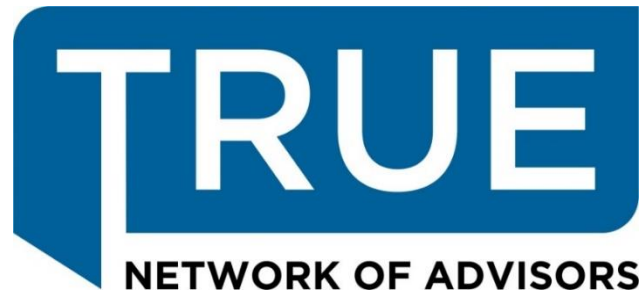


# Lessons Learned: ACA Reporting and IRS Penalties



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November 2022



# ACA Reporting & Employer Mandate

- ▼ Applicable Large Employers: 50 or more full-time employees (including full-time equivalents) in the preceding calendar year
- ▼ Form 1094-C and Forms 1095-C
- ▼ ACA reporting is its own requirement and has its own penalties
  - ▼ Penalties: \$290 per form (x2)
- ▼ ACA reporting also has significant implications for employer mandate penalties
- ▼ Electronic Filing Required if filing more than 250
- ▼ **Expired:** Good Faith Transition Relief

# Common ACA Reporting Challenges

## ALE Group Reporting

- ▶ Evaluate controlled/affiliated employer group status
- ▶ ALE Members – Each employer with its own EIN should file a Form 1094-C marked as the “Authoritative Transmittal”
- ▶ Divisions of an ALE Member – Where an ALE Member has divisions (i.e., separate divisions all have the same EIN), each division MAY (but is not required to) file separate Forms 1094-C
  - ▶ Only ONE Form 1094-C should be marked as the “Authoritative Transmittal” and will include aggregate data for the ALE Member

# 2023 ACA Reporting Deadlines

**To IRS**

**Paper Filers**

**February 28, 2023**

**Electronic Filers**

**March 31, 2023**

**To Employees**

**March 2, 2023**

# ACA Employer Mandate - By The Numbers

	For 2022 Plan Years
Code Section 4980H(a) Penalty	\$2,750 (\$229.17/month)
Code Section 4980H(b) Penalty	\$4,120 (\$343.33/month)
Affordability %	9.61% (2022)  Coverage not <i>affordable</i> —and employee may be eligible for PTC for exchange coverage—if employee’s required contribution for self-only coverage exceeds 9.61% of the employee’s household income.  Employer avoids 4980H(b) penalty if it satisfies <i>Affordability Safe Harbors</i> using 9.61%

# Common ACA Reporting Challenges

## ▼ Full-Time Status Determination Methods

### ▼ Month-to-Month

### ▼ Look Back Safe Harbor

#### □ New Employees:

- New Full-Time Employees → Three-Month Grace Period
- New Variable Hour, Part-Time, or Seasonal Employees → Initial Measurement Period Safe Harbor

#### □ Ongoing Employees:

- Look Back Safe Harbor using Standard Measurement Period

# Common ACA Reporting Challenges

## Affordability

- ▶ **Affordability Threshold = 9.61%** for plan years beginning in 2022
  - ▶ **9.12%** for plan years beginning in 2023
- ▶ **Wellness Program Incentives**
  - ▶ **Assume all employees FAIL wellness standard**
  - ▶ **Except for tobacco cessation wellness programs – assume all employees PASS**
- ▶ **Affordability Safe Harbors**
  - ▶ **W-2 Safe Harbor**
  - ▶ **Rate of Pay Safe Harbor**
  - ▶ **Federal Poverty Level Safe Harbor**

# ACA Affordability Safe Harbors

## ACA Affordability Safe Harbor

## Form W-2 Safe Harbor

### The Basics

- Employee's required contribution does not exceed **9.61%** of that employee's Form W-2 wages from the ALE Group for the calendar year

### “Strings” Attached

- Determined after the end of the calendar year and on an employee-by-employee basis, taking into account the Form W-2 wages and the required employee contribution for that year.
- Employee's required contribution must remain a consistent amount or percentage of all Form W-2 wages during the calendar year (or during the plan year for plans with non-calendar year plan years)
  - an applicable large employer member is not permitted to make discretionary adjustments to the required employee contribution for a pay period
- ACA Reporting rules allow full year contribution / 12
- Must Use Form W-2 Safe Harbor for all months of the calendar year



# ACA Affordability Safe Harbors

## ACA Affordability Safe Harbor

## Rate of Pay Safe Harbor

### The Basics

- Hourly employees: satisfied for a calendar month if the employee's required contribution for the calendar month does not exceed **9.61%** of an amount equal to **130 hours** multiplied by the lower of the employee's hourly rate of pay as of the first day of the coverage period (generally the first day of the plan year) or the employee's lowest hourly rate of pay during the calendar month.
- Non-hourly employees: does not exceed **9.61%** of an amount equal to **130 hours** multiplied by the employee's monthly salary, as of the first day of the coverage period (instead of 130 multiplied by the hourly rate of pay).

### *“Strings”* Attached

- Hourly employees: Must use lowest rate of pay (i.e., cannot count raises)
- Non-hourly employees: Unavailable if the monthly salary is reduced, including due to a reduction in work hours
- Generally does not work for tipped or commissioned employees
- May use for some or all months

# ACA Affordability Safe Harbors

ACA Affordability Safe Harbor	FPL Safe Harbor
The Basics	<p>An applicable large employer member satisfies the federal poverty line safe harbor with respect to an employee for a calendar month if the employee's required contribution for the calendar month for the applicable large employer member's lowest cost self-only coverage that provides minimum value does not exceed <b>9.61%</b> of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12.</p>
“Strings” Attached	<ul style="list-style-type: none"><li>• Basically no strings attached</li><li>• May use for some or all months</li><li>• Allows use of the Qualified Offer Method for ACA reporting</li><li>• Generally results in the lowest employee premium</li></ul>

# Affordability Safe Harbor Take-Aways

- ▼ Affordability Threshold = 9.61% for plan years beginning in 2022
  - ▼ 9.12% for plan years beginning in 2023
- ▼ Based on employee's required contribution for the employer's lowest cost self-only coverage that provides minimum value
  - ▼ May not be what employee actually pays (e.g., family coverage, wellness incentives, etc.)
- ▼ **BEWARE** of strings attached
- ▼ We find the most issues with Form W-2 Safe Harbor
  - ▼ Use a *buffer* affordability percentage to avoid the “never-ending math problem”
  - ▼ Letter 226-J PTC Listing: XF
- ▼ Rate of Pay Safe Harbor often works out best
- ▼ *May* be able to fix issues through ESRP process
- ▼ Work with your **TRUE Network** consultants! (before year-end)

# Lessons Learned & Best Practices: **GOLDEN “CODES”**



- ▼ **Code Series 1 & 2**
  - ▼ Code Series 1 (Line 14)
  - ▼ Code Series 2 (Line 16)
- ▼ **Will always have a Series 1 Code**
- ▼ **May not always have a Series 2 Code – but you want one!**
- ▼ **2C is the “*Trump Code*” (only exception is 2E for multiemployer plan interim rule relief)**
- ▼ **Offers of Coverage - All or Nothing Per Month**

# Lessons Learned & Best Practices:

## **GOLDEN “CODES”**

### Line 16 (Code Series 2) Test

- ▼ You ALWAYS want Line 16 to have a response, if possible.
- ▼ Did we offer coverage to the employee?
  - ▼ YES – Did employee enroll?
    - ▼ YES – 2C (employee enrolled)
    - ▼ NO – Use your affordability safe harbor (2F, 2G, or 2H)
  - ▼ NO – Why not?
    - ▼ Not employed – 2A
    - ▼ Not full-time (that month) – 2B\*
    - ▼ Limited Non-Assessment Period – 2D
      - ▼ Examples: Waiting Period, Initial Measurement Period, First month of employment

# Lessons Learned & Best Practices

- ▶ **REVIEW THE FORMS BEFORE FILING**
  - ▶ **Especially Form 1094-C**
- ▶ **Line 16 – Avoid leaving Line 16 blank if possible**
- ▶ **Line 15**
  - ▶ **Only complete if coverage is offered (but not with 1A)**
- ▶ **Code Combinations - ACA returns with incorrect code combinations increase the possibility that the employer will be subject to an IRS audit because the IRS will be unable to properly process the returns**
- ▶ **Watch out for “strings” attached to Affordability Safe Harbors**
- ▶ **GET STARTED ASAP!!**

# Lessons Learned & Best Practices

- ▼ **Expired:** Good Faith Transition Relief
- ▼ Save PDF files
- ▼ Document efforts, responsible employees, service providers
- ▼ Double check ACA reporting service providers
  - ▼ Disclaimers..?
- ▼ Spot check for **Red Flag** code combinations
- ▼ Use “Buckets” for Coding Audit
  - ▼ e.g., status changes, 1H, PTC eligibility
- ▼ Must complete Line 14
- ▼ Best to complete Line 16
- ▼ Form 1094-C – Be sure to mark “Yes” in Line 23, Column A

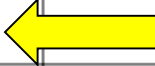
# Lessons from Employer Shared Responsibility Assessments

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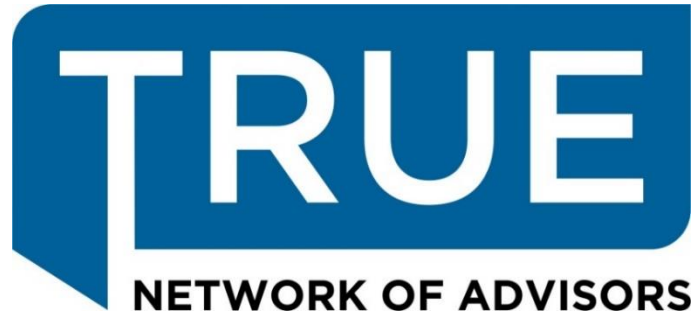
Form 1094-C (2017)

Page 2

		(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 type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28	May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29	June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30	July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31	Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32	Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
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35	Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	







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