



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

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The Honorable Mimi Walters  
Member, U.S. House of Representatives  
3333 Michelson Drive, Suite 230  
Irvine, CA 92612

Attention:

Dear Representative Walters:

I am responding to your inquiry dated May 16, 2017, on behalf of your constituent, . explained that he's a disabled veteran and owns a service-disabled veteran-owned small business, which provides valet parking and shuttle services to veterans seeking treatment. He has questions about compliance under the Affordable Care Act (ACA).

More specifically, explained he has been offering cash to his employees in lieu of health benefits pursuant to the Service Contract Act (SCA). Over the past two years, the company has grown and is now an applicable large employer (ALE) under the ACA.

explained that he wants to comply with the ACA rules on offering affordable health coverage to his employees, but also wants to coordinate these rules with the requirements of the SCA, which allows for cash payments in lieu of health benefits. He also asked about the minimum participation rates for enrolling in group coverage under the ACA.

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

Section 4980H of the Internal Revenue Code (the Code) provides that if an ALE fails to offer health coverage to its full-time employees, and if the other conditions in the statute are met, the employer may be liable for the employer shared responsibility payment (ESRP). 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. A large employer will generally owe an ESRP under Section 4980H if either:

- (a) 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), or
- (b) 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.

### **Explanation of the SCA as it relates to the ACA**

The SCA requires that workers employed on certain federal contracts be paid prevailing wages and fringe benefits. An employer generally can satisfy its fringe benefit obligation by providing the cash equivalent of benefits or some combination of cash and benefits. Alternatively, it may permit employees to choose among various benefits, or various benefits and cash. An employer may choose to provide fringe benefits under the SCA by offering an employee the option to enroll in health coverage provided by the employer (including an option to decline that coverage). If the employee declines the coverage, that employer would then generally be required by the SCA to provide the employee with cash or other benefits of an equivalent value.

IRS Notice 2015-87 sets forth how the ACA and the SCA may be coordinated for plan years beginning before January 1, 2017. Under these rules, is required to offer affordable health coverage to his employees under the ACA. However, he may also offer his employees a choice between the health coverage and a cash opt-out payment. Notice 2015-87 clarifies that in the case of employees under a SCA, the choice of a cash-out payment will generally not require the employer to pay a greater share of the cost of the health coverage in order for the coverage to be considered affordable.

also expressed concern about whether issuers will allow him to offer health coverage if too many employees decline to enroll and the participation rate drops below certain levels. Under the ACA, issuers must make all large group products available to all large employers, regardless of whether the employers meet participation rates.

**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 reduce potential burden imposed by the ACA. The legislative provisions of the ACA are still in force until changed by the Congress. Therefore, taxpayers are still required to 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](http://www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals) at [www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals](http://www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals).

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

Sincerely,

Denise Trujillo  
Branch Chief,  
Health and Welfare Branch,  
Office of Associate Chief Counsel  
(Tax Exempt and Government Entities)