

## ACA: FAQs ON IRS LETTER 226-J

The ACA employer mandate requires applicable large employers (those with 50 or more full-time employees (FTEs) and full-time equivalents) to offer affordable minimum value coverage to substantially all FTEs (those working 30 hours or more per week) and their dependents, or risk owing penalties through an employer shared responsibility payment (ESRP). Importantly, the IRS notifies employers of a proposed ESRP through Letter 226-J. IRS FAQs include guidance on exactly how applicable large employers (ALEs) will be notified of an ESRP, how employers should respond to or dispute the notification, and how employers will remit any owed payments to the IRS. For more detailed background information regarding employer mandate penalties, see the PPI publication [ACA: Employer Mandate Penalties and Affordability](#).

*In FAQs, the IRS gives details regarding assessment and collection of ESRPs for employers subject to the ACA employer mandate.*

### Q1. WHY IS THE IRS SENDING LETTER 226-J TO ALEs?

**A:** Letter 226-J is sent to ALEs who may owe an ESRP for calendar years 2015 and beyond. Generally, an employer will receive Letter 226-J if one of two types of penalties under the employer mandate are being proposed. "Penalty A" applies if the employer failed to offer at least minimum essential coverage to at least 95% (70% for 2015 only) of FTEs and dependents, and at least one FTE received a premium tax credit in relation to their individual policy purchased through the exchange. "Penalty B," however, applies if the employer failed to offer health coverage that met minimum value or was considered unaffordable and a FTE received a premium tax credit. Therefore, Penalty A or B is triggered only when a FTE received a premium tax credit (i.e., federal premium assistance) for the cost of an exchange policy.

### Q2. HOW WILL THE IRS NOTIFY EMPLOYERS OF A POTENTIAL PAYMENT THEY MIGHT OWE?

**A:** An employer will receive Letter 226-J if the IRS determines that one or more of the employer's FTEs received a premium tax credit. Letter 226-J will describe the general IRS procedures used to determine if an employer actually owes an ESRP. It is important to note that Letter 226-J is not an invoice for payment. Instead, it is a preliminary determination based on data listed on the Forms 1095-C reported to the IRS and matched to information on individuals who received premium assistance for their individual health policy. In other words, any possible liability for an ESRP is based upon the data that was reported to the IRS on Forms 1094-C and 1095-C as compared to information regarding FTEs who received a premium tax credit on the exchange.

### Q3. WHAT SHOULD AN EMPLOYER DO WHEN IT RECEIVES LETTER 226-J?

**A:** Read the letter and all attached forms carefully and note any response date indicated. The letter provides detailed information on where the IRS got the information used to calculate the payment and instructions on how to pay or appeal the payment.



#### Q4. WHEN SHOULD AN EMPLOYER RESPOND ONCE THE LETTER IS RECEIVED?

**A:** A response to the preliminary IRS letter is due by the date indicated on the letter, which is generally 30 days from the date the letter is generated. Employers should reach out to the IRS by phone to establish a line of communication promptly upon receipt of the letter, but in no event later than the required response date. The IRS has been open to granting extensions of time to submit a formal response where the employer is responsive and has good reason for an extension.

#### Q5. WHO SHOULD AN EMPLOYER RESPOND TO ONCE THE LETTER IS RECEIVED?

**A:** Letter 226-J will include the name and contact information of an assigned IRS representative, and the employer should follow the instructions provided in the letter under “What you must do.” The employer’s representative (either the employer or the employer’s CPA/legal counsel) should contact the assigned IRS representative with any questions, including questions on appropriate documentation or the sufficiency of the employer’s planned response. Employers that need additional time to provide the required documentation should respectfully request an extension of the deadline set forth in the letter and should maintain a record of any extension that is granted.

#### Q6. HOW SHOULD AN EMPLOYER DISPUTE OR APPEAL A PROPOSED ESRP?

**A:** Employers that disagree with the Letter 226-J proposed payment have an opportunity to dispute the IRS’s initial determination before paying any employer mandate penalties. In other words, the initial letter is not a bill, and an employer has an opportunity to dispute the IRS’s information. To dispute the Letter 226-J determination, an employer must complete Form 14764 (ESRP Response) and mail it back to the IRS by the due date listed on the letter.

On Form 14764, an employer would include a signed statement that explains the disagreement with the proposed payment and include all supporting documentation, such as employee waiver forms, payroll records and/or benefit admin system records that prove an offer of coverage was made to a specific employee. If there is no proof or documentation, use the statement to explain the circumstances.

If the information reported on the relevant year’s Forms 1095-C or 1094-C is not correct, the employer’s statement should describe any changes that should be made to Forms 1095-C or 1094-C. The employer should also make any necessary changes (if any) to the “Employee PTC Listing” portion of Form 14765 using the indicator codes used for Lines 14 and 16 of the Form 1095-C (do not file any corrected forms at this time).

Finally, employers should provide any supporting documentation along with the corrected changes listed on Form 14764. Ultimately, employers should engage outside counsel for assistance on specific interaction with and response to the IRS and Letter 226-J.

#### Q7. WHAT HAPPENS FOLLOWING AN EMPLOYER’S APPEAL OF THE PROPOSED ASSESSMENT?

**A:** The IRS will acknowledge the employer’s response, and if the parties continue to disagree on the assessment, the employer may request a conference with the IRS Office of Appeals.

#### Q8. WHAT SHOULD AN EMPLOYER DO IF IT AGREES WITH THE IRS’S PROPOSED PAYMENT?

**A:** In the event that an employer agrees with the proposed ESRP, the employer will need to complete, sign and date Form 14764 (ESRP Response) and return it to the IRS address listed on the letter along with a check or money order for the required amount made payable to the United States Treasury. The required form and payment must be mailed no later than the due date listed on Letter 226-J. If enrolled in the Electronic Federal Tax Payment System, the employer can instead pay electronically. If the total amount of the payment due is not paid in full, the IRS will send a Notice and Demand letter for the remaining balance.

#### Q9. IF THE APPEAL IS DENIED BY THE IRS, HOW WILL AN EMPLOYER BE NOTIFIED AND MAKE AN ESRP?

**A:** If, after reviewing the appeal information, the IRS concludes that an employer in fact owes an ESRP, the IRS will calculate the final amount and issue a demand letter for payment (Notice CP 220J). Notice CP 220J will show the balance due and give instructions on how to make a payment. The employer will not have to include the ESRP on any tax return or submit payment before the demand letter is sent. Further, the IRS may work with employers on payment options (via an installment agreement), if necessary.

## Q10. WHAT HAPPENS IF AN EMPLOYER DOESN'T RESPOND TO THE INITIAL IRS LETTER?

**A:** If an employer fails to respond by the response date listed on the first page of the letter, the IRS will send a Notice and Demand letter for the payment that the IRS proposed and assessed. The ESRP will be subject to an IRS lien and the IRS may levy enforcement actions. In addition, interest will accrue from the date of the notice and demand and continue until the total amount due is paid in full.

## Q11. WHAT ARE SOME BEST PRACTICES FOR EMPLOYERS GOING FORWARD?

**A:** For future filings, the employer should make sure that offers of coverage are documented every year during open enrollment and that signed waiver forms are collected from any FTEs who decline the group health coverage.

Employers should keep important records such as payroll records, variable hour tracking calculations, signed enrollment forms and copies of enrollment materials showing employee costs and coverage options in accordance with the employer's record retention policy.

Finally, employers should carefully select a vendor to populate and file Forms 1094-C and 1095-C and should closely oversee the reporting process. Do not assume the vendor will correctly populate the forms without any employer oversight. Generally, this means the employer should ensure all IRS instructions for completing the forms are properly followed, that the indicator codes used in Lines 14 and 16 are correct before filing any 1095-C forms with the IRS, and that filing and employee distribution requirements are completed by the IRS deadlines each year.

## RESOURCES

[IRS FAQs](#)

[Understanding your Letter 226-J](#)

[Sample Letter 226-J](#)

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