

IRS Doubles Down on Employer Mandate Enforcement

IRS released additional guidance on its process for assessment and payment of the ACA's ESRPs for the 2015 calendar year. In addition to 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, the IRS is now sending assessments for 2015 coverage that was "unaffordable" or failed to provide minimum value. If timing is like last year, IRS will start releasing assessment notices for the 2016 calendar year later this year.

Background

The Affordable Care Act 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 children, or pay a nondeductible assessment if at least one full-time employee enrolls in marketplace coverage and receives a premium tax credit (PTC). 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](#).)

The IRS uses the information an ALE provides on Forms 1094-C and 1095-C to compute any ESRP. Late last year, it started sending 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 in 2015 using Letter 226-J. IRS 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 226-J. (See our [March 21, 2018 For Your Information](#).)

Guidance on the Notices

IRS has posted [information](#) on Letter 227, which is the acknowledgment it sends to ALEs based on its review of the ALE's [Letter 226-J](#) response. Letter 227 either closes an ESRP inquiry or informs the ALE of next steps on payment or appeal.

According to the guidance, there are five types of Letter 227:

New Forms 1094-C and 1095-C

The IRS recently released 2018 drafts of Form [1095-C](#), [1094-C](#), and [1094-B](#). Except for a change in the employee name field in the 1095-C, the IRS has not changed these forms from their 2017 versions.

- [Letter 227-J](#) acknowledges receipt of the signed agreement [Form 14764](#), ESRP Response, and that the ESRP will be assessed. After the IRS issues this letter, the case is closed and no response is required.
- [Letter 227-K](#) acknowledges receipt of the information provided and shows the ESRP has been reduced to zero. After the IRS issues this letter, the case is closed and no response is required.
- [Letter 227-L](#) acknowledges receipt of the information provided and shows the ESRP has been revised. The letter includes an updated [Form 14765](#) (PTC Listing) and revised calculation table. The ALE can agree, request a meeting with IRS, and/or appeal this determination.
- [Letter 227-M](#) acknowledges receipt of information provided and shows that the ESRP did not change. The letter provides an updated [Form 14765](#) and revised calculation table. The ALE can agree, request a meeting with IRS, and/or appeal this determination.
- [Letter 227-N](#) acknowledges the decision reached in appeals and shows the ESRP based on the appeals review. After the IRS issues this letter, the case is closed and no response is required.

The IRS also released [guidance](#) explaining its CP220J Notice, which is the ESRP bill. The information provides payment options and arrangements.

IRS Now Enforcing the “(b) Penalty”

Initially, IRS sent Letter 226-J 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. Now, however, the IRS is sending Letter 226-J for assessments relating to coverage offered to full-time employees that is “unaffordable” or fails to provide minimum value — the so-called “(b) penalty.”

In Closing

Employers should ensure processes are in place to make shared responsibility assessment payments, as necessary. If the timing is like last year, IRS will start releasing assessment notices for the 2016 calendar year later this year.

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