



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

April 17, 2019

Number: **2019-0008**
Release Date: 6/28/2019

CONEX-106213-19

UIL: 4980H.00-00

The Honorable Susan Collins
United States Senate
Washington, DC 20510

Attention:

Dear Senator Collins:

I am responding to your inquiry dated March 21, 2019, on behalf of several of your constituents. You noted that certain constituents may be liable for an employer shared responsibility payment (ESRP) because they have not complied with the Affordable Care Act (ACA) rules on providing health coverage to their employees. You asked whether an ESRP may be waived or reduced based on hardship or other factors. You also asked whether the Internal Revenue Service will extend the transition relief for employers with fewer than 100 employees.

Explanation of Employer Shared Responsibility Provisions under Section 4980H of the Internal Revenue Code

Applicable large employers (ALEs) that do not offer health coverage to their full-time employees may be liable for an ESRP under Section 4980H of the Internal Revenue Code (the Code). An ALE is generally an employer with at least 50 full-time employees, including full-time equivalent employees, on business days in the preceding calendar year. An ALE will generally owe an ESRP under Section 4980H of the Code if either one of the following situations apply:

- The employer fails to offer minimum essential coverage to substantially all of its full-time employees (and their dependents), and at least one full-time employee is allowed the Premium Tax Credit (PTC).
- The employer offers minimum essential coverage to substantially all of its full-time employees (and their dependents) but at least one of the full-time employees was allowed the PTC because the coverage does not provide

minimum value or is not affordable, or the full-time employee was not offered coverage.

The law doesn't provide for a waiver of an ESRP. The employer shared responsibility provisions generally were first effective in 2015, but several forms of transition relief were available for 2015. Several forms of transition relief also were available to some employers for 2016. However, no transition relief is available for 2017 and future years.

Explanation of the ACA Executive Order

Executive Order *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal* (January 20, 2017), directed federal agencies to exercise authority and discretion permitted to them by law to waive, defer, grant exemptions from, or delay regulatory burden the ACA imposed. The legislative provisions of the ACA are still in force until Congress changes them. Therefore, taxpayers must follow the law and pay what they may owe. For additional information on the ACA Executive Order and the current tax filing season, please visit our IRS.gov website at www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals.

I hope this information is helpful. If you have additional questions, please contact me at
or at .

Sincerely,

Victoria A. Judson
Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Taxes)