

Q&A from Assurex Global Webinar "ACA & Benefits Compliance Update"	
March 24, 2016	
Question	Answer
Are employer reporting forms mailed to the same place as the W2's?	Form 1094s/1095s are mailed either to Kansas City, MO or Austin, TX depending upon the principal place of business. See page 3 of the instructions found at https://www.irs.gov/pub/irs-pdf/i109495c.pdf for more information.
Can you confirm the safe harbor % for 2016? Is is 9.5 or 9.66?	<p>When Section 4980H regulations were originally established, they stated that affordability for purposes of potential Section 4980H(b) penalties was 9.5% of an employee's household income. However, the amount was set to be indexed each year and therefore moved to 9.56% in 2015, 9.66% for 2016 and will be 9.69% for 2017.</p> <p>On the other hand, for purposes of the affordability safe harbors that employers may use (i.e., FPL, rate of pay, or Form W-2), as well as the percentage for determining a "qualifying offer", the guidance originally set the percentage at 9.5% and didn't provide for indexing. But then recent guidance provided at the end of 2015 (Notice 2015-87) indicates the IRS will allow the percentage used for the 3 safe harbors (and determining a qualifying offer) to increase along with the amount used for purposes of determining affordability based on household income.</p> <p>Therefore, for all purposes, the appropriate percentage to use for 2016 is 9.66%.</p>
Did I understand correctly that the 1095-B will come from my insurance company and that as an employer I only need to provide the 1095-C? My software has a form option to choose for the 1095-B, so I thought I had to fill out both. Could you please confirm?	<p>If the employee is an applicable large employer (ALE) - 50 or more FTEs - for 2015, then the employer is required to send out a Form 1095-C with Parts I and II completed for any employees that meet the definition of full-time under Section 4980H (averaging 30 hours of service or more per week using either the monthly measurement method or the look-back measurement method) for at least one month during 2015. The information reported in Part II indicates whether minimum value, affordable coverage was offered.</p> <p>If the employer offers a self-funded plan, the employer will then also complete Part III of Form 1095-C for any individuals covered under the self-funded plan. However, if the employer offers only fully-insured coverage, the employer leaves Part III of Form 1095-C blank and individuals covered under the fully-insured plan will instead receive a Form 1095-B from the insurance carrier showing months of coverage under the fully-insured plan.</p> <p>So full-time employees of an ALE that were enrolled under a fully-insured plan will receive two Form 1095s – a Form 1095-B from the insurance carrier showing months of coverage under the fully-insured plan and a Form 1095-C from the employer showing whether minimum value, affordable coverage was offered each month, while full-time employees enrolled under a self-funded plan will receive only a Form 1095-C, but Part III will also be completed.</p>
Does a 1095 still need to be given to a FTE if not electing health coverage from employer?	Not to FTEs...but rather, full-time employees. All full-time employees of an applicable large employer should receive a Form 1095-C from the employer indicating whether coverage was offered or not for each month. A form is required regardless of whether the employee was actually offered coverage or not; or if offered, whether the employee actually enrolled or waived.
Does COBRA count as offering coverage?	Based on informal guidance from the IRS and the way that offers of COBRA are reported, it appears to; however COBRA is unlikely to be "affordable", and therefore creates a potential risk for a penalty under Section 4980H(b).
Does the employer report part time non benefit eligible employee on the 1095 C for self funded plan?	No. An employer is not required to report for part-time employees unless they are actually covered/enrolled in a self-funded plan offered by the employer.

Question	Answer
Full time meaning the 130 hours in a month?	For purposes of Section 4980H offer of coverage requirements and Section 6056 employer reporting requirements, "full-time" is defined as averaging 30 or more hours of service per week (or 130 or more per month). An employer may use the monthly measurement method or the look-back measurement method to determine full-time status.
Has anything been resolved re: counting hours for being "on-call" as hours for determining requirement to offer coverage?	<p>Nothing further has been provided since the Section 4980H final rules were released in February 2014. In general, most on-call hours must be counted as an hour of service. The language from the final rules states <i>"... It is not reasonable for an employer to fail to credit an employee with an hour of service for any on-call hour for which payment is made or due by the employer, for which the employee is required to remain on-call on the employer's premises, or for which the employee's activities while remaining on-call are subject to substantial restrictions that prevent the employee from using the time effectively for the employee's own purposes."</i></p> <p>However, if including such individuals in the full-time employee count, the employer is still confident that coverage is being offered to at least 95% of full-time employees each month, the risk of not offering coverage may be relatively low. The employer would only face a penalty under Section 4980H(b) if such employee(s) enrolled through a public Exchange and qualified for a tax subsidy (approx. \$270/month for any such employee in 2016).</p>
If an employee fails to pay their portion of their premiums while out on approved leave and coverage is stopped for non payment. What does that mean for the employer?	If the employer continues to offer coverage but the employee fails to make the employee contribution, coverage may be terminated for nonpayment and the employer would not be subject to any potential penalties under Section 4980H. In addition, COBRA continuation coverage is not available in the case of nonpayment.
If an employer had under 50 employees and then made an acquisition in 2015 and went over 50 employees, do they report for only those months when they had over 50 employees?	<p>The answer will likely depend upon whether the purchase was an asset or stock transaction, whether both entities were applicable large employers (ALEs) prior to the transaction, and whether the entities offered a self-funded plan. Unfortunately, there isn't currently much guidance in regards to corporate restructures and mergers/acquisitions for purposes of Section 4980H offer of coverage requirements or for Section 6056 employer reporting requirements. It would be advisable to work with the employers' lawyers involved with the transactions to determine how such things should be handled based on the specific facts and circumstances. In the case of a merger/acquisition, our team's general consensus based on the very limited guidance available to-date is as follows (based off of how things are handled for other similar situations):</p> <ul style="list-style-type: none"> • In an asset purchase, if the acquiring entity was already an ALE, the additional employees are simply added to the reporting requirements as of the date of the purchase; but if not already an ALE, no reporting is required for the current year and status will need to be re-determined for the following year. • In a stock purchase, under which each entity may remain separate but become part of a controlled group, if one of the entities was already considered an ALE, all entities would then be considered ALEs subject to the reporting requirements as of the date of the merger, if not at the beginning of the year.
If an intern works full-time during the summer but wouldn't meet the 130 hour requirement in the lookback analysis, do I need to provide a 1095c to the interns?	It depends on whether the position meets the definition of "seasonal". Seasonal, for purposes of Section 4980H, is defined as customary annual employment of 6 months or less, meaning the employment generally stops and starts at the same time each year.

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If we do not have a self-funded plan, are we required to provide a 1095C for a non-employee on COBRA?	No. The insurance carrier will provide a Form 1095-B for any individuals covered under a fully-insured plan (including COBRA participants); the employer isn't required to do any reporting for such individuals.
If we don't offer any insurance, do we have to pay both the 'A' and the 'B' penalties?	No. The penalties are capped at the total penalty that could apply under Section 4980H(a). So if the employer is subject to the "A" penalty, there is no "B" penalty.
If we have a 12 month look back period (or 9 since we are a school district) and we know someone filling in for a maternity leave will be full time for 2 months of the year, do we have to offer coverage?	If you are asking about an ongoing, regular part-time or variable hour employee that will work full-time hours just for a couple months, the employee doesn't need to be offered coverage for those 2 months, but may need to be offered coverage the next stability period if the additional hours allow the employee to average full-time during the measurement period.
If we have electronic online enrollment how do we prove it was offered to employees?	Section 4980H rules do not set forth any particular process or documentation requirements outside of requiring that an opportunity is provided, at least annually, to accept or decline coverage. However, the employer will want to have something to prove that coverage was offered. A signed enrollment form/waiver form (on paper or electronic) would provide a good method of proof, but there are certainly other options so long as the employer has a reasonable method to show that coverage was offered. Therefore, if the employer feels confident that the communication being provided is reaching all eligible employees and makes it clear how the eligible employees can obtain coverage, and the employer can provide proof of this communication, the employer should be okay.
If we were fully insured from January to July then switched to a self funded plan from August to December, applicable employees will receive both a 1095-c and 1095-b forms, correct?	Correct. Assuming this involves an applicable large employer using the "C" forms...the insurance carrier will provide a Form 1095-B marking coverage for January through June for anyone covered under the fully-insured plan, and the employer will provide a Form 1095-C with Part III completed, marking coverage for July through December for anyone covered under the self-funded plan.
If you are an employer of about 70 employees using QuickBooks software, how would you electronically file if you choose to do so?	For submission to the IRS, it is necessary to file electronically if the employer is sending in 250 or more Form 1095s, while those filing less have the option to mail in their forms. The electronic filing process is fairly complex. The process to become an electronic filer with the IRS is described at this IRS website - Returns/Affordable-Care-Act-Information-Return-AIR-Program">https://www.irs.gov/for-Tax-Pros/Software-Developers/Information>Returns/Affordable-Care-Act-Information-Return-AIR-Program . Almost no employers actually go through this process themselves. It involves getting approved by the IRS as an electronic filer, doing testing of their filing system, etc. Typically only payroll providers and other vendors that provide IRS filing as a service go through this. However, there are a number of vendors that provide low-cost electronic filing services to employers for W-2s and 1095/1094 filing. One of the vendors we refer employers to is Aatrix (www.aatrix.com). They have a service that simply files the forms electronically. It is not a full ACA reporting or management system.
Is that 70%/95% of all employees or of eligible employees? (e.g. full time employees)	Section 4980H(a) requires that a minimum essential coverage (MEC) plan be offered to 70%/95% of <u>full-time employees</u> and their dependent children. An applicable large employer is not obligated to make an offer of coverage to part-time employees.
is the 9.5 contribution based on employee only coverage?	Yes. For purposes of determining affordability under Section 4980H, it is necessary to consider what the employee is required to contribute for employee-only (single) coverage.
Just to confirm I understand: if flex credits are cashable then EE contribution amt must include that amount; if non-cashable then contribution amounts are left alone? Or is there more to it than that?	It's the opposite...if flex credits are cashable, the amount that is cashable cannot be used to reduce the employee contributions. Whereas, if the flex credits are considered "health flex credits", the amount reduces the employee contribution.

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On the 1994-C. On Part II, question 22. If you select D (98% offer method), do you NOT have to fill out Part III column B?	That's correct. If the employer qualifies for and selects Box D - 98% Offer Method, the employer may skip Part III, column (b) of Form 1094-C and does not have to provide the total full-time employee count each month.
To clarify, applicable waiver for calculating penalty in 2015 is 80?	For employers with 100 or more full-time equivalents (FTEs), if the employer fails to offer coverage to 70% or more of full-time employees for any month in 2015, there is a waiver for the first 80 full-time employees when calculating the penalty under Section 4980H(a). NOTE - for employers with 50-99 FTEs that do not qualify for transition relief for 2015 and are subject to the Section 4980H(a) penalty, the waiver is only 30.
We are a restaurant company and use a look back period to qualify those we offer insurance to each year. We use a 12 monthly look back. In our busy season, some of our folks may work more than 30 hours/week for a few months. Do we then have to offer them benefits even if they will go back down to under 30 in the fall?	Generally, no. If you are correctly applying the look-back measurement method and such employees don't achieve 1560 or more hours of service over the 12 month measurement period, then they may be considered part-time for the next stability period even if they exceeded 30 hours per week/130 hours per month for some months during the measurement period.
We are a seasonal employer. Do we need to complete a 1095c for our seasonal employees?	Under Section 4980H rules, a "seasonal employee" is defined as an employee in a position for which the customary annual employment is six months or less. The reference to customary means that by the nature of the position an employee in this position 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. If the employer is using the look-back measurement method, any employees who meet the definition of seasonal will be considered part-time and no offer of coverage is required. However, if the employer is using the monthly measurement method, any employee that achieves 130 or more hours of service in any given month is considered full-time, regardless of whether the position meets the definition of seasonal, and would require a Form 1095-C.
We have two part-time employees who work less than 30 hours per week/130 hours per month. We DO offer benefits to them. We are fully-insured ALE. Do we provide them a 1095-C, and what code do we use in line 16 since they pay more than others (more than "affordable") because they are part-time?	An applicable large employer is not required to report on any employees that are part-time UNLESS they are enrolled in a <u>self-funded plan</u> offered by the employer. Because coverage was provided under a fully-insured plan, no reporting is required (the insurance carrier will provide a Form 1095-B showing months of coverage).
We mailed out our 1095-c to employees and we are already getting returned mail due to bad addresses. What is our responsibility? Do we need to try and get a second address or what is our recourse?	Employers should show a "good faith effort" to be certain they have exhausted internal efforts to identify whether or not the last known address was used for the employee (whether current or former). We suggest the employers approach would be similar to the actions taken in furnishing a W-2 to an employee. If it so happens that the employer identifies an alternative/accurate address, the employer should issue a new 1095-C with the address updated on the form and mailed to the correct address.

Question	Answer
<p>we use ADP for payroll and ACA reporting, we suspect they filled out our forms incorrectly. How can we confirm whether the 1H and 2I they told us to use is incorrect. Our benefits renewal is May 1st every year and have had coverage for several years.</p>	<p>The rules make it fairly clear that accurate reporting of offer of coverage information is required for all 12 months, regardless of the employer's plan year. In other words, if the employer offered coverage, it should be reported as such. Code 2I should be used only for the months the employer failed to offer coverage to a full-time employee or made an offer of coverage that did not provide minimum value or wasn't affordable. See below excerpt from Section 4980H final regulations -</p> <p><i>Employers eligible for the transition guidance for plans with non-calendar year plan years remain subject to the reporting requirements under section 6056 for the entire 2015 calendar year. Because no section 4980H liability applies whether or not a full-time employee is offered coverage during the portion of the 2014 plan year falling in 2015, the applicable large employer may determine the full-time employees for that period for purposes of the section 6056 reporting requirements after the period has ended, using actual service data or using the look-back measurement method, and use those determinations for the reporting required for the period during 2015 that precedes the start of the 2015 plan year. In addition, the employer should be able to determine whether the coverage offered provides MV and the employee portion of the applicable premium in time to complete the required reporting for 2015 (that is, for section 6056 returns furnished to employees and filed with the IRS in 2016). Because this reporting is needed by the employee and the IRS for the administration of the premium tax credit, applicable large employers are required to report this information for the entire 2015 calendar year, even if during some calendar months in 2015 section 4980H liability will not apply by reason of the transition guidance for non-calendar year plan years. The section 6056 return instructions will provide additional information on how to report for 2015.</i></p> <p>Will the IRS show some leniency for this, especially for the first year? Maybe...but we can't make any promises; we don't know anything for sure at this point in regard to how reporting penalties may be handled by the IRS. It is really up to the employer. There is time to make corrections before the IRS submission deadline and then corrected statements could be sent out to employees and covered individuals. Whether or not the employer wants to take that on, with or without the vendor's help, is a judgment call that the employer will need to make.</p>
<p>What are the codes to use on the 1095 if employer offered coverage, it is affordable and were covered all 12 months?</p>	<p>If the coding is the same for all 12 months, then it is only necessary to complete the "all 12 months" boxes on Lines 14-16 as applicable.</p> <ul style="list-style-type: none"> - On Line 14, enter the applicable offer code (i.e. 1A, 1B, 1C, 1D or 1E) - On Line 15, enter the employee contribution amount if Codes 1B, 1C, 1D or 1E are entered on Line 14; otherwise leave it blank - On Line 16, enter Code 2C
<p>What if an employee didn't elect an FSA for the plan year, but \$500 rolled over into the plan year from the previous year. How is the COBRA premium calculated?</p>	<p>If the plan allows the \$500 to be carried over into the next plan year without a new health FSA election, since the \$500 carryover cannot be considered for purposes of the COBRA premium, the COBRA premium would be \$0.</p>

Question	Answer
what if you have summer interns that work full-time for 2 or 3 months of the year but are not offered coverage? Do they need to be reported?	An intern or temporary employee that works full-time hours generally needs to be treated just like any other full-time employee and offered coverage to avoid potential penalties under Section 4980H unless the intern may be categorized as "seasonal" AND the employer is using the look-back measurement method. Under Section 4980H rules, a "seasonal employee" is defined as an employee in a position for which the customary annual employment is six months or less. The reference to customary means that by the nature of the position an employee in this position 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. If the employer is using the look-back measurement method, any employees who meet the definition of seasonal will be considered part-time and no offer of coverage is required. However, if the employer is using the monthly measurement method, any employee that achieves 130 or more hours of service in any given month is considered full-time, regardless of whether the position meets the definition of seasonal.
Where on the 1095-C do we report former employees on COBRA? We are not self-insured.	No reporting is required...for a fully-insured plan, the insurance carrier will handle reporting on any covered individuals (including COBRA participants). Reporting is only required for those that were full-time for at least one month during the year as determined under either the monthly measurement method or the look-back measurement method.
Will there be a penalty is the employee is not offered coverage while they are in their waiting period (2D)	No. So long as the employee is offered coverage after the plan waiting period or after the initial measurement period + administrative period, whichever is applicable, a limited non-assessment period applies and there is no Section 4980H penalty for such months. However, if coverage is not offered after the waiting period or initial measurement period (assuming the individual averages full-time hours), then there is a potential penalty under Section 4980H for all months of full-time status beginning with the date of hire.
You mentioned the associaite must have the 1095 in their hands by 3/31. Is it acceptable to have the 1095 Postmarked 3/31?	Yes. If the statements are mailed, so long as they are mailed (postmarked) by the due date, they will be considered timely.
Did you state that if we have over 250 1095Cs we are required to do electronic filing?	Yes. Any employer filing 250 or more Form 1095-Cs or Form 1095-Bs (tallied separately) is required to report electronically to the IRS. Employers filing less than 250 Form 1095s have the option to mail the forms or file electronically.

Question	Answer
How do we calculate FT employees for the type A penalty? Do seasonal FT employees count towards the FT employee?	<p>Full-time under Section 4980H rules and for purposes of employer reporting under Section 6056 rules is defined as an employee averaging 30 or more hours of service per week or 130 or more per month. Employers may use the monthly measurement method or the look-back measurement method to determine full-time status.</p> <ul style="list-style-type: none">• Under the <u>monthly measurement method</u>, employers determine full-time status on a monthly basis and would need to offer coverage to employees for any months in which they average 30 hours of service per week or achieve 130 hours of service for the month (full-time). Under this method, regardless of job category (including temporary, seasonal or variable hour), full-time is simply determined on a monthly basis and coverage must be offered accordingly to avoid potential penalties under Section 4980H. This is the method most employers use today and is the easiest for administration and allows the most flexibility for changes. This method is most appropriate for those employers that have most of their employees remaining above or below 130 hours of service per month rather than crossing back and forth above and below that threshold.• Under the <u>look-back measurement method</u>, employers may average hours of service over a period of 3-12 months (the employer's choice) to determine full-time status. If the employee achieves full-time status during the measurement period, the employee must then be treated as eligible for coverage for a corresponding stability period (generally matching the length of the measurement period). 12 months is the most common as it can be aligned with the plan year and requires measurement only once per year; however some employers prefer a 6-month cycle to provide additional flexibility. If the employer chooses this method, it will be necessary to categorize positions as full-time, part-time, variable hour and/or seasonal. Only those new hires that are categorized as part-time, variable hour or seasonal may be subjected to an initial measurement period of 12 months prior to a determination as to full-time or part-time. Those that are hired as full-time would need to be offered coverage according to the plan's waiting period rules (e.g. 1st of the month following 60 days). This method requires a bit more administration and less flexibility, but for employers with lots of employees crossing back and forth (above and below) the 130 hours of service threshold from month to month, or many seasonal employees, this is usually the more appropriate method choice.
If coverage is offered to a full time employee and the employee waives coverage, does that count toward calculating that 70%/90% penalty threshold?	Yes. It's not important whether the employees actually enroll or waive...the employer is on the hook only for making an offer of coverage available.
pulled the trigger too soon. we filed 1095cs for all of our employees who met the full-time definition. Part-time and seasonal did not get one. I am now told all should have received a 1095 but my payroll provider said only those identified as full-time ACA. I am actually getting various answers to this question.	Reporting is only required for those that were full-time for at least one month during the year as determined either under the monthly measurement method or the look-back measurement method UNLESS they were enrolled in a self-funded plan offered by the employer (e.g. employer offers to part-time employees).

Question	Answer
We have 4 levels of contribution based on participation in our wellness program, what level do I need to use to determine affordability? The one that is for some one who does not participate, which is the lightest?	<p>For purposes of determining affordability, it is necessary to assume the employee fails to complete the wellness program criteria UNLESS it is tobacco-related. Therefore, other than wellness incentives for tobacco use, coverage is affordable only if the higher premium or contribution level (prior to consideration of the wellness program incentive) is affordable for the employee.</p> <p>For Example:</p> <ul style="list-style-type: none">• Required monthly employee contribution is \$250• Potential wellness incentive (not tobacco-related) reduces cost to \$210/month <p>The coverage is "affordable" so long as \$250 (not \$210) does not exceed 9.66% (in 2016) of the employee's household income.</p> <p>Now assume:</p> <ul style="list-style-type: none">• Required monthly employee contribution is \$250• Potential wellness incentive (tobacco-related) reduces cost to \$150/month <p>The coverage is "affordable" so long as \$150 (not \$250) does not exceed 9.66% (in 2016) of the employee's household income.</p>

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