



➤ November 10, 2021

# ACA Compliance Filing 2021

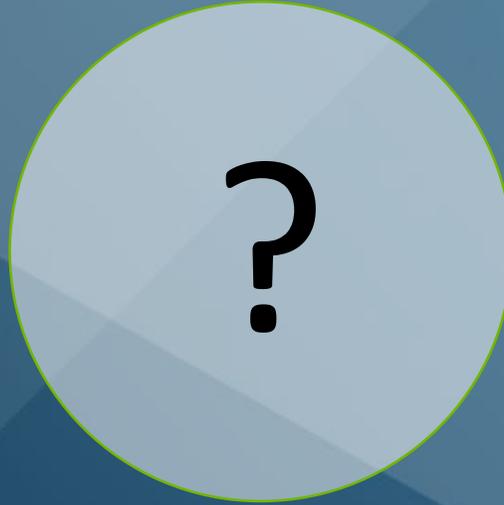


Presentation By:  
**Joe Aitchison**

# Before We Begin



We are recording  
today's webinar

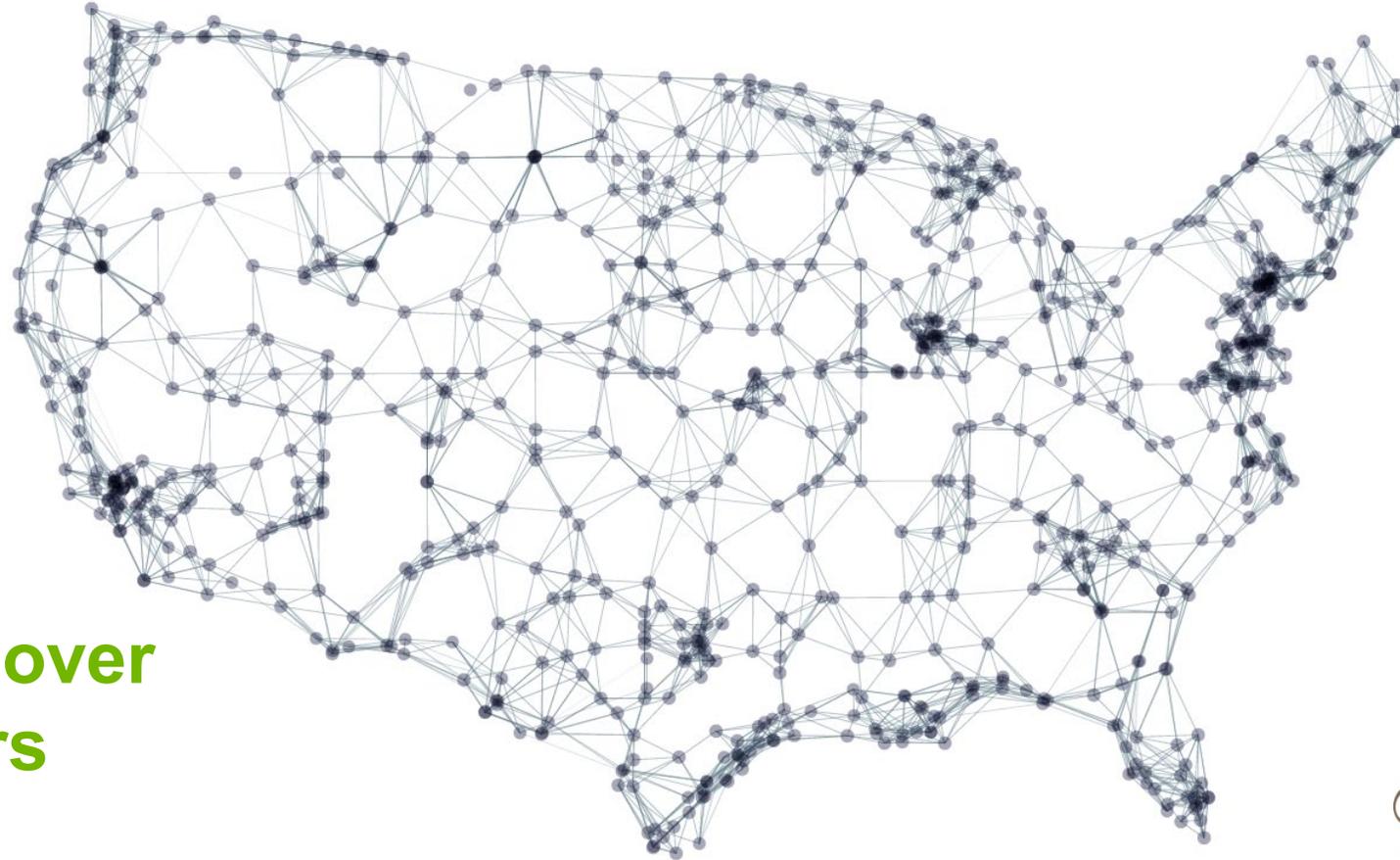


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# ➤ Presenter



## **Joe Aitchison, SPHR, SHRM-SCP, CHRS**

Joe provides Business & HR client advisory services and HR out-source services nationally. He is a Human Resource professional with over twenty five years business management and HR consulting experience. He has worked with multi plant International Tier I Automotive Manufacturing, retail, food processing, health care, legal administration and professional services.

Mr. Aitchison is recognized as a leader in human resources and has obtained a lifetime certification as a senior professional in human resource management, SHRM – Senior Certified Professional and Healthcare Reform Specialist by the Healthcare Reform Center & Policy Institute. Mr. Aitchison serves on several for profit and not for profit boards.

# ➤ What's New and What's Not

## 2021 Calendar Year Deadline for ACA Form Delivery

- **1095-B / 1095-C** Furnished to all ACA defined full time employees by January 31, 2022.
- **1094 & 1095** IRS Filings by paper (mail) February 28, 2022.
- **March 31, 2022** for electronic filers – E-file Form 1094-C and included 1095-Cs with the IRS
  
- No Expectation for extensions on filing dates
  
- **Expect E-filing requirement change for the 2022 filing year from 250 1095-C forms filed to employers having 100 or more forms filed.**

# ➤ ACA State Filing Dates

1. California March 31<sup>st</sup>
2. New Jersey March 31<sup>st</sup>
3. Washington, DC April 30<sup>th</sup>
4. Rhode Island January 31<sup>st</sup>
5. Massachusetts\*

## State Reporting References / Links

- <https://www.calpers.ca.gov/page/employers/policies-and-procedures/aca-guidance>
- <https://www.ftb.ca.gov/file/business/report-mec-info/index.asp>
- <https://nj.gov/treasury/njhealthinsurancemandate/employers.shtml>
- <http://www.ohic.ri.gov/ohic-employers.php>
- <https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/FAQ%20reporting%20SRP%20Update.3.31.20.pdf>
- <https://www.mass.gov/info-details/health-care-frequently-asked-questions-for-employers#general-questions->
- <https://www.mass.gov/service-details/health-care-reform-for-employers>

# ➤ Small Self-Insured Employers

Non-ALE Employers - Having fewer than 50 FTEs

Are not required to provide a 1095-B Form to Employees but must:

1. Post on its website that Forms 1095-B are available with contact information to obtain a form
2. Employer must provide a form within 30-days from the request
3. Employer **must file** form 1094-B with 1095-B forms with the IRS

ALE Employers (Self-Insured)

1. Must continue using 1095-C for all full-time employees
2. No penalty for not issuing 1095-B form to “part-time” employees who are covered under the self-insured health plan
  - Notice of 1095-B availability & contact information must be posted on the employer's website
  - 1095-B provided within 30 days of the request
3. IRS reporting requirements must be met

# ➤ Transition Relief – Good Faith No Longer Available

6721 & 6722 “Good Faith Effort” Transition Relief for 2021 – No longer available (at this time) for missing TIN and mismatched Name / SSN on 1095-C Forms.

**HOWEVER**, the IRS will consider “**Reasonable Cause**” Penalty Relief for Errors beyond the employer’s control. If the employer receives a penalty notice, the employer needs to provide information to the IRS that the mismatch is beyond their control – not due to the employer’s mistake or neglect (employee provided false or incorrect information).

1. Review employment records to verify that the SSN is accurate as reported
2. Contact the employee for correction
3. Maintain records on verification requests to employee & provide information to the IRS
4. Other documentation to support errors / omissions were beyond the employer’s control

# ➤ Affordability Changes

- Employers need to confirm that the employee premium portion for self only coverage is affordable.
- 2022 affordability percentage is 9.61%
- 2021 affordability percentage is 9.83%
- Box “1” of W-2 Wages – (2F)
- 130 hours x Hourly Rate of Pay (at start of the current plan year) – (2H)  
“or” lowest pay rate during the month
- Federal Poverty - (1A)

ACA FPL Maximum Employee Cost share for self-only coverage				
	Calendar Year	FPL	Affordability Percentage	Maximum Monthly Contribution
	2022	-----	9.61%	-----
	2021	\$12,760	9.83%	104.52
	2020	\$12,490	9.78%	101.79
	2019	\$12,140	9.86%	99.75
	2018	\$12,060	9.56%	\$96.08
	2017	\$11,880	9.69%	\$95.93
	2016	\$11,770	9.66%	\$94.75
	2015	\$11,670	9.56%	\$92.97
Source: Internal Revenue Service Data/Information				

# ➤ Common Employer Mistakes

1. **Providing affordable coverage** that meets minimum essential coverage / minimum value (MEC / MV) to all full-time eligible employees
  - Employers often don't understand how to determine affordable coverage
2. **Manage employees by class of employees**
  - Who is Full time
  - Who is Part time
  - Who is a Seasonal Employee?
  - Difference between Seasonal "Employee" / Seasonal "Worker"
  - Variable Hour Employees
3. **Actively manage employee eligibility** for the entire calendar year
4. **Timely offer Affordable MEC/MV Health Benefits to full time employees** (working 30 or more hours weekly)

# ➤ Common Employer Mistakes

Form **1094-C** Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns  CORRECTED OMB No. 1545-2251  
Department of the Treasury Internal Revenue Service **2021**  
Go to [www.irs.gov/Form1094C](http://www.irs.gov/Form1094C) for instructions and the latest information.

**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	

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** (2021)

## Common Employer Mistakes Part I

### Employer Information

- Don't use DBA

## Part II

### Common Mistakes

# ➤ Common Employer Mistakes

Form 1094-C (2021) Page 2

**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 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"/>	
33 Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
34 Nov	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
35 Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

Form 1094-C (2021)

## Common Employer Mistakes Part III

### Employer Information

- **How to count employees –** Why PR records need to be maintained w/ hire & term dates – (Full time / Part time status)

# ➤ Common Employer Mistakes

120316

Form 1094-C (2021) Page 3

**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 1094-C (2021)

## Common Employer Mistakes

### Part IV ALE Member Information

- Common Ownership Rules Apply
  - 80% Common Ownership
  - Includes family members (brother, sister, spouse, parent, etc.)
- List ALE with highest number of employees first
- List all ALE members

# ➤ Minimum Value & Minimum Essential Coverage Plan

## Minimum Value

An employer-sponsored plan provides **minimum value** if it covers at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan. (Reference IRS Notice: 2014-69)

Minimum Essential Coverage is the **mandatory coverage that employers must offer employees regardless of their health status** or plan type to meet ACA requirements. Sometimes referred to as Essential Health Benefits (EHBs).

**ACA qualifying Health Plans must include the following 10 essential benefits:**

1. Laboratory services
2. Emergency services
3. Prescription drugs
4. Mental health/substance abuse
5. Maternity and newborn care
6. Pediatrics services, including oral and vision care
7. Rehabilitative and habilitative services and devices
8. Ambulatory patient services
9. Preventive/wellness services and chronic disease management
10. Hospitalization

*Note: Not sure if your plan meets MEC / MV to Employees & Dependents...  
Check your SBC (Summary of Benefits & Coverage)*

# ➤ Common Employer Mistakes

600120

**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  
**2021**

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.)			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		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 (2021)

## Common Employer Mistakes

### Employee Information

- Not using Employee's Formal Name

**Line 14** Common Miscoding

**Line 15** Common Mistakes

**Line 16** Common Miscoding

# ➤ ACA 1095-C Current Codes

## Offer of Coverage Indicator Code (same as 2020) Line 14 – 1095-C

Code/Line 14	Explanation
1A	Qualifying Offer (QO): Minimum Essential Coverage (MEC) providing MV offered to full-time ("FT") employee with employee contribution for self-only coverage equal to or less than 9.78% (9.83% for 2021) of the mainland single FPL and at least MEC offered to spouse and dependent(s).
1B	MEC providing MV offered to employee only.
1C	MEC providing MV offered to employee and at least MEC offered to dependent(s) (not spouse).
1D	MEC providing MV offered to employee and at least MEC offered to spouse (not dependent(s)). Do not use if the offer to the spouse is conditional. <sup>1</sup>
1E	MEC providing MV offered to employee and at least MEC offered to dependent(s) and spouse. Do not use if the offer to the spouse is conditional. <sup>1</sup>
1F	MEC NOT providing MV offered to employee; employee and spouse or dependent(s); or employee, spouse and dependents.
1G	Offer of coverage to employee who was not a FT employee for any month of the calendar year (which may include one or more months in which the individual was not an employee), and, who enrolled in self-funded coverage for one or more months of the calendar year. Can only be used for all 12 months.
1H	No offer of coverage (employee not offered any health coverage or employee offered coverage that is not MEC, which may include one or more months in which the individual was not an employee).
1I	Not effective for 2016 (and beyond) Form 1095-C filings.
1J	Employer offers MEC providing MV offered to the employee and at least MEC offered conditionally <sup>1</sup> to his/her spouse; MEC not offered to dependent(s).
1K	Employer offers MEC providing MV offered to the employee and at least MEC offered conditionally <sup>1</sup> to his/her spouse; at least MEC offered to dependent(s).

**1L.** Individual coverage health reimbursement arrangement (HRA) offered to you only with affordability determined by using employee's primary residence ZIP code.

**1M.** Individual coverage HRA offered to you and dependent(s) (not spouse) with affordability determined by using employee's primary residence ZIP code.

**1N.** Individual coverage HRA offered to you, spouse, and dependent(s) with affordability determined by using employee's primary residence ZIP code.

**1O.** Individual coverage HRA offered to you only using the employee's primary employment site ZIP code affordability safe harbor.

**1P.** Individual coverage HRA offered to you and dependent(s) (not spouse) using the employee's primary employment site ZIP code affordability safe harbor.

**1Q.** Individual coverage HRA offered to you, spouse, and dependent(s) using the employee's primary employment site ZIP code affordability safe harbor.

**1R.** Individual coverage HRA that is NOT affordable offered to you; employee and spouse or dependent(s); or employee, spouse, and dependents.

**1S.** Individual coverage HRA offered to an individual who was not a full-time employee.

**1T.** Individual coverage HRA offered to employee and spouse (no dependents) with affordability determined using employee's primary residence ZIP code.

**1U.** Individual coverage HRA offered to employee and spouse (no dependents) using employee's primary employment site ZIP code affordability safe harbor.

### Individual HRA ACA Affordability Determination

ICHRA affordability is important – affects the employee ability to obtain a tax credit on the exchange - unaffordable subjects the employer to a 4980H tax penalty.

- If an ICHRA is "affordable", employees are not eligible for tax credits (PTC)
- If an ICHRA is "unaffordable", employees can choose either the ICHRA or tax credits (PTC)
- Safe harbors to determine household income?

# ➤ 1095-C Line 16 Codes

## Line 16 Indicator Code (same as 2020)

Code/Line 16	Defintition
2A	Employee not employed during the month. Enter code 2A if the employee was not employed on any day of the calendar month. Do not use code 2A for a month wherein the individual was an employee of the employer on any day of the calendar month. Do not use code 2A for the month during which an employee terminates employment with the employer.
2B	Employee not a full-time ("FT") employee. Enter code 2B if the employee is not a FT employee for the month and did not enroll in MEC, if offered for the month. Enter code 2B also if the employee is a FT employee for the month and the offer of coverage (or coverage if the employee was enrolled) ended before the last day of the month solely because the employee terminated employment during the month (so that the offer of coverage or coverage would have continued if the employee had not terminated employment during the month).
2C	Employee enrolled in coverage offered. Enter code 2C for any month in which the employee enrolled in health coverage offered by the employer for each day of the month, regardless of whether any other Code in Code Series 2 (other than code 2E) might also apply (for example, the code for the affordability safe harbor, had the employee declined enrollment in the coverage). Do not enter 2C in line 16 if code 1G is entered in the All 12 Months Box in line 14 because the employee was not a FT employee for any months of the calendar year. Do not enter code 2C in line 16 for any month in which a terminated employee is enrolled in COBRA continuation coverage (enter code 2A instead).
2D	Employee in a Limited Non-Assessment Period ("LNP")*. Enter code 2D for any month during which an employee is in a LNP.
2E	Multiemployer interim rule relief. Enter code 2E for any month for which the multiemployer arrangement interim guidance applies for that employee, regardless of whether any other code in Code Series 2 (including code 2C) might also apply. See Form 1095-C instructions for more details.
2F	Affordability Form W-2 safe harbor. Enter code 2F if the employer used the Form W-2 safe harbor to determine affordability for this employee for the year. If an employer uses this safe harbor for an employee, it must be used for all months of the calendar year for which the employee is offered health coverage.
2G	Affordability FPL safe harbor. Enter code 2G if the employer used the FPL safe harbor to determine affordability for this employee for any month(s).
2H	Affordability rate of pay safe harbor. Enter code 2H if the employer used the rate of pay safe harbor to determine affordability for this employee for any month(s).

# ➤ ALE Determination / FTE Count

## ALE - FTE Calculation

- An employee with 130 or more hours per month is considered FT for the month for purposes of determining whether an offer of coverage is required.
- An employee with 120 hours or more per month is considered FT for the month for purposes of determining ALE status.
- The hours of all employees with less than 120 hours per month are added and then divided by 120 to determine the total FTEs for purposes of determining ALE status.

## ALE Calculation

- Add each month's total FT and FTE counts for all 12 months in the preceding tax year and divide by 12. Round down to get your ALE status.
- If the result is 50FT/FTE or greater, then you are an ALE.

# ➤ The Payroll Challenges

1. Maintain current employee addresses on file
2. Understand that the SSN verification system for ACA reporting is **“not the same”** as it is for Payroll (more restrictive – less forgiving)
  - Employee Name
    - As it appears on the SS Card should be used for payroll purposes (potential rejection, especially for foreign nationals)
3. Maintain “accurate” Hire & Termination Dates as part of EE payroll record
  - Inactive employee status does not transition over to ACA filing
4. Maintain Employee Status Information Uniformly
  - Full time / Part time / Seasonal Worker / Seasonal Employee / Variable Hour Employee
  - Change employee status as applicable on payroll records – **by date of event**
5. Uniformly cross reference job titles with Employee Status or Classes:
  - Examples: Manager FT / Manager PT; Hrly. Maintenance FT or PT
  - Define part time as less than 30 hours weekly

# ➤ From the Employer Side

## So, an employee goes to the Exchange – What happens next?

### 1. IRS is reviewing / auditing past employer filings

- Started in 2016 and now reviewing 2019 filings
- Issuing penalties for late filing & failing to provide 1095-C forms to employees for 2018 & 2019
- Will continue in 2021 reviewing 2019
- **2022 – will continue reviewing 2019 filings and start (most likely in the fall) 2020 filings**
- If captured during an IRS internal review – inaccuracies in employer 1094-C may trigger a review of the State Exchange Data files (for employees who opted for health benefits from the exchange and received a subsidy)

### 2. Employees who went to the exchange and received a subsidy indicated the employer did not make them an affordable offer of coverage

- Was the employee full time or part time?

### 3. Did the employer file a 1094-C w/ 1095-C forms?

- If FT, then there is a possibility the employer will receive an IRS penalty notice
- **So how does the IRS know if I was supposed to file a 1094-C or not?**
  - Employer federal business tax records and state payroll records are clear indicators on the “estimated” number of employees working for an employer. IRS will review the W-3 report filed by the employer to determine W-2 count for penalty purposes if no 1094-C was filed with the IRS.
  - Information reported by Fed//State Exchanges – who obtained coverage from the exchange and received a subsidy

# ➤ Employer Shared Responsibility Payment (ESRP)

## ESRP Notices | ACA *What happens if...*



In a 2018 report the Treasury Inspector General for Tax Administration (TIGTA) commented that the IRS uses the Affordable Care Act Compliance Validation (ACV) system to automatically identify non-compliant ALEs.

# ➤ Employer Shared Responsibility Provisions

## ALEs must:

Offer **Affordable** Minimum Essential Coverage (MEC) health coverage providing value to their full-time (FT) employees and at least Minimum Essential Coverage to their dependents

or

Potentially be subject to an employer shared responsibility payment

## Liability exists if employer (ALE):

**(a) Penalty:** Employer does not offer coverage to at least 95% of FT employees (and their dependents) and at least one FT employee receives a premium tax credit (PTC) \$225 (M) / 2,2700 (A) Xs all FTE ~ 2021 Rate

or

**(b) Penalty:** Employer does offer to 95% of FT employees (and their dependents), but at least one FT employee receives a PTC from the Marketplace (Exchange) – 2021 (b) amount ~ \$338.33 (M) /\$ 4,060 (A) per EE that receives a subsidy form the Exchange

Reason for an individual PTC:

- not offered
- unaffordable, or
- did not provide minimum value

Employer Shared Responsibility Annual Assessments			
	4980H(a) – Failure to offer coverage	4980H(b) – Failure to offer affordable, minimum-value coverage	Affordability threshold under 4980H(b)
2021	\$2,700 / \$225.00	\$4,060 / \$338.33	9.83%
2020	\$2,570 / \$214.17	\$3,860 / \$321.67	9.78%
2019	\$2,500	\$3,750	9.86%
2018	\$2,320	\$3,480	9.56%

# ➤ IRS Enforcement of Pay or Play Penalty – Letter 226J

- In most cases, the employers who are receiving the notices\* appear to have inaccurately completed their IRS Form 1094-C regarding whether or not the employer offered coverage to an individual employee or at least 95% of its full-time employees

\* Initial tax penalty notices sent to employers are “inquiries” and not an actual penalty

# ➤ IRS Enforcement of Pay or Play Penalty – Letter 226J

- The IRS notice will list one or more employees who went to the exchange and received a premium tax credit, triggering the penalty (Form 14765 received with 226J Letter)
- If the “a” penalty does not apply, the employer can still be subject to the “b” penalty for each full-time employee who was not offered affordable, minimum value coverage and who received a premium tax credit

# ➤ ESRP Assessment and Payment

- **IRS will send the Employer an inquiry notice**
- IRS will check to see if the Employer filed a 1094-C Form for that year (*most likely 2018*)
- **A 226J Letter** – Notice w/ “Proposed” penalty amount will be sent to the employer  
Employer has 30 days to respond (can be extended an additional 30 days)
- **Form 14764** – Opportunity to agree, reduce penalty or state no penalty due & to identify an authorized representative to contact IRS  
Optional – Form 2848 POA (can be used but not necessary to respond to the 226J Notice)
- **Form 14765** – Lists Employees who went to the exchange & received a subsidy

## **Note: If Employer fails to respond to the 226J Letter / Notice the IRS will**

- Send a reminder notice allowing 15 days to respond
- Assess the **(a)** or **(b)** penalty – based on the information provided on the filed 1094-C form

# ➤ ESRP Assessment and Payment

Dear Employer,

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP

**\$2,678,000.00**

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage, for one or more months of the year at least one of the full-time employees was certified as being allowed the premium tax credit (PTC) on his or her individual income tax return information. We are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least 70% of your full-time employees and at least one of your full-time employees was certified as being allowed the PTC on his or her individual income tax return information.

ESRP Summary Table

Month	Information Reported to IRS					f. Applicable IRC Section 49801 provision	g. Monthly ESRP amount
	a. Form 1094-C, Part III, Col (a) Minimum essential coverage offer indicator offered to at least 70%	b. Form 1094-C, Part III, Col (b) Full-time employee count for ALE member	c. Allocated reduction of full-time employee count for IRC Section 49801(a)	d. Count of assessable full-time employees with a PTC for IRC Section 49801(a)	e. Count of assessable full-time employees with a PTC for IRC Section 49801(b)		
Jan	No	1,575	30	5	-	49801(a)	\$ 267,800.00
Feb	No	1,575	30	17	-	49801(a)	\$ 267,800.00
March	No	1,575	30	18	-	49801(a)	\$ 267,800.00
Apr	No	1,575	30	13	-	49801(a)	\$ 267,800.00
May	No	1,575	30	7	-	49801(a)	\$ 267,800.00
June	No	1,575	30	5	-	49801(a)	\$ 267,800.00
July	No	1,575	30	2	-	49801(a)	\$ 267,800.00
Aug	No	1,575	30	1	-	49801(a)	\$ 267,800.00
Sep	No	1,575	30	1	-	49801(a)	\$ 267,800.00
Oct	No	1,575	30	1	-	49801(a)	\$ 267,800.00
Nov	No	1,575	30	-	-		\$ -
Dec	No	1,575	30	-	-		\$ -
Total Proposed ESRP							\$ 2,678,000.00

Letter 226J (10-2017)  
Catalog Number 67905G

# ➤ ESRP Assessment and Payment

<b>Indicate Your Agreement or Disagreement</b>		
<b>Agreement with proposed assessment</b>		
<input type="checkbox"/> I consent to the assessment and collection of the proposed assessment of the ESRP in the amount of \$2,678,000.00.		
Signature	Date	
Print name and title of the person who signed above		
<b>Partial/Total disagreement with proposed assessment</b>		
<input type="checkbox"/> I disagree with part or all of the proposed assessment of the ESRP		
<b>Indicate Your Payment Option</b> <i>(Check all that apply)</i>		
<input type="checkbox"/> Full payment using EFTPS on _____		
<input type="checkbox"/> Partial payment using EFTPS on _____		
<input type="checkbox"/> Enclosed full payment of \$2,678,000.00		
<input type="checkbox"/> Enclosed partial payment of \$ _____		
<input type="checkbox"/> No payment		
<ul style="list-style-type: none"><li>• Write your employer ID number 20-5219209, the tax year 2015 and ESRP on your payment and any correspondence.</li><li>• Make your check or money order payable to the United States Treasury.</li></ul>		
Catalog Number 68861Z	www.irs.gov	Form 14764 (4-2017)

# ➤ 5699 Letters Reporting Penalties

- IRS can assess **\$280 penalty per return** for late, incomplete or incorrect forms
- IRS can assess another **\$280 penalty** for failure to provide a 1095 form to employees
- IRS granted relief for incomplete or incorrect returns for prior years if good faith effort
- 2020 filing was the final year (unless otherwise determined) the IRS will extend good faith relief
- “Good Faith” relief does not include “failure to file” by an employer

# ➤ IRS 5699 Letter / 5698 Follow-up Letter

What happens if I did not file a 1094-C in past years (2016, 2017, 2018, 2019 and now 2020)

➤ Am I in IRS Trouble? Answer: Maybe yes / maybe no (right now)

IRS is reviewing employer W-3s – based on number of W-2 issued to determine if there should be a 1094-C on file for that employer for the year.

**OR**

An employee went to the exchange and obtained coverage and possibly a subsidy, telling the exchange that you (the employer) did not offer them affordable health benefits.

➤ The IRS is checking individuals who went to an exchange and received a subsidy – back checking their employer filings to determine if a 1094-C was filed for that year.

**What happens next:** IRS issues a 5699 “Inquiry” letter to the Employer – if the employer does not respond to the 5699 letter, a follow up IRS letter (5698) will be sent. If the employer fails to respond to this letter, the next step is a 5005A Notice.

# ➤ IRS 5699 Letter


**Department of the Treasury**  
**Internal Revenue Service**  
 1973 North Rulon White Boulevard  
 Ogden, UT 84201-0062

**Date:** August 22, 2018  
**Taxpayer ID number:** 27-340251  
**Tax year:** 2016  
**Person to contact:** 48601 Response Unit  
**Contact ID number:** 15699  
**Contact telephone number:** 877-671-4712  
**Contact e-tax number:** 877-992-2723



Dear Employer:

Our records show you may have been an Applicable Large Employer (ALE) in 2016 and therefore required to file certain information returns for 2016. We haven't received those returns for the taxpayer ID number shown at the top of this letter.

Internal Revenue Code (IRC) Section 6056 requires employers that are ALEs to file information returns with the IRS and provide statements to their full-time employees relating to the health insurance coverage, if any, the employer offered its full-time employees. ALEs meet these reporting requirements using Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage.

**How to know if you're required to file**

In general, an employer is an ALE for a year (and thus subject to the reporting requirements) if it had an average of 50 or more full-time employees (including full-time equivalent employees) during the preceding calendar year. For this purpose, there are specific definitions of full-time employee and full-time equivalent employee, exceptions for certain seasonal workers and employees with TRICARE or Veterans Administration health coverage, and specific rules for employers that are members of an aggregated group under IRC §§ 414(b), (c), (m) or (o). For more information on these rules and other information about how to determine if you were an ALE in 2016, visit the ACA Information Center for Applicable Large Employers (ALEs) at [www.irs.gov](http://www.irs.gov), keyword "ALEs."

Employers required to file at least 250 Forms 1095-C generally must file electronically. Other employers may file either electronically or on paper. You can find the 2016 Forms 1094-C and 1095-C and Instructions for Forms 1094-C and 1095-C, which includes information on how to file returns with the IRS, at [www.irs.gov](http://www.irs.gov) (at the top of the screen select "Forms & Pubs," under the "Browse" heading choose "List of Prior Year Forms & Pubs" and in the "Find" box enter "1094-C" or "1095-C," as applicable).

Letter 5699 (Rev. 6-2018)  
Catalog Number 6636P

**What you must do**

Check the box below that applies and mail your response to us to the address shown at the top of this letter within 30 days from the date of this letter.

I was an ALE for calendar year 2016 and already filed Form 1094-C and Forms 1095-C with the IRS using the following name \_\_\_\_\_ and employer identification number (EIN) \_\_\_\_\_ on date \_\_\_\_\_.

I was an ALE for calendar year 2016 and have included my Form 1094-C and Forms 1095-C with this letter. (Do not use this box if you are required to file electronically.) (Explain reasons for late filing below under "Other")

I was an ALE for calendar year 2016 and **will file my Form 1094-C and Forms 1095-C with the IRS** using the following name \_\_\_\_\_ and EIN \_\_\_\_\_ by date \_\_\_\_\_. (If more than 90 days from the date of this letter, explain below under "Other") (Explain reasons for late filing below under "Other")

I was not an ALE for calendar year 2016. Explain reasons below under "Other".

Other (Indicate below or attach a statement explaining why you haven't filed the required returns and any actions you plan to take.)

Senior management was not aware that the 1094-C was not completed - We have contracted with a 3rd party to completed they filing within the next 90 days.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If you're required to file and furnish information returns under IRC Section 6056, failure to do so may result in the assessment of penalties under IRC Section 6721 for failure to file and IRC Section 6722 for failure to furnish information returns.

When responding to this letter, please include your contact information, including a daytime telephone number and the best hours to reach you.

If you have questions, please use the contact information at the top of the first page of this letter.

Sincerely,

  
 Shan Montoya  
 Operation Manager

Letter 5699 (Rev. 6-2018)  
Catalog Number 6636P

# ➤ 5698 IRS Follow-up Letter

 Department of Treasury  
Internal Revenue Service  
1973 North Rulon White Boulevard  
Ogden, UT 84201-0062

Date: 9/17/2018  
Taxpayer ID number (last 4 digits): XX-XXXX843  
Tax year: 2016  
Person to contact: 49801 Response Unit  
Employee ID number: Letter 5699  
Contact telephone number: 877-571-4712  
Contact e-fax number: 877-792-2723

Dear [REDACTED]

We haven't received your response to our Letter 5699, Missing Information Return Form 1094/1095-C, which we sent on Jul 12, 2018. We need your response so we know how to correctly proceed.

Please complete the section under "What you must do" on the enclosed copy of Letter 5699, and return it to us within 30 days from the date of this letter. When you respond, include a name and telephone number of the person we can contact if we have questions about your response.

If you're required to file and furnish information returns and statements under Internal Revenue Code (IRC) Section 6056, failure to do so may result in the assessment of penalties under IRC Section 6721 for failure to file information returns and Section 6722 for failure to furnish information statements.

Please use the contact information above if you have questions.

Thank you for your cooperation.

Sincerely,  
  
Shan Montoya  
Operation Manager

Enclosure:  
Letter 5699

Letter 5698 (Rev. 8-2018)  
Catalog Number 68385E

# ➤ CP220J IRS Penalty Notice

Department of the Treasury  
Internal Revenue Service  
Group 2219  
2300 Fairway Road Suite 410  
Florence, KY 41042

030176.753055.451005.25555 2 AD 0.400 1371  
[Redacted]

**Notice** CP220J  
**Tax period** December 31, 2015  
**Notice date** October 15, 2018  
**Employer ID number** [Redacted]  
**To contact us** Phone 1-800-829-0115  
Page 1 of 4

We charged you an employer shared responsibility payment (ESRP)  
**Amount due: \$174,720.00**

We charged you an (ESRP) for the tax period ended December 31, 2015, because in one or more months one of the following occurred:

- You didn't offer Minimum Essential Coverage (MEC) to at least 70% (after 2015 95%) of your full-time employees (and their dependents) and at least one full-time employee received the Premium Tax Credit (PTC).
- You offered MEC to at least 70% (after 2015 95%) of your full-time employees (and their dependents), but at least one full-time employee received the PTC.

To avoid interest charges, pay the amount due by October 29, 2018.

Billing summary	
ESRP amount	\$174,720.00
<b>Amount due by October 29, 2018</b>	<b>\$174,720.00</b>

Continued on back...

**Payment**

- Make your check or money order payable to the United States Treasury.
- Write your Employer ID number (36-4231505), the tax period (December 31, 2015), and "ESRP" on your payment and any correspondence.

**Amount due by October 29, 2018** **\$174,720.00**

INTERNAL REVENUE SERVICE  
OGDEN, UT 84201-0039

364231505 PJ R0HR 43 2 201512 670 0000000000

# ➤ Penalty Rates

## Exhibit 20.1.7-1

**IRC 6721 & IRC 6722 Penalty Rates for Large Businesses and Government Entities (Other Than Federal Entities) with Gross Receipts Over \$5 Million (Average annual gross receipts for the most recent 3 taxable years)**

Returns Due	Penalty Rate	Not more than 30 days late	31 days late - August 1	After August 1	Intentional disregard**
From 01-01-2022 thru 12-31-2022* (Rev. Proc. 2020-45)	Per return / Max	\$50 / \$571,000	\$110 / \$1,713,000	\$280 / \$3,426,000	\$570 / No max
From 01-01-2021 thru 12-31-2021* (Rev. Proc. 2019-44)	Per return / Max	\$50 / \$565,000	\$110 / \$1,696,000	\$280 / \$3,392,000	\$560 / No max
From 01-01-2020 thru 12-31-2020* (Rev. Proc. 2018-57)	Per return / Max	\$50 / \$556,500	\$110 / \$1,669,500	\$270 / \$3,339,000	\$550 / No max
From 01-01-2019 thru 12-31-2019* (Rev. Proc. 2018-18)	Per return / Max	\$50 / \$545,500	\$100 / \$1,637,500	\$270 / \$3,275,500	\$540 / No max
From 01-01-2018 thru 12-31-2018* (Rev. Proc. 2016-55)	Per return / Max	\$50 / \$536,000	\$100 / \$1,609,000	\$260 / \$3,218,500	\$530 / No max
From 01-01-2017 thru 12-31-2017* (Rev. Proc. 2015-53)	Per return / Max	\$50 / \$532,000	\$100 / \$1,596,500	\$260 / \$3,193,000	\$530 / No max
From 01-01-2016 thru 12-31-2016* (Rev. Proc. 2016-11)	Per return / Max	\$50 / \$529,500	\$100 / \$1,589,000	\$260 / \$3,178,500	\$520 / No max
From 01-01-2011 thru 12-31-2015	Per return / Max	\$30 / \$250,000	\$60 / \$500,000	\$100 / \$1,500,000	\$250 / No max

Reference: (IRP) Notice: [20.1.7 Information Return Penalties | Internal Revenue Service \(irs.gov\)](https://www.irs.gov/irb/2017-17/irb20171701.html)

## Exhibit 20.1.7-2

**IRC 6721 & IRC 6722 Penalty Rates for Small Businesses with Gross Receipts Less Than or Equal to \$5 Million (Average annual gross receipts for the most recent 3 taxable years)**

Returns Due	Penalty Rate	Not more than 30 days late	31 days late - August 1	After August 1	Intentional disregard**
From 01-01-2022 thru 12-31-2022* (Rev. Proc. 2020-45)	Per return / Max	\$50 / \$199,500	\$110 / \$571,000	\$280 / \$1,142,000	\$570 / No max
From 01-01-2021 thru 12-31-2021* (Rev. Proc. 2019-44)	Per return / Max	\$50 / \$197,500	\$110 / \$565,000	\$280 / \$1,130,500	\$560 / No max
From 01-01-2020 thru 12-31-2020* (Rev. Proc. 2018-57)	Per return / Max	\$50 / \$194,500	\$110 / \$556,500	\$270 / \$1,113,000	\$550 / No max
From 01-01-2019 thru 12-31-2019* (Rev. Proc. 2018-18)	Per return / Max	\$50 / \$191,000	\$100 / \$545,500	\$270 / \$1,091,500	\$540 / No max
From 01-01-2018 thru 12-31-2018* (Rev. Proc. 2016-55)	Per return / Max	\$50 / \$187,500	\$100 / \$536,000	\$260 / \$1,072,500	\$530 / No max
From 01-01-2017 thru 12-31-2017* (Rev. Proc. 2015-53)	Per return / Max	\$50 / \$186,000	\$100 / \$532,000	\$260 / \$1,064,000	\$530 / No max
From 01-01-2016 thru 12-31-2016* (Rev. Proc. 2016-11)	Per return / Max	\$50 / \$185,000	\$100 / \$529,500	\$260 / \$1,059,500	\$520 / No max
From 01-01-2011 thru 12-31-2015	Per return / Max	\$30 / \$75,000	\$60 / \$200,000	\$100 / \$500,000	\$250 / No max

# Before Q&A



HRCI/SHRM  
certificate is in  
the handout  
section



Receive an email  
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recording



Please  
complete the  
exit survey

# Before Q&A



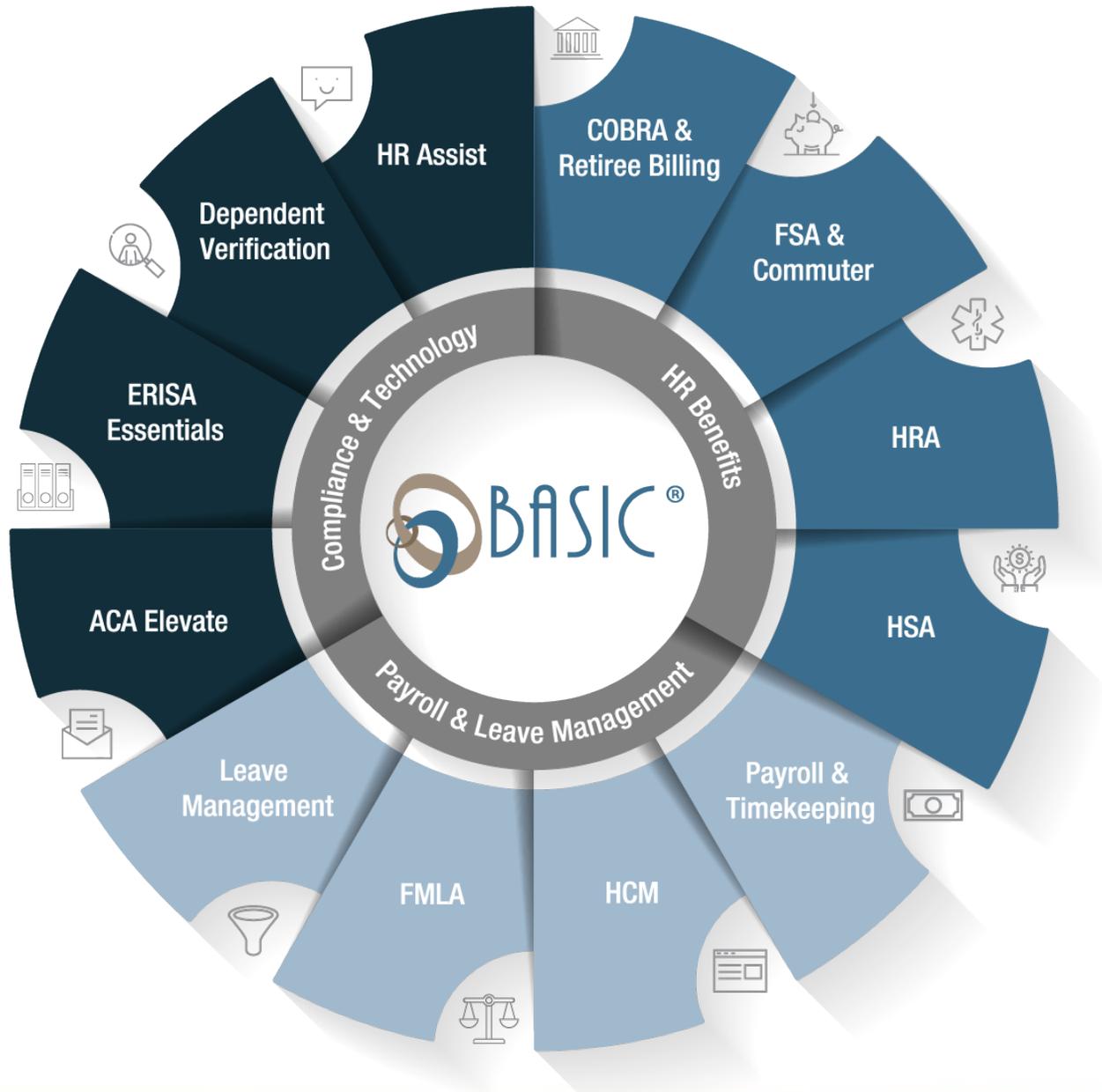
Receive an email tomorrow with the slides & recording



Please complete the exit survey

QUESTIONS





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