



Benefitfocus[®]

ACA Penalties

And what you need to
do when you receive
a Letter 226J



You may have received a Letter 226J and wondered, what am I supposed to do now? Or thought, I know my organization is compliant with ACA reporting, there must be a mistake.

Let's start off with what is Letter 226J and then move on to how to respond. Letter 226J is the initial notification from the IRS that an Applicable Large Employer (ALE) may be liable for an Employer Shared Responsibility Payment (ESRP) or tax penalty. There are a variety of reasons that you received these penalties such as bad data, incorrect full-time employee data, coding errors or missing information. Often ACA penalties can be reduced after an in-depth investigation and comprehensive response with documentation.

ACA Tax Assessments

After multiple failed attempts to repeal the law, ACA penalties became a reality towards the end of 2017. The penalty risk is real. The Treasury Inspector General for Tax Administration (TIGTA) reported an estimated \$8 billion were assessed for 2015, \$9 billion for 2016, \$13 billion for 2017 and \$15 billion for 2018. These penalties are essentially tax assessments to recover the cost of ACA subsidies for individuals who were eligible for and should have received an affordable healthcare coverage offer from their employer and did not.

The IRS must cross-reference several different sources in order to determine if the employer was responsible for offering the employee affordable health coverage. They must review the employer 1094-C filing, the 1095-C filing and the employee's 1040 income, then compare the findings to the public health exchange subsidy report.

According to the same report, "For Tax Years 2015 and 2016 cases closed or in process as of July 27, 2019, the IRS initially calculated proposed Employer Shared Responsibility Payments of nearly \$17 billion. However, the IRS assessed only \$749 million. TIGTA found that in most cases, the IRS reduces or eliminates the Employer Shared Responsibility Payments that health insurance coverage was provided by the employers. A review identified 90 cases for which examiners adjusted the proposed ESRP amount from nearly \$24 million to about \$88,000."

You Have 30 Days to Respond

The IRS gives employers **30 days** to respond to Letter 226J. This has left many employers scrambling to investigate the tax assessments or asking for extensions. The deadline is 30 days from the date on the Letter 226J, not from when you received it. If you don't receive an extension and fail to respond to by the specified date, the IRS will send a Notice and Demand for Payment (Notice CP 220J). The penalty will be subject to IRS lien and levy, and interest will begin to accrue until the ESRP penalty is paid in full.

How to Respond to Letter 226J

It's very important to be organized when you receive **Letter 226J**. Follow the instructions on the letter and document any information you discover in your research that might show you do not owe the full tax assessment. Here are steps to follow if you receive IRS Letter 226J:



Note: You will receive these two additional documents with the summary Letter 226J: the response Form 14764 and Form 14765, which contains the specific employee data you will want to investigate.

1. Read your letter in detail and determine which penalty is being assessed.

If you have any questions along the way, you can contact the IRS at the phone number listed on Letter 226J. Make sure to ask and record the IRS agent's ID number for reference.

ACA Letter 226J—4980H A Penalties are related to section 4980H(a) of the Internal Revenue Code, "A Penalties." The ACA "A Penalties" are assessed when:

- Employers self-report they failed to meet the 70% threshold for offering Minimum Essential Coverage (MEC) to their full-time employees in at least one month in a year.
- At least one full-time employee of an Applicable Large Employer (ALE) received a Premium Tax Credit (PTC).

ACA Letter 226J—4980H B Penalties are related to section 4980H (b) of the Internal Revenue Code, "B Penalties." These ACA "B Penalties" are assessed when:

- A full-time employee at an ALE received a PTC and wasn't offered affordable healthcare that met minimum value requirements.
- A full-time employee at an ALE received a PTC and was offered healthcare that met minimum value requirements but wasn't affordable.

FOR REFERENCE ONLY

Department of Treasury
Internal Revenue Service
1575 North Rulon White Boulevard
Ogden, UT 84201-0602

The year: 2015
Letter date: 08/05/15
Employee ID number: [REDACTED]
Contact name: 4980H Program Unit
Contact ID number: 12342
Contact telephone number: 877-874-4112
Contact e-file number: 877-792-2722
Response date: 8/2/2015

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

Proposed ESRP: \$3,312,733.31

Our records show that you filed one or more Forms 1095-C, Employee-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employee-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 70% 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

Letter 226J (10-2017)
Catalog Number 1706024

Example Letter 226J

- This is the date that starts the 30-day countdown for a response
- IRS contact information
- This is the deadline for the response
- Proposed ESRP Penalty
- The specific issues and employees affected will be listed on the 14765 included with this letter

2. Determine if there is a factual error

- Review 1094-Cs and 1095-Cs to ensure accuracy
- Verify healthcare enrollment status
- Determine if your company offered health coverage for full-time employees that didn't enroll but did receive a Premium Tax Credit (PTC)
- Check employee's FT status or if the employee was in a qualifying Limited Non Assessment Period (LNAP) during the months in question

3. Gather supporting documentation

Pull together any payroll records or benefits documentation that provides data contradicting what the IRS has listed for the employee. For example, if the employee was not employed during the months with a proposed penalty, provide documentation that shows the hire/term dates.

4. Re-calculate how much is owed for the 4980H penalty assessment

You can reference the IRS website to see the per month per employee penalty: [Calculation of the Employer Shared Responsibility Payment](#)

5. Fill out the IRS response via form 14764

Use Form 14764 to indicate if you agree or disagree with Letter 226J.

If you disagree with the assessment in Letter 226J you can:

1. Check that you disagree on Form 14764
2. Check "no payment"
3. Fill out Form 14765 and include the correct coding for each employee that has received a premium tax credit. If additional documentation is attached for any employees, check the box that states this for those employees.
4. Attach any supporting documentation and include the recalculated penalty amount.

If you agree with the assessment in Letter 226J:

1. Check that you agree with the proposed penalty on Form 14764
2. Check "no payment" (the IRS will follow up with an invoice at a later date).

6. Return your letter 225J response to the IRS

You need to make sure you include everything that the IRS might need to be clear about your response.

- You can send your response via certified mail or FAX. Both the address and the FAX number can be found on the cover page of the Letter 226J.
- Include all relevant documentation—including a copy of your Letter 226J. This letter has all the case details and will help the IRS keep track of your response.

If you AGREE with the ESRP penalty assessment include:

- Form 14764 with your response
- Optional: Authorization form (this can be used to authorize a representative to discuss your case with the IRS on your behalf)

If you DISAGREE with the ESRP penalty assessment include:

- Form 14764 with your response
- Form 14765 with the correct coding
- A summary statement with your EIN name/number, an overview of the analysis, the adjusted ESRP tax and the reasoning behind the adjustment
- All other documentation that supports your case, including the recalculated penalty amount
- Optional: Authorization form (this can be used to authorize a representative to discuss your case with the IRS on your behalf)

7. Review the IRS Letter 227 submission acknowledgement

Once the IRS has reviewed your submission, they will send you Letter 227 to acknowledge the receipt. There are many different versions of this acknowledgement, so make sure you understand which one you received:

- **Letter 227-J:** acknowledgment that the IRS received a signed Form 14764 and the case is closed. No further action is needed.
- **Letter 227-K:** acknowledgment that the ESRP penalty has been reduced to \$0. No further action is needed.
- **Letter 227-L:** acknowledges that the ESRP penalty has been revised. Possible next steps for the employer are to agree with the change, request a meeting or appeal.
- **Letter 227-M:** acknowledges that the information was received by the IRS but shows that there are no changes to the ESRP penalty.
- **Letter 227-N:** this acknowledges the Appeals decision and shows the final ESR. No response is required.



Reminder: keep a copy of the Letter 226J and all the documents you submit for your records. If you don't identify a factual data issue but still disagree with the ESRP penalty, you can choose to appeal.

It's important to have a plan in place to ensure you can respond to the IRS notices quickly and efficiently.

Be Prepared for ACA Penalties



Develop an internal process to manage ACA penalties.

This is especially important if you have multiple EINs and locations. Make sure everyone knows what the letters look like, who to forward them to and how to respond. Your organization will end up paying more if any of the IRS notices are lost.



Use a software that allows for a full audit trail.

Remember, you may need to analyze data from several years ago. That's one reason it's best to use a standalone software that you can take with you regardless of what HRIS/Payroll system you use.

ACA Penalty Assistance with a Full-Service Vendor

Going through the process of responding to Letter 226J can bring some deficiencies in your current ACA process, software and vendor to light. Even with an internal plan and software in place, many companies require additional support to extend their team's expertise.

Without a comprehensive and accurate ACA system-of-record, the data collection and analysis to refute a Letter 226J is manual, time intensive and prone to errors. Even with an ACA system-of-record, the complexity and rules can make refuting the IRS challenging for individuals unfamiliar with the law.

You should ensure the ACA solution you adopt includes Letter 226J response at no extra cost. A full-service ACA compliance vendor will be able to quickly compare the specific assessments in Letter 226J with the penalty exposure previously identified in their ACA system to identify and research any unexpected assessments.

How to Respond to Letter 226J with a Full-Service ACA Reporting Vendor

Your vendor will take on most of the ACA penalty response burden from the employer. Here's the process for responding to Letter 226J when working with a full-service partner like Benefitfocus:



Send a copy of Letter 226J to your client manager



Then Benefitfocus does the heavy lifting:

- Research the issues and verify any discrepancies
- Fill out Forms 14764 and 14765 and any other forms as needed
- Ask any questions/clarification from the IRS—all you need to do is authorize them on Form 14764 to contact the IRS on your behalf
- Pull together all the documentation to refute the ESRP penalty assessment
- Consult with your legal counsel as needed



Lastly, submit your response and documentation to the IRS

Benefitfocus is a full-service, ACA compliance and reporting partner that includes expedited Letter 226J analysis and response at no extra charge.

We have helped our customers navigate ACA reporting since the beginning. There are no surprises with Benefitfocus. Our software and experts proactively alert customers to potential reporting issues and help respond to IRS penalties as needed.



To learn more, [contact us](#).

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