

# ACA Update: IRS Enforcement of ESR



## ***IRS intends to begin ESR penalty process***

The Internal Revenue Service (IRS) recently revised its [“Questions and Answers on Employer Shared Responsibility Provisions under the Affordable Care Act”](#). The revisions are specifically focused on employer shared responsibility (ESR) penalties.

In the FAQs, the IRS outlines the process they will utilize to notify employers of ESR penalties. The IRS plans to issue letters informing applicable large employers (ALEs) of potential liability for ESR payments in late 2017. This group of penalty letters will be in reference to any potential liabilities for the 2015 calendar year. It is important for large employers to understand the penalty notification and appeal process as we anticipate the IRS to issue the letters in the near future. Here is an overview of the process that employers should expect:

### **Step One: Employer receives Letter 226J from the IRS**

The IRS will inform ALEs who they believe are responsible for a penalty payment via [Letter 226J](#). The basis for the penalty demand is based on the IRS determination that for at least one month in 2015 one or more of the large employer’s full-time employees was enrolled in Marketplace coverage, received a premium tax credit (PTC) and the large employer did not qualify for an affordability safe harbor or any other relief.<sup>i</sup>

The letter will contain a payment summary table, a response form ([Form 14764](#)), employee premium tax credit list ([Form 14765](#)), and full instructions on how to proceed from the IRS.

### **Step Two: Response to IRS Letter 226J**

Employers who receive Letter 226J will have 30 days to respond to the IRS, based on the date of the letter. Employers should complete Form 14764, edit Form 14765 with proper 1095 1 and 2 codes if the codes indicated are incorrect, provide any supporting documentation and mail the response to the IRS.

### **Step Three: IRS Response to Forms 14764/14765**

The IRS will acknowledge the employer response to Letter 226J and provide a letter (Letter 227 – not available yet) with further action required, if any. If the employer disagrees with the information provided in Letter 227, the employer may request a pre-assessment conference with the IRS Office of Appeals. Any requests should be made in writing generally within 30 days of the date of Letter 227.



**Response necessary:** It should be noted that employers who do not respond to either Letter 226J OR Letter 227, the IRS will assess the amount of payment and issue a notice and demand for payment via Notice CP220J. The employer will need to make its payment following the included instructions.

**Key Takeaway:** With this notice, the Internal Revenue Service appears ready to assess employer shared responsibility payments to large employers. These payments will apply to large employers who did not offer coverage to enough full-time employees and/or did not offer affordable coverage to eligible full-time employees.

Since the implementation of the Affordable Care Act, employers have been encouraged to pay attention to the rules and document all required processes in order to have proof to appeal any IRS assessments. It is imperative that you continue to rely on your tax partner/vendor who have assisted you in the reporting process. And, as always, your M3 team will be available to provide you with necessary compliance support.

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<sup>i</sup> Please keep in mind that employers with 50-99 employees were eligible for transition relief in 2015 as long as the employer certified on the 2015 1094C. Also, transition relief may apply to employers with 100+ employees who sponsored non-calendar year plans.

Created: 11/21/2017