Bouchard® Insurance
Client First

Health Care Reform and Compliance Updates

February 2015

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Updates for this Session

February 2015 ACA and Compliance Updates

EMPLOYER PENALTY RULES

- *Applicable Large Employer Status & One-year Delay for Medium-sized Employers*
- *Transition Relief for Non-calendar Year Plans*
- *Full-time Employees*
- *Health Plan Affordability*
- *Minimum Value Coverage*

Updates for this Session

REPORTING OF COVERAGE

- *Code section 6056 & Code section 6055*

DOL AUDIT AND COMPLIANCE CHECKLIST

- *DOL Audit Alerts*
- *Bouchard Compliance Checklist*

RECENT REGULATORY AND LEGAL ACTIVITY

- *Updates and recent events*

Employer Penalty Rules

Applicable Large Employer Status & One Year Delay for Medium-sized employers

- In 2015, the ACA's employer shared responsibility provisions will generally apply to larger firms with 100 or more full-time employees.
- Applicable large employer status is determined for each calendar year using employee information from the **prior calendar year**. Specifically, an employer that employed an average of at least 50 full-time employees (including full-time equivalents, or FTEs) on business days during the preceding calendar year will be an ALE.
- An employer may measure the number of full-time employees using any **consecutive six-month** period in 2014, rather than using the full 12 months.
- The final regulations also include a one-year delay for medium-sized employers that satisfy certain eligibility conditions. Employers with 50-99 full-time employees will have to comply starting in 2016.
- Under the extended transition rule for 2015, employers can determine whether they had at least 100 full-time and FTE employees in 2014 by reference to a period of at **least six consecutive months, instead of the full year**.

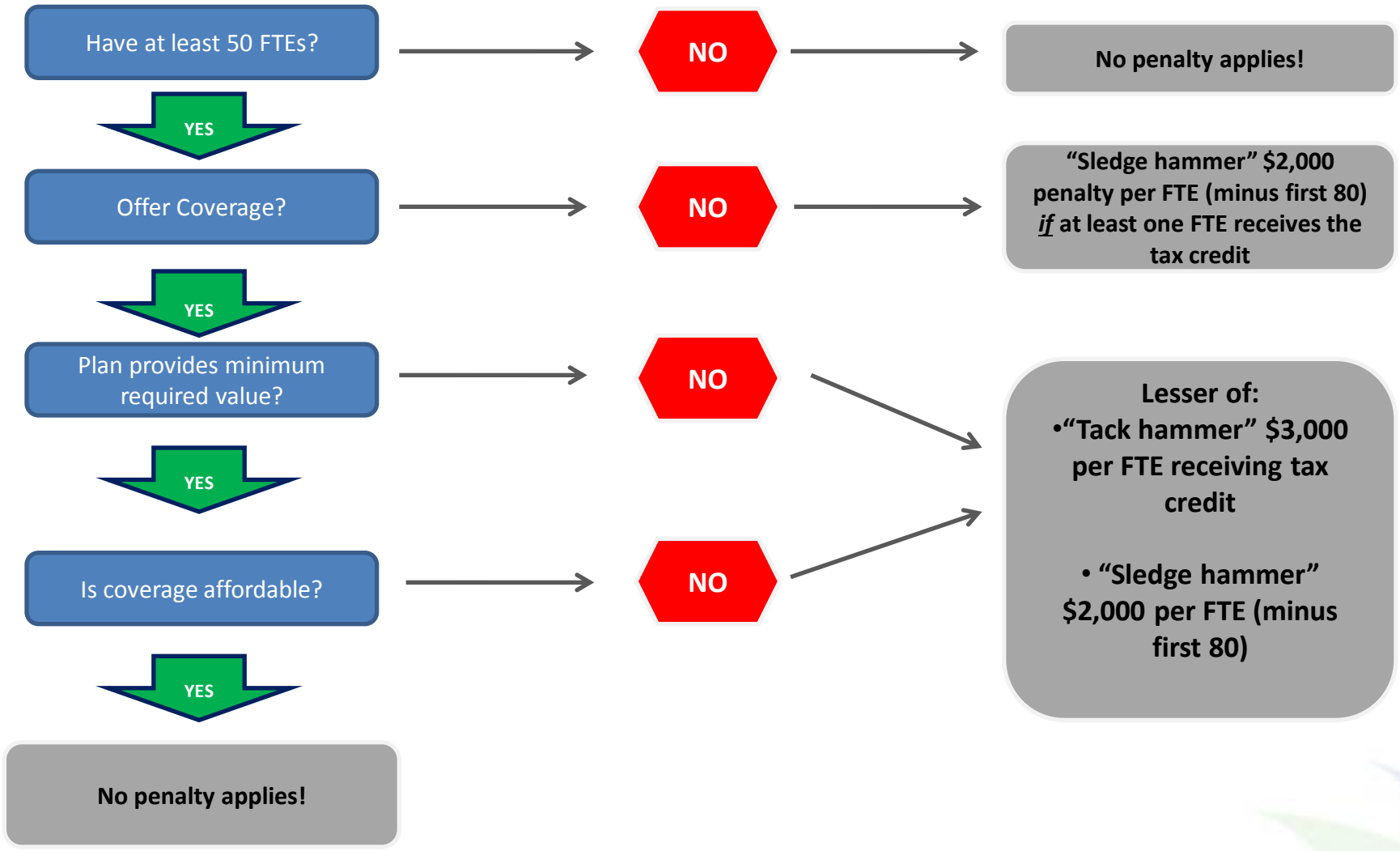
Employer Penalty Rules

Transition Relief for Non-calendar Year Plans

If any of these transition policies apply, the employer will not be liable for a penalty for months in 2015 before the 2015 plan year begins with respect to employees who are offered affordable, minimum value coverage no later than the first day of the 2015 plan year and who would not have been eligible for coverage under any calendar year group health plan maintained by the employer as of Feb. 9, 2014.

- The non-calendar year plan(s) **covered** at least one-quarter of the large employer's **employees** as of any date in the 12 months ending on Feb. 9, 2014; or
- At least one-third of the large employer's employees were **offered** coverage under the non-calendar year plan(s) during the most recent open enrollment period before Feb. 9, 2014.
- The non-calendar year plan(s) **covered** at least one-third of the large employer's **full-time employees** as of any date in the 12 months ending on Feb. 9, 2014; or
- At least one-half of the large employer's **full-time employees** were **offered** coverage under the non-calendar year plan or plans during the most recent open enrollment period before Feb. 9, 2014.

“Pay or Play”


Have at least 50 FTEs?
NO
No penalty applies!
YES
Offer Coverage?
NO
“Sledge hammer” $2,000 penalty per FTE (minus first 80) *if* at least one FTE receives the tax credit
YES
Plan provides minimum required value?
NO
YES
Is coverage affordable?
NO
YES
Lesser of:
•“Tack hammer” $3,000 per FTE receiving tax credit
• “Sledge hammer” $2,000 per FTE (minus first 80)
No penalty applies!

Employer Penalty Rules

Full-time Employees

A full-time employee is an employee who was employed on average for at least **30** hours of service per week. The IRS has provided two methods for determining full-time employee status—the monthly measurement method and the look-back measurement method.

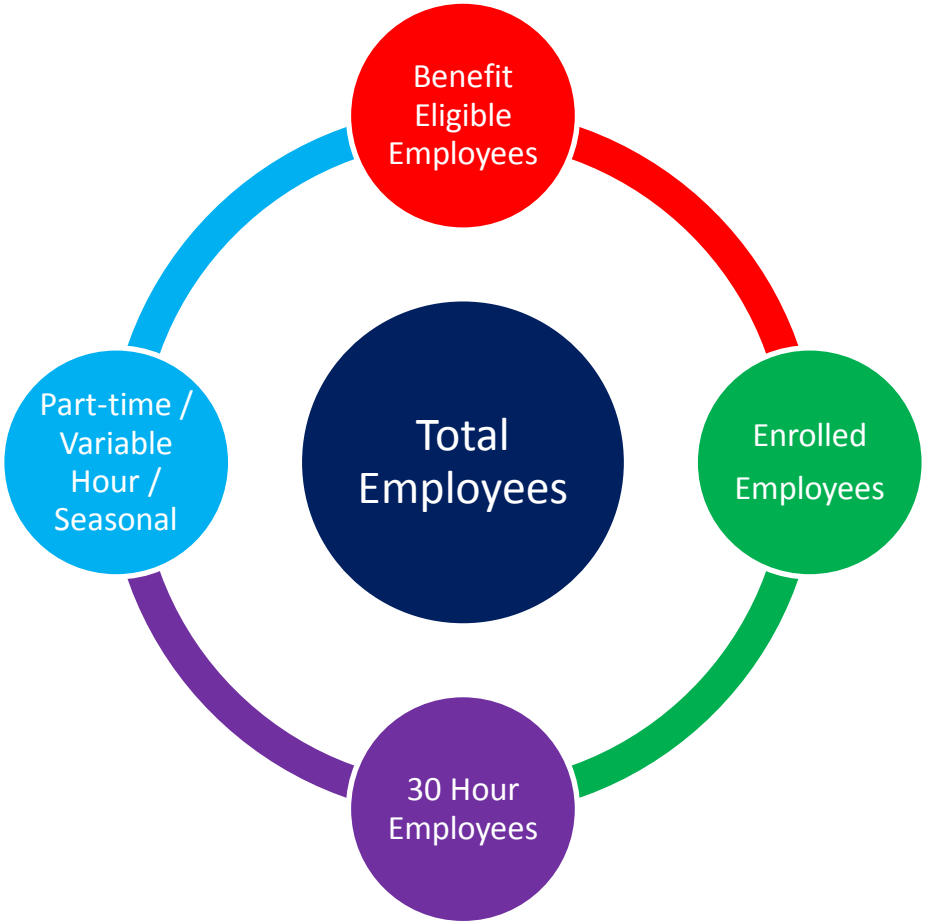
Quick Tip

- For simplicity think of employees as two types:
  - Those offered benefits
  - Those not offered benefits
- For those offered benefits as full-time employees the coverage must be affordable and of minimum value to avoid employer penalties under the Employer Mandate and Shared responsibility Payment provisions of ACA.
- For those not offered benefits employers who can not prove the offer was not made due to ineligibility of said employees, fines and penalties may apply.

Know Your Employees …

Employer Penalty Rules

Know Your Employees



Employer Penalty Rules

Know Your Employees

When you hire an employee are they full-time or not?

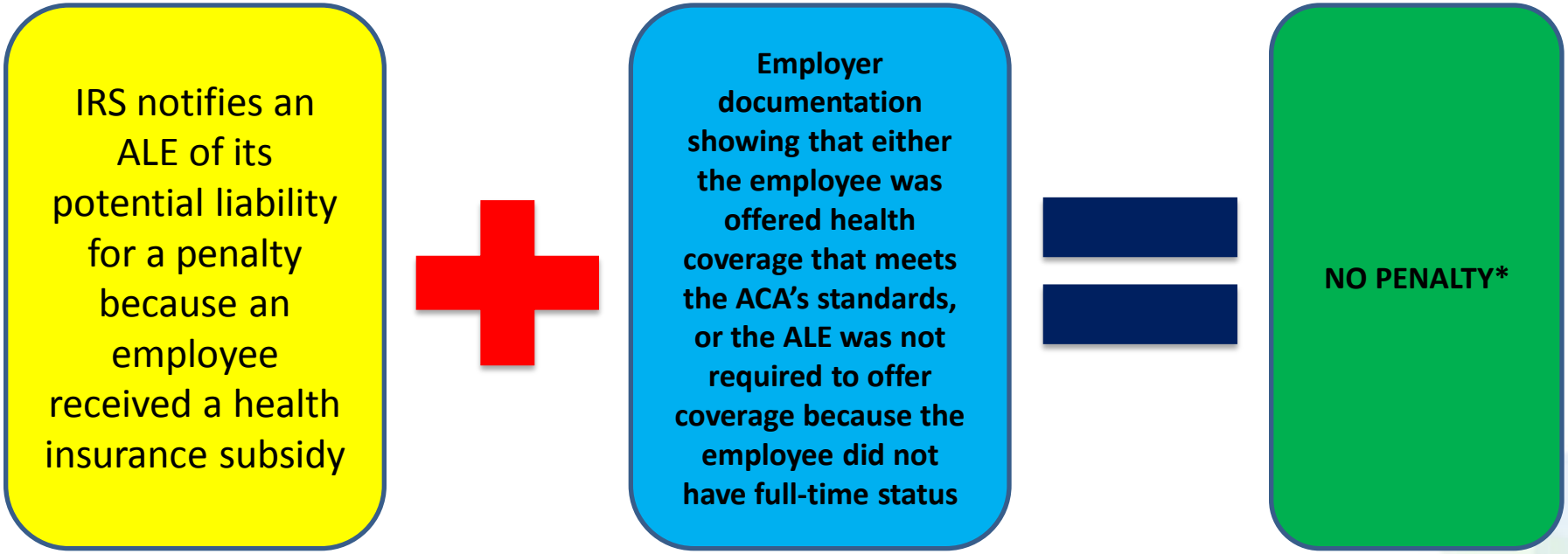
YES…..NO…Maybe?

When you hire a variable hour employee who is reasonably expected to work full-time (**30** hours per week or **130** hours per month) treat them like any other full-time employee and make sure to offer them benefits within the **90** day waiting period limit.

When you hire a variable hour employee and do not reasonably expect them to work full-time and you choose not to offer them benefits by the **90** day waiting period limit, you may wish to consider the measurement / look back period methods of determining eligibility in order to help demonstrate ACA compliance.

Employer Penalty Rules

Although the IRS does not require employers to document their measurement method, maintaining a description of the selected measurement method and a record of the method's outcomes for individual employees may help an ALE **demonstrate its compliance** with the shared responsibility rules and avoid a pay or play penalty.

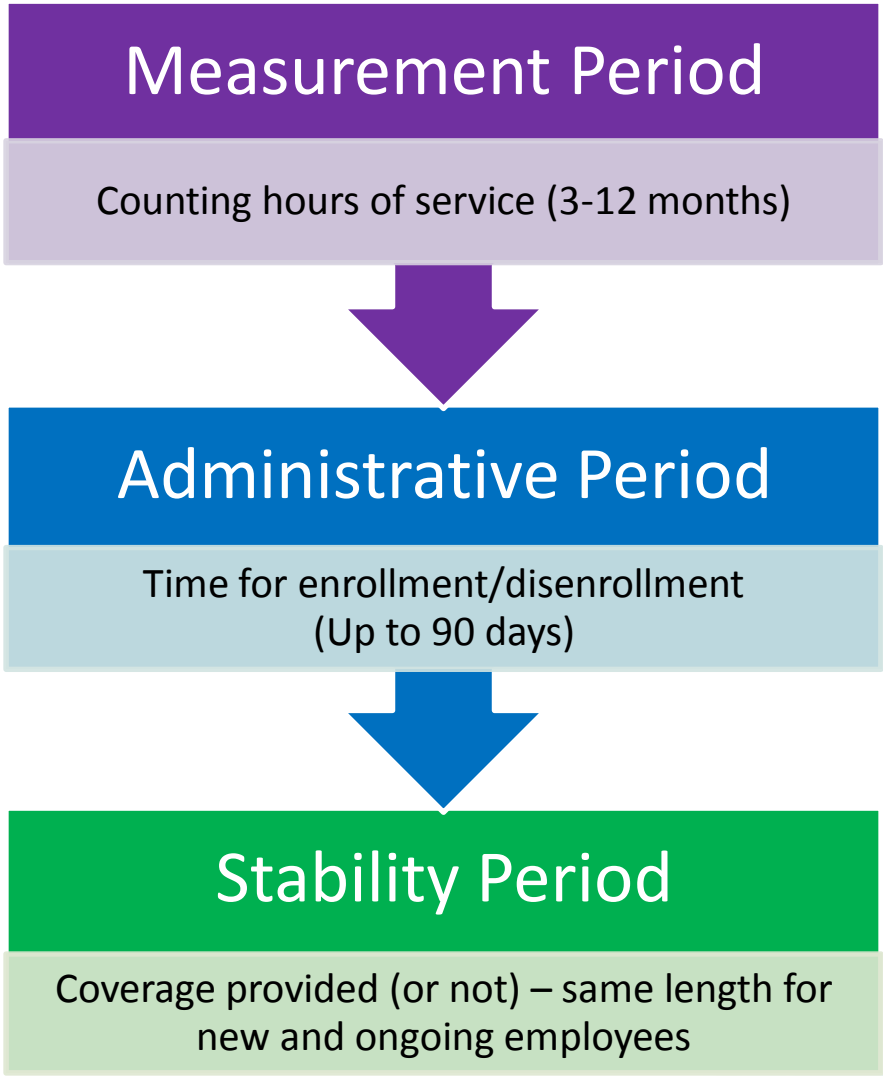


***Assumes Employers documentation is accurate and compliant**

Employer Penalty Rules

Look-back Measurement Method

- May be used for new variable hour and seasonal employees **IF** used for ongoing employees
- Generally **may not** use the look-back measurement method for variable hour/seasonal employees and use monthly measurement method for employees with predictable schedules



Employer Penalty Rules

Did employee average 130+ hours/month during MP?

Treat as FULL-TIME employee for stability period

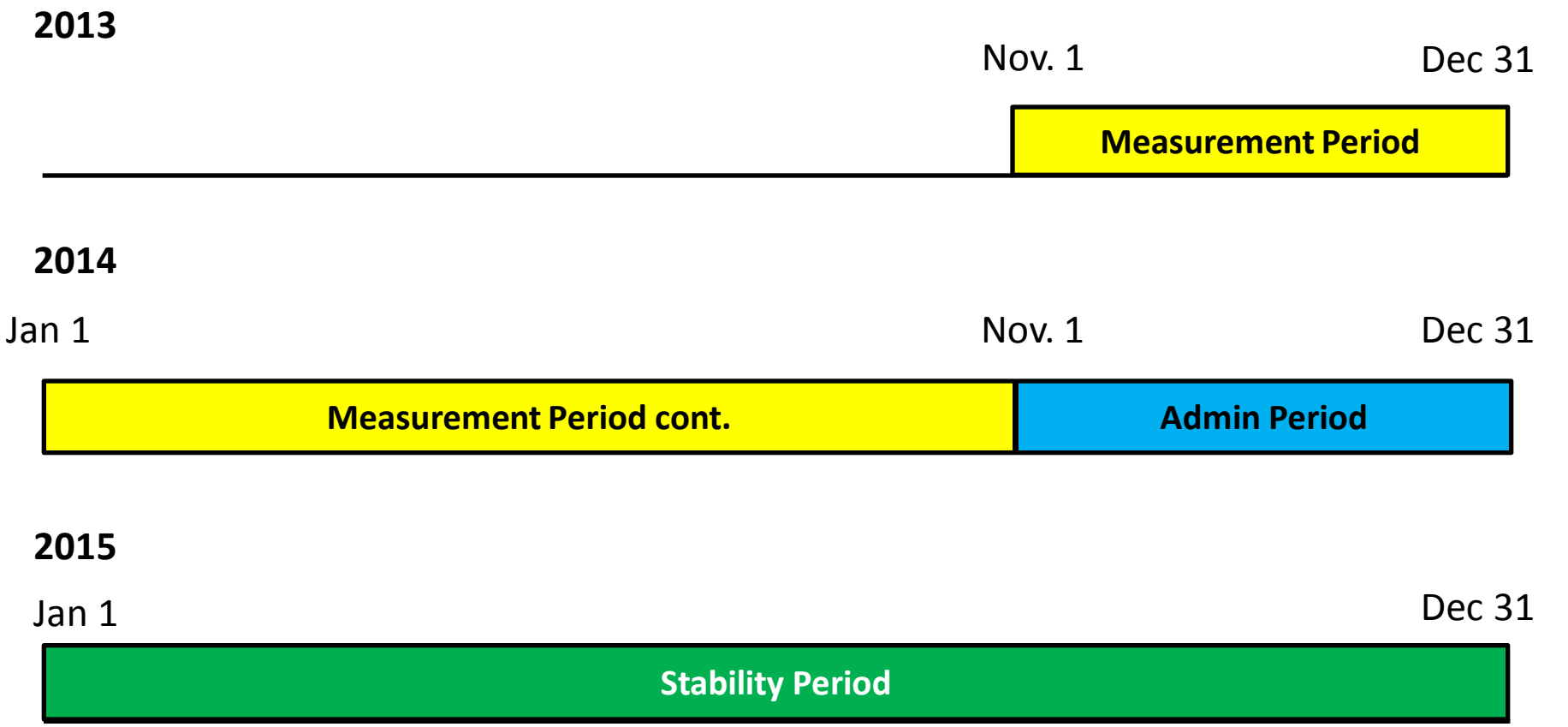
- Regardless of hours of service during stability period
- As long as the person remains employed
- Stability period must be 6 months long or as long as the SMP (whichever is longer)

Treat as NOT FULL-TIME employee for stability period

- Stability period may not be longer than standard measurement period
- Unless Employee is Hired in to a full-time position and reasonably expected to work 30 plus hours

Employer Penalty Rules

Look-Back Measurement Method Example



Employer Penalty Rules

Rehired Employees

Proposed rule:

- Employees may not be treated as new employees unless they have a break in service of 26 weeks
- Break in service may be shorter period under rule of parity
- Rules designed to avoid abuse of look-back measurement method

Final rule:

- 26 week period shortened to **13 weeks** for most employers
- Educational institutions must continue to use **26 weeks**

Employer Penalty Rules

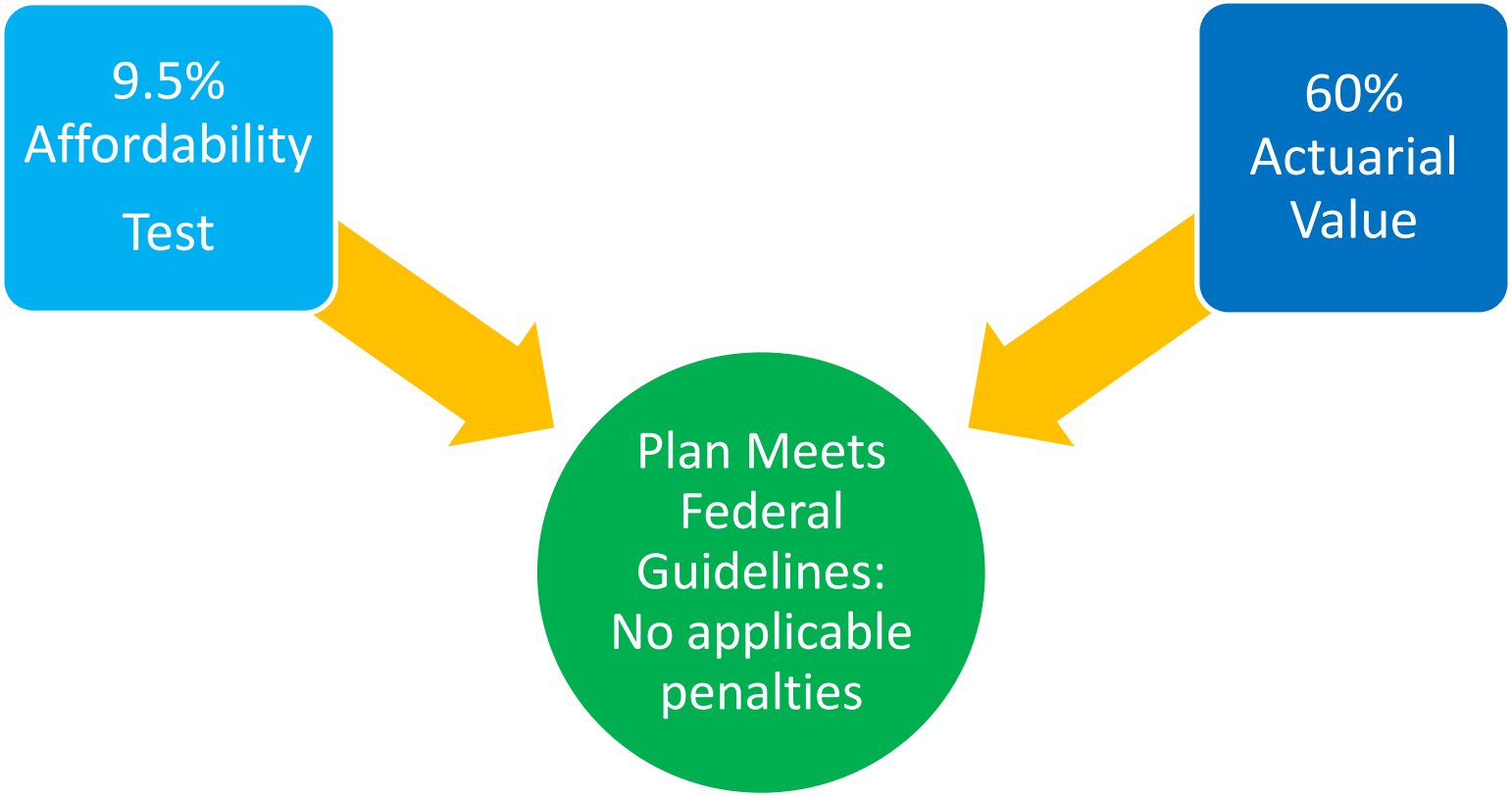
Hours of Service during leaves - Special rules for jury duty, FMLA and USERRA leaves

- Only applies to EEs who are **treated as continuing EEs** upon resuming service, not to EEs who are treated as terminated and rehired

Options for counting hours of service:

Disregard special unpaid leave periods from calculation	**OR**	Include average imputed hours for leave periods

Employer Penalty Rules



Employer Penalty Rules

Health Plan Affordability

An employer's health coverage is considered affordable if the employee's required contribution to the plan does not exceed 9.5 percent of the employee's household income for the taxable year (adjusted to 9.56 percent for plan years beginning in 2015).

Because an employer generally will not know an employee's household income, the IRS provided three affordability safe harbors that employers may use to determine affordability based on information that is available to them. These safe harbors allow an employer to measure affordability based on:

- the employee's W-2 wages;
- the employee's rate-of-pay income;
- or the federal poverty level for a single individual.

ALEs that use an affordability safe harbor may continue using a contribution percentage of 9.5 percent (instead of the adjusted 9.56 percent) to measure their plan's affordability.

http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act

Employer Penalty Rules

Health Plan Affordability

	Plan A	Plan B	Plan C
EE only	**$50**	$100	$150
EE + SP	$250	$350	$450
EE + CH	$300	$400	$500
EE + SP/CH	$500	$600	$850

"Affordability" is based on lowest cost EE only deduction

Employee may enroll in any plan as long as at least one is "affordable"

Employer Penalty Rules

Minimum Value Coverage

A plan provides minimum value if the plan's share of total allowed costs of benefits provided under the plan is at least 60 percent of those costs. (This is not related to the amount of premium that an employee contributes for the cost of coverage, only the plan design itself)

The IRS and HHS provided the following approaches for determining minimum value:

- a Minimum Value Calculator
- design-based safe harbor checklists
- and actuarial certification

In addition, any plan in the small group market that meets any of the "metal levels" of coverage (that is, bronze, silver, gold or platinum) provides minimum value.

http://www.irs.gov/irb/2012-20_IRB/ar08.html

Employer Penalty Rules

Minimum Value Calculator

User Inputs for Plan Parameters

Use Integrated Medical and Drug Deductible?	☑
Apply Inpatient Copay per Day?	☐
Apply Skilled Nursing Facility Copay per Day?	☐
Use Separate OOP Maximum for Medical and Drug Spending?	☐
Grandfathered Plan?	☐

HSA/HRA Options		Narrow Network Options	
HSA/HRA Employer Contribution?	☐	Blended Network/POS Plan?	☐
Annual Contribution Amount:		1st Tier Utilization: 2nd Tier Utilization:	

	Tier 1 Plan Benefit Design			Tier 2 Plan Benefit Design		
	Medical	Drug	Combined	Medical	Drug	Combined
Deductible ($)			$3,000.00			$6,000.00
Coinsurance (%, Insurer's Cost Share)			80.00%			80.00%
OOP Maximum ($)			$5,000.00			$9,500.00
OOP Maximum if Separate ($)						

Click Here for Important Instructions

	Tier 1				Tier 2				Service No
Type of Benefit	Subject to Deductible?	Subject to Coinsurance?	Coinsurance, if different	Copay, if separate	Subject to Deductible?	Subject to Coinsurance?	Coinsurance, if different	Copay, if separate	Tier 1
Medical	☑ All	☑ All			☑ All	☑ All			
Emergency Room Services	☑	☑		$300.00	☑	☑		$300.00	☐
All Inpatient Hospital Services (inc. MHSA)	☑	☑		$1,000.00	☑	☑		$1,000.00	☐
Primary Care Visit to Treat an Injury or Illness (exc. Well Baby, Preventive, and X-rays)	☑	☑		$20.00	☑	☑		$20.00	☐
Specialist Visit	☑	☑		$40.00	☑	☑		$40.00	☐
Mental/Behavioral Health and Substance Abuse Disorder Outpatient Services	☑	☑		$500.00	☑	☑		$500.00	☐
Imaging (CT/PET Scans, MRIs)	☑	☑		$300.00	☑	☑		$300.00	☐
Rehabilitative Speech Therapy	☑	☑		$40.00	☑	☑		$40.00	☐
Rehabilitative Occupational and Rehabilitative Physical Therapy	☑	☑		$40.00	☑	☑		$40.00	☐
Preventive Care/Screening/Immunization	☐	☐	100%	$0.00	☐	☐	100%	$0.00	☐
Laboratory Outpatient and Professional Services	☑	☑			☑	☑			☐
X-rays and Diagnostic Imaging	☑	☑		$300.00	☑	☑		$300.00	☐
Skilled Nursing Facility	☑	☑			☑	☑			☐
Outpatient Facility Fee (e.g., Ambulatory Surgery Center)	☑	☑			☑	☑			☐
Outpatient Surgery Physician/Surgical Services	☑	☑			☑	☑			☐
Drugs	☑ All	☑ All			☑ All	☑ All			
Generics	☑	☑		$15.00	☑	☑		$15.00	☐
Preferred Brand Drugs	☑	☑			☑	☑			☐
Non-Preferred Brand Drugs	☑	☑			☑	☑			☐
Specialty High-Cost Drugs	☑	☑			☑	☑			☐

Options for Additional Benefit Design Limits:

Set a Maximum on Specialty Rx Coinsurance Payments?	☐
Specialty Rx Coinsurance Maximum:	
Set a Maximum Number of Days for Charging an IP Copay?	☐
# Days (1-10):	
Begin Primary Care Cost-Sharing After a Set Number of Visits?	☐
# Visits (1-10):	
Begin Primary Care Deductible/Coinsurance After a Set Number of Copays?	☐
# Copays (1-10):	

Output

Calculate

Status/Error Messages:	MV Over 60%
Minimum Value:	67.6%

Reporting of Coverage

Code section 6056 & Code section 6055

The Affordable Care Act added section 6056 to the Internal Revenue Code, which requires applicable large employers to file information returns with the IRS and provide statements to their full-time employees about the health insurance coverage the employer offered.

- Employer Information mat be reporting using the 1095-C form
- Employee Statements may be reported using the 1094-C form

Timelines for calendar year 2015

- Employer Information (Form 1095-C or another form that IRS designates, or a substitute form) and a transmittal form for each employee (Form 1094-C or another form that IRS designates, or a substitute form) with the IRS on or before February 28 (March 31 if filed electronically)
- ALE members must furnish the statement to each full-time employee on or before January 31 of the year immediately following the calendar year to which the information relates. The statements for 2015 must be furnished to employees no later than February 1, 2016 (January 31, 2016, being a Sunday).
- The regulations require electronic filing with the IRS of section 6056 information returns except for an ALE member filing fewer than 250 section 6056 returns (employee statements) during the calendar year.

Reporting of Coverage

Section 6056 information returns will include the following information within an Employer Transmittal Return:

1. The name, address, and EIN of the ALE (applicable large employer) member; the name and telephone number of the contact person of the ALE member.
2. Certification as to whether the ALE member offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, by calendar month.
3. The number of full-time employees for each calendar month during the calendar year.
4. The number of employee statements being submitted

Reporting of Coverage

Reporting Must Include for each full-time employee, by calendar month:

A. The name, address, and taxpayer identification number of each full-time employee during the calendar year, and months, if any, during which the employee was covered under an eligible employer-sponsored plan;

B. The months during which minimum essential coverage was available to the employee;

C. The employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan;

D. Whether minimum essential coverage was offered to the employee; the employee and dependents; the employee's spouse, or to all;

E. If coverage was not offered to the employee, whether the employee was a new variable-hour employee, or was in a waiting period, or not a full-time employee, or not employed during that month;

F. If coverage was offered to a non-full-time employee during that month;

G. Whether the employer met one of the affordability safe harbors with respect to the employee;

H. Certain other elements which are conditional as noted below, or as may be required by forms and instructions.

Reporting of Coverage

If two or more related companies together are an applicable large employer under section 4980H, how do they comply with the information reporting requirements?

- For purposes of the information reporting requirements under section 6056, each ALE member must file an information return with the IRS and furnish a statement to its full-time employees, using its own EIN.

Who is not required to report under section 6056?

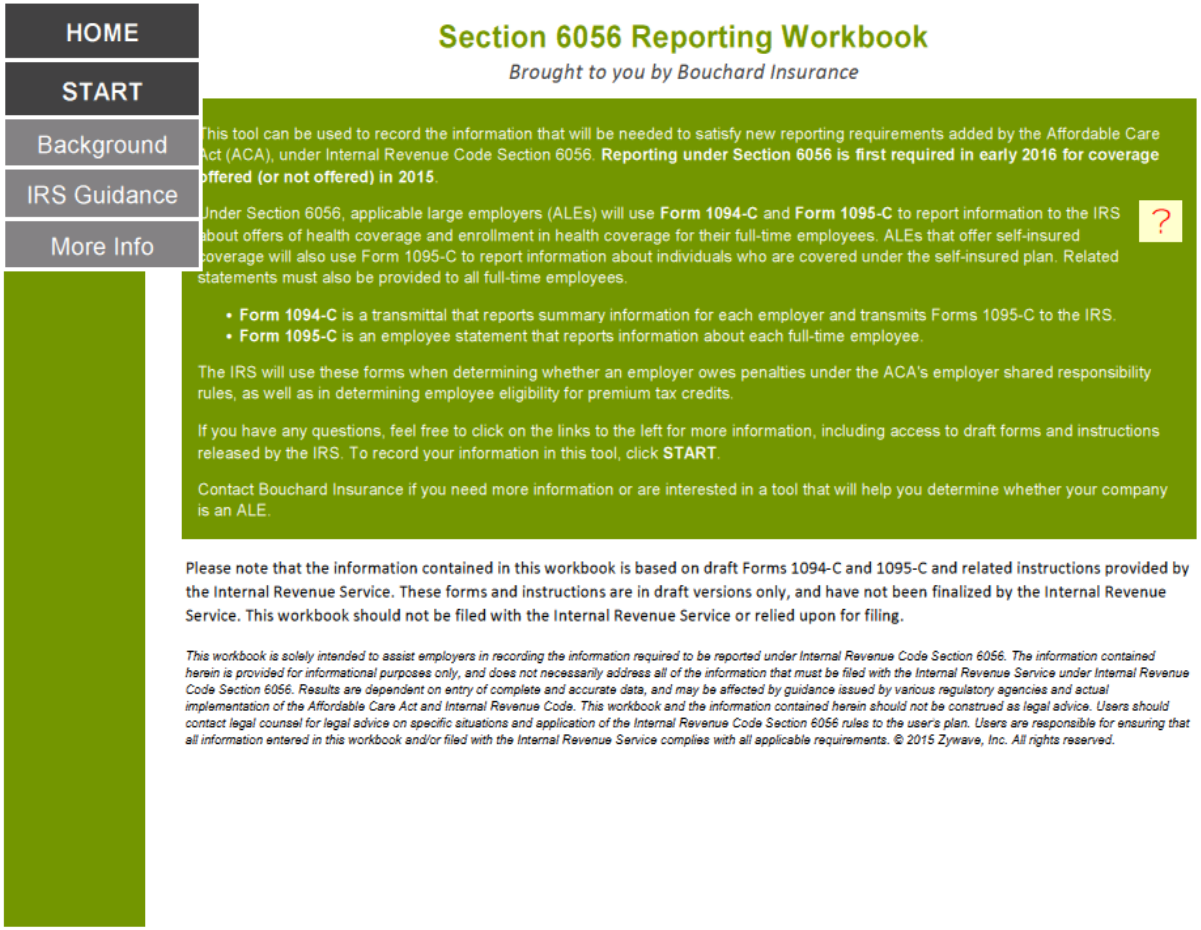
- Employers that employed fewer than 50 full-time employees (including full-time equivalents) during the prior year are not subject to the reporting requirements. (However, any employer that sponsors a self-insured health plan is required to report under section 6055, even if the employer has fewer than 50 full-time employees.)

Reporting of Coverage

Helpful Links for Draft Tax Documents:

- http://www.irs.gov/pub/irs-dft/f1094c--dft.pdf
- http://www.irs.gov/pub/irs-dft/f1095c--dft.pdf

Reporting of Coverage



Bouchard's Section 6056 & 6055 Reporting Workbook

DOL Audit and Compliance

DOL Audits

- The Department of Labor (DOL)'s Employee Benefits Security Administration (EBSA) has the authority to conduct audits on benefit plans that are governed by the Employee Retirement Income Security Act (ERISA). DOL audits often focus on violations of ERISA's fiduciary obligations and reporting and disclosure requirements.

- The DOL may also investigate whether an employee benefit plan complies with ERISA's protections for plan participants, such as the special enrollment rules or mental health parity requirements. Recently, the DOL has been using its investigative authority to enforce compliance with the Affordable Care Act (ACA).

- Penalties for noncompliance and other errors found during an audit can be steep. For example, during the 2013 fiscal year, more than **70** percent of audits resulted in monetary fines or other corrective action. There are several factors that increase or indicate your likelihood of being audited, including the common triggers listed below.

DOL Audit and Compliance

DOL Audit Triggers - A DOL audit can be triggered for a variety of reasons. Some audits can be avoided through careful administrative efforts; other audits are initiated through no fault of your own.

Common triggers for a DOL audit include these preventable causes:

- **Participant complaints**. If any of your plans' participants complain to the DOL about potential ERISA violations, your plan will likely be subjected to an audit. For example, according to a DOL audit summary, 775 new investigations in 2013 resulted from participant complaints.
- **Incomplete or inconsistent information**. The DOL is more likely to investigate a plan that has incomplete answers on the plan's **Form 5500**, or if information you report is inconsistent from year to year.
- Another reason your plan might be selected for a DOL audit is due to the DOL's national enforcement priorities or projects, which focus investigative resources on certain issues. According to the DOL, the following are areas of heightened importance for audits:
- **Major case enforcement**. EBSA is focusing on major cases in order to best protect areas that have the greatest impact on plan assets and participants' benefits.
- **Employee contributions initiative.** EBSA is focusing on delinquent employee contributions in order to help protect employee contributions to their 401(k), health care and other plans.

Recent Regulatory and Legal Activity

IRS Releases Individual Mandate Penalty Cap in 2015

- IRS Rev. Proc. 2015-15 provides the 2015 monthly national average bronze plan premium. This amount serves as the cap for any penalty owed under the ACA's individual mandate.
- In 2015, the individual mandate penalty is capped at:
- **$2,484** per year for each individual; and
- **$12,420** per year for a family with five or more members.

US Supreme Court will Hear Challenges to Subsides in Federal Exchanges

- On Nov. 7, 2014, the U.S. Supreme Court agreed to review a lawsuit challenging the ability of the federal government to provide subsidies to individuals in states that did not establish their own Exchange.
- A ruling from the Supreme Court is not expected until late June or early July 2015.
- Despite these pending cases, a White House statement on Nov. 7, 2014, confirms that subsidies remain available.

Additional Questions?

THANK YOU!

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