Cleaning Up After the Elephant in the Room:
Minimizing ACA’s Mess
You’ve got Questions, We’ve Got Answers.

In our webinar, “The White Elephant in the Room,” our experts offered tips to deal with ACA’s 2018 reporting deadlines. Unfortunately, we received more questions from the audience than we could get to during the hour-long event!

As a follow-up to the session, we’ve addressed many of those questions with additional tips for cleaning up after the elephant in the room.
Can we scrub ACA employer penalties once and for all?

Not necessarily. President Trump signed the Tax Cuts and Jobs Act on Dec. 22, 2017, which repealed the individual mandate provision under the Affordable Care Act that required Americans to have health insurance. However, the employer shared responsibility payments and employer reporting requirements are not directly tied to the individual mandate, such that even if the individual mandate penalties are lowered to zero, the employer mandate would not be affected.

How can employers polish independent contractors’ benefits eligibility?

Under current law, independent contractors would be ineligible for benefits, but under the president’s newest executive order (signed Oct. 12, 2017), agencies are directed to allow loosely connected affiliations to created common plans, which could permit such individuals to be allowed into a plan. However, there are complexities and risks that will have to be addressed once the rules are issued.
How long will it take for 2015 penalties to wash out?

What is the estimated timeframe for when the IRS will complete sending 2015 penalty notices – after March 2018?

The IRS has not indicated an end date for these notices. At this time, we are only seeing tax year 2015 notices. The IRS has indicated that they will be distributing other notices, it's likely the IRS will begin distributing 2016 notices shortly after they complete assessing penalties for 2015 forms.

It's also important to note that while we've only seen notices for 4980H(a) penalties (employers not offering health coverage) up to this point, it doesn't mean that 4980H(b) penalties (employers offering health coverage to employees who are eligible for ACA subsidies) are not forthcoming.
How can brokers and vendor partners help employers scour their records for potential fines?

Employers are beginning to receive letters from the IRS regarding Employer Shared Responsibility Payment (ESRP) assessments from tax year 2015. Employers should be encouraged to identify these letters immediately, so appropriate time for research is available.

If the contact has changed since 2015, or the address of the contact has changed, penalty notices may be delayed in reaching the correct individual, cutting into the time available for research and response.

It’s also important to note that penalty notices will be sent to the employer contact (not a benefits administration company or other service provider) notes on an employer’s 2015 1094C.
Hiding dirty laundry: Is a penalty assessed if a company takes steps now to correct its 2016 1094C full-time employee counts?

If you’ve not yet received a 226J penalty notice – for violating IRS Code 4980H(a) or (b) – refiling is permitted; however, you may receive a 226J shortly after refiling and need to appeal.

How can employers avoid being swept up in the Cadillac tax?

While some employers have taken steps to reduce the value of their plans to avoid the tax, we’ve also seen many employers that at this time haven’t changed their plans – yet are watching closely to see what actions may be taken to delay the Cadillac tax beyond 2022 or eliminate it altogether.
Does the Oct. 12 executive order addressing association health plans (AHPs) sanitize employers from current regulations?

Perhaps. Current AHP regulations stem from problem that occurred years ago, where improper controls or funding occurred. At the time, it was believed that the best way to mitigate these issues by increasing regulations. Meanwhile, some states have added additional regulations to the federal rules.

However, if the Department of Labor’s soon-to-be-released guidance is broad enough, it could potentially allow employers to move to AHPs without worrying about current or future regulations by the states.

Generally speaking, stop-loss coverages are not as regulated as fully insured plans and there are fewer protections that apply. As a result, stop-loss carriers may determine not to cover an individual based on a pre-existing condition, whereas an employer cannot exclude a specific individual for the same reason.

So, while there is the potential for some savings, there are potentially other risks as well.
Does the executive order purify PEOs?

The Oct. 12 executive order could potentially benefit a PEO (professional employer organization), but will largely depend on how the new rules are written. We are still waiting on the agency guidance based on these executive orders, so until that guidance is received, we are uncertain of the final impact.

Do level self-funded plans lose any of their shine under ACA?

Level self-funded plans are a new concept that attempts to offer more fixed costs components to self-insured plans. These plans take a self-funded plan with an actuarial determined cost for the year, and then reinsurance covers any claims above the actuarial determined claims costs. This isn’t necessarily a fixed-cost plan, due to the reinsurance element.
To learn more about ACA Compliance, watch our webinar.