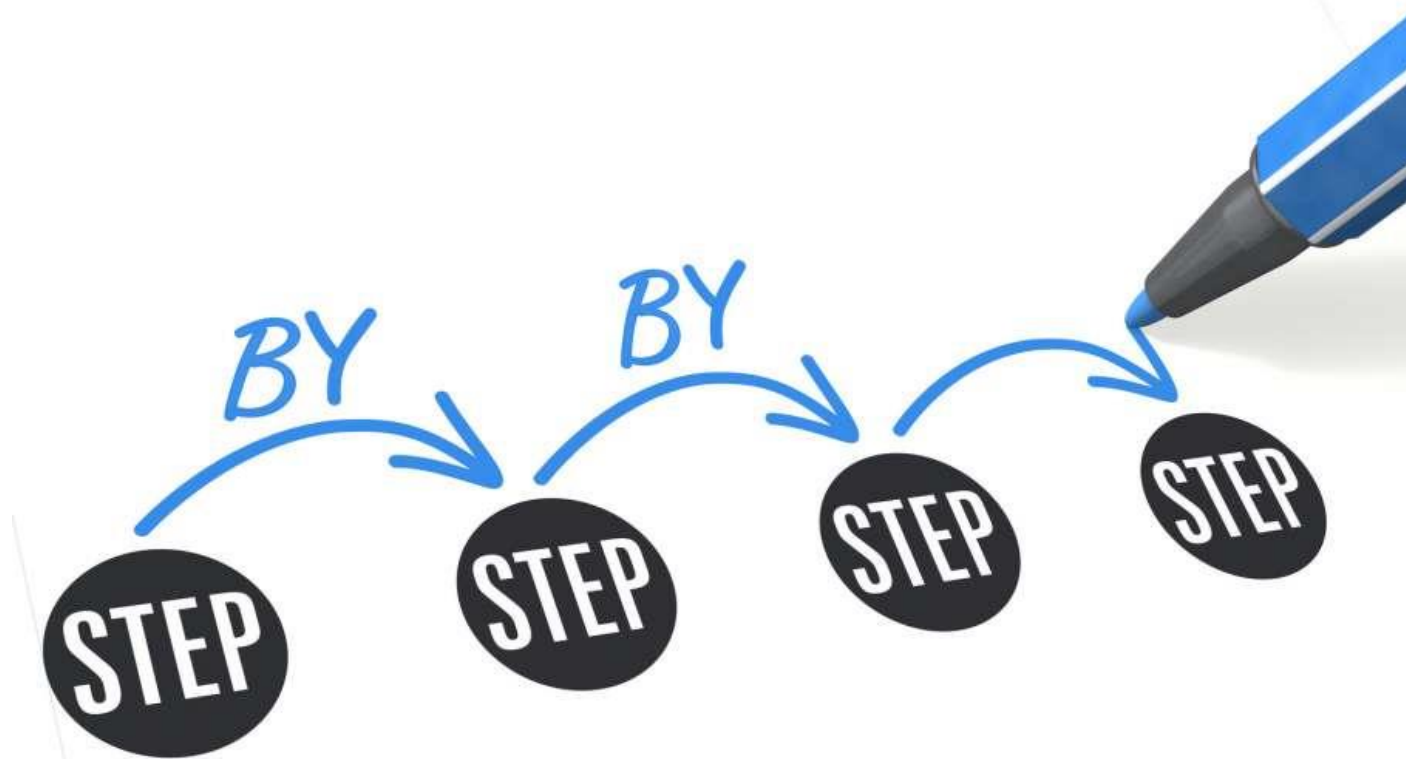
- ALEs must offer health coverage to their full-time employees or pay an employer shared responsibility penalty (\$4980H) (more later)
- ALEs must annually furnish and file IRS Forms 1094/1095 (more later)



# Overview: The ACA's Impact on ALEs

- Under the ACA, ALEs must (hint: they interrelate):
  - Offer health coverage to their full-time employees. Coverage must be “minimum essential coverage” (MEC), “minimum value” (MV), and “affordable.” If ALEs do not offer this coverage, they may owe 26 U.S.C. **§4980H(a) or (b)** employer shared responsibility penalties to the IRS (more to follow)
  - Annually furnish and file **IRS Forms 1094-C and 1095-C**. The forms provide the IRS with details on which employees were offered coverage each month, and whether coverage was MEC, MV, and affordable, so the IRS knows whether the ALE should pay a §4980H penalty (more to follow) (**note:** small employers that self-fund have to furnish and file the 1094-B and 1095-B forms)
- **Note:** Large employer plans do not have to cover the 10 “essential health benefits” and are not subject to small group rating rules, so they have more flexibility in plan design and cost may be lower

# The §480H Penalties and Forms 1094/1095 Reporting: Step-by-Step



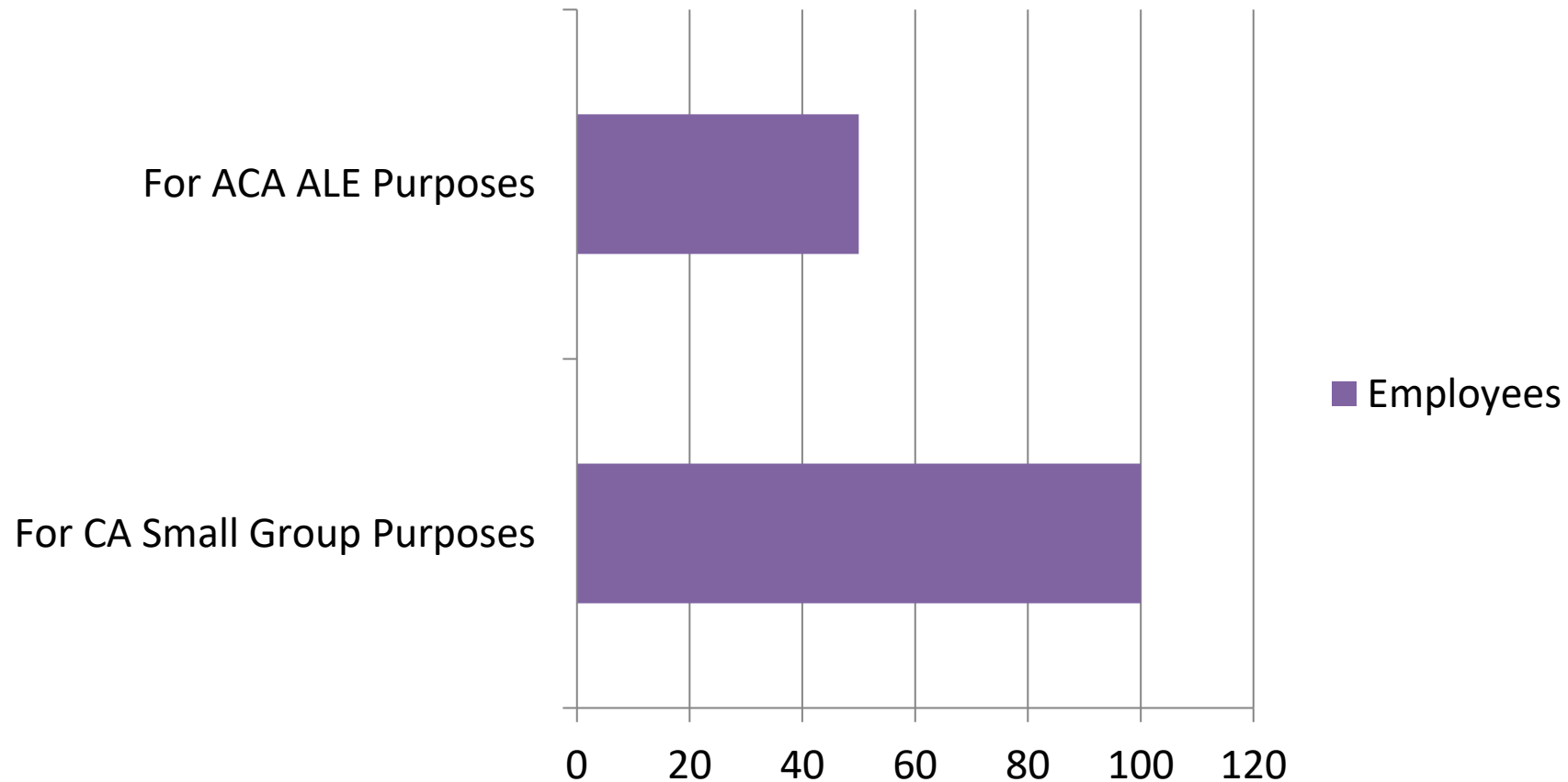
# Step 1: Who Is an ALE?

- An **ALE** is an employer with an average of **50** or more full-time employees, including full-time equivalent employees, during the **preceding** calendar year
  - Who is a full-time (FT) employee? **30** hours per week
  - Do you include part-time employees? Yes – “full-time equivalent” (FTE)
    - Add all the hours worked per month by part-time (PT) employees (but not more than 120 hours per employee) and divide by 120 (= FTE)
  - Special rules apply to “seasonal workers”
  - **Process:** For each calendar month, add your FT and FTE employees for a monthly total (FT + FTE). Add the monthly totals. Divide the sum of the monthly totals by 12. If the result is 50 or more employees, you are an ALE.
- **Resources:** IRS Publications 5208 and 5200 and IRS FAQs (“Determining if an Employer is an Applicable Large Employer”)

# Example

- Acme employs 25 FT employees each month (each work 30 hours/week)
- Acme employs 40 PT employees (who average 90 hours/month):
  - $40 \times 90 = 3,600$ ;  $3,600 \div 120 = 30$  (Acme has 30 FTE employees each month)
  - $25 + 30 \text{ FTE} = 55$  employees
- Add the monthly totals and divide by 12:
  - $55 \times 12 = 660$ ;  $660 \div 12 = 55$
- An employer with 50 or more employees is an ALE
  
- **Note:** Status could change each year; watch for changes in employee population and mergers and acquisitions
- **Note:** Aggregated (control) group rules apply (add together employees of all entities within aggregated group to determine if they are separately treated as ALEs)

# Small Employer under ACA (Not an ALE) vs. CA Small Group Coverage



**Note:** Aggregated (control) group rules apply.

# Step 2: Determining Who Is an Employee and Measuring Hours

- Why does it matter? ALEs must identify their full-time employees because:
  - ALEs must offer full-time employees health coverage to avoid **§4980H** employer shared responsibility penalties
  - ALEs must report to the IRS whether they offered coverage to full-time employees (**Forms 1094-C and 1095-C**), and must furnish a Form 1095-C to full-time employees
- Identifying each full-time employee is a two-part process:
  - **First:** Determine if the individual is the employer’s “common law” employee (rather than an independent contractor)
  - **Second:** Determine if the individual works enough hours to qualify as a full-time (FT) employee (measurement methods)

# First, Who Is an Employee?

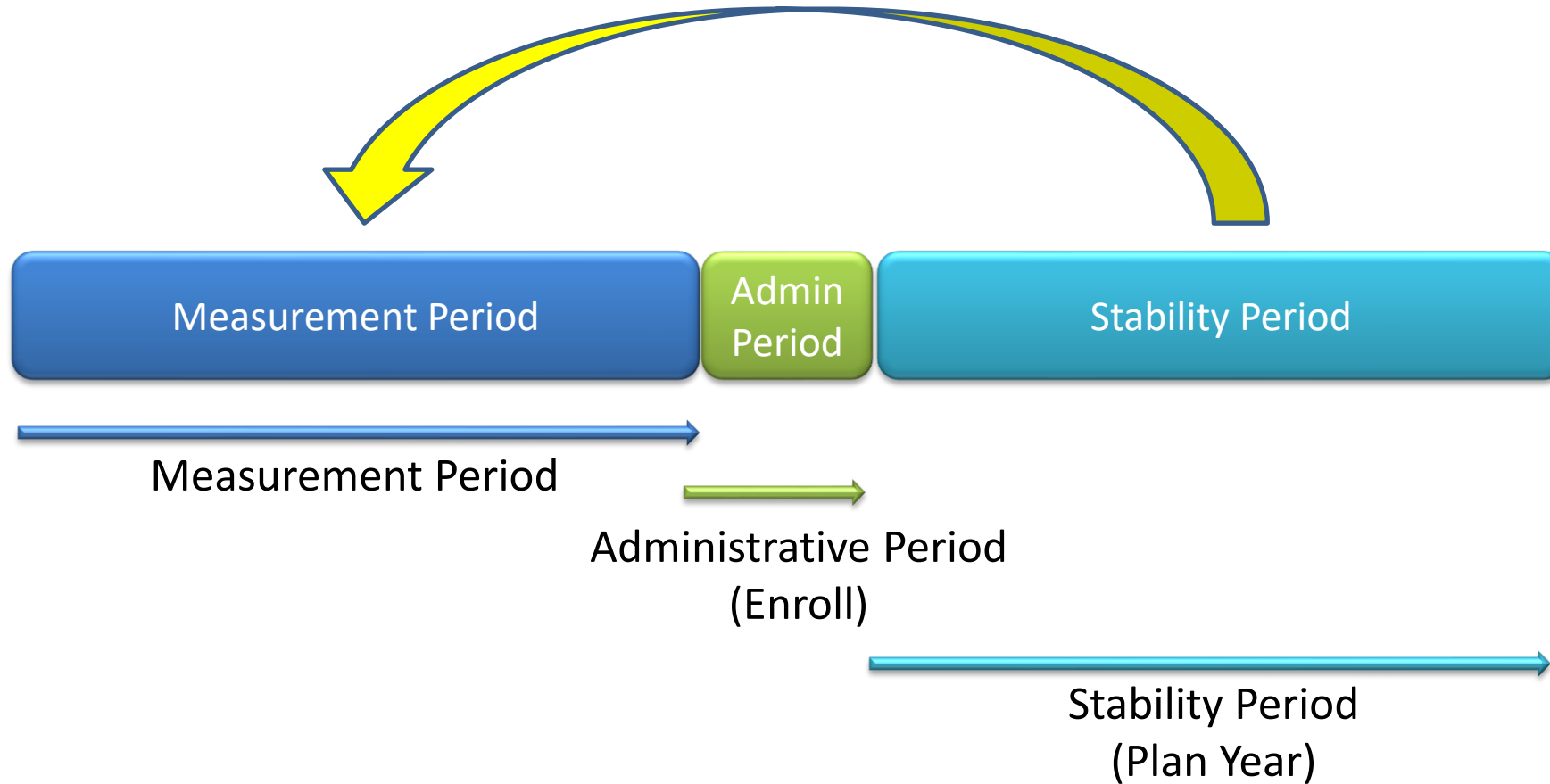
- ALEs only have to offer coverage to “**common law**” employees, not independent contractors; therefore, employers must determine who is a “common law” employee
- How the “common law” standard applies:
  - Anyone who performs services for you is generally your employee if you have the right to control what will be done and how it will be done
  - Labels and contract terms are not controlling
- Misclassification could result in ACA penalties (§4980H and IRS 1094/1095 reporting penalties), and other labor law penalties
- **Resources:** IRS Publication 15-A (brief summary)
- **Compliance Tip:** If in doubt, consult employment lawyer (**note:** new ABC test in California)

# Second, Who Is a Full-Time Employee?

- Under the ACA, anyone who works on average **30** hours or more per weeks is a full-time (FT) employee
- To track hours and determine status as a FT employee, use either:
  - **Monthly** measurement method, or
  - **Look-back measurement method (LBMM)** (often used by employers with many variable hour, part-time (PT), or seasonal employees)
- **The look-back measurement method (LBMM):**
  - Hours are measured during “**measurement period**” (3-12 months)
  - Employees are enrolled during the “**administrative period**”
  - Full-time status is locked in during the “**stability period**”
- **Compliance Tip:** Must document method used in eligibility provisions of health plan documents



# Look-Back Measurement Method



# How to Apply the LBMM to Both New and On-Going Employees

- **Example:** Alpha Corp., an ALE, is a retail business, with both office staff (FT) and sales staff (variable hour). Alpha has many long-term employees and will also be hiring new staff this year. Alpha has a calendar year plan year (1/1 – 12/31).
- Three sets of rules within the look-back measurement method:
  - Rules for **new full-time employees** – employees who are reasonably expected to work on average 30 hours per week; they are offered coverage as soon as waiting period (no more than 90 days) ends
  - Rules for **new non-FT employees** – new variable hour, seasonal, and part-time (PT) employees
  - Rules for **ongoing employees** – employees who have been employed for at least one full standard measurement period
- Create “**initial**” measurement, administrative, and stability periods for **new non-FT employees**, which will start upon hire
- Create “**standard**” measurement, administrative, and stability periods for **on-going employees**

# Variable Hour & Seasonal Employees

- **Variable hour employee** means an employee if, based on the facts and circumstances at the employee's start date, the ALE cannot determine whether the employee is reasonably expected to work on average at least 30 hours of service per week during the initial measurement period because the employee's hours are variable or otherwise uncertain
  - **Factors to apply:** Whether the employee is replacing an employee who was a full-time or a variable hour employee; the extent to which the hours of service of employees in the same or comparable positions have actually varied above and below an average of 30 hours of service per week during recent measurement periods; and whether the job was advertised, communicated to the new employee, or documented (for example, through a contract or job description) as requiring hours of service that would average at least 30 hours of service per week, less than 30 hours of service per week, or may vary above and below an average of 30 hours of service per week. No single factor is determinative. It is not relevant that the employee may terminate employment before the end of the initial measurement period.
- **Seasonal employee** means an employee who is hired into a position for which the customary annual employment is six months or less
  - **Factors to apply:** Customary means that by the nature of the position an employee typically works for a period of six months or less, and that period should begin each calendar year in approximately the same part of the year, such as summer or winter, such as a ski instructor.

# Look-Back Measurement Method: New Hire Examples

- **Facts:** Alpha has established 12-month **initial** measurement and stability periods (no administrative period, for purposes of these examples). Alpha has a calendar year plan year (Jan. 1 – Dec. 31).
- **Example 1:** Beth starts work 7/1/21 as a bookkeeper in the store's administrative office. Beth is expected to work 35 or more hours each week.
- **Conclusion:** Beth is deemed a new full-time employee and she should be offered coverage as soon as the plan's waiting period (no more than 90 days) ends.
- **Example 2:** Joe starts work 7/1/21 as a sales associate. Joe's hours are not fixed. Joe is a variable hour employee who is expected to work between 20 and 40 hours per week.
- **Conclusion:** Joe will be measured (hours tracked) during an initial 12-month measurement period. If Joe works on average 30 hours or more during the measurement period, Joe will be entitled to an offer of coverage for the following 12-month stability period (starting 7/1/22).

# Look-Back Measurement Method: New Hire Example

Example 2:

Joe – New Variable Hour Employee

**Initial Measurement Period**  
July 1, 2021 - June 30, 2022

**Initial Stability Period**  
July 1, 2022 – June 30, 2023



# Look-Back Measurement Method: Another New Hire Example

- **Same Facts:** Alpha has established 12-month **initial** measurement and stability periods (no administrative period, for purposes of these examples).
- **Example 3:** Alpha hires Amy—as a common law employee—for a specific IT project. Amy is given a 6-month contract. Amy starts work 7/1/22. Amy’s contract, and her employment, will end on December 31, 2022. From her start date, Amy is expected to work 35 or more hours each week.
- **Conclusion:** Amy is deemed a new full-time employee and she should be offered coverage as soon as the plan’s waiting period (no more than 90 days) ends.

# Look-Back Measurement Method: On-Going Employee Examples

- **Example—Same Facts:** Alpha Corp., an ALE, is a retail business, with both office staff (FT) and sales staff (variable hour). Alpha has a calendar year plan year (Jan. 1 – Dec. 31).
- Under the LBMM (for 2022 plan year),
  - Alpha has established a 12-month **standard measurement** period (Nov. 1, 2020 – Oct. 31, 2021)
  - Alpha has established a 2-month **administrative** period (Nov. 1, 2021 – Dec. 31, 2021) (enrollment period)
  - Alpha has established a 12-month **standard stability** period (Jan. 1, 2022 – Dec. 31, 2022) (the same as the plan year)
- These periods will repeat each year

# Measuring On-Going Employee under LBMM

On-Going Employee Full-Time Status Determination  
Calendar Year Plan Year

A.K.A.  
Plan Year

Standard Measurement Period  
November 1- October 31

Admin Period  
Nov 1 - Dec 31

Standard Stability Period  
January 1- December 31





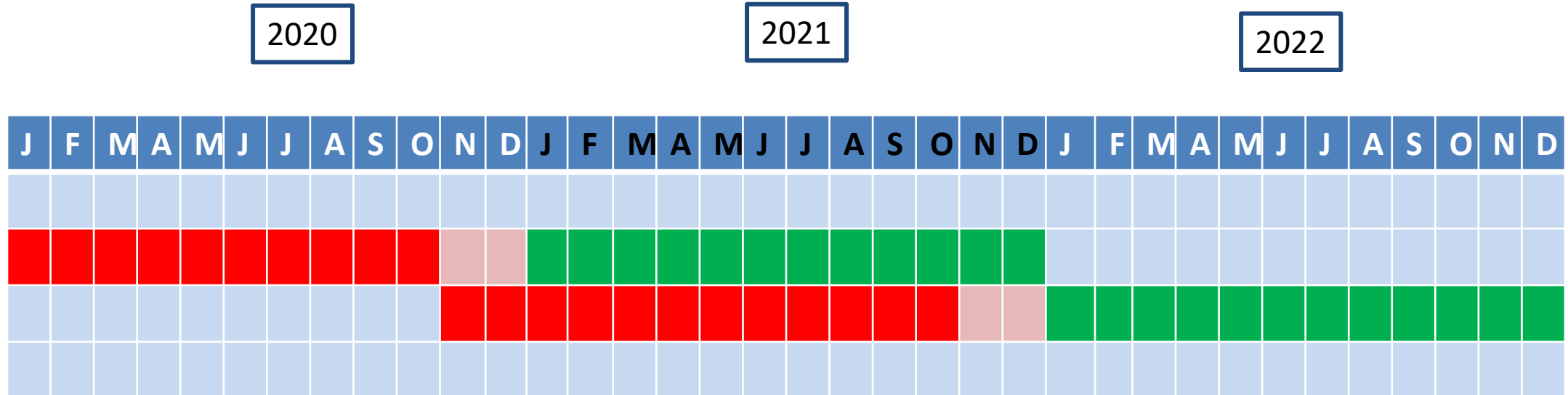
# LBMM: Standard Measurement/Stability Periods: Calendar/Plan Year Examples

<b>Plan Year</b>	<b>Standard Measurement Period</b>	<b>Standard Administrative Period</b>	<b>Standard Stability Period (Plan Year)</b>
2020 Plan Year	Nov. 1, 2018 – Oct. 31, 2019	Nov. 1, 2019 – Dec. 31, 2019	Jan. 1, 2020 – Dec. 31, 2020
2021 Plan Year	Nov. 1, 2019 – Oct. 31, 2020	Nov. 1, 2020 – Dec. 31, 2020	Jan. 1, 2021 – Dec. 31, 2021
2022 Plan Year	Nov. 1, 2020 – Oct. 31, 2021	Nov. 1, 2021 – Dec. 31, 2021	Jan. 1, 2022 – Dec. 31, 2022
2023 Plan Year	Nov. 1, 2021 – Oct. 31, 2022	Nov. 1, 2022 – Dec. 31, 2022	Jan. 1, 2023 – Dec. 31, 2023

# Look-Back Measurement Method: On-Going Employee Examples

- **Example 1:** Meg has worked for Alpha for several years as a sales associate. Her hours are not fixed. During the last standard measurement period (Nov. 1, 2020 – Oct. 31, 2021), Meg worked on average 35 hours each week.
- **Conclusion:** Meg must be offered coverage for the next 12-month standard stability period (Jan. 1, 2022 – Dec. 31, 2022).
  
- **Example 2:** John has worked for Alpha for several years as a sales associate. His hours are not fixed. During the last standard measurement period (Nov. 1, 2020 – Oct. 31, 2021), John worked on average 25 hours per week.
- **Conclusion:** John is not entitled to an offer of coverage for the following 12-month stability period (Jan. 1, 2022 – Dec. 31, 2022).

# Look-Back Measurement Method: Calendar/Plan Year Example



Alpha's standard measurement (red), standard administrative (pink), and standard stability (green) periods

# Look-Back Measurement Method: Transition from Initial to Standard Example

- Alpha has 12-month **initial measurement and initial stability** periods (no administrative period), beginning on hire date. Alpha has a calendar year plan.
- **Example:** Bob starts work 7/1/20 as a sales associate. He is a variable hour employee who is expected to work between 20 and 40 hours per week.
- **Conclusion:** Bob's hours are tracked during the initial 12-month measurement period (7/1/20 – 6/30/21). Bob worked on average 35 hours/week during this time. Bob is entitled to an offer of coverage for his **initial stability period** of 12 months (7/1/21-6/30/22).
- **Transition:** Once Bob has been employed for **full standard measurement period** (11/1/20-10/31/21), his hours are measured during that standard measurement period. Bob worked an average of 35 hours/week during this measurement period; Bob is entitled to coverage through all of 2022.

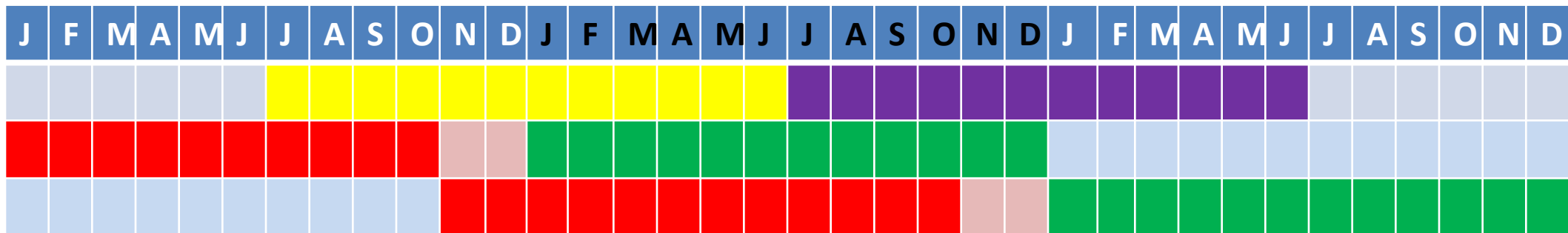
# Look-Back Measurement Method: Transition from Initial to Standard Example

Bob – New Variable Hour Employee

2020

2021

2022



Yellow: Bob's initial 12-month measurement period

Purple: Bob's initial 12-month stability period

2<sup>nd</sup> & 3<sup>rd</sup> Rows: Alpha's standard measurement (red) & stability (green) periods

From 11/20 – 6/21, Bob is measured for two purposes (initial and standard)

# Step 3: The §4980H Employer Shared Responsibility Penalties



## Step 3: The §4980H Penalties Overview

- To avoid the §4980H(a) and (b) penalties, the ALE member must offer “**minimum essential coverage**” (**MEC**) to at least 95% of its full-time employees and their dependent children (not spouses); coverage must also be “**affordable**” and of “**minimum value**” (**MV**) to avoid a §4980H(b) penalty (more to follow)
- **Full-time employees:** An employee who is employed an average of 30 hours of service per week
  - Do not have to offer coverage to PT employees
  - Do not have to offer coverage during “limited non-assessment periods” (LNPs), such as a waiting period or initial measurement period
- **Note:** If coverage not offered for any day of a calendar month, it is treated as if no coverage offered for entire month
- **Compliance Tip:** SBC states whether plan is MEC and MV

# ACA Section 4980H Compliance

ACA § 4980H Compliance	2023	2022	2021
<b>ACA Affordability Percentage</b>	9.12%	9.61%	9.83%
<b>Section 4980H(a) Penalty</b>	\$2,880	\$2,750	\$2,700
<b>Section 4980(b) Penalty</b>	\$4,320	\$4,120	\$4,060
<b>Failure to Furnish/File Penalty - IRS</b>	\$290	\$280	\$280
<b>Failure to File Penalty - FTB</b>	\$50	\$50	\$50
<b>CA Minimum Wage</b>	\$15.50	\$15	\$14
<b>Federal Poverty Level (48 states/DC)</b>	\$14,580	\$13,590	\$12,880



#### Excluded Services & Other Covered Services:

##### Services Your [Plan](#) Generally Does NOT Cover (Check your policy or [plan](#) document for more information and a list of any other [excluded services](#).)

- Cosmetic surgery
- Dental care (Adult)
- Infertility treatment
- Long-term care
- Non-emergency care when traveling outside the U.S.
- Private-duty nursing
- Routine eye care (Adult)
- Routine foot care

##### Other Covered Services (Limitations may apply to these services. This isn't a complete list. Please see your [plan](#) document.)

- Acupuncture (if prescribed for rehabilitation purposes)
- Bariatric surgery
- Chiropractic care
- Hearing aids
- Weight loss programs

**Your Rights to Continue Coverage:** There are agencies that can help if you want to continue your coverage after it ends. The contact information for those agencies is: [insert State, HHS, DOL, and/or other applicable agency contact information]. Other coverage options may be available to you, too, including buying individual insurance coverage through the [Health Insurance Marketplace](#). For more information about the [Marketplace](#), visit [www.HealthCare.gov](http://www.HealthCare.gov) or call 1-800-318-2596.

**Your Grievance and Appeals Rights:** There are agencies that can help if you have a complaint against your [plan](#) for a denial of a [claim](#). This complaint is called a [grievance](#) or [appeal](#). For more information about your rights, look at the [description of benefits](#) you will receive for that medical [claim](#). Your [plan](#) documents also provide complete information on how to submit a [claim](#), [appeal](#), or a [request for any reason](#) to your [plan](#). For more information about your rights, this notice, or assistance, contact: [insert applicable contact information from insert applicable contact information].

**Does this plan provide Minimum Essential Coverage? Yes.**

[Minimum Essential Coverage](#) generally includes [plans](#), [health insurance](#) through the [Marketplace](#) or other individual market policies, Medicare, Medicaid, CHIP, TRICARE, and certain other coverage. If you are eligible for [certain types of Minimum Essential Coverage](#), you may not be eligible for the [premium tax credit](#).

**Does this plan meet the Minimum Value Standards? Yes.**

If your [plan](#) doesn't meet the [Minimum Value Standards](#), you may be eligible for a [premium tax credit](#) to help you pay for a [plan](#) through the [Marketplace](#).

#### Language Access Services:

[Spanish (Español): Para obtener asistencia en Español, llame al [insert telephone number].]

[Tagalog (Tagalog): Kung kailangan ninyo ang tulong sa Tagalog tumawag sa [insert telephone number].]

[Chinese (中文): 如果需要中文的帮助, 请拨打这个号码[insert telephone number].]

[Navajo (Dine): Dinek'ehgo shika a'ohwol ninisingo, kwijigo holne' [insert telephone number].]

*To see examples of how this [plan](#) might cover costs for a sample medical situation, see the next section.*

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# Penalties: §4980H(a)



- If the employer does **not** offer **MEC** to at least **95%** of its FT employees (and their dependent children),
- And at least 1 FT employee enrolls in an individual plan through a Marketplace (such as Covered CA) and receives a “premium tax credit” (PTC or APTC),
- Then the employer will be assessed an (a) penalty:
  - For **2023**, penalty is **\$2,880** per year (\$240/month) per FT employee, but do not count first 30 FT employees
  - **2023 Example:** In 2023, ALE with 200 FT employees does not offer MEC coverage to at least 95% of its FT employees.  $200 \text{ FT} - 30 = 170$ ;  $170 \times \$2,880 = \$489,600$  penalty
- **Note:** Exchanges (Covered CA) have been notifying employers when employees receive an APTC (more later)

# Penalties: §4980H(b)

- If employer offers enrollment in **MEC** to at least **95%** of its F/T employees (and their dependent children),
- But the value of coverage is not “**minimum value**” (**MV**) or is not “**affordable**” (so that an individual qualifies for a premium tax credit (PTC or APTC)), and
- At least one FT employee enrolls in an individual plan through a Marketplace (such as Covered CA), and receives a PTC or APTC,
- Then the employer will be penalized:
  - For **2023**, the lesser of \$2,700 per FT employee (less 30 FT employees) or **\$4,320** (\$360/month) per FT employee receiving PTC
  - **2023 Example:** In 2023, ALE offers MEC coverage to 95% of its FT employees, but coverage is not MV and affordable; 5 FT employees receive PTC; 2023 penalty is \$21,600

# Affordable

- Employer coverage is **not affordable** if *employee contribution* toward *self-only premium* for the employer's *lowest-cost plan* that provides "**minimum value**" (**MV**) exceeds 9.5% of "*household income*"–
  - 9.83% for 2021; 9.61% for 2022; **9.12% for 2023**
- ALE may determine affordability based on one of the three **safe harbor** methods: **W-2, rate of pay, federal poverty line (FPL)**
- **Action Item:** Recalculate affordability (contributions) each year:
  - Affordability percentage adjusts each year (see above)
  - Rate of pay could change with changes in minimum wage
    - CA 2023: **\$15.50/hr** (may be higher in some municipalities)
  - FPL will adjust each year; may use FPL in effect 6 mos. prior to plan year:
    - 2023 FPL is **\$14,580** for continental US, 1-person home
- **Note:** Cost to buy up from lowest-cost plan & cost of dependent coverage are N/A

# Safe Harbor Examples (2023)

## W-2

- Box 1 wages: \$32,240 (\$15.50/hour, 40 hours/week)
- $\$32,240 \div 12 = \$2,686.67$
- $\$2,686.67 \times .0912 = \mathbf{\$245.02}$

## Rate of Pay

- Based on a formula, not actual hours worked
- $\$15.50 \times 130 = \$2,015$ ;  $\$2,015 \times .0912 = \mathbf{\$183.79}$
- $\$7.25 \times 130 = \$942.50$ ;  $\$942.50 \times .0912 = \mathbf{\$85.96}$

## FPL

- 2022 FPL: \$13,590;  $\$13,590 \div 12 = \$1,132.50$ ;  $\$1,132.50 \times .0912 = \mathbf{\$103.28}$
- 2023 FPL: \$14,580;  $\$14,580 \div 12 = \$1,215$ ;  $\$1,215 \times .0912 = \mathbf{\$110.81}$

# Safe Harbor Examples (2022)

W-2

- Box 1 wages: \$29,120 (\$15/hour, 40 hours/week)
- $\$31,200 \div 12 = \$2,600$
- $\$2,600 \times .0961 = \mathbf{\$249.86}$

Rate of  
Pay

- Based on a formula, not actual hours worked
- $\$15 \times 130 = \$1,950$
- $\$1,950 \times .0961 = \mathbf{\$187.40}$

FPL

- 2021 FPL: \$12,880;  $\$12,880 \div 12 = \$1,073.33$ ;  $\$1,073.33 \times .0961 = \mathbf{\$103.15}$
- 2022 FPL: \$13,590;  $\$13,590 \div 12 = \$1,132.50$ ;  $\$1,132.50 \times .0961 = \mathbf{\$108.83}$



# The Family Glitch



# The Family Glitch

- **Affordability of Employer Coverage for Family Members of Employees Final Rule:** The final rule adopts an affordability test for employer-sponsored minimum essential coverage for purposes of the premium tax credit that takes into consideration the cost of covering an employee's family members in addition to that of the employee.
  - **Important:** Does not change affordability calculations for 4980H purposes
  - **Amended Form:** Employers may receive updated “**Employer Coverage Tool**” (Question 15)
  - **Effective:** December 12, 2022. **Application:** Tax years beginning **January 1, 2023**
- **IRS Notice 2022-41: Additional Permitted Election Changes for Health Coverage under Section 125 Cafeteria Plans:** This notice expands the application of the permitted change-in-status rules for health coverage (not health FSAs) under a cafeteria plan. The notice addresses the situation in which, during a plan year, a cafeteria plan participant may wish to revoke the employee’s election for other-than-self-only (family) coverage under a group health plan in order to allow one or more family members to enroll in a Qualified Health Plan (QHP) through a Health Insurance Exchange (Exchange) in the individual market.
  - **Effective:** For plan amendments allowing elections on/after **January 1, 2023**



# Employer Coverage Tool

Use this worksheet to help you gather information about employers that offer traditional health coverage to anyone on your Marketplace application. Complete one form for each employer that offers coverage. You'll need this information to complete the application, even if no one enrolls in coverage through their job (or the job of another person, like a spouse or parent).

Don't use this form if someone works for a business that offers help paying for a health plan or health care expenses through a Health Reimbursement Arrangement (HRA).

Visit [HealthCare.gov/have-job-based-coverage](https://www.healthcare.gov/have-job-based-coverage) for more details if you have (or got an offer for) job-based insurance.

## Tell us about the health coverage offered by this employer.

13. Do the plans offered by the employer meet the minimum value standard? A health plan meets the minimum value standard if it pays at least 60% of the total cost of medical services for a standard population and offers substantial coverage of hospital and doctor services. Most job-based plans meet the minimum value standard.

- YES** (Go to question 14.)  **NO** (STOP and return this form to employee.)  
 The employer offers plans that meet the minimum value standard to only the employee.

14. How much would the employee pay for themselves for the lowest-cost plan that meets the minimum value standard? Don't include family plans.

- a. Employee would pay this premium: \$   
b. Employee would pay this amount:  Weekly  Every 2 weeks  Twice a month  Monthly  Quarterly  Yearly

15. If other household members are listed for question 3: How much would the employee pay for the lowest-cost plan that covers the employee and the household members listed in question 3? If the employer offers wellness programs, enter the premium that the employee would pay if the employee got the maximum discount for any tobacco cessation programs and didn't get any other discounts based on wellness programs.

- a. Employee would pay this premium: \$   
b. Employee would pay this amount:  Weekly  Every 2 weeks  Twice a month  Monthly  Quarterly  Yearly

# Step 4: IRS Forms 1094/1095

Form **1094-C**

**Transmittal of Employer-Provided Health Insurance Offer or Coverage Information Returns**

► Information about Form 1094-C and its separate instructions is at [www.irs.gov/efile](#)

**Part I Applicable**

1 Name of ALE Member (Employer name) \_\_\_\_\_

2 Employer identification number (EIN) \_\_\_\_\_

3 Street address (including room or suite no.) \_\_\_\_\_

4 City or town \_\_\_\_\_

5 State or province \_\_\_\_\_

6 Country \_\_\_\_\_

7 Name of person to contact \_\_\_\_\_

8 Telephone number \_\_\_\_\_

9 Name of Designated Government Entity (or other applicable) \_\_\_\_\_

10 EIN of Designated Government Entity \_\_\_\_\_

11 Street address (including room or suite no.) \_\_\_\_\_

12 City or town \_\_\_\_\_

13 State or province \_\_\_\_\_

14 Name of person to contact \_\_\_\_\_

15 Telephone number \_\_\_\_\_

# Why It Matters

- The IRS needs to know:
  1. Prior to 2019, whether individuals have health coverage (if not, they had to pay an individual shared responsibility penalty)
  2. Whether individuals who obtained coverage from the Marketplace (Covered CA) are entitled to a subsidy (or premium tax credit (PTC or APTC)) (and they are not if offered employer coverage that is MEC, MV, & affordable)
  3. Whether large employers (ALE members) owe an employer shared responsibility penalty (a §4980H(a) or (b) penalty)
- These forms provide the data needed to make these determinations
- The forms which have to be prepared, furnished, and filed:
  - **Form 1094-C** (transmittal) (typically, one form per employer)
  - **Form 1095-C** (employee statement) (typically, one for each FT employee)
- **Note:** Even ALEs that do not offer coverage must furnish and file the forms

# New Developments

- We will talk about these new developments:
  - No more good faith penalty relief, and what that means to employers (**getting it right!**)
  - Extension of time to furnish forms—adopted
  - Alternative distribution method for Forms 1095-B—adopted
  - Forms 1095-C adjusted to accommodate individual coverage health reimbursement arrangements (ICHRAs)
  - Modified IRS electronic filing rules—proposed
  - State reporting mandates
- **Penalties & Affordability:** The affordability percentage for 2023 is **9.12%** (down from 9.61% for 2022). The adjusted 4980H(a) and (b) penalties for 2023 are \$2,880 and \$4,320.

# ACA Reporting: New Regulations

- **First:** No good faith penalty relief if forms are furnished and filed on time but are incorrect or incomplete; penalty is \$290/form (adjusted annually)
- **Second:** Automatic 30-day extension to furnish the Forms 1095-C in perpetuity; new date is March 2; no further extensions will be granted
- **Third:** Automatic 30-day extension to furnish the Forms 1095-B in perpetuity; new date is March 2; no further extensions will be granted
- **Fourth:** Alternative distribution method for Forms 1095-B—posting information on website (following the rules) and then providing a copy within 30 days
- **Action Items for Employers:** Because no more good faith penalty relief, the time is right to make certain you are filling out the forms correctly; re-assess your processes; review your vendor contracts

# ACA Reporting: Proposed IRS Rule

- **IRS Electronic-Filing Requirements—Proposed Rule:** On July 23, the IRS issued a **proposed rule** on “Electronic-Filing Requirements for Specified Returns and Other Documents.” Comments were due **September 21, 2021**.
- Currently, electronic filing is only mandatory if the filer files 250 or more of a particular form. That standard will change under the proposed rule for Forms 1094/1095, W-2, and 1099.
- **Example:** Under the proposed rule, employers filing Forms 1094/1095 would have to file electronically unless they file fewer than **100** returns during calendar year **2022**, and fewer than **10** returns during **2023** and after.
- **Aggregation:** Also, employers will have to add various forms together (1095s, W-2s, etc.) to determine if the threshold is met. Finally, corrected returns must be filed in the same manner as the original filing. There are also proposed rules on Forms 5500.
- **Action Items for Employers:** Watch for final rule and, if adopted, work with vendors or set up for e-filing

# Forms 1094/1095: Deadlines for 2022 Forms

Employer Obligation	Due Date
Furnishing 1095-Cs to Employees	<b>March 2, 2023</b> (no additional extensions)
Filing 1094-C and 1095-Cs with the IRS (on paper)	<b>February 28, 2023</b>
Filing 1094-C and 1095-Cs with the IRS (electronically) (required if filing $\geq 250$ 1095-Cs)	<b>March 31, 2023</b>

- Employers may file a Form 8809 to obtain a 30-day extension to file the forms with IRS.
- Small employers that self-fund must file and furnish Forms 1094-B and 1095-B.

These deadlines also apply to the Forms 1095-B from insurers/HMOs.



# Employer IRS Filing Requirements

	Insured Health Plan	Self-Insured Health Plan
Small Employer (Fewer than 50 FTE employees)	<ul style="list-style-type: none"> <li>● Employer does <u>not</u> file 1094-C or 1095-C</li> <li>● Insurer files 1095-B</li> </ul>	<ul style="list-style-type: none"> <li>● Employer files 1094-B and 1095-B</li> </ul>
Applicable Large Employer (ALE) (50 to 99 FTE employees)	<ul style="list-style-type: none"> <li>● Employer files 1094-C and 1095-C (completes Parts I and II)</li> <li>● Insurer files 1095-B</li> </ul>	<ul style="list-style-type: none"> <li>● Employer files 1094-C and 1095-C (completes Parts I, II, and III)</li> </ul>
Applicable Large Employer (ALE) (100 or more FTE employees)	<ul style="list-style-type: none"> <li>● Employer files 1094-C and 1095-C (completes Parts I and II)</li> <li>● Insurer files 1095-B</li> </ul>	<ul style="list-style-type: none"> <li>● Employer files 1094-C and 1095-C (completes Parts I, II, and III)</li> </ul>



# Forms 1094/1095: Key Changes & Reminders

- **Changes to 2020-2022 Forms 1095-C:**
  - Plan Start Month: Now required (for everyone)
  - Individual Coverage Health Reimbursement Arrangements (ICHRA):
    - Codes 1L – 1U added for line 14
    - Line 17 for ZIP code added
    - Line for “Employee’s Age on January 1” added
  - Part III—Covered Individuals (Lines 18–30)—for self-funded plans—moved to page 3

Changes to Form 1095-C for 2020-2022.

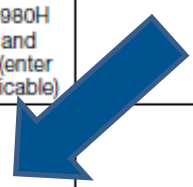
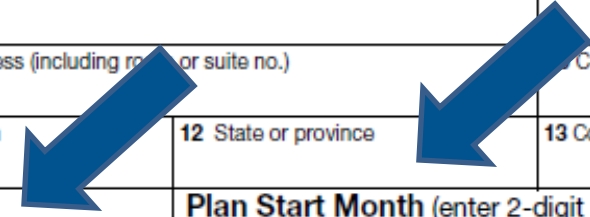
Form **1095-C**  
 Department of the Treasury  
 Internal Revenue Service

**Employer-Provided Health Insurance Offer and Coverage**  
 Do not attach to your tax return. Keep for your records.  
 Go to [www.irs.gov/Form1095C](http://www.irs.gov/Form1095C) for instructions and the latest information.

VOID  
 CORRECTED

OMB No. 1545-2251  
2022

Part I Employee				Applicable Large Employer Member (Employer)									
1 Name of employee (first name, middle initial, last name)		2 Social security number (SSN)		7 Name of employer					8 Employer identification number (EIN)				
3 Street address (including apartment no.)				9 Street address (including room or suite no.)					Contact telephone number				
4 City or town		5 State or province		6 Country and ZIP or foreign postal code			11 City or town		12 State or province		13 Country and ZIP or foreign postal code		
Part II Employee Offer of Coverage				Employee's Age on January 1					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)													
17 ZIP Code													



For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60705M Form 1095-C (2022)

Part III – Where self-insured employers provide information on “Covered Individuals” – has been moved to page 3 of the form.

# California Minimum Essential Coverage Individual Mandate (S.B. 78)

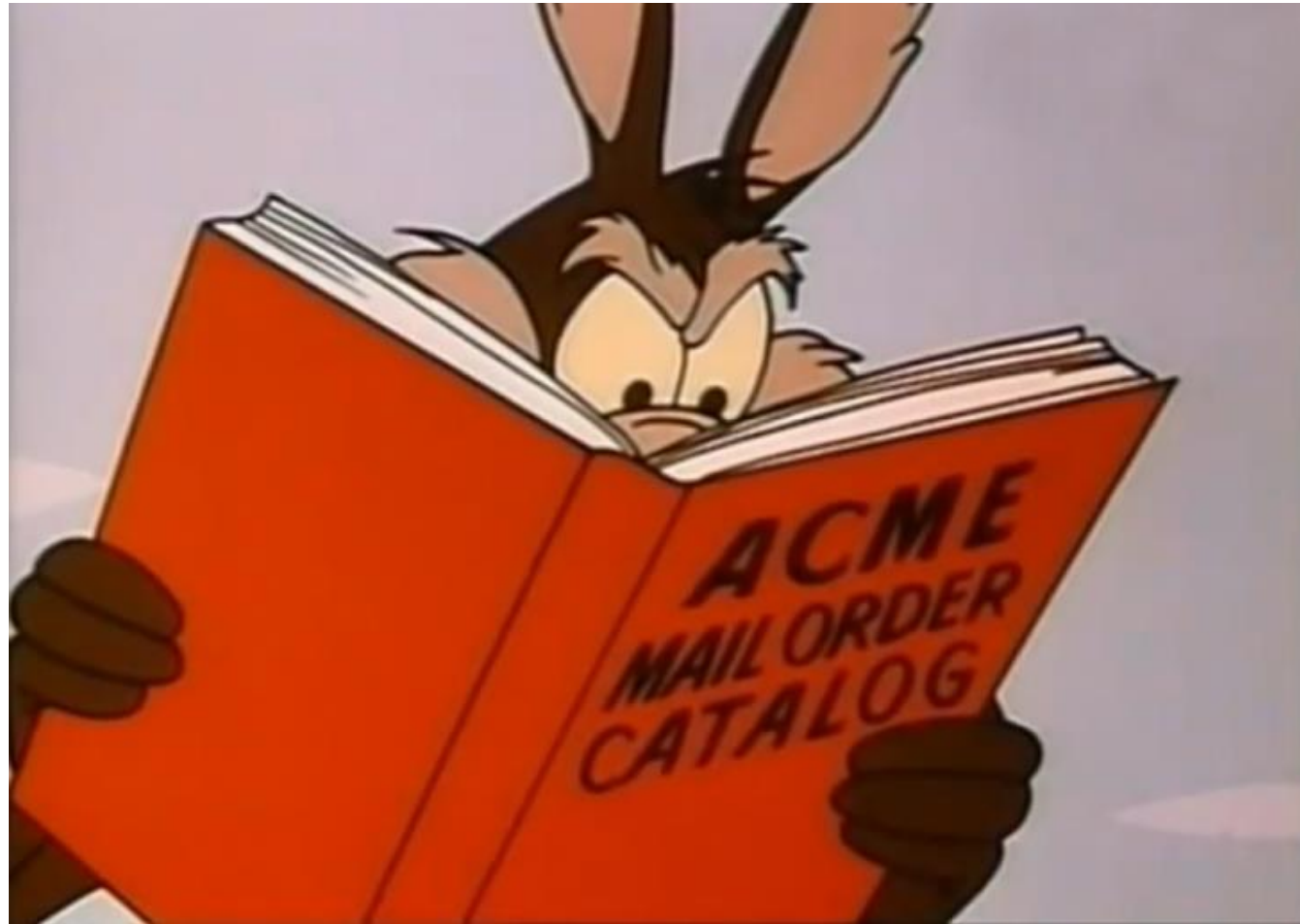
- The federal Tax Cuts & Jobs Act reduced the ACA's individual shared responsibility penalty to zero, effective **12/31/18**; effective **1/1/20**, Californians must have MEC or pay penalty to **FTB**
- **Reporting:** S.B. 78 contains a reporting requirement (\$50/form penalty):
  - Employers must distribute and file with the FTB Forms 1094/1095, unless carrier files (so, self-funded employers must comply); if filing electronically, **register** w/ MEC IR system
  - **Resources:** FTB website; Publications 3895B and 3895C

Insurer/Employer Obligation	Due Date
Furnishing Forms 1095-B/C to Employees	January 31, 2023
Filing Forms 1094/1095-B/C with the FTB (electronic filing required if filing ≥250 1095-Cs)	March 31, 2023 (extended to <b>May 31, 2023</b> )

# State Individual Mandates & Filing Requirements

- Which other jurisdictions have an individual coverage mandate?
  - **D.C.:** Individual Taxpayer Health Insurance Responsibility Requirement Amendment Act of 2018 includes a filing requirement with the Office of Tax and Revenue (OTR) (Notice 2019-04 & 2020-04)
  - **Massachusetts:** The Health Care Reform Law includes a filing requirement with the Department of Revenue (DOR)
  - **New Jersey:** The Health Insurance Market Preservation Act includes a filing requirement with the Division of Taxation
  - **Rhode Island:** The Market Stability and Reinsurance Act includes a reporting requirement to the Dept. of Revenue Div. of Taxation (2019 Ch. 88, HB 5151 Art. 11)
  - **Vermont:** The Requirement to Maintain Minimum Essential Coverage does not appear to include a filing requirement; check with state (2019 Act 63, HB 524)
- **Note:** State law may also include notice furnishing requirements

# How to Complete the Forms



# How to Complete the Forms: Scenario 1

- Acme Consulting, Inc. has 120 FT employees at beginning of 2022 and 20 PT employees
- Calendar year plan (Jan. 1 – Dec. 31)
- Acme offers MEC coverage to all FT employees, spouses, & dependents
  - So, MEC coverage offered to at least 95% of FT employees and dependent children
- Coverage is fully insured, MV, and “affordable”
  - \$100/mo. for self-only coverage for the lowest cost plan (FPL)
- John Q. Participant was hired (\$15/hr) and started work on 2/1/22
- Because of a waiting period, John was offered coverage and he enrolled the first of the month after his hire date (3/1); he also enrolled his wife (Susan) and daughter (Emma)
- Acme had no other terminations or new hires during the year
- Acme is not part of an aggregated (control) group

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

Go to [www.irs.gov/Form1094C](http://www.irs.gov/Form1094C) for instructions and the latest information.

CORRECTED

**Part I Applicable Large Employer Member (ALE Member)**

1 Name of ALE Member (Employer) <b>Acme Consulting, Inc.</b>		2 Employer identification number (EIN) <b>55-5555555</b>
3 Street address (including room or suite no.) <b>123 Pacific Avenue</b>		
4 City or town <b>Marina del Rey</b>	5 State or province <b>CA</b>	6 Country and ZIP or foreign postal code <b>USA 90292</b>
7 Name of person to contact <b>Robert Smith</b>		8 Contact telephone number <b>555-555-5555</b>
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

**For Official Use Only**



17 Reserved

18 Total number of Forms 1095-C submitted with this transmittal **121**

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 **121**

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. Reserved  C. Reserved  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 CFO Date

**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) Reserved
		Yes	No				
23	All 12 Months	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>	120	120	<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>	120	121	<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	
28	May	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	
29	June	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	
30	July	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	
31	Aug	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	
32	Sept	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	
33	Oct	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	
34	Nov	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	
35	Dec	<input type="checkbox"/>	<input type="checkbox"/>	121	121	<input type="checkbox"/>	





**Part IV Other ALE Members of Aggregated ALE Group**

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

Name	EIN	Name	EIN
36		51	
37		52	
38		53	
39		54	
40		55	
41		56	
42		57	
43		58	
44		59	
45		60	
46		61	
47		62	
48		63	
49		64	
50		65	

## Form 1095-C, Part II, Line 14:

### Indicator Code Series 1 for “Offer of Coverage” —Abbreviated!

**1A. Qualifying Offer:** MEC, MV coverage offered to employee, FPL safe harbor, & at least MEC offered to spouse and dependent(s).

**1B.** MEC, MV offered to employee only.

**1C.** MEC, MV offered to employee, & at least MEC offered to dependent(s) (not spouse).

**1D.** MEC, MV offered to employee, & at least MEC offered to spouse (not dependent(s)).

**1E.** MEC, MV offered to employee, & at least MEC offered to dependent(s) and spouse.

**1F.** MEC not providing MV offered to employee; employee & spouse or dependent(s); or employee, spouse, & dependents.

**1G.** ER offered self-insured coverage and individual enrolled for one or more months, and individual either was not an employee for any month of the year, or was an employee but was not F/T for any month of the year.

**1H.** No offer of coverage.

**1I.** Reserved.

**1J.** MEC, MV offered to employee, & at least MEC conditionally offered to spouse; MEC not offered to dependent(s).

**1K.** MEC, MV offered to employee; at least MEC offered to dependents; & at least MEC conditionally offered to spouse.

**1L – 1U.** For ICHRAs.

**1V – 1Z.** Reserved.

## Form 1095-C, Part II, Line 16: Indicator Code Series 2 for “Section 4980H Safe Harbor and Other Relief” —Abbreviated!

**Note:** If no indicator code applies, leave line 16 blank. If more than one code applies, generally enter 2C (if enrolled in minimum essential coverage) or, if not enrolled, follow ordering rules in the descriptions of the indicator codes.

**Note:** There is no specific code to enter on line 16 to indicate that a full-time employee offered coverage either did not enroll in the coverage or waived the coverage.

**2A.** Employee not employed during the month.

**2B.** Employee not a full-time employee.

**2C.** Employee enrolled in health coverage offered.

**2D.** Employee in a section 4980H(b) Limited Non-Assessment Period (LNP).

**2E.** Multiemployer interim rule relief.

**2F.** Section 4980H affordability Form W-2 safe harbor.

**2G.** Section 4980H affordability federal poverty line safe harbor.

**2H.** Section 4980H affordability rate of pay safe harbor.

**2I.** Reserved.

## Employer-Provided Health Insurance Offer and Coverage

Do not attach to your tax return. Keep for your records.  
 Go to [www.irs.gov/Form1095C](http://www.irs.gov/Form1095C) for instructions and the latest information.

VOID  
 CORRECTED

OMB No. 1545-2251  
**2022**

Part I Employee				Applicable Large Employer Member (Employer)			
1 Name of employee (first name, middle initial, last name) John		2 Social security number (SSN) Participant Q 555-55-5555		7 Name of employer Acme Consulting, Inc.		8 Employer identification number (EIN) 55-555555	
3 Street address (including apartment no.) 456 Main Street				9 Street address (including room or suite no.) 123 Pacific Avenue		10 Contact telephone number 555-555-5555	
4 City or town Marina del Rey		5 State or province CA		11 City or town Marina del Rey		12 State or province CA	
				13 Country and ZIP or foreign postal code USA 90292			

Part II Employee Offer of Coverage	Employee's Age on January 1												Plan Start Month (enter 2-digit number):	
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	01
14 Offer of Coverage (enter required code)		1H	1H	1A	1A	1A	1A	1A	1A	1A	1A	1A	1A	1A
15 Employee Required Contribution (see instructions)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)		2A	2D	2C	2C	2C	2C	2C	2C	2C	2C	2C	2C	2C
17 ZIP Code														

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form **1095-C** (2022)

**2A = Not employed during the month**  
**2D = LNP (waiting period)**  
**2C = Enrolled**

**1H = No offer of coverage**  
**1A = MEC, MV, FPL offered to employee; MV offered to spouse & dependent(s)**

# Scenario 2: Use Rate of Pay Safe Harbor; Cost of Self-Only Coverage Is \$187/mo.

**Form 1095-C**  
Department of the Treasury  
Internal Revenue Service

**Employer-Provided Health Insurance Offer and Coverage**  
Do not attach to your tax return. Keep for your records.  
Go to [www.irs.gov/Form1095C](http://www.irs.gov/Form1095C) for instructions and the latest information.

VOID  
 CORRECTED

OMB No. 1545-2251  
**2022**

Part I Employee				Applicable Large Employer Member (Employer)									
1 Name of employee (first name, middle initial, last name) John		2 Social security number (SSN) Q Participant 555-55-5555		7 Name of employer Acme Consulting, Inc.				8 Employer identification number (EIN) 55-5555555					
3 Street address (including apartment no.) 456 Main Street				9 Street address (including room or suite no.) 123 Pacific Avenue				10 Contact telephone number 555-555-5555					
4 City or town Marina del Rey		5 State or province CA		6 Country or foreign postal code USA 90292		11 City or town Marina del Rey		12 State or province CA		13 Country and ZIP or foreign postal code USA 90292			
Part II Employee Offer of Coverage													
Employee's Plan on January 1													
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)		1H	1H	1E	1E	1E	1E	1E	1E	1E	1E	1E	1E
15 Employee Required Contribution (see instructions)	\$	\$	\$	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)		2A	2D	2C	2C	2C	2C	2C	2C	2C	2C	2C	2C
17 ZIP Code													

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60705M Form 1095-C (2022)

**1H = No offer of coverage**  
**1E = MEC, MV offered to employee; MV offered to spouse & dependent(s)**

**Form 1094-C, Line 22: Do not check box A (because not using FPL safe harbor)**

## Scenario 3: Same Facts as Scenario 2, but John Waives Coverage

Form **1095-C**  
Department of the Treasury  
Internal Revenue Service

### Employer-Provided Health Insurance Offer and Coverage

Do not attach to your tax return. Keep for your records.

Go to [www.irs.gov/Form1095C](http://www.irs.gov/Form1095C) for instructions and the latest information.

VOID

CORRECTED

OMB No. 1545-2251

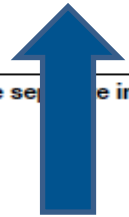
2022

Part I Employee				Applicable Large Employer Member (Employer)									
1 Name of employee (first name, middle initial, last name) John		2 Social security number (SSN) Q Participant 555-55-5555		7 Name of employer Acme Consulting, Inc.					8 Employer identification number (EIN) 55-5555555				
3 Street address (including apartment no.) 456 Main Street				9 Street address (including room or suite no.) 123 Pacific Avenue					10 Contact telephone number 555-555-5555				
4 City or town Marina del Rey		5 State or province CA		6 Country and ZIP or foreign postal code USA 90292			11 City or town Marina del Rey		12 State or province CA		13 Country and ZIP or foreign postal code USA 90292		
Part II Employee Offer of Coverage				Employee's Age on January 1					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)		1H	1H	1E	1E	1E	1E	1E	1E	1E	1E	1E	1E
15 Employee Required Contribution (see instructions)	\$	\$	\$	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00	\$ 187.00
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)		2A	2D	2H	2H	2H	2H	2H	2H	2H	2H	2H	2H
17 ZIP Code													

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form **1095-C** (2022)



**2A = Not employed during the month**  
**2D = LNP (waiting period)**  
**2H = Rate of pay safe harbor**

# Scenario 4: Same Facts as Scenario 2, but Plan Is Self-Funded

Form 1095-C (2022)

**Part III Covered Individuals**

If Employer provided self-insured coverage, check the box and enter the information for each individual enrolled in coverage, including the employee.

	(a) Name of covered individual(s) First name, middle initial, last name			(b) SSN or other TIN	(c) DOB (if SSN or other TIN is not available)	(d) Covered all 12 months	(e) Months of coverage											
							Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
18	John	Q	Participant	555-55-5555		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
19	Susan	A	Participant	444-44-4444		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
20	Emma	L	Participant	333-33-3333		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
21						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
22						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

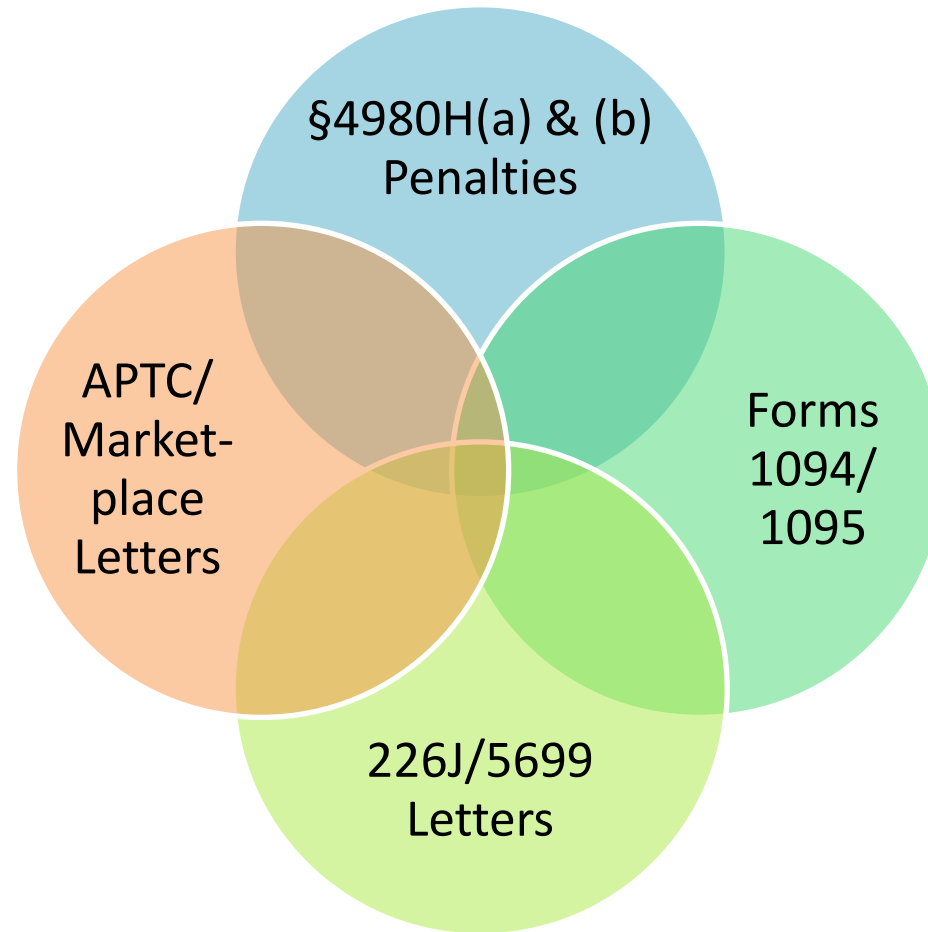


# Which IRS Forms Will Employees Receive?

<b>Employer &amp; Plan:</b>	<b>Full-Time Employees Will Receive:</b>
ALE and Fully Insured	<ul style="list-style-type: none"> <li>• Form 1095-C from employer</li> <li>• Form 1095-B from insurer/HMO</li> </ul>
ALE and Self-Funded	<ul style="list-style-type: none"> <li>• Form 1095-C from employer</li> <li>• Enrolled part-time employees will also receive Form 1095-C from employer</li> </ul>
ALE and Offers No Coverage	<ul style="list-style-type: none"> <li>• Form 1095-C from employer</li> </ul>
Small Employer and Fully Insured	<ul style="list-style-type: none"> <li>• Form 1095-B from insurer/HMO</li> </ul>
Small Employer and Self-Funded	<ul style="list-style-type: none"> <li>• Form 1095-B from employer</li> <li>• Enrolled part-time employees will also receive Form 1095-B from employer</li> </ul>
Small Employer and Offers No Coverage	<ul style="list-style-type: none"> <li>• No Forms from employer or insurer/HMO</li> </ul>
Employee Enrolls in Individual Covered CA Plan	<ul style="list-style-type: none"> <li>• Form 1095-A from Covered CA</li> </ul>



# Next Steps (Consequences) (Hint: They All Interrelate)



# HHS Activity



- **Marketplace Appeal:** Appeal made to HHS; the purpose is to let you know that an employee received an APTC from the Marketplace (Covered CA)
  - 90 days to respond
- HHS is seeking very **specific** information about **each** employee identified
- The documents requested are designed to prove that this employee was:
  - 1) Made an offer of coverage for the calendar year, and that the employee waived or accepted the coverage
  - 2) Offered coverage that was affordable, based on the employee's income
  - 3) Offered coverage that was affordable, based on the cost of coverage
  - 4) Offered coverage that was MV (**tip:** SBC)
- **Compliance Tips:** For open enrollment, ensure that **your lowest-cost plan**—for entire calendar year—is clearly identified on the SBC and rate sheet (use same name), that the monthly cost of coverage for that plan is identified, and that names of employee and employer are identified



The Summary of Benefits and Coverage (SBC) document will help you choose a health [plan](#). The SBC shows you how you and the [plan](#) would share the cost for covered health care services. **NOTE:** Information about the cost of this [plan](#) (called the [premium](#)) will be provided separately. This is only a summary. For more information about your coverage, or to get a copy of the complete terms of coverage, [insert contact information]. For general definitions of common terms, such as [allowed amount](#), [balance billing](#), [coinsurance](#), [copayment](#), [deductible](#), [provider](#), or other underlined terms, see the Glossary. You can view the Glossary at [www.\[insert\].com](#) or call 1-800-[insert] to request a copy.

Important Questions	Answers	Why This Matters:
What is the overall <a href="#">deductible</a> ?	\$500 / individual or \$1,000 / family	Generally, you must pay all of the costs from <a href="#">providers</a> up to the <a href="#">deductible</a> amount before this <a href="#">plan</a> begins to pay. If you have other family members on the <a href="#">plan</a> , each family member must meet their own individual <a href="#">deductible</a> until the total amount of <a href="#">deductible</a> expenses paid by all family members meets the overall family <a href="#">deductible</a> .
Are there services covered before you meet your <a href="#">deductible</a> ?	Yes. <a href="#">Preventive care</a> and primary care services are covered before you meet your <a href="#">deductible</a> .	This <a href="#">plan</a> covers some items and services even if you haven't yet met the <a href="#">deductible</a> amount. But a <a href="#">copayment</a> or <a href="#">coinsurance</a> may apply. For example, this <a href="#">plan</a> covers certain <a href="#">preventive services</a> without <a href="#">cost sharing</a> and before you meet your <a href="#">deductible</a> . See a list of covered <a href="#">preventive services</a> at <a href="https://www.healthcare.gov/coverage/preventive-care-benefits/">https://www.healthcare.gov/coverage/preventive-care-benefits/</a> .
Are there other <a href="#">deductibles</a> for specific services?	Yes. \$300 for <a href="#">prescription drug coverage</a> and \$300 for occupational therapy services. There are no other specific deductibles.	You must pay all of the costs for these services up to the specific <a href="#">deductible</a> amount before this <a href="#">plan</a> begins to pay for these services.
What is the <a href="#">out-of-pocket limit</a> for this <a href="#">plan</a> ?	For <a href="#">network providers</a> \$2,500 individual / \$5,000 family; for <a href="#">out-of-network providers</a> \$4,000 individual / \$8,000 family	The <a href="#">out-of-pocket limit</a> is the most you could pay in a year for covered services. If you have other family members in this <a href="#">plan</a> , they have to meet their own <a href="#">out-of-pocket limits</a> until the overall family <a href="#">out-of-pocket limit</a> has been met.
What is not included in the <a href="#">out-of-pocket limit</a> ?	<a href="#">Copayments</a> for certain services, <a href="#">premiums</a> , <a href="#">balance-billing</a> charges, and health care this <a href="#">plan</a> doesn't cover.	Even though you pay these expenses, they don't count toward the <a href="#">out-of-pocket limit</a> .
Will you pay less if you use a <a href="#">network provider</a> ?	Yes. See <a href="#">www.[insert].com</a> or call 1-800-[insert] for a list of <a href="#">network providers</a> .	This <a href="#">plan</a> uses a <a href="#">provider network</a> . You will pay less if you use a <a href="#">provider</a> in the <a href="#">plan's network</a> . You will pay the most if you use an <a href="#">out-of-network provider</a> , and you might receive a bill from a <a href="#">provider</a> for the difference between the <a href="#">provider's</a> charge and what your <a href="#">plan</a> pays ( <a href="#">balance billing</a> ). Be aware, your <a href="#">network provider</a> might use an <a href="#">out-of-network provider</a> for some services (such as lab work). Check with your <a href="#">provider</a> before you get services.

#### Excluded Services & Other Covered Services:

##### Services Your [Plan](#) Generally Does NOT Cover (Check your policy or [plan](#) document for more information and a list of any other [excluded services](#).)

- Cosmetic surgery
- Dental care (Adult)
- Infertility treatment
- Long-term care
- Non-emergency care when traveling outside the U.S.
- Private-duty nursing
- Routine eye care (Adult)
- Routine foot care

##### Other Covered Services (Limitations may apply to these services. This isn't a complete list. Please see your [plan](#) document.)

- Acupuncture (if prescribed for rehabilitation purposes)
- Bariatric surgery
- Chiropractic care
- Hearing aids
- Weight loss programs

**Your Rights to Continue Coverage:** There are agencies that can help if you want to continue your coverage after it ends. The contact information for those agencies is: [insert State, HHS, DOL, and/or other applicable agency contact information]. Other coverage options may be available to you, too, including buying individual insurance coverage through the [Health Insurance Marketplace](#). For more information about the [Marketplace](#), visit [www.HealthCare.gov](http://www.HealthCare.gov) or call 1-800-318-2596.

**Your Grievance and Appeals Rights:** There are agencies that can help if you have a complaint against your [plan](#) for a denial of a [claim](#). This complaint is called a [grievance](#) or [appeal](#). For more information about your rights, look at the [description of benefits](#) you will receive for that medical [claim](#). Your [plan](#) documents also provide complete information on how to submit a [claim](#), [appeal](#), or [request for a review](#) for any reason to your [plan](#). For more information about your rights, this notice, or assistance, contact: [insert applicable contact information from instructions].

**Does this plan provide Minimum Essential Coverage? Yes.**

[Minimum Essential Coverage](#) generally includes [plans](#), [health insurance](#), [Medicare](#), [Medicaid](#), [CHIP](#), [TRICARE](#), and certain other coverage. If you are eligible for any of these types of [Minimum Essential Coverage](#), you may not be eligible for the [premium tax credit](#).

**Does this plan meet the Minimum Value Standards? Yes.**

If your [plan](#) doesn't meet the [Minimum Value Standards](#), you may be eligible for a [premium tax credit](#) to help you pay for a [plan](#) through the [Marketplace](#).

#### Language Access Services:

[Spanish (Español): Para obtener asistencia en Español, llame al [insert telephone number].]

[Tagalog (Tagalog): Kung kailangan ninyo ang tulong sa Tagalog tumawag sa [insert telephone number].]

[Chinese (中文): 如果需要中文的帮助, 请拨打这个号码[insert telephone number].]

[Navajo (Dine): Dinek'ehgo shika a'ohwol ninisingo, kwijigo holne' [insert telephone number].]

*To see examples of how this [plan](#) might cover costs for a sample medical situation, see the next section.*

**PRA Disclosure Statement:** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1146. The time required to complete this information collection is estimated to average 0.08 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.



- **IRS 226J Letter:** The purpose is to notify you that you may owe a \$4980H penalty for a specific tax year
  - Includes proposed “Employer Shared Responsibility Payment” (ESRP)
  - Includes also Form 14764 (ESRP Response) and Form 14765 (Employee Premium Tax Credit (PTC) Listing)
  - 30 days to respond
- **Notice 972CG/IRS 5699 Letter:** The purpose is to notify you that you have not filed the 1094/1095 forms for a specific tax year and may impose a fine
- **Action Items:** Don’t panic; be prepared to respond timely; ask for help when needed; get your records and supporting documentation together; consider problems that may exist in subsequent years and fix them



### ESRP Summary Table

Month	Information Reported to IRS		c.	d.	e.	f.	g.
	a.	b.					
	Form 1094-C, Part III, Col (a)  Minimum essential coverage offer indicator offered to at least [70% or 95%]	Form 1094-C, Part III, Col (b)  Full-time employee count for ALE member	Allocated reduction of full-time employee count for IRC Section 4980H(a)	Count of assessable full-time employees with a PTC for IRC Section 4980H(a)	Count of assessable full-time employees with a PTC for IRC Section 4980H(b)	Applicable IRC Section 4980H provision	Monthly ESRP amount
Jan	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
Feb	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
March	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
Apr	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
May	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
June	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
July	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]

# Scenario

- Acme Consulting, Inc. had 120 FT employees throughout 2018 and 20 PT employees
- For the first 3 months of the 2018 tax year, Acme did not offer MEC coverage to at least 95% of its FT employees (and their dependent children)
- For April and May 2018, Acme did offer MEC coverage to at least 95% of its FT employees (and their dependent children), but the coverage was not MV and affordable
- For June – December 2018, Acme offered MEC coverage to all FT employees, spouses, & dependents; coverage was also MV and “affordable”
  - \$90/mo. for self-only coverage for the lowest cost plan (FPL)
- 3 Acme FT employees purchased individual policies from Covered CA & received an APTC to help pay for the coverage for each month of the year
- Acme is not part of an aggregated (control) group

### ESRP Summary Table

Month	Information Reported to IRS		c.	d.	e.	f.	g.
	a.	b.					
	Form 1094-C, Part III, Col (a)  Minimum essential coverage offer indicator offered to at least [70% or 95%]	Form 1094-C, Part III, Col (b)  Full-time employee count for ALE member	Allocated reduction of full-time employee count for IRC Section 4980H(a)	Count of assessable full-time employees with a PTC for IRC Section 4980H(a)	Count of assessable full-time employees with a PTC for IRC Section 4980H(b)	Applicable IRC Section 4980H provision	Monthly ESRP amount
Jan	No	120	30	3		4980H(a)	\$17,399.70
Feb	No	120	30	3		4980H(a)	\$17,399.70
March	No	120	30	3		4980H(a)	\$17,399.70
Apr	Yes	120	30		3	4980H(b)	\$870.00
May	Yes	120	30		3	4980H(b)	\$870.00
June	Yes	120	30				
July	Yes	120	30				
Aug	Yes	120	30				
Sep	Yes	120	30				
Oct	Yes	120	30				
Nov	Yes	120	30				



### Employee Premium Tax Credit (PTC) Listing

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			Additional Information Attached
Acme Consulting, Inc.									55-555555			2018			
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	
Bob Brown	5555		1H/	1H/	1H/	1F/	1F/	1A/2G	1A/2G	1A/2G	1A/2G	1A/2G	1A/2G	1A/2G	
Joe Green	6666		1H/	1H/	1H/	1F/	1F/	1A/2G	1A/2G	1A/2G	1A/2G	1A/2G	1A/2G	1A/2G	<input type="checkbox"/>
April White	7777		1H/	1H/	1H/	1F/	1F/	1A/2G	1A/2G	1A/2G	1A/2G	1A/2G	1A/2G	1A/2G	<input type="checkbox"/>
															<input type="checkbox"/>
															<input type="checkbox"/>
															<input type="checkbox"/>
															<input type="checkbox"/>

Form **14765**  
(May 2021)

Department of the Treasury - Internal Revenue Service

## Employee Premium Tax Credit (PTC) Listing

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. Any month that shows XF, XG, or XH is due to a determination that you do not qualify for the safe harbor being claimed (2F, 2G, or 2H). If you still think the safe harbor applies, you may provide your computation with your written request for reconsideration.

Employer name										Employer ID number			Tax year		
Employee Name <i>(last, first)</i>	SSN <i>(last 4 digits)</i>	All 12 months Indicator Codes <i>(Form 1095-C, lines 14 and 16 combined)</i>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Additional Information Attached
															<input type="checkbox"/>
															<input type="checkbox"/>

# Forms 1094/1095: Reporting Penalties

	<b>2015 Penalty</b>	<b>2016 Penalty</b>	<b>2017 Penalty</b>	<b>2018 Penalty</b>	<b>2019 Penalty</b>	<b>2020 Penalty</b>	<b>2021 Penalty</b>	<b>2022 Penalty</b>
Failure to file with IRS (max)	\$250 (\$3M)	\$260 (\$3,193,000)	\$260 (\$3,218,500)	\$270 (\$3,275,500)	\$270 (\$3,339,000)	\$280 (\$3,392,000)	\$280 (\$3,426,000)	\$290 (\$3,532,500)
Failure to furnish to employee (max)	\$250 (\$3M)	\$260 (\$3,193,000)	\$260 (\$3,218,500)	\$270 (\$3,275,500)	\$270 (\$3,339,000)	\$280 (\$3,392,000)	\$280 (\$3,426,000)	\$290 (\$3,532,500)
Intentional disregard	\$500 (no cap)	\$530 (no cap)	\$530 (no cap)	\$540 (no cap)	\$550 (no cap)	\$560 (no cap)	\$560 (no cap)	\$580 (no cap)

For 2021 forms and thereafter, same penalties will apply for forms furnished or filed with incorrect information; good faith penalty relief no longer available

These penalties may be waived if the failure is due to reasonable cause and not willful neglect

# The End . . . or Fishing for More Information?



# Resources

- **From Monahan Law Office** (when the IRS forms are finalized):
  - IRS Reporting Action Plan (2022)
  - IRS Form 1095-C (2022): Indicator Codes for Lines 14 and 16
  - IRS Forms 1094-C and 1095-C (2022): LNPs
- **From the IRS:**
  - Publications 5208 and 5200: Affordable Care Act: Are you an applicable large employer?
  - Publication 15-A: Employer’s Supplemental Tax Guide
  - FAQs: ACA Information Center for Applicable Large Employers (ALEs) (online)
- **From the California Franchise Tax Board (FTB) (S.B. 78):**
  - Go to [www.ftb.ca.gov](http://www.ftb.ca.gov) and look for “Health Care Mandate” or “Minimum Essential Coverage Individual Mandate”

# ACA Checklist for ALEs for Open Enrollment

- Choose MEC, MV plan
  - ACA is focused on lowest-cost plan, but may also offer buy up options
  - SBC confirms MEC, MV status
- Choose affordability safe harbor and calculate employee self-only premium contribution; document safe harbor; create rate sheet
- Define eligibility and waiting period; document in SPD
- Identify FT employees and offer MEC, MV, affordable coverage to at least 95%
- As you prepare open enrollment materials, for each month of the calendar year, ensure that **your lowest-cost plan** is clearly identified on the SBC and rate sheet (use same name); that the monthly cost of coverage for that plan is identified; and that enrollment form/waiver includes name of employee, employer, plans offered, coverage period, and date
- Compliance Tip:** Keep records! SBCs, rate sheets, affordability safe harbor, employee counts, waivers, etc.—everything you need to complete the 1094/1095 forms (or FTB form) and respond to an IRS audit or HHS appeal

## Plan Ahead: Some Key 2023 Health & Welfare Deadlines

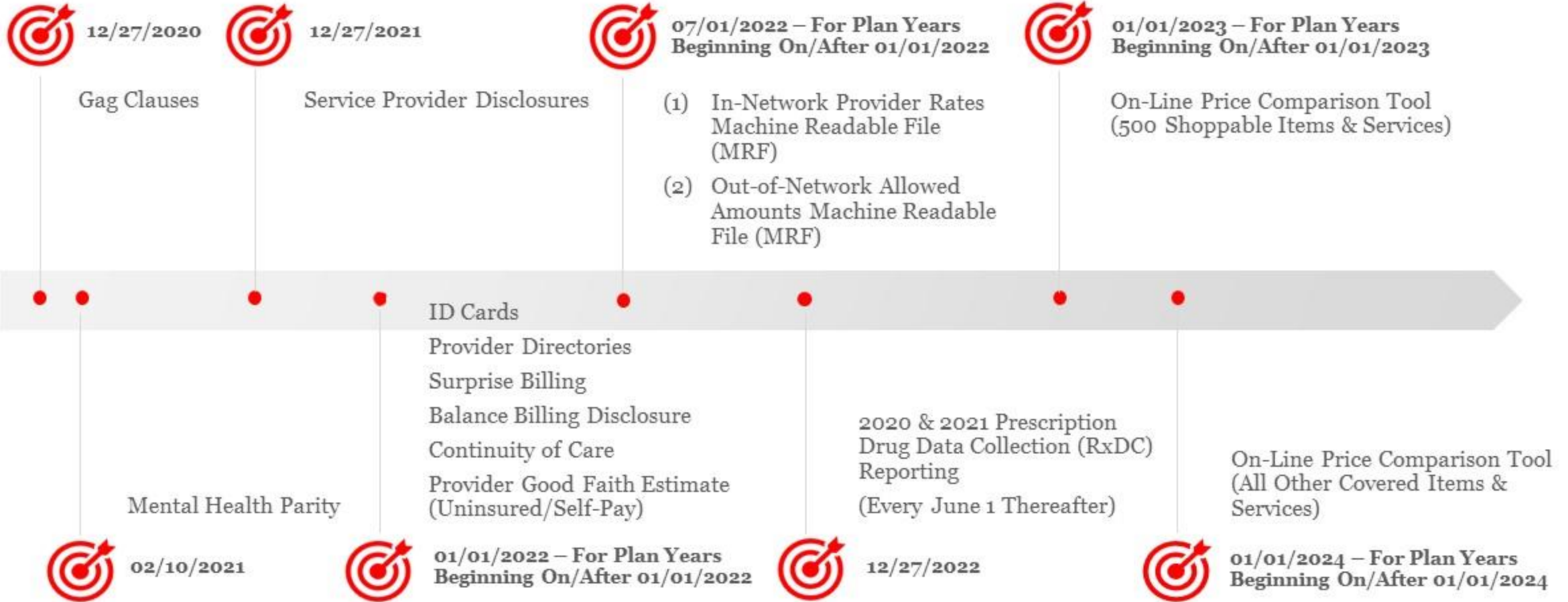
- **2022 W-2s**
  - Distribute by January 31, 2023
- **2022 Forms 1094/1095**
  - Distribute 1095-C by March 2, 2023 (January 31 for FTB)
  - File 1094/1095-C w/ IRS by February 28 (paper) or March 31, 2023 (electronic)
  - File 1094/1095-C w/ FTB by March 31, 2023 (self-funded only if insurer files for fully insured) (extended to May 31, 2023)
- **CMS Disclosure for Medicare Part D**
  - Complete on-line disclosure within 60 days after the beginning of plan year (March 1 for calendar year plans)
- **San Francisco HCSO and FCO**
  - File annual report by April 30 (May 1\*)
- **PCORI Fee**
  - File IRS Form 720 by July 31, 2023, and pay applicable fee (self-funded only)
- **Form 5500**
  - Must file by the last day of the 7<sup>th</sup> month after end of plan year (July 31 for calendar year plans)
- **Summary Annual Report (SAR)**
  - Must distribute by the last day of the 9<sup>th</sup> month after end of plan year (September 30\* (October 2, 2023) for calendar year plans)
- **MLR Rebates**
  - Distribute w/in 90 days after receipt (insurer/HMO must distribute by September 30)
- **Medicare Part D Certificate of Creditable/Non-Creditable Coverage Notice**
  - Distribute prior to October 15 each year

\* Filing deadlines that fall on a weekend or legal holiday typically move to the next business day



# TiC Final Rule/CAA Deadlines

- Delayed:**
- Gag Clause Attestation
  - Prescription Drug MRF
  - Provider Good Faith Estimate (Insured)
  - Advanced Explanation of Benefits
  - Air Ambulance Reporting





# CE Credit Reminders

- Zoom participants wanting CA DOI CE Credit will receive a certificate of completion once verification of participation with poll questions is verified.
- Zoom participants wanting HRCI credit will receive a notice of HRCI program ID number after ABC has reviewed your attendance and verified your participation with poll questions.
  - You will receive a certificate by email with 1 week of this class.

*“The use of this official seal confirms that this Activity has met HR Certification Institute’s® (HRCI®) criteria for recertification credit pre-approval.”*



# Questions?

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The information provided during this program does not constitute legal advice. In addition, this program only provides a summary of certain complex and always evolving laws and regulations. Attendees should consult their legal counsel for guidance on the application and implementation of the many federal and state laws that impact employee benefit plans and the workplace, including the topics discussed during this program.

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