

## Update on ACA Employer Mandate Enforcement

IRS released a sample notice of employer shared responsibility charge, which employers will receive after having had the opportunity to dispute an assessment for the 2015 calendar year. So far, it appears IRS has only sent assessment notices in connection with an employer’s failure to offer minimum essential coverage to at least 70% of its full-time employees and their dependents — but not yet due to coverage that is “unaffordable” or fails to provide minimum value.

### Background

The Affordable Care Act (ACA) imposes employer shared responsibility requirements, commonly referred to as the “employer mandate.” Beginning in 2015, applicable large employers (ALEs) — generally, those with at least 50 full-time employees — are required to offer minimum essential coverage to substantially all full-time employees and their dependents, or pay a nondeductible assessment if at least one full-time employee enrolls in marketplace coverage and receives a premium tax credit. Even if they offer employees coverage, ALEs may still be subject to an employer shared responsibility payment (ESRP) if the coverage they offer to full-time employees is “unaffordable” or fails to provide minimum value. (See our [April 17, 2014 FYI In-Depth](#).)

#### Employer Mandate Assessments Survived the TCJA

The Tax Cuts and Jobs Act (TCJA) nullified the individual mandate penalty beginning on January 1, 2019. However, it did *not* impact the existing employer shared responsibility assessments. (See our [Legislate from December 20, 2017](#).)

In 2017, IRS released [FAQs](#) explaining it would issue [Letter 226J](#) to note the employees by month who received a premium tax credit, and provide the proposed ESRP. It also issued [Form 14764](#), the ESRP Response, and [Form 14765](#), the Employee PTC Listing. Together, these forms are the vehicle for employers to respond to a Letter 226J. (See our [December 13, 2017 For Your Information](#).)

### Sample Notice CP 220J

IRS subsequently released sample Notice 220J, the notice of ESRP charge, that ALEs will receive after they have already received a Letter 226J and had the opportunity to review and appeal the ESRP — and make any necessary changes to their reporting. The sample notice indicates where the IRS will specify the dollar amount due and how to pay. It instructs an employer that disagrees with the assessment to file a claim for a refund on [Form 843](#).

## Letter 226J Addresses the “(a) Penalty” Only – So Far

It appears that IRS has sent Letter 226J only for assessments in connection with failure to offer minimum essential coverage in 2015 to 70% or more of an ALE’s full-time employees and their dependents — the so-called “(a) penalty,” after its subsection in Code Section 4980H. That is to say, at this point, the IRS does not seem to be sending Letter 226J for assessments relating to coverage offered to full-time employees that is “unaffordable” or fails to provide minimum value — the so-called “(b) penalty.”

This strategy makes sense to the extent the IRS is trying to limit the number of appeals needing review as the agency kicks off the assessment process. However, as the IRS continues with shared responsibility assessments, it is expected to address the (b) penalty as well.

## In Closing

Employers should ensure processes are in place to make shared responsibility assessment payments, as necessary. Even employers that have not yet received a Letter 226J for 2015 may eventually need to respond to 2015 (b) penalty assessments.

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