



NORTH RISK PARTNERS®

## ***The ACA is Here to Stay***

*Presented by SyncStream*

***\*Webinar will be recorded, and slides will be made available\****



***Webinar Presented by:***  
*Michelle Kershner and Stacy Barrow*



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Michelle is a dynamic, result driven compliance strategist with a 20+ plus year record of working in the compliance and the payroll world. She has worked with millions of employers providing visionary leadership to help become compliant in an ever-changing time for employer's and reporting.

Stacy Barrow, Esq.  
ACA Compliance Expert,  
SyncStream Solutions Chief Legal Counsel

Stacy Barrow is a partner at Marathas Barrow Weatherhead Lent LLP, a boutique employee benefits, executive compensation and employment law firm located in Boston. Stacy is one of the nation's leading experts on the Affordable Care Act. Stacy has represented hundreds of clients nationally and responded to 500+ IRS ACA letters.

# *Webinar Agenda*

- What's new with the ACA
- ACA Deadlines
- The Death of the Good Faith Effort
- ACA Light
- ACA Penalties
- Past Years' Filings
- State Filings
- EEOC
- Stacy Barrow, Audit Defense



## What's New with the ACA



### Changes in ACA

As of June 17th, the ACA was challenged yet again. The Supreme Court ruled on Thursday, June 17, 2021, that the Affordable Care Act remains valid.

They rejected the claim that without the individual mandate that the Affordable Care Act is unconstitutional.

- The forms have been expanded to include additional indicator codes related to ICHRA plans
- IRS continues to send penalty letters to non-compliant employers
- Penalties continue to increase each year for non-compliance, non-affordable coverage, inaccurate forms and late filings
- The Good Faith effort is going away
- No Statute of limitations
- State Mandates

## Complicating Factors for Employers



### Forms just got harder!

(ICHRA) –  
Individual Coverage Health Reimbursement  
Arrangement

*New Indicator Codes:*

1L, 1M, 1N, 1O, 1P, 1Q, 1R, 1S

*The new indicator codes are related to a  
new type of “offer of coverage”*



COVID exacerbates  
tracking complexity:  
furloughed, terms, &  
rehires



Line 17 was added to  
1095c form for Zip  
Code affordability  
calculation

### ACA 2021 Filing Deadlines

Employee Fulfillment of 1095-C Forms	January 31 <sup>st</sup> , 2022 as of now this date will be enforced
Paper Filing to IRS	February 28 <sup>th</sup> , 2022
Electronic Filing to IRS	March 31 <sup>st</sup> , 2022

#### "Statute of Limitations"

The Internal Revenue Service (IRS) recently concluded that there is no statute of limitations that applies for pay or play penalties owed by an applicable large employer (ALE). This means that there is no time limit for the IRS to assess penalties on employers that do not comply with the employer shared responsibility rules (aka "pay or play") for a given year. Rather, the IRS could assess such penalties many years after the violation occurred.

## The Death of the Good Faith Effort

### “Good-Faith Relief”

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Provides that employers that report incomplete or incorrect information on their information returns (including missing and inaccurate taxpayer identification numbers or “TINs”) can show they made a good- faith effort to file and furnish. In determining whether Good-Faith Relief applies, the IRS will take into account whether an employer made reasonable efforts to prepare for reporting the required information to the IRS and furnishing it to employees and covered individuals, such as gathering and transmitting the necessary data or testing its ability to transmit information to the IRS. **Yet, the 2020 reporting year was the final year this type of relief was available.** Notice 2020-76 conveys this plainly: “As this good-faith relief was intended to be transitional relief, this is the last year the Treasury Department and the IRS intend to provide this relief.”

## “ACA Light” Defined

### What is “ACA Light” ?

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An ACA vendor or solution that is provided to employers but is lacking or weak on key logic that is necessary to for employers to stay fully compliant.

### Use it in a sentence

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Oh man! I just got a penalty letter from the IRS. I thought I was compliant but when I dug into it I found out that the ACA solution we were using was an “ACA Light” system.

## Why does “ACA Light” exist?

Many believed (and still incorrectly do in some instances) that the ACA was/is going away.

### And why wouldn't they?

- ✓ The IRS has levied trillions of dollars in ACA penalties
- ✓ There has been dozens of major political figures, including the past President, vowing to get rid of it.

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Because of this belief, many vendors and employers chose not to invest too much time or resources in their compliance or solution. Often this resulted in buying a solution that appeared to “get the job done” without really kicking the tires. A system may house a company's payroll/benefits and offer ACA reporting. Employers trust that it will be done correctly – not always the case.

## What should your solution have to avoid “ACA Light”

### **Your Full-Service model should include the following to keep you in compliance and avoiding penalties.**

*If your solution does not include the below items your solutions is “light” on logic.*

- ✓ Compliance tracking to determine eligibility
- ✓ Solution built with all updated laws and regulations
- ✓ Form 1095 and 1094 generation
- ✓ Print, Mail and E-file Services
- ✓ Dedicated Customer Support Specialist (unlimited hours of service)
- ✓ Audit of forms for potential penalties or errors – prior to print/mail/e-file
- ✓ Safe Harbor Affordability Calculator
- ✓ ICHRA Calculator
- ✓ E-file Only Solution
- ✓ State Mandate Filings
- ✓ Past Year’s Filings (2015-present)
- ✓ Individualized preparation and guidance through 1095 fulfillment and e-filing
- ✓ Month to month ACA action plan and touchpoints for following year preparation
- ✓ Tax Form Repository and Audit Reports
- ✓ IRS Inquiry and Audit Trail
- ✓ IRS Audit Defense (help with IRS penalty letters)

## Penalties

	2019	2020	2021
4980H(a) Penalty	\$2,500	\$2,570	\$2,750
4980H(b) Penalty	\$3,750	\$3,860	\$4,120

### “Not Offering” Penalty Example

# of Full-Time Employees	Employees Subject to Penalty	Penalty Amount	Total Penalty
100	70	\$2,750	<b>\$192,500</b>



**What happens if you receive a 226J letter?**



## Noncompliance and Penalties

*The IRS has invested millions into upscaling up their program*



Failure to comply with the Employer Mandate (4980H) or Employer Reporting (6055 and 6056) can lead to significant penalties for employers



In addition, there are penalties for late filing, failure to file and inaccurate forms



Letters/Notices include:

Letter 5699, 226-J, 5698

Notice 972CG



Notification of noncompliance or “potential” noncompliance are delivered to employers through a series of letters that go directly to employers

## Why are we learning about it now?



Penalty letters are now forcing employers to take a deeper look at their filings and that is why these issues are being exposed.



Remember, penalty letters are coming out 2 years after a filing is completed, and in some instances, even longer.



We are finding that this is the first time many employers have really ever deeply evaluated their solution or their filing. Many are not liking what they are finding under the hood.



Keeping your head in the sand and hoping for the best is no longer a viable business strategy.

# Past Year Filings

2020							2018							2016							2015						
SUN	MON	TUE	WED	THU	FRI	SAT	SUN	MON	TUE	WED	THU	FRI	SAT	SUN	MON	TUE	WED	THU	FRI	SAT	SUN	MON	TUE	WED	THU	FRI	SAT
29	30	31	1				29	30	31	1				29	30	31	1				29	30	31	1	2	3	4
5	6	7	8				5	6	7	8				5	6	7	8				5	6	7	8	9	10	11
12	13	14	15				12	13	14	15				12	13	14	15				12	13	14	15	16	17	18
19	20	21	22				19	20	21	22				19	20	21	22				19	20	21	22	23	24	25
26	27	28	29				26	27	28	29				26	27	28	29				26	27	28	29	30	31	1

***SyncStream can assist with all past year filings back to 2015!!!***

## State Filing

The ACA State Mandates require Employers to file the offer of coverage and demographic information for any employee that resides in their state, even if the company address is in another state.



**SyncStream is currently able to file for the following states :**

**California, New Jersey, Washington DC, Rhode Island, Vermont**

**Legislation is pending in following states :**

**Connecticut, Hawaii, Maryland, Minnesota, Washington**

***SyncStream will support ALL Future State Filings***

## EEOC portal opened in **April 2021** for 2019 & 2020 reporting



Any employer over 100  
employees regardless of pay type  
must file



California does require the  
expanded EEOC-2 reporting for  
2020 filing year



SyncStream offers full-service  
support for EEOC compliance  
reporting



EEOC reporting is *complimentary*  
with the purchase of an ACA  
Dashboard or Reporting Essentials  
license.

# ACA Audit Defense

SyncStream has helped mitigate 500 million in penalties...that begins to add up.



## Penalty Letter and Response Support

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SyncStream's ACA Audit Defense helps employers respond to IRS authorities. Our legal defense team, experts in ACA compliance, will develop a strategy with you and then work with the IRS on your behalf.



## Stacy Barrow, Esq.

ACA Compliance Expert, SyncStream Solutions Chief Legal Counsel

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## ACA Reporting Case Studies

IRS continues to enforce the employer shared responsibility provision (ESRP), timely reporting, and electronic reporting (required of employers that file 250+ forms under one EIN)

ESRP penalty letters often generated because employer has failed to indicate that MEC was offered for all 12 months of the year



E.g., MEC offered Jan-Apr and Aug-Dec, but not May-Jul

May be caused by faulty logic in vendor's system

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ESRP letters also being generated due to IRS comparing 1095-Cs with W-2s and rejecting safe harbor codes if the employer is ineligible to use the safe harbor



The letter shows an “XF” on the Form 14765 – PTC Listing where the employer had reported “2F” to reflect application of the W-2 safe harbor)

## ACA Reporting Case Studies

Other issues include filing multiple entities under one EIN, filing an extension for only one member of an Aggregated ALE Group, and applying the 95% rule on an aggregated basis



Note that due to ARPA's enhancement of the ACA premium tax credit program, more employees who are not offered "affordable" coverage will be eligible for a subsidy (2021 and 2022, unless extended)

**We want to hear from you on the ACA topics that are most important!**

**ACA Podcast Topics to choose from:**

**Please choose all applicable podcast topics in the survey that will prompt as you are leaving the webinar.**

**ACA 101** – Get to know the facts

**226J Letter** – What is it what do I do?

**Contract Employees** - Employer Rules

**ACA Control Groups** – What does it mean to me?

**Multiple Entities** – How to handle when they have the same owners

**Past Years' Filings** - Don't put a target on your back, become compliant and take the worry away

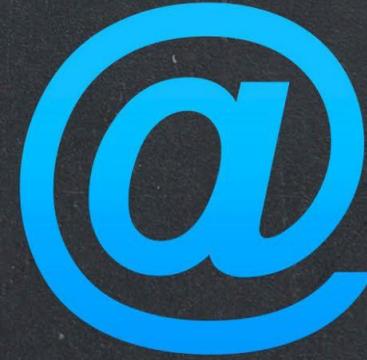
***\*Disclaimer: Answering this question in the survey that will prompt at the end of the webinar provides consent for SyncStream to follow-up with you via email with the requested podcast topic episode(s).***

*Eliminate expensive surprises – and buy yourself  
peace of mind with SyncStream Solutions.*

Q & A



# CONTACT US



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