

1. As of December 1, 2017, the total number of ALEs that IRS has notified of employer shared responsibility payments for 2015.

We began sending letters (Letter 226-J) in November 2017 to notify Applicable Large Employers (ALEs) regarding their potential liability for an employer shared responsibility payment (ESRP) for 2015. As described in our January 3, 2018, interim response, Letter 226-J is not an assessment of liability. Rather, it is a pre-assessment notification of a proposed payment amount that expressly invites the employer to respond if the employer disagrees with the proposed payment amount. We expect that some employers that receive Letter 226-J will not be assessed an ESRP based on the information that the employers provide to the IRS in response to Letter 226-J.

As of March 30, 2018, we sent Letter 226-J to 9,760 ALEs.

Please also provide the number of ALEs that IRS has notified that correspond to each of the following size categories¹:

Number of ALEs Sent Letter 226-J as of December 1, 2017 and March 30, 2018:

Number of Employees	Number of ALEs	
	As of 12/01/2017	As of 03/30/2018
Fewer than 100	858	4,246
100-150	418	1,670
151-200	268	980
201-250	137	557
251-500	330	1,217
501-750	92	388
751-1,000	48	194
1,001-1,250	21	114
1,251-1,500	16	76
More than 1,500	83	318
Total	2,271	9,760

2. As of December 1, 2017, the total number of ALEs that IRS plans to notify of employer shared responsibility payments for 2015.

At this time, we have not yet determined the exact number of ALEs that we will notify by Letter 226-J regarding a potential liability for the ESRP for 2015.

¹ To categorize the number of letters issued by employee size, the IRS used the largest number of employees that the employer reported in the monthly count of full-time employees on the Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns. For those employers that did not report the number of full-time employees on the Form 1094-C, the IRS used the number of Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, filed by the employer.

3. Which factors did IRS use to prioritize the order in which ALEs were notified of employer shared responsibility payments for 2015?

- a. We excluded ALEs that indicated on Form 1094-C that they met the 2015 section 4980H transition relief for ALEs with fewer than 100 full-time employees and/or ALEs that did not have assessable employees. We categorized the remaining ALEs as follows:
- Section 4980H(a)² only
 - Section 4980H(b)³ only
 - Section 4980H(a) and 4980H(b)⁴ for different months of the year
- b. Initially for 2015, we selected Section 4980H(a) only cases. These were most easily identified based on the reporting because the ALEs reported that they did not offer insurance coverage to the requisite percentage of the ALE's full-time employees (and their dependents). We recently began issuing letters to Section 4980H(b) only cases and plan to select cases where Section 4980H(a) and 4980H(b) apply for different months during the year in the future.

4. Does IRS intend to enforce the ACA employer mandate for years 2016 and 2017? If so, when will the enforcement actions begin?

We intend to send Letters 226-J to notify ALEs about their potential liability for an ESRP for 2016 and 2017. However, we cannot issue letters until we are able to analyze the data obtained from the information returns submitted by the ALEs and the individual income tax returns of their full-time employees because that information provides the basis for determining whether an employer may be liable for an ESRP and the amount of the potential payment.⁵ We anticipate issuing Letters 226-J for the 2016 and 2017 years in the fall of 2018 and the fall of 2019, respectively.

² An ALE will owe an ESRP under section 4980H(a) for a month if the ALE reported on Form 1094-C that it did not offer minimum essential coverage (MEC) to at least 70% of its full-time employees (and their dependents) (95% for 2016 and later years) and at least one full-time employee received a premium tax credit (PTC) for the month.

³ An ALE will owe an ESRP under section 4980H(b) for a month if the ALE reported on Form 1094-C that it offered MEC to at least 70% of its full-time employees (and their dependents) (95% for 2016 and later years), but at least one full-time employee received a PTC for the month, which can occur if the coverage offered was not affordable or did not provide minimum value or if the employee receiving the PTC was not offered coverage.

⁴ Depending on when and what type of coverage is offered by the ALE, the ALE can be subject to an ESRP under either section 4980H(a) or (b) in a given month; however, an ALE cannot be subject to both in the same month.

⁵ The information returns filed by employers for these years are due no later than March 31 of the year following the year to which they relate if filed electronically and February 28 of the year following the year to which they relate if filed on paper. The individual income tax returns of the ALEs' full-time employees are due no later than October 15 of the year following the year to which they relate if on extension.

5. **Prior to guidance being posted on the IRS website in November 2017, did IRS notify any small businesses or small business trade associations that the enforcement actions were beginning?**

In response to several inquiries from external stakeholders, such as the Information Reporting Program Advisory Committee, Reporting Agents Forum, and the Payroll Industry, we shared information regarding tentative plans to initiate the assessment process in 2017. We also posted additional ESRP FAQs on www.irs.gov in late 2016 addressing the assessment process, including a statement that IRS anticipated starting the issuance of Letter 226-J in 2017.