



# Affordable Care Act's Employer Mandate

*Are you in compliance?*

*July 11, 2018*

# Speakers

Nicole M. Elliott: Partner, Public Policy & Regulation Group,  
Holland & Knight LLP

# AGENDA

- I. Basics of the Reporting Requirements
- II. Basics of Employer Mandate
- III. IRS Enforcement
- IV. Emerging Issues and Takeaways
- V. Tribal Sponsorship
- VI. Questions and Answers

# I. Basics of the Reporting Requirements

Applicable Large Employers (ALE) must file an information return with the IRS, and furnish (provide) a statement to each of its ACA full-time employees (FTEs) about the coverage it offered, if any.

- » Primary purpose is to enforce the Employer Mandate (Section 4980H)
- » Furnished to FTEs on Form 1095-C
- » Forms 1095-C are filed with IRS, along with transmittal Form 1094-C.

An employer is an ALE for the calendar year (for example, 2018), if the organization (and other entities that must be combined together with the organization) employed an average of at least 50 full-time equivalents during the preceding calendar year (for example, 2017).

# Form 1094-C

120118

Form **1094-C**

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

CORRECTED

OMB No. 1545-2261

Department of the Treasury  
Internal Revenue Service

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

**2017**

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

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)
3 Street address (including room or suite no.)		
4 City or town	5 State or province	6 Country and ZIP or foreign postal code
7 Name of person to contact		8 Contact telephone number
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)
11 Street address (including room or suite no.)		
12 City or town	13 State or province	14 Country and ZIP or foreign postal code
15 Name of person to contact		16 Contact telephone number

For Official Use Only



17 Reserved

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

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions

### Part II ALE Member Information

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member

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 \_\_\_\_\_ Date \_\_\_\_\_

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

Cat. No. 61571A

Form **1094-C** (2017)

# Form 1095-C

600117

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

**2017**

Part I Employee			Applicable Large Employer Member (Employer)		
1 Name of employee	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.)		10 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	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)													

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. <input type="checkbox"/>															
(a) Name of covered individual(s)	(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
17			<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"/>	
18			<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"/>	
19			<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"/>	
20			<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"/>	
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"/>	

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

Cat. No. 60705M

Form **1095-C** (2017)

# I. Basics of the Reporting Requirements

## » Deadlines

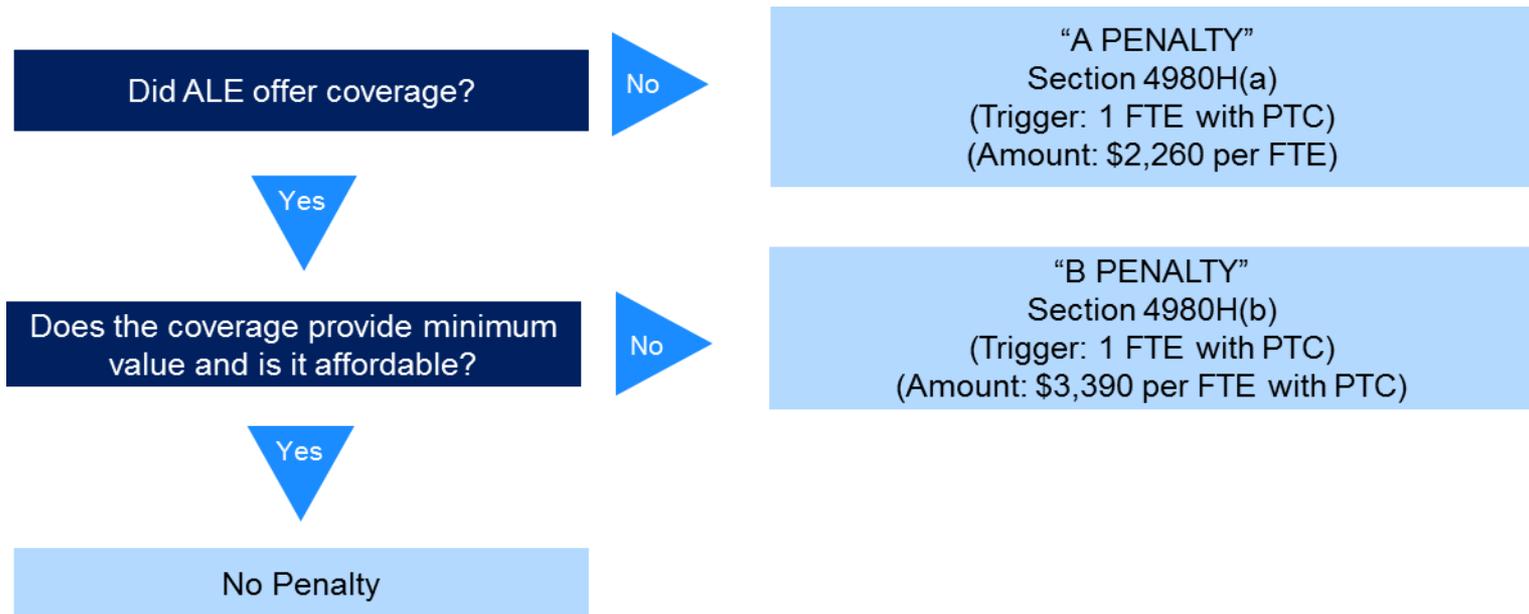
- Furnishing to ACA FTEs
  - January 31st
- Filing with IRS
  - February 28th (paper)
  - March 31st (electronic)

## » Reporting Penalties

- Apply for inaccurate, incomplete, or late
- Some relief if reasonable cause

## II. Basics of the Employer Mandate

- » General rule: ALEs must offer minimum essential coverage that is affordable and provides minimum value to at least 95% of their ACA full-time employees and dependents, or be subject to a penalty.



## II. Basics of Employer Mandate

### AFFORDABILITY

Coverage is considered affordable for an employee if the employee required contribution is no more than 9.5 percent (as adjusted) of that employee's household income.

Because employers do not know their employees' household incomes, there are three affordability safe harbors employers can take advantage of that are based on information the employer does have available, such as the employee's Form W-2 wages or the employee's rate of pay.

### MINIMUM VALUE

A plan provides minimum value if it covers at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan and provides substantial coverage of inpatient hospitalization services and physician services.

### III. IRS Enforcement

- » Employer Mandate is the law (Tax bill impacted only the Individual Mandate)
- » IRS sent out 10,000 letters to ALE proposing an assessment for the Employer Mandate
- » Focused on year 2015
- » Focused on employers who acknowledge they do not offer coverage to their full time employees, i.e., those that owe the “A PENALTY”
- » Highest amount seen \$8 million
- » IRS willing to reduce amounts if corrections are made
- » IRS personnel overwhelmed with responses and sometimes lack expertise

# IV. Emerging Issues and Takeaways

## Emerging Issues

- » Will Congress act?
- » What level of IRS enforcement?
- » What will IRS be looking for?
- » Due process violations?

## Takeaways

- » Know your compliance status
- » Ensure that reporting is accurate
- » Keep records – Statute of Limitation
- » Do not ignore IRS letters

# TRIBAL SPONSORSHIP

- » Tribal Sponsorship is:
  - Tribally-Sponsored program to purchase health insurance coverage for their tribal members through a Health Insurance Marketplace
  
- » Tribal Sponsorship is not:
  - Reimbursement by an employer for its employees plan
  - Pre or post tax – still not ok
  - Longstanding Section 4980D penalty
    - Generally \$100 dollars per day per person

On an unrelated note: No Section 457 plans for tribes



# Contact

**Nicole M. Elliott**  
**Holland & Knight**  
[Nicole.Elliott@hklaw.com](mailto:Nicole.Elliott@hklaw.com)  
**202-469-5144**

