The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The text is centered on a white background within this design.

2015-2016
District Training
Prop 301 / Affordable Care Act

Prop 301 Inflation Lawsuit (Cave Creek USD, et. Al. v. DeWit)

Last Summer (2014)...

- Judge Cooper issues order to increase base level immediately to levels that would provide for inflation funding not provided in FY2010-FY2014 (“reset” issue); \$317M (now \$336M)

- Also sets date for evidentiary hearing on “back-pay” - the cumulative amount not provided during same years.

Prop 301 Inflation Lawsuit (Cave Creek USD, et. Al. v. DeWit)

- ▶ Last fall (2014) an offer was made to settle the case for the reset only (\$317M vs. \$1.6B). This was rejected by the legislature.
- ▶ Evidentiary hearing on back pay issue in October was to be decided on equity grounds.
- ▶ State appeals Judge Cooper's order on reset to the Court of Appeals, asking for a stay of order while appeal is pending.

Prop 301 Inflation Lawsuit (Cave Creek USD, et. Al. v. DeWit)

- ▶ January to August 2015
 - ▶ Judge Cooper urges the parties to mediate with three members from the Court of Appeals. These judges are recused from ever having to deal with this case in the future.
 - ▶ The mediation team engaged in talks independently with each of the parties. There was a gag order placed on the proceedings.

Prop 301 Inflation Lawsuit (Cave Creek USD, et. Al. v. DeWit)

- ▶ January to August 2015
 - ▶ August 25: education groups move to declare impasse in negotiations, order issued - gag order continues for discussions that occurred in mediation.
 - ▶ August 26: litigation resumes, informal talks continue
 - ▶ Whats Next:
 - ▶ 1) Superior Court decision on back pay (Judge Cooper has been reassigned)
 - ▶ 2) Court of Appeals State Motion for Stay on Reset

Prop 301 Inflation Lawsuit (Gov. Ducey - Trust Land Proposal)

- ▶ Proposed June 3 2015
 - ▶ Increases amount of funds from investment proceeds of Trust Corpus (now valued at \$5.1B from \$1B in 1999)
 - ▶ Increases % from 2.5% to 10% for five years; Then reduces to 5% for five years (\$2.2B over 10 years)
 - ▶ The 10-year average return on the Trust Corpus is 7.2%
 - ▶ This would be a 9% boost in base level funding

Prop 301 Inflation Lawsuit (Gov. Ducey - Trust Land Proposal)

- ▶ Gov Ducey Trust Land Proposal
 - ▶ Plan to start in FY2017; No immediate call for Special Session of Congress
 - ▶ Likely would need to be both a constitutional amendment and a statutory change
 - ▶ According to the Governor, this is intended to be NEW money (agreeable to supplanting language) and DOES NOT settle the lawsuit or affect the requirement of the state to fund inflation under ARS 15-901.01
 - ▶ State Treasurer DeWit wrote a letter to legislators on July 15th opposing the Governors plan as being inconsistent with legal requirements and sustainability of state trust lands.

What Would the Plaintiffs Do...or Agree to As Settlement?

- ▶ 1) Inflation must continue as ARS 15-901.01 mandates and as the Courts have interpreted it.
- ▶ 2) The base level of funding must be increased to what it would be had inflation been provided in FY2011-FY2013 (\$336M)
- ▶ 3) Any revenue source used to accomplish the above should be sustainable over time
- ▶ 4) Some consideration should be given for the funding not provided (“back pay”)

Prop 301 Inflation Lawsuit

Biggs/Gowan School Funding Plan

- ▶ Issued the day that the impasse in mediation was declared
- ▶ Sketch of a plan; claims to provide \$500M in annual fundig for 10 years using following sources
 - ▶ 1) May repeal ARS 15-901.01 (if so, would require voter approval)
 - ▶ 2) Continuing a supplement to state aid of \$74M that was put into both FY15 and FY16
 - ▶ 3) “Partial shift” of money from First Things First (would require voter approval)
 - ▶ 4) Increased earnings from State Trust Land Fund (would require voter approval)
 - ▶ 5) Additional supplemental money from FY15 surplus

Prop 301 Inflation Lawsuit - Road Blocks to Compromise

- ▶ 1) Use of Trust Lands - Yes or No?
 - ▶ If Yes, are they “new” funds or are they used to fund current obligations?
 - ▶ How Much?
 - ▶ How to buffer for downturns?

Prop 301 Inflation Lawsuit - Road Blocks to Compromise

- ▶ 2) New Taxes as Dedicated Revenue Source
 - ▶ Governor and Legislature say NO
 - ▶ Would not be raising taxes themselves but would be referring to a ballot measure.

Prop 301 Inflation Lawsuit - Road Blocks to Compromise

- ▶ 3) Continuation of ARS 15-901.01 as it has been interpreted by courts or commensurate amount with repeal of statute?
 - ▶ If it continues, does it reset the base level each year?
 - ▶ If it continues, is it a General Fund obligation or can it be covered out of another source?

Prop 301 Inflation Lawsuit - Road Blocks to Compromise

- ▶ 4) Use of Rainy Day Fund (BSF) or surplus as on-going source of revenue?
 - ▶ Need to avoid cliffs and uncertainty
 - ▶ May need to be used for one-time costs without creating future financial obligations

Prop 301 Inflation Lawsuit - Road Blocks to Compromise

- ▶ Can Prop 301 be renewed at the same time?
 - ▶ Prop 301 has two parts, the first part is the inflation funding that we have been talking about. There is no sunset date for this portion of Prop 301.
 - ▶ Sales tax that funds the Classroom Site Fund is due to expire on June 30, 2021
 - ▶ Only three general elections left to renew this portion, 2016, 2018 and 2020.

Prop 301 Inflation Lawsuit

...The Good News

- ▶ Critical mass is present among public, media, and business community on a need for more funding for education.
 - ▶ Teacher shortage across the state worsenes. Started this year with more than 1,000 open teacher positions to start this year.
 - ▶ Business community recognition of need to invest in K-12 education
 - ▶ US Census pegs Arizona as last in country in per pupil funding.
 - ▶ Positive media coverage
 - ▶ Reasonableness of position in inflation lawsuit has helped

Prop 301 Inflation Lawsuit Advice for Advocates

- ▶ Only the plaintiffs and defendants can settle this lawsuit.
 - ▶ Please give your input and assistance but understand decisions made by three organizations, using their governance structures
 - ▶ ASBA: 230 school districts and their governing boards
 - ▶ AEA and their more than 20,000 members
 - ▶ AASBO school business officials across the state

**Remember we have to work with the other side
In a compromise, no side gets everything it wants.**

Prop 301 Inflation Lawsuit Advice for Advocates

- ▶ Beware of proposals to fund specific programs out of inflation monies.
 - ▶ Inflation is for basic student support and decisions on the use of those funds need to be made at the local level
 - ▶ **WATCH OUT FOR UNFUNDED MANDATES!**



- ▶ **AFFORDABLE CARE ACT**
 - ▶ **(OBAMA-CARE)**

- ▶ **Two Penalties in a Nutshell**
- ▶ **Employer Shared Responsibility Penalty (4980H Penalty)**
- ▶ Beginning with the first day of the plan year in 2015, certain large employers may be subject to a penalty tax for failing to offer minimum essential coverage (MEC) to the required percentage of full-time employees and their dependent children to age 26 (4980H (a) \$2,000).

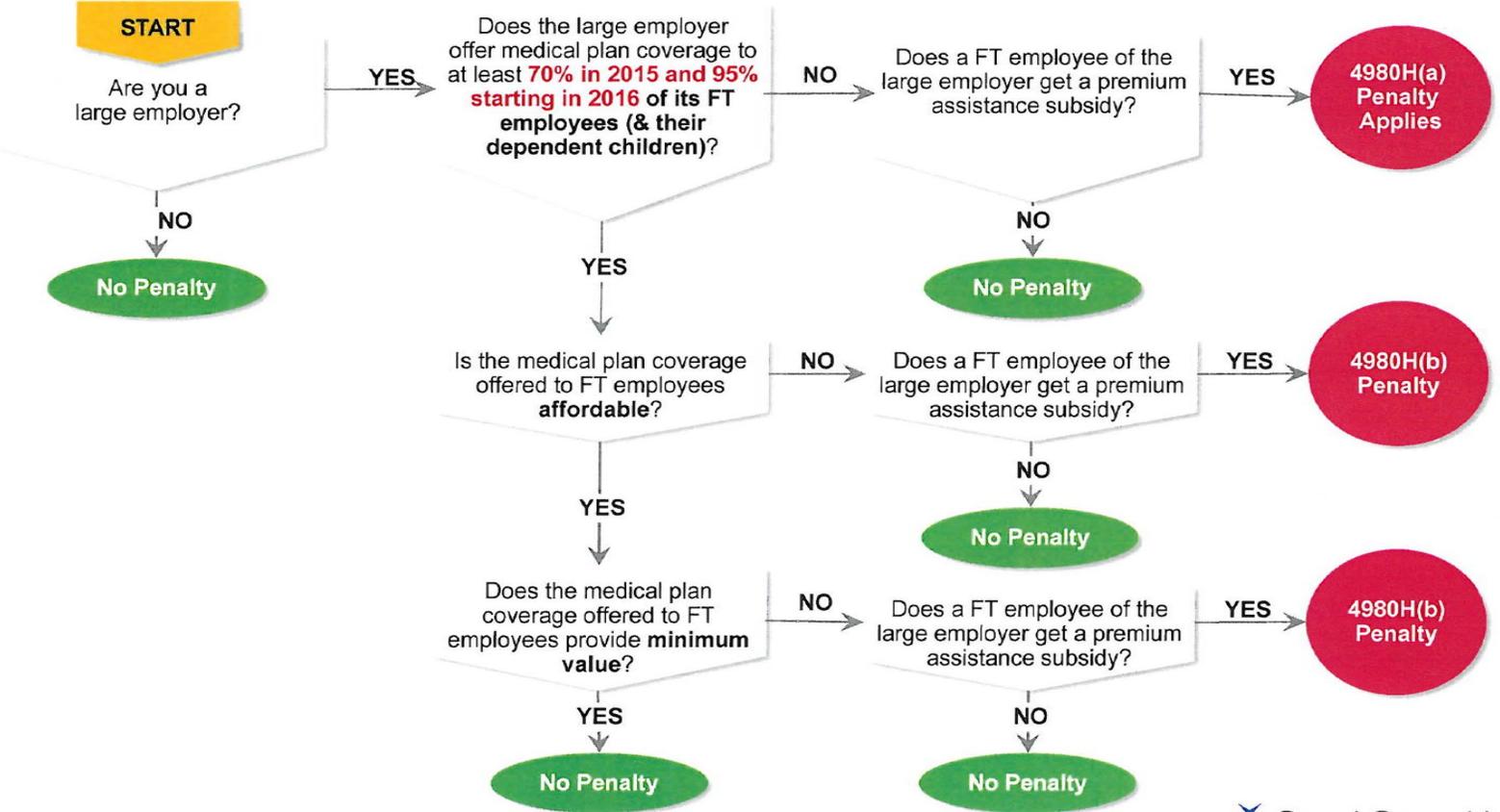
▶ **OR**

- ▶ Offering MEC coverage that is not Affordable and does not offer a Minimum Value (4980H (b) \$3,000).

▶ **LET'S BE CLEAR ABOUT SOMETHING:**

- ▶ **There is NO LAW THAT REQUIRES you, as a plan sponsor/employer, to maintain MEC or to offer coverage to employees. But there is a law that applies a financial penalty if you do not do so in certain situations. In both potential penalty situations above, there may be times when you decide that it's a wiser financial decision NOT to maintain MEC or NOT to offer coverage and instead pay the penalty.**

The 4980H Penalty Process



New Lingo: Who is a Full-Time Employee?

- Full-time means a “common law” employee who works or is credited with:
 - An average of 30 “hours of service” per week with an employer
 - 130 or more hours of service per calendar month
 - 1,560 or more hours of service per 12 month period (but since the 4980H penalty is applied monthly, focus on 130 hours of service as FT)
 - IRS math: 52 weeks x 30 hours divided by 12 =130/month
- In general, if an employer reasonably expects an employee to be a full-time employee when the new employee begins work, that new employee **MUST be offered coverage effective no later than the first day of the 4th calendar month** in order to avoid the 4980H penalty (maybe sooner to avoid the 90-day waiting period rule)

Examples for a new FT employee:

- January 1 hire date → coverage by April 1
- January 15 hire date → coverage by May 1

Common Law: IRS looks at whether someone is an “independent contractor” or not from the perspective of the Employer’s right of control over the worker including Behavioral control, Financial control, and Type of Relationship



For Which Employees Must ALE Complete the Form 1095-C?

- Any employee who is a **full-time employee** for at least one month (the entire month) of the calendar year
 - Include employees who are treated as full-time under a stability period (if using look-back method)
 - Report regardless of whether the employee is enrolled in the employer's plan
- Any **NON full-time employee who is actually covered** under the employer's self-insured medical plan for **at least one day of any month**
 - Coverage for one day is considered coverage for the entire month
 - Report only if the part-time employee is enrolled in the employer's medical plan
 - To report enrollment for non-employees, retirees with a full-year retiree coverage or individuals with a full-year COBRA coverage, use either Form 1095-C or Form 1095-B (the plan reporting form)

Special instructions on reporting COBRA coverage
See appendix

Form 1095-C: Has 3 Parts

Large employer completes this form **for each full-time employee**, and it's sent to each full-time employee (with a copy to the IRS). Must be only one form 1095-C that reports information for all 12 months of the year.

Note:
Part I
Part II
Part III



Form **1095-C** **Employer-Provided Health Insurance Offer and Coverage** VOID CORRECTED **2014**
 Department of the Treasury Internal Revenue Service **OMB No. 1545-0047**
 Information about Form 1095-C and its separate instructions is at www.irs.gov/1095c.

Part I Employee **Applicable Large Employer Member (Employer)**

1 Name of employee 2 Social security number (SSN) 7 Name of employer 8 Employer identification number (EIN)
 3 Street address (including apartment no.) 9 Street address (including room or suite no.) 10 Contact telephone number
 4 City or town 5 State or province 6 Country and ZIP or foreign postal code 11 City or town 12 State or province 13 Country and ZIP or foreign postal code

Part II Employee Offer and Coverage

14 Offer of Coverage (enter required code)	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

16 Applicable Section 4980H safe harbor code, if applicable

Part III Covered Individuals
 If Employer provided self-insured coverage, check the box and enter the information for each covered individual

(a) Name of covered individual(s)	(b) SSN	(c) Code (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Form 1095C at <http://www.irs.gov/pub/irs-pdf/f1095c.pdf>

ALEs may designate third parties to perform reporting on their behalf. A governmental ALE may designate another governmental entity to accept reporting responsibility on its behalf. See IRS FAQ: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-about-Employer-Information-Reporting-on-Form-1094-C-and-Form-1095-C>

IRS Reporting Due Dates

➤ Reporting Deadlines:

- **January 31: Deadline for employee/participant statements**
 - February 1 in 2016 because January 31 is a Sunday
- **February 28: Deadline for filing with IRS if filing on paper**
 - February 29 in 2016 because February 28 is a Sunday
- **March 31: Deadline for filing with IRS if filing electronically**
 - Must file electronically if filing 250 or more forms

**First IRS reports are due in early 2016 for the 2015 calendar year
There is no exception for employers with non-calendar year plans**

Penalty for Non-Compliance with IRS Reporting

➤ June 29, 2015 Trade Preferences Extension Act increased the penalty for non-compliance with IRS reporting*

- The general penalty for **failure to file a required IRS return** will increase from \$100 per return to **\$250 per return**.
- The **cap on the total amount of penalties** for such failures during a calendar year will increase from \$1,500,000 to **\$3,000,000**.
 - If a failure to file relates to both an IRS information return (e.g., a Form 1095-C) and a payee statement (e.g., that same Form 1095-C required to be furnished to the individual), **penalties are doubled**.
- If a **failure to file is caused by intentional disregard**, the new \$250 penalty noted above is doubled to **\$500 for each failure**, and no calendar year cap applies.
 - » Waivers are available when failure to file is due to a reasonable cause
 - » Limited relief is also available for returns and statements filed or furnished in 2016 (for 2015 coverage) if when incorrect or incomplete information is reported, the information is corrected

*IRS says a provider of minimum essential coverage that fails to comply with the information reporting requirements may be subject to the general reporting penalty provisions under section 6721 (failure to file correct information returns) and section 6722 (failure to furnish correct payee statement).

Employer Shared Responsibility Penalty 4980H(a)

- **No Coverage Penalty** (also known as “Pay or Play” or 4980H(a))
 - **For the 2015 plan year**, if in any month a “large employer” **does not offer to 70%*** of its “full-time employees” (and their dependent children up to age 26) an opportunity to enroll in minimum essential coverage (MEC), and at least **one full-time employee enrolls in the Exchange and receives a government subsidy** to help pay for Exchange coverage, the large employer is subject to a 4980H(a) penalty.
 - **The 4980H(a) penalty is \$2,000/year** times EACH of an employer’s full-time employees** minus the first 80 FT employees. Penalty is 1/12th of \$2,000 (\$167/EE) if applied monthly
 - ** penalty adjusted for inflation.... In 2015 (a) penalty estimated at \$2,120/year
 - ***Starting with the 2016 plan year the percentage rises to 95% of FT employees and you can subtract only the first 30 FT employees**
 - **Minimum essential coverage** includes any employment-based group health plan of any actuarial value, insured or self-insured, except one that consists only of HIPAA “excepted benefits” like insured dental and vision coverage.
 - **No penalty if a dependent gets a subsidy. No penalty if employee is eligible for Medicare/Medicaid instead of the subsidy.**

Aim for 100% coverage of FT employees not just 70% or 95%...give yourself some cushion

