Q&A from Assurex Global Webinar " IRS §4980H Penalty Collection Efforts and Why Employer Reporting Still Matters"	January 25, 2018
Question	**Answer**
for new hires, if using the look back period, we still have the limited non-assessment period before offer of coverage is required, correct?	For an employer using the look-back measurement method to determine full-time status, the rules in regard to when coverage must be offered differ depending upon whether or not the employee is reasonably expected (at hire) to be a full-time employee. • Full-time new hires must be offered coverage after the plan's regular waiting period (e.g. 1st of the month following 60 days), but no longer than 1st of the 4th month following hire, and then are transitioned into the standard cycle with the rest of the ongoing employees. Such employees are measured monthly until they have been employed for one full standard measurement period. • New hires that are expected to be part-time, variable hour or seasonal may be subjected to an initial measurement period of up to 12 months from the date of hire. Regardless of hours worked during the initial measurement period, unless there is a formal status change to full-time, there is no obligation to offer coverage until the employee has completed the initial measurement period and is determined to be full-time. If the employee is determined to be full-time after the initial measurement period, coverage must be offered after the administrative period. The rules indicate coverage must be offered no later than 13 and a partial month from hire if the employee is determined to be full-time. So, for example, only a 1-month administrative period would be allowed after a 12-month initial measurement period, while up to 90 calendar days for the administrative period could follow a 6-month initial measurement period.
Do employees from a staffing agency count? We have a client with about 30 FT EEs on W2. They also have about 80-90 EEs through a staffing agency. They are NOT on W2. The client pays the staffing agency. The staffing agency provides, insurance, worker's comp, etc.	The answer depends upon who is considered the common law employer. Whoever is considered the common law employer must count the employees to determine applicable large employer status and offer coverage to those who are full-time. The determination of who is the common law employer may be addressed in the contract between the contracting employer and the staffing/temp agency, but otherwise may require advice from employment law counsel based on the specific facts and circumstances.
How do you prove that you offer the coverage?	§4980H rules do not set forth any particular process or documentation requirements in regard to proving an offer of coverage 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. An enrollment form/waiver form 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, it should be okay to default to a waiver even if an actual form is not generated. Certainly having a process during which eligible employees actually access a site and affirmatively accept or decline coverage (or provide something via email or paper) would provide more concrete proof, but that is not necessarily required.

Status change PT to FT during initial measurement period, how do you code (lines 14 & 16) the months the EE was being originally measured as PT in his/her initial measurement period? Can you still use 1H/2D?	If the employee was hired as a variable hour employee, Codes 1H and 2D would be appropriate for the entire initial measurement period, even if the employee's hours vary back and forth between part-time and full-time during the initial measurement period. However, if there is a formal change in status to a regular full-time position, the employee should be considered full-time and offered coverage no later than 1st of the 4th month following the change in status (generally after the regular waiting period), and should be coded as full-time as of that date if it occurs prior to the end of the initial measurement period.
Are hours counted if employee is on short term disability with payments being issued from a TPA?	Hours during which the employee is receiving short-term disability (STD) payments are counted if the employer contributed (directly or indirectly) to the coverage. The IRS provided the following guidance in regard to counting hours of service for employees receiving disability payments: *"...periods during which an individual is not performing services but is receiving payments due to short-term disability or long-term disability result in hours of service for any part of the period during which the recipient retains status as an employee of the employer, unless the payments are made from an arrangement to which the employer did not contribute directly or indirectly. For this purpose, a disability arrangement for which the employee paid with after-tax contributions (so that the benefits received under the arrangement are excluded from income under § 104(a)(3)) would be treated as an arrangement to which the employer did not contribute, and payments from the arrangement would not give rise to hours of service."*
Can you provide specific examples of when Line 16 would be left blank?	Two common scenarios for which Line 16 would be left blank: • Full-time employee was not offered coverage (intentionally or unintentionally) for a month when it should have been offered. Line 14 would be coded 1H and Lines 15 and 16 would be left blank. • Full-time employee and family were offered minimum value coverage that was not affordable, and the employee waived the coverage. Line 14 would be coded with 1E, Line 15 would indicate the cost of single coverage, and Line 16 would be left blank.
Can you tell us the difference is between penalty A and penalty B?	§4980H(a) – If the employer fails to offer minimum essential coverage (MEC) to at least 95% (or all but 5, if greater) of full-time employees and their dependent children in any given month, the penalty is calculated by multiplying the penalty amount by the total full-time employee count minus the first 30, regardless of how many employees were offered coverage. • 2018 §4980H(a) penalty = (full-time employee count – 30) X $2320 annually ($193.33/month) §4980H(b) – If the employer satisfies §4980H(a) requirements, but fails to offer minimum value, affordable coverage to a full-time employee and that employee enrolls through a public Exchange and qualifies for a tax subsidy, the penalty applies for that particular employee (no waiver for the first 30). • 2018 §4980H(a) penalty = $3480 annually ($290.00/monthly) for each full-time employee who is not offered minimum value, affordable coverage who enrolls through a public Exchange and qualifies for a tax subsidy
Common ownership in various entities, would it be considered ALE?	If there is enough common ownership (generally 80% or more) or shared services resulting in a controlled group or an affiliated service group under §414 rules, and together the entities have 50 or more full-time equivalents (FTEs), then all of them are considered applicable large employers; and together they form an aggregated ALE group.
Do groups that implement spousal waiver with coverage not being offered if spouse is eligible for his/her employer's plan need to use 1K for line 14?	Yes, that is correct.

For Part III column b, do you count only full time employees (those actually working 30+ hours per week) or the sum of full-time employees plus full-time equivalents?	On Form 1094-C, for purposes of reporting in Part III column (b), the employer should count only those employees who were full-time for the month. Full-time status for may be determined using either the monthly measurement method or the look-back measurement method. Also, the instructions indicate that those who are in a limited non-assessment period (e.g. waiting period or initial measurement period) should not be counted.
How do we know if an employee received the PTC?	The Exchanges are supposed to send out letters to employers, but this did not start happening in most states until 2016, and will only occur if the employee provides accurate employer information upon applying for coverage. It's possible the employer will not know exactly which employees enrolled through a public Exchange and received a tax subsidy until the employer receives a Letter 226J (if at all).
How do you code uion employees who are given coverage through the union but paid for by the company	So long as the employer is contributing toward the union plan on behalf of the union employee, the employer likely qualifies for the multiemployer interim transition relief set forth in §4980H final regulations and also described in the employer reporting instructions. If the employer qualifies for this transition relief, at least for each month the union employee is considered full-time, the employer may use the coding 1H and 2E on Lines 14 and 16 without worrying about whether the employee was actually offered coverage or enrolled.
how would a wellness contrib figure into Line 15?	If the wellness incentive affects the amount the employee contributes for medical coverage, for purposes of calculating affordability under §4980H rules and reporting on Line 15, the employee contribution is based off the higher non-wellness rate (assuming all employees fail to participate); unless the incentive is tobacco-related, then the employee contribution is based off the lower non-tobacco rate.
I did mark No on Part III (a) but it should have been Yes. We have not received at 14767 letter but we might. Should I send in a correction or wait for the letter	There isn't a perfect answer to this. Technically, an employer should submit a correction as soon as possible after discovering an error in reporting. It may be worthwhile to discuss this with your tax advisor or counsel to understand the risks and rewards of filing a correction versus waiting for the letter.
If coverage is offerred to an employee and he waives it and then terminates employment 6 months later does line 14 for the month he terms get coded 1E (when coverage goes through the end of the month,had the employee elected it)?	Yes, that is correct. If coverage would have gone through the end of the final month of employment had the employee enrolled, it is coded as a waived offer of coverage through the final month of employment, and then coded 1H and 2A on Lines 14 and 16 for the remainder of the year.
So if a plan is offered to employees where they are covered at no cost to the employee but for dependents and spouses to be covered are at a cost to the employee would that be 1A oe 1E.	1A - only the employee contribution for single coverage is considered.
We are an ALE and have filed, we have not recieved a letter yet....Question relating back to the 1094-C, under reporting mistakes, failure to check box C of Line 22 indicating Section 4980H transition relief for 2015. If an employer checked box A, Qualifying Offer Method. Is that ok, or should both boxes have been checked?	If the employer offered minimum value, affordable coverage to 95% or more of full-time employees and transition relief was not needed for 2015, then it's not a problem that Box C was not checked. On the other hand, if the employer needed to claim any of the 2015 Section 4980H transition relief (e.g. coverage offered to 70% instead of 95%, or offer of coverage relief prior to the beginning of a non-calendar plan year), it was necessary to check Box C to do so.

what do you do if you if you have not reported at all ?	While we would advise working with your tax advisor or counsel to best undertand the options and risks, reporting sooner rather than later is likely the best approach. Employers who fail to report may be subject to reporting failure penalties in addition to §4980H penalties (if coverage was not offered as required). In addition, reporting penalites may be increased for intentional disregard.
What if them employee started mid month. Are they counted as FT employee or not until they are FT for the entire month for the 1094 FT count?	An employee who is hired mid-month is considered to be in a limited non-assessment period for the first partial month of employment, even if the employee is hired as full-time. The instructions make it clear that an employee in a limited non-assessment period is not considered full-time, and therefore such employee would not be counted as full-time for the month.
What is the code on Line 16 for when you put 1H for Line 14 (no offer of coverage) due to being in the Waiting Period?	Code 1H on Line 14 and Code 2D on Line 16 should be used for an employee in a limited non-assessment period (e.g. due to a waiting period, so long as coverage is actually offered at the end of the waiting period, or would have been if the employee was still employed).
What is the form called that lists employees that got coverage through the Exchabge?	Form 14765 is included in the Letter 226J (toward the end) and sets forth the employees who received a tax subsidy toward coverage through a public Exchange. Also included is the coding that was indicated on each such employee's Form 1095-C.
When EE is in the stability period, how would the employer collect the EE contributions when the EE is not working, or not having enough to pay for the insurance?	If an employee is not actively at work or receiving a paycheck, or there is not enough in the paycheck to cover employee contributions, it is advisable to have a process for obtaining the employee contribution and communicate such process accordingly (e.g. pay in after-tax or catch-up later). Whatever the arrangement, it should ideally be communicated to employees in advance. If an employee is in danger of losing coverage due to nonpayment, that should probably be communicated with a reasonable grace period. It may be helpful and easier administratively to look to other leave practices and handle the situation the same way. For example, FMLA requires that the employer provide a 30-day grace period and notification at least 15 days prior to the termination (e.g. if your contribution is not received by XX, your coverage will be terminated). While the grace period and notification is not required outside of FMLA, it is considered a good practice. Ultimately, if the employee is aware of and fails to make the employee contributions in accordance with the employer's policy, there is no requirement to continue to offer coverage.
Doesn't emplyer have to offer Health insurance coverage to a part time emplyee?	No - not if they average less than 30 hours per week. Applicable large employers are only required to offer coverage to those employees §4980H defines as full-time - those averaging 30 or more hours of service per week (or 130 or more per month).
and what is some of your employees were covered through other sources already and did not need the coverage?	Whether employees have coverage elsewhere or not, applicable large employers are required to make an offer of coverage to full-time employees and their dependent children.
Do I need to complete column B - Employee count even if I checked box A or D in sectiom 22	On Form 1094-C, Part III Column (b) must be completed with the full-time employee count for each month unless the employer meets the criteria for the 98% Offer Method and checks Box D on Line 22. Meeting the criteria for the Qualifying Offer Method and checking Box A on Line 22 would not allow the employer to skip completing Part III Column (b); the Qualifying Offer Method allows other simplifications to the reporting process.
So what is exactly offer of coverage? Is this the letter given at the enrollment period to your full time employees? That is what needs to be given to those empoyees?	To satisfy the requirement to make an offer of coverage, full-time employees must be given the option to enroll or waive coverage at least once every 12 months. There aren't any specific requirements about how the offer of coverage is made or documented. Employers commonly handle the process via either a paper enrollment form or online enrollment process, both of which typically provide adequate proof that an offer was made.

For ALE's, this 250 employer limit is cumulative, isn't it?	Employers who file 250 or more Form 1095s are required to submit the reporting electronically to the IRS. The count of 250 is considered on a per entity basis (per EIN), and does not consider how many Form 1095s are filed by other members of the same aggregated ALE group (i.e. controlled group or affiliated service group). In addition, the count is done separately for employers filing both the "B" forms and the "C" forms.
If the HRA is bundled with the medical - do they have to report?	Reporting is not required for coverage under an HRA so long as the HRA is integrated with the employer's group medical plan (i.e. those enrolled in the HRA are also enrolled in the employer's group medical plan), because reporting will already show coverage under a minimum essential coverage plan for the group medical plan. However, if the HRA is not integrated with the employer's group medical plan, reporting would be required for the HRA. So reporting for the HRA would be required if the employer allows HRA enrollment for those enrolled in another employer's group medical plan (e.g. through a spouse's employer) or for stand-alone HRAs such as those offered to retirees.
If we have less than 50 employees, should we report to IRS 1095 form?	Small employers (less than 50 FTEs) are not required to report on a Form 1094 with associated Form 1095s UNLESS: • The small employer is part of a larger controlled group or affiliated service group due to common ownership or shared services (§414 rules) and together they have 50 or more FTEs; or • The small employer offers a self-funded medical plan (reporting is then required on Form 1094-B and 1095-Bs for those covered under the self-funded plan).
okay, so I wanted to clarify, for the 1094-c Column B on page 2, if we utilize the look back method, and an employee receives coverage or an offer of coverage for the month, we can still exclude an employee that falls below the 130 hours a month, in any particular month in our full time employee count. Is that correct?	The general rule is that if an employee is determined to be full-time during the previous measurement period, the employee is then considered full-time and counted as full-time for all months in the stability period unless employment is terminated. This would be the case both for determining who requires an offer of coverage as well as counting the number of full-time employees for purposes of reporting in Part III Column (b) of the Form 1094-C.