

## Publications

# New Year, New ACA Penalty and Reporting Relief!

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In late December, President Biden signed into law relief related to Code section 4980H employer mandate penalties and Code section 6055 minimum essential coverage (“MEC”) and Code section 6056 employer mandate reporting on Forms 1095-B and -C (the “New Law”) (Employer Reporting Improvement Act ([H.R. 3801](#)) and the Paperwork Burden Reduction Act ([H.R. 3797](#))). The New Law applies beginning with 2024 reporting due in early 2025, with some exceptions noted below.

Much of the New Law amends Code sections 4980H, 6055, and 6056 to codify relief already permitted by regulations (see our prior alert [here](#)), but with certain expansions. However, some of the New Law provides new relief.

## Employer Mandate Relief

- The New Law increases the timeframe for applicable large employers (“ALEs”) to respond to Letter 226J assessing 4980H penalties from 30 days to at least 90 days. This applies to assessments proposed in taxable years beginning in 2025 and later.

**GROOM INSIGHT:** Although the IRS typically grants 30-day extensions to reply to Letter 226J, most employers need more than 60 days to process the letter and gather all of the data to reply. If an ALE does not timely reply to the Letter 226J, the IRS can assess the penalties, and the IRS begins collection activity, including sending notices of intent to levy the ALE’s property. It is much easier to remove the penalties at the Letter 226J stage, before assessment, so this is welcome relief for ALEs.

- The IRS has historically taken the position that there is no statute of limitations on 4980H penalty assessments. The New Law creates a six-year statute of limitations on 4980H penalty assessments. The 6-year period begins on the later of: (1) the due date of the Forms for the year in which the penalty would apply; or (2) the date the employer actually files the Forms for such year. This is effective with respect to Forms that are due after December 31, 2024 (i.e., 2024 Forms due in 2025).

**GROOM INSIGHT:** Based on the effective date, it appears that the IRS could take the position that no statute of limitations should apply to 4980H penalty assessments for tax years 2023 and earlier (assuming the ALE timely filed the Forms), and the six-year statute of limitations only applies to 4980H penalty assessments for tax years 2024 and later.

## Reporting Relief

- For MEC reporting, a reporting entity (generally, an insurer or an employer) must report covered individuals' taxpayer identification numbers ("TINs") and can be subject to reporting penalties if it fails to do so. However, the entity can avoid these penalties if it follows "TIN solicitation" rules in the Code section 6724 reasonable cause regulations and reports the individual's date of birth. The TIN solicitation rules generally require that the entity request the TIN three times, at certain specified time periods. The New Law allows the reporting entity to report the date of birth rather than the TIN where the entity is "unable to collect information on the TIN." This applies to Forms due after December 31, 2024 (i.e., 2024 Forms due in 2025).

**GROOM INSIGHT:** It is not clear how this new rule relates to the TIN solicitation rules. For example, if the individual does not provide the TIN, is the reporting entity still required to ask for the TIN three times at specified timeframes consistent with the existing regulations? Further guidance on how the TIN solicitation rules apply after the New Law would be helpful.

- For both MEC and employer mandate reporting, the reporting entity is permitted to furnish the Forms to individuals electronically if the individual consents. If the consent states that it applies to future consents, the reporting entity is not required to get a new consent every year. The New Law provides that an individual is deemed to have consented to receive the Forms electronically if he/she has affirmatively consented at any prior time, unless he/she revokes the consent. This applies to Forms due after December 31, 2024 (i.e., 2024 Forms due in 2025).
- The IRS issued regulations in 2022 that allows certain reporting entities to only furnish Forms to individuals upon request where the entity follows certain notice requirements. However, ALEs could not use this relief for full-time employees. The New Law codifies these regulations, makes some changes, and extends it to ALEs with respect to full-time employees. Under the New Law, the reporting entity is not required to furnish the Forms to individuals if it provides a "clear, conspicuous, and accessible" notice that the individual can request a copy of the Form. If the individual does request a copy, the reporting entity must provide the Form by the later of (1) January 31 or (2) 30 days after the request. This applies to Forms for calendar years after 2023 (i.e., 2024 Forms due in 2025).

**GROOM INSIGHT:** The 2022 regulations also contain certain rules regarding font size, content requirements, and length of time to keep the notice posted. It appears that all of these rules still apply, unless the IRS provides guidance that says otherwise.

Although reporting entities that use this relief are still required to file the Forms with the IRS, the relief could help reporting entities save time and money preparing distributions of the Forms to individuals (e.g., postage costs) and limit exposure to penalties that could otherwise apply if Forms are not furnished properly.