

# *ACA Enforcement:* **Letter 226J Penalty Assessments**

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# *Today's Agenda*

- ❑ Background on ESR + Recent Updates
- ❑ Letter 226J Basics
- ❑ ESRP Response & Appeal Process
- ❑ Recommendations
- ❑ Q&A Session



# Employer Shared Responsibility (ESR)

Requires Applicable Large Employers (ALEs) to offer compliant coverage to full-time employees and their dependent children. Employers who fail to do so face two different potential penalties.

	4980H(a): The “A” Penalty	4980H(b): The “B” Penalty
Conditions for the Penalty to Apply	A full-time employee receives a PTC to help pay for individual coverage purchased through an ACA Marketplace/exchange.	
	No coverage offered to full-time employees <b>OR</b> Coverage offered to less than 95% (70% in 2015) of the employer’s full-time employees	Coverage is offered to at least 95% (70% in 2015) of full-time employees but either: a. The coverage is not affordable, <b>OR</b> b. The coverage does not provide minimum value
Penalty Amount	<ul style="list-style-type: none"> <li>• 2015: \$173.33/month (\$2,080/year)</li> <li>• 2016: \$180/month (\$2,160/year)</li> <li>• 2017: \$183.33/month (\$2,260/year)</li> <li>• 2018: \$193.33/month (\$2,320/year)</li> </ul>	<ul style="list-style-type: none"> <li>• 2015: \$260/month (\$3,120/year)</li> <li>• 2016: \$270/month (\$3,240/year)</li> <li>• 2017: \$282.50/month (\$3,390/year)</li> <li>• 2018: \$290/month (\$3,480/year)</li> </ul>
Multiplier	All full-time employees for the month, minus 30 (or 80, for 2015 only).	Only those full-time employees who received a PTC for the month.

# *Affordability Percentages by Year*

For plan years beginning in...	The applicable percentage is...
2015	9.56%
2016	9.66%
2017	9.69%
2018	<b>9.56%</b>

# *Recent Developments*

↑  
• **April 2017:** IRS releases ESRP Provision Assessment addressing the status of their enforcement efforts.

• **Nov. 2017:** IRS updates FAQ section on ESR payments.

• **Nov. 2017:** IRS begins to send out ESR penalty proposal notices (Letter226J) to employers for CY 2015.

• **Dec. 2017:** Individual Mandate repealed under tax reform bill.  
*Employer mandate coverage & reporting requirements remain unchanged.*  
↓

# *Why did I receive Letter 226J?*

- Reporting errors
- Failure to use safe harbor for affordability
- Confused employees
- Failure to provide coverage




# *2015 “Relief” and Other Specifics*

- Conditional relief for midsize employers (50-99), but not for reporting
- Penalty A reduced by 80 employees instead of 30
- “Good faith” reporting relief
- Penalties adjusted for inflation - Penalty A: \$2080; Penalty B: \$3,120

# Letter 226J Contents

- An explanation of the employer shared responsibility provisions in the Internal Revenue Code § 4980H, which serve as the basis for ESR payments
- An ESRP Summary Table outlining the proposed penalty amount, by month
- An explanation of the ESRP Summary Table
- Form 14764: ESRP Response
- Form 14765: Employee Premium Tax Credit (PTC) Listing

	<b>Department of the Treasury</b> Internal Revenue Service	Date: 02/13/2018
		Tax year: YYYY
		Employer ID number: #####
		Person to contact: Contact Name
		Employee ID number: #####
		Contact telephone number: (###) ###-####
		Contact e-fax number: (###) ###-####
		Response date: 03/05/2018

Taxpayer Name  
Taxpayer Address  
City, ST Zipcode

Dear Taxpayer:

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

**Proposed ESRP \$0.00**

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least 100% of your full-time employees (and their dependents) and at least one of your full-time employees was certified as being allowed the PTC; or
- You offered MEC to at least 100% of your full-time employees (and their dependents), but at least one of your full-time employees was certified as being allowed the PTC (because the coverage was unaffordable or did not provide minimum value, or the full-time employee was not offered coverage).

This letter certifies, under Section 1411 of the Affordable Care Act, that for at least one month in the year, one or more of your full-time employees was enrolled in a qualified health plan for which a PTC was allowed. Based on this certification and information contained in our records, we are proposing that you owe an ESRP of \$0.00.



# ESRP Summary Table

Itemizes the proposed payment by month, indicating for each month if the liability is under section 4980H(a) or section 4980H(b).

- **Column a.** MEC Offer Indicator
- **Column b.** Full time employee count for the month
- **Column c.** Allocated reduction of FT employees
- **Column d. & e.** Count of assessable employees with a PTC for each ESRP code section
- **Column f.** Applicable 4980H Provision (“A” penalty or “B” penalty)
- **Column g.** Proposed monthly ESRP amount:
  - “A” Fine – Monthly ESRP: Column b - c x \$173.33
  - “B” Fine – Monthly ESRP: Column e x \$260.00

ESRP Summary Table							
Information Reported to IRS							
Month	a. Form 1094-C, Part III, Col (a) Minimum essential coverage offer indicator offered to at least [70% or 95%]	b. Form 1094-C, Part III, Col (b) Full-time employee count for ALE member	c. Allocated reduction of full-time employee count for IRC Section 4980H(a)	d. Count of assessable full-time employees with a PTC for IRC Section 4980H(a)	e. Count of assessable full-time employees with a PTC for IRC Section 4980H(b)	f. Applicable IRC Section 4980H provision	g. Monthly ESRP amount
January	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0
February	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	\$0

# Employee PTC Listing -Form 14765

**Row 1** reflects the codes, if any, that were entered on Lines 14 & 16 of the employee's 1095-C form for each month.

➤ Includes each full-time employee that had a PTC & no safe harbor code on their 1095-C form for one or more months

**Row 2** is for employers to make corrections to the coding if they chose to.

➤ For each employee, if the month is not highlighted, the employee is not an assessable FT employee for that month.

Form <b>14765</b> (April 2017)	Department of the Treasury - Internal Revenue Service <b>Employee Premium Tax Credit (PTC) Listing</b>
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Any month not highlighted is a month that the employee received a PTC and no safe harbor or other relief from the ESRP was applicable. The employee is an assessable full-time employee for that month.

Employer name										Employer ID number			Tax year			
Employee Name <i>(last, first)</i>	SSN <i>(last 4 digits)</i>	All 12 months Indicator Codes <i>(Form 1095-C, lines 14 and 16 combined)</i>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Additional Information Attached	
<b>Row 1</b>	→		NoPTC	NoPTC	1H/2D	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	
<b>Row 2</b>	→														<input type="checkbox"/>	

# Form 14764 – ESRP Response

## Includes:

- Contact info
- Agree or disagree
- Payment options
- Authorization for limited authority

Form <b>14764</b> (April 2017)	Department of the Treasury - Internal Revenue Service <b>ESRP Response</b>
Complete both sides of this form and return it to the address below so that we receive it by [MM/DD/YYYY]. An envelope has been enclosed for your convenience. To request more time to respond, call us at 1-[XXX-XXX-XXXX].	
<b>Return form to:</b> Department of the Treasury Internal Revenue Service Group 2219 7300 Turfway Road, Suite 410 Florence, KY 41042	
<b>Provide Your Contact Information</b>	
Name 	
Address (if you changed your address, make the changes below)	

**Due date** (indicated by a red arrow pointing to the return address)

**Phone # to request extension** (indicated by a blue arrow pointing to the return address)

**Employers must respond by the due date shown on the letter (30 days from date of 226J) or the IRS will begin the collection process**

# *Responding to Letter 226J*

<b>Employer Agrees with Proposed ESRP</b>	<b>Employer Disagrees with Proposed ESRP</b>
<ul style="list-style-type: none"><li>• Complete, sign &amp; date Form 14764 before due date</li><li>• Include payment via money order, check, or pay electronically via the EFTPS</li><li>• Additional payment options (e.g. installment agreements) may be available</li></ul>	<ul style="list-style-type: none"><li>• Do not file a corrected 1094-C or 1095-C</li><li>• Complete, sign &amp; date Form 14764 before due date and include a signed statement on why you disagree</li><li>• In statement, make necessary changes to 1094-C/1095-C forms and Employee PTC listing (Form 14765)</li><li>• <b>Include any supporting documentation</b></li></ul>

# *Supporting Documentation*

- For electronic enrollment: A report of employees who were given an opportunity to enroll.
- For paper enrollment: Waiver forms (if obtained) for employees who declined coverage.
- Records of distributions of enrollment materials.
- Summary Plan Descriptions or other plan communications showing definition of “eligible employee” and which measurement period was used.
- Payroll records to show hire dates, termination dates, hours worked, etc.

# *Next Steps*

After employers who disagree with the proposed ESRP respond to Letter 226J...

- IRS will respond with Letter 227 (series of 5 different letters) explaining next steps
- If employer disagrees with the proposed/revised ESRP, they may request a conference with the IRS Office of Appeals. **Conference must be requested by due date shown on Letter 227.**



# *Recommendations*

- ❑ Alert the mail room/appropriate workforce members that notices may be coming
- ❑ Review 2015 Reporting
- ❑ Appoint specific individual to quarterback a response
- ❑ Request more time by calling the number on your Letter 226J
- ❑ Contact experienced industry expert
- ❑ Compile & organize supporting documentation internally and from vendors
- ❑ Clean-up ACA eligibility and consider affordability safe harbors

# *Marshall & Sterling Can Help!*

Our team can assist with:

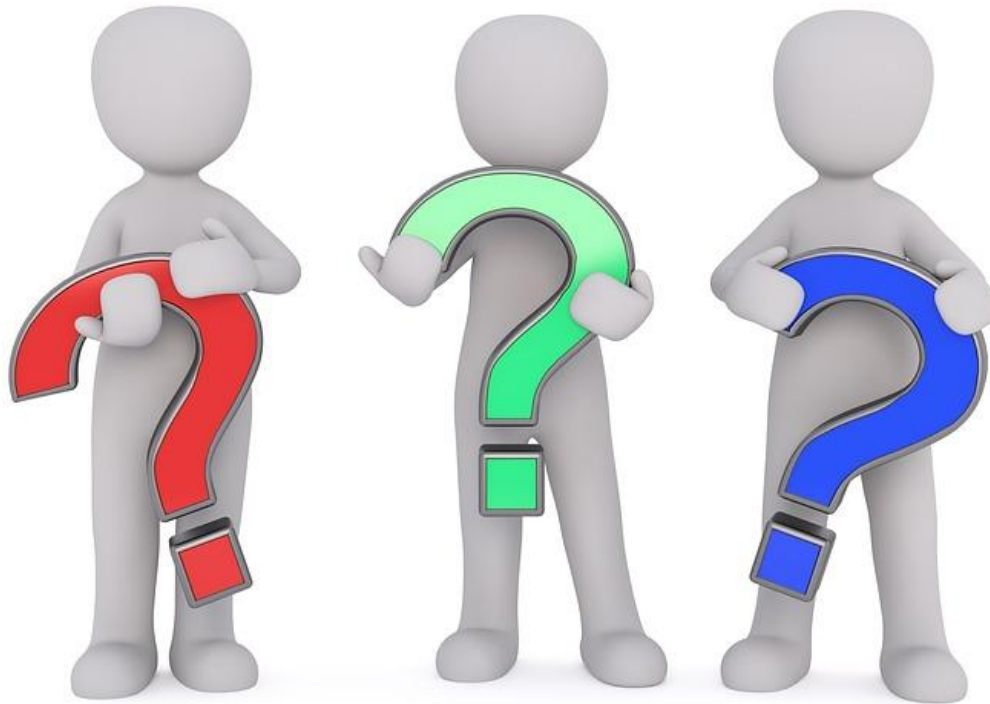
- Review of previously filed 1094-C/1095-C forms
- Responding to IRS letter 226J
- Dispute services and fine assessments
- **Ongoing compliance:**
  - Employee/eligibility tracking
  - ACA consulting
  - 1094-C/1095-C reporting

**Learn more! Visit:**

[www.marshallsterling.com/group-benefits/aca-compliance-solution](http://www.marshallsterling.com/group-benefits/aca-compliance-solution)



# *Questions & Answers*



*Submit your questions via the webinar chat!*