December 8, 2017

Received Letter 226J – Now What?

The IRS issued Letter 226J to certain Applicable Large Employers ("ALEs")[1]. This letter describes the proposed Employer Shared Responsibility Payment ("ESRP") owed for calendar year 2015.

Letter 226J provides specific information on the ESRP and instructions for responding to the proposed assessment. The IRS will issue a Notice and Demand for payment of the proposed assessment (as the final amount) if the ALE fails to timely respond to Letter 226J. If an employer disagrees with the assessment, timely responding via Form 14764 and including a statement explaining the objections and any back up documentation is crucial.

ALEs that receive these letters should carefully review them. It will be important to have 2015 Forms 1094-C and 1095-C available as you work through the information. Other materials may be relevant as well, including documentation regarding employee eligibility, affordability and minimum value of employer-sponsored coverage and/or copies of employee waiver forms.

This summary is intended to explain the information contained in Letter 226J and to provide general guidance on these requirements.

BACKGROUND

Beginning in 2015, ALEs may be subject to an ESRP (also referred to as a "penalty") if any *ACA full-time employee* ("ACA FTE")[2] receives a premium tax-credit ("PTC") to purchase health insurance through the Marketplace. There are two possible penalties ("A" and "B"). The penalty that

[1] An ALE is an employer that employed on average at least 50 full-time employees (including full-time equivalent employees) in the preceding calendar year. ALE status is determined on an annual basis and requires aggregating all employees within a controlled group. For calendar year 2015 only (and 2015 plan years that ended in 2016), subject to certain rules the ESRP does not apply to ALEs with 50-99 full-time employees.

[2] An "ACA FTE" means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week (or 130 hours of service in a calendar month). This is determined under one of two measurement methods, the look-back measurement method or the monthly measurement method.

may apply will depend on the circumstances of the ALE. A more detailed discussion of ESRP calculation and assessments is available later in this summary.

"A" Penalty – "No Coverage" Penalty

- This penalty applies when an ALE does not offer at least 95% (70% for 2015) of ACA FTEs and their dependent children minimum essential coverage ("MEC") and at least one ACA FTE receives a subsidy in the Marketplace to purchase qualified health plan coverage.[3]
- For 2015, the penalty is $173.33/month (or $2,080/year) multiplied by the total number of ACA FTEs – 80.

"B" Penalty – "Offer Coverage" Penalty

- This penalty applies when an ALE offers at least 95% of ACA FTEs and their dependent children MEC but the coverage is not *affordable*[4], does not provide *minimum value* or excludes 5% (30% for 2015) or fewer ACA FTEs and one (or more) of those ACA FTEs receive a subsidy in the Marketplace.
- For 2015, the penalty is the lesser of:
  - $260/month (or $3,120 annually) multiplied by each ACA FTE who receives a subsidy in the Marketplace to purchase health insurance coverage; or
  - the "A" penalty.

Transition relief may be available to certain employers for calendar year 2015 (and for non-calendar year 2015 plans that ended in 2016).

- Subject to certain rules, ALEs with 50-99 full-time employees are not subject to ESRP (however, these ALEs were required to report information to the IRS on Forms 1094-C and 1095-C).[5]

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[3] For 2015 only, an ALE with at least 100 FTEs may use **70%** (as opposed to 95%) and **80** (as opposed to 30) to determine liability under the "A" penalty. However, this relief is not available if the employer changed a non-calendar year plan after February 9, 2014 to begin at a later date. For purposes of the "B" Penalty, employers eligible for this transition relief may use **30%** (as opposed to 5%).

[4] Coverage is affordable if the cost for self-only coverage does not exceed 9.5% (as adjusted) of household income for the lowest cost minimum value plan. ALEs offering MV may rely on one of three safe harbors to determine affordability:
- W-2. For 2015, an ALE will not be subject to a penalty with respect to an FTE if that employee's required contribution for the calendar year for the employer's lowest cost self-only coverage that provides minimum value during the entire calendar year does not exceed 9.56% of that employee's Form W–2 wages not taking into account any elective deferrals to a 401(k), 403(b), or cafeteria plan.
- Rate of Pay (2015).
  - Hourly. An ALE offers affordable coverage if the employee's required contribution toward the lowest cost self-only coverage that provides minimum value does not exceed 9.56% of an amount equal to 130 hours multiplied by the employee's hourly rate of pay (e.g., $10/hour x 130)= $1,300 x.0956 = $124.30
  - Non-hourly. An ALE offers affordable coverage to a non-hourly employee if the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides minimum value does not exceed 9.56% of the employee's monthly salary.
- Federal Poverty Level. ALE's offer of coverage is affordable if it does not exceed 9.56% of monthly income for a single individual at 100% of FPL. For 2015, 9.56% of $11,770 ÷ 12 = **$93.77**, 9.56% of $14,720 ÷ 12 = **$117.27 for Alaska**, and 9.56% of $13,550 ÷ 12 = $**107.95 for Hawaii**.

[5] Briefly, relief is available **only** if the employer did not modify the plan year after February 9, 2014 to begin on a later calendar date and if the employer satisfies all of the following conditions:
- **Limited Workforce Size.** The employer employs on average at least 50 but fewer than 100 FTEs (including full-time equivalent employees) on business days during 2014.
- **Maintenance of Workforce and Aggregate Hours of Service.** During the period beginning on February 9, 2014 and ending on December 31, 2014, the employer does not reduce the size of its workforce or the overall hours of service of its employees in order to satisfy the workforce size condition.
- **Maintenance of Previously Offered Health Coverage.** During the *coverage maintenance period*, the employer does not eliminate or materially reduce the health coverage, if any, it offered as of February 9, 2014.
- **Certification of Eligibility for Transition Relief.** Certifies eligibility for this relief on Form 1094-C (Part II, Line 22 and Part III, Column (e)).

- ALEs with at least 100 ACA FTEs avoid the "A" penalty if an offer of coverage was made to at least 70% of ACA FTEs (and their dependents).[6] Additionally, if subject to the "A" penalty (e.g., offered coverage to 50% of ACA FTEs), the ALE may exclude the first 80 ACA FTEs (as opposed to 30) when calculating the assessment.
- Non-calendar year plans were not subject to any penalty assessment until the first day of the 2015 plan year assuming, at that time, there was an offer of affordable and minimum value coverage to all ACA FTEs (and their dependents).[7]

Beginning with calendar year 2015 (and each calendar year thereafter), ALEs are responsible for providing certain information to ACA FTEs and the IRS regarding offers of health insurance coverage. ALEs use Forms 1094-C and 1095-C to meet this requirement. Information contained in those Forms is used to determine eligibility for individual premium tax credits as well as the application of an ESRP.

For every calendar year, Forms 1095-C are provided to ACA FTEs (generally by January 31 of the following year) and Forms 1094-C and 1095-C provided to the IRS (generally March 31 of the following year unless filing fewer than 250 Forms, then February 28). This is the case regardless of an employer's plan year.

LETTER 226J

The first page of the letter provides a general overview of the Employer Shared Responsibility rules and contains some important information:

- Tax year to which the letter applies, generally 2015.
- The date of the letter. This is important as the ALE must respond within 30 days. Many of the letters were issued mid-November 2017.
- A contact name, phone number and fax number for a person at the IRS responsible for the specific letter.
- The response date. This date is important. It is 30 days from the date the letter is issued. Many of the responses will be due in mid-December 2017. Keep in mind that in order to consider that appeal of an assessment, the IRS must receive the response by this date (not just mailed on this date).
- The proposed penalty assessment. This dollar amount is determined based on records the ALE submitted to the IRS (i.e., Form 1094-C and Forms 1095-C for 2015) and the information submitted by the ACA FTEs on their individual tax returns for 2015.

Letter 226J is a package of information relevant to the proposed assessment and includes:

- An ESRP Summary Table itemizing the proposed ESRP by month.
- Form 14764 – the ESRP Response Form.
- Form 14765 – the Employee PTC Listing.
- An envelope for submitting response to the IRS.

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[6] As opposed to 95% which applied beginning in 2016.

[7] If an employer has a non-calendar year plan (i.e., a plan year other than January 1), the effective date of the employer mandate may be delayed until the first day of the 2015 plan year subject to certain rules: (1) The employer did not modify the plan year after December 27, 2012 to begin at a later calendar date; and (2) all FTEs are offered minimum value coverage that is affordable no later than the first day of the 2015 plan year. Notably, if coverage is not offered to FTEs or if the coverage offered does not meet minimum value or is unaffordable, the employer may face applicable penalties ("A" or "B") as of January 1, 2015. Code 2I was used in Line 16 of the Form 1095-C to document application of this relief.

If the ALE **AGREES** with the proposed ESRP:

- Complete, sign and date Form 14764, ESRP Response and return it to the IRS by the response date shown on the first page of the letter.
- Include the payment amount via check or money order. If the ALE is enrolled in the Electronic Federal Tax Payment System (“EFTPS”), payment may be made electronically.
- If the entire ESRP is not paid, a Notice and Demand (essentially, a bill) for the remaining balance will be issued.
- For additional payment options, see [Publication 594] or call the telephone number on the issued bill.
- Failure to pay the bill will result in a collections process and interest assessed.

If the ALE **DISAGREES** with the proposed ESRP:

- Complete, sign and date Form 14764, ESRP Response and return it to the IRS **so that it is received by the response date on the first page of the letter.**
- Include a signed statement as to why you disagree with part, or all, of the proposed ESRP. Documentation may be included to support the statement.
    - Make sure the statement describes corrections, if any, that you want made to the information reported on Forms 1094-C and 1095-C. Do not file a corrected 1094-C with the IRS to reflect these changes.
- Make changes, if any, on the Employee PTC Listing using the indicator codes in the Instructions to Form 1094-C and 1095-C for the applicable tax year (i.e., 2015). Do not file corrected 1095-Cs to report changes.
- Include the revised Employee PTC Listing, if necessary, and any additional documentation supporting the requested changes with the Form 14764, ESRP Response, and signed statement.

Important Notes.
▪ Ensure the response will be received by the IRS by the date on the first page of the letter (consider proof of receipt). ▪ Articulate any necessary changes in the response statement to the IRS. Filing separate corrected Forms 1094-C and 1095-C for the calendar year will not be sufficient. Changes must be in this package. It’s unclear whether you will also need to correct prior returns as well (or if the IRS will correct via this process). Further guidance is needed.

Employee PTC Listing – Form 14765

Letter 226J includes Form 14765- Employee PTC Listing and provides a snapshot of Form 1095-C for the calendar year 2015. Briefly, this listing

- identifies individuals the IRS believe to be ACA FTEs of the ALE; and
- received a PTC in any month of calendar year 2015.

The IRS identifies individuals as ACA FTEs receiving the PTC, thus triggering the ESRP. Using Form 14765, the IRS lists out the affected individuals and months of the calendar year. Individuals and months that are not highlighted are triggering the assessment. You will want to carefully review the list and determine whether any corrections to the information is needed. Corrections are made using the 2015 indicator codes applicable to Form 1095-C. We have included these for your reference in Appendix B, along with links to the 2015 instructions and forms.

Corrections are not needed for any month that is highlighted. The following example illustrates the Form 14765 Employee PTC listing.

Employee Name	SSN (last 4 digits)	All 12 months Indicator Codes (Form 1095-C, lines 14 and 16 combined)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Additional Information Attached
Mary Smith	2233	First row as filed	1H/	1/H	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	
Mary Smith		Second row for corrections	1H/2A	1H/2A	1H/2A	1H/2D	1H/2D	1H/2D	1H/2D	1H/2D	1H/2D	1H/2D	1H/2D	1H/2D	X
John Doe	4455	First row as filed	No PTC	No PTC	No PTC	No PTC	No PTC	No PTC	No PTC	1H/	1H/	1H/	1H/	1H/	
John Doe		Second row for corrections													
Tim Jones	6677	First row as filed	1H/	1H/	1H/	1H/2A	1H/2A	1H/2A	1H/	1H/	1H/	1H/	1H/	1H/	
Tim Jones		Second row for corrections													

The grey highlights mean no penalty is assessed for these months.

Months not highlighted grey reflect an ESRP. Review Forms 1095-C to determine whether this is correct. If incorrect revise the applicable Codes in the second row. If including additional information in support of the correction check the additional information box.

Above is an example of corrections for “Mary Smith” in red. In this case, Mary wasn’t hired until March 25th and she was a new hire variable employee. Because the employer uses a 12-month initial measurement period, the employer is correcting the Form to reflect 2A (not employed) for Jan – Mar and then 2D for April – Dec to reflect that she is in a limited non-assessment period and therefore not subject to a penalty. The additional information box is checked as this employer is submitting documentation that Mary is not an ACA FTE during 2015.

ESRP information and calculation

This section describes how the IRS determined the ESRP assessment for 2015. Specifically,

- The ESRP applies and is calculated on a monthly basis and each month is a taxable period.
- The ALE may be liable for an ESRP for any month of calendar year 2015 under either Section 4980H (a) or (b) if it:
  - Did not offer MEC to at least 70% of its ACA FTEs (and their dependents) and at least one ACA FTE received a PTC (4980H(a) assessment or “A” penalty).
  - Did offer MEC to at least 70% of ACA FTEs and their dependents and at least one ACA FTE received a PTC because (1) the coverage was unaffordable, (2) the coverage did not provide minimum value or (3) the ACA FTE was not offered the coverage. (4980(b) assessment or “B” penalty).
- The ESRP is not deductible for income tax purposes.

A summary table shows how the IRS came up with any assessment (“A” or “B”) for each month of the calendar year. For any month, an ALE may owe:

- no ESRP, or
- an ESRP under 4980H(a) (“A”), or
- an ESRP under 4980H(b) (“B”).

An ALE cannot be assessed both an A and B penalty in the same month

- Column “a” shows whether (for each month of the calendar year, as listed) the employer made an offer of MEC to **at least 70% of the ACA FTEs** and their dependents. The response will be “Yes” or “No”
  - If “Yes” in any month, this means the employer made an offer of coverage to at least 70% of ACA FTEs.
  - If “No” in any month, this means the ALE did not make an offer of coverage to at least 70% of ACA FTEs. “No” may also show up if the ALE did not complete this section of the Form 1094-C for any month of the calendar year. In other words, if column “a” in Part III of the Form 1094-C was left blank for the month of November, “No” would be reflected in the month of November on the summary table even if the ALE actually made an offer of coverage.

Important Note.
Many Summary Tables have shown “No” in column “a” even though the ALE made an offer of coverage to at least 70% of ACA FTEs (therefore should be “Yes”). ALEs will need to address this error in the statement submitted with the ESRP Response. Do not try to correct the error through the correction process for Form 1094-C.

- Column “b” reflects the number of ACA FTEs the ALE reported on the Form 1094-C.
  - If the ALE failed to report the number of ACA FTEs on the Form 1094-C Part III for the calendar year, the IRS uses the number of Forms 1095-C the ALE identified as submitting on Form 1094-C, Part II Line 20.
  - If the ALE failed to report the number of ACA FTEs on the Form 1094-C Part III for any month (or months) of the calendar year (e.g., left November blank), the IRS uses the ACA FTE count for the month with the greatest number of ACA FTEs reported.

Practical Tip.
Make sure you have your Form 1094-C from the 2015 reporting handy as you go through this letter for accuracy. It will also help you identify whether you may have missed certain information on some (or all) of the months of the calendar year.

- Column “c” reflects the number of ACA FTEs that the employer is allowed to subtract from the “A” penalty calculation. If the employer qualified for transition relief, this number is 80.[8] Otherwise it is 30. In order to claim relief, the ALE should have checked Box “C” on Form 1094-C Part II Line 22 and entered “B” on the Form 1094-C Part III Column “e”.

Important Note.
Most ALEs will be able to use “80”. In some instances, we have seen the IRS use “30” as opposed to “80”. This may be due to mistakes on the Form 1094-C and can be addressed in the statement included with the ESRP Response (Form 14764). Do not try to correct the Form 1094-C as the response to Letter 226J.

[8] The threshold change from 30 to 80 ACA FTEs is available to all ALEs with at least 100 full-time employees for the 2015 plan year. However, it is not available to a non-calendar year plan that changed its plan year after February 9, 2014 to begin at a later date. Note that while this change may reduce potential exposure to the “A” penalty for 2015, there remains potential “B” penalty exposure.

- Columns “d” and “e” provide the number of ACA FTEs the IRS identified as receiving a PTC for at least one month of the calendar year. Letter 226J describes these as “assessable full-time employees” (or “ACA FTEs”). Essentially, it is their receipt of the PTC that triggered the proposed assessment on the ALE. Details on each of the identified “assessable full-time employees” can be found on the Employee PTC Listing (Form 14765). Only one of the columns (“d” or “e”) will be completed for a month as the employer cannot be subject to both the “A” and “B” penalty in the same month. Column “f” identifies whether it is the “A” penalty (4980H(a)) or the “B” penalty (4980H(b)) that applies to some (or all) of 2015.
- Column “g” provides the proposed ESRP for each month of 2015 with a total annual proposed assessment captured at the bottom of the table. This number should match what is included as the ESRP on the first page of Letter 226J.

Assessment of “A” or “B” penalty

“A” penalty. The 4980H(a) ESRP applies for a month when:

- Column “a” MEC coverage offer indicator (offered to at least 70% of ACA FTEs and their dependents) is marked “No”; and
- Column “d” has at least one (1) for that same month (reflecting at least one ACA FTE received a PTC).

The 4980H(a) assessment is calculated by taking the number in column “b” (the IRS ACA FTE count for the month) and subtracting column “c” (number of ACA FTEs the ALE can back out of its total for purposes of “A” penalty calculation). The resulting number is then multiplied by 173.33 ($2,080/12) to arrive at the monthly ESRP.

“B” penalty. The 4980H(b) ESRP applies for a month when:

- Column “a” (offered to at least 70% of ACA FTEs and their dependents) is marked “Yes”; and
- Column “e” has at least one (1) for that same month (reflecting at least one ACA FTE received a PTC).

The 4980H(b) assessment for a month is calculated by taking the number in column “e” (the number of ACA FTEs who receive a PTC) and multiplying it by $260 ($3,120/12).[9]

FORM 14764 – ESRP RESPONSE

Regardless of whether you agree or disagree with the proposed assessment, ALEs should timely respond to Letter 226J. There is a phone number to call on the ESRP Response form in the event you need additional time to respond.

An ALE that disagrees with the proposed assessment must submit the following:

- Form 14764 – ESRP Response,
- Signed statement, and
- Any supporting documentation.

[9] While likely unusual, there is a special rule under this “B” penalty that caps liability at the “A” penalty assessment. In other words, the total amount of any 4980H(b) assessment cannot exceed the amount the ALE would pay had 4980H(a) applied. The instructions make clear that if an ALE with a “B” assessment believes it would pay less if the “A” assessment applied, the ALE should contact the identified IRS personnel to further discuss and ensure the correct assessment is applied.

An ALE that agrees with the proposed assessment must submit the following:

- Form 14764, and
- Payment.

To complete Form 14764, the ALE needs the following information.

Contact information.

- Your name
- Address
- Primary and secondary phone numbers and best time to call

Agreement or Disagreement with the ESRP.

- **Agree with the assessment.** If you agree with the proposed assessment, check the box reflecting the agreement, print and sign your name and include the date.
- **Disagree with the assessment.** If you disagree with part (or all) of the proposed assessment, check the box reflecting partial/total disagreement with the proposed assessment.

Payment.

This includes full or partial payment options if agreeing to the proposed penalties. Payment can be made by check, money order or, if participating, electronically through EFTPS.

- Include the employer ID number (EIN), the tax year (2015) and ESRP on the payment and any correspondence.
- Make check or money order payable to the United States Treasury.

If you are not making a payment, for example because you disagree with the assessment, check the box indicating no payment.

Authorization – optional

The ALE may authorize additional individuals to assist the ALE with this process. ALEs must designate any authorized individual in the ESRP Response. This may be another person at the company, legal counsel or a tax adviser. Please do not list USI or a member of your USI's client service team as USI cannot interface directly with the IRS on your behalf.

Sign the authorization in order for the IRS to discuss and provide information to the designated person.

Importance of Responding.

If the employer **does not respond** by the date identified on the first page of the letter, a Notice and Demand will be sent for the ESRP that has been proposed and will be assessed. The ESRP will be subject to IRS lien and levy enforcement actions and interest will accrue from the date of the Notice and Demand until the ESRP is paid in full.

SAMPLE STATEMENT LETTER

USI has crafted a sample statement letter that can be used as a starting point for drafting a response disagreeing with the proposed ESRP. The statement includes some examples of why an ALE would disagree with the ESRP. These examples are not exhaustive. ALEs that disagree with the ESRP will need to include a statement explaining the reason for the disagreement along with a completed Form 14765 and any supporting documentation in a response to the IRS. See Appendix A for the sample.

Appendix A: Sample Statement – ESRP Response

The following is a sample response statement that may be used as a starting point to respond to the IRS when disagreeing with an ESRP assessment. This is just a sample and does not take into account the particular facts and circumstances of the employer's offer of coverage (or lack thereof). Employers must carefully review the details of the assessment and determine the reasons for disagreement. Areas that are highlighted reflect where the employer information is needed. USI comments provide insight on where information may be found and/or examples. The examples provided in this summary are not exhaustive and there may be situations not described in this letter which apply to a particular employer. Employers should carefully review any Letters 226J and work with legal and tax advisors to respond to the IRS in a timely manner.

Company Letterhead

Insert Month Day, Year

USI Comment.
Should be no later than the Response Date on Letter 226J.

Department of Treasury
Internal Revenue Service
Group 2219
7300 Turfway Road, Suite 410
Florence, KY 41042

Re: Employer Name:
Employee ID Number:
Contact ID Number:

USI Comment.
Located on the first page of Letter 226J.

Employer Response to Proposed ESRP

To Whom It May Concern:

This letter is being sent in response to Letter 226J dated *insert date of the letter* for Tax Year 2015.

USI Comment.
Date is located on the first page of Letter 226J.

This is a sample only, intended to convey general information and may not take into account all the circumstances relevant to a particular person's situation. Legal and tax advice is recommended.

[Employer Name] **disagrees** with the proposed Employer Shared Responsibility Payment in the amount of *insert assessment amount* outlined in the ESRP Summary Table and submit this appeal.

USI Comment.
ESRP payment amount is located on the first page of the Letter 226J and in the ESRP summary table.

[Name of Employer]:

USI Comment.
The following are examples of why an employer may disagree with the ESRP. An employer's specific reason for disagreement will be based particular facts and circumstances unique to the employer. There may be more than one reason for the disagreement. Employers will need to carefully draft a response disagreeing with the proposed assessment that reflects the employer's particular circumstances. The examples provided here are general in nature and may not apply to a specific situation.

- *Calendar Year Plan.* Did offer minimum essential coverage to at least 70% of [Employer]'s full-time employees (and their dependents) for all twelve months in accordance with IRC Section 4980h(a).
- *Non-Calendar Year Plan.* Did offer minimum essential coverage to at least 70% of [Employer]'s full-time employees (and their dependents) from *insert first day of non-calendar year plan (e.g., April 1)*, 2015 through December 31, 2015 in accordance with Section 4980H(a) and qualified for non-calendar year plan transition relief.
- *Calendar Year Plans.* Did offer minimum essential coverage to at least 70% of [Employer]'s full-time employees (and their dependents) for all twelve months and the offer of coverage was minimum value and affordable as determined by the [W-2 safe harbor, rate of pay safe harbor or Federal Poverty Level safe harbor] in accordance with Section 4980H(b).
- *Non-Calendar Year plans.* Did offer minimum essential coverage to at least 70% of [Employer]'s full-time employees (and their dependents) from *insert first day of non-calendar year plan (e.g., April 1)*, 2015 through December 31, 2015.
- *Error on Form 1094-C.* Reviewed Form 1094-C filed for Tax Year 2015 and determined that Part III, Column A inaccurately states that minimum essential coverage was not offered to at least 70% of our full-time employees for all twelve months [***or*** from ___________ 2015 through _________ 2015] ***and/or*** Part III, Column (a), (b), (c), or (e) was/were inadvertently left blank. Please correct Form 1094-C, Part III as follows: *insert requested corrections.*
- *Error(s) on Forms 1095-C.* Reviewed the filed Forms 1095-C and determined that Part II, Line 14/16 [reflects an incorrect code ***or*** was incomplete and/or did not identify the correct safe harbor]. I have updated the Employee Premium Tax Credit (PTC) Listing on Form 14765 to reflect the correct codes.
- *Medium-sized employer relief*. Reviewed Form 1094-C filed for Tax Year 2015 and determined that [Employer] was eligible for transition relief from penalties as we employed fewer than 100 full-time employees (including full-time equivalents) in calendar year 2014 and otherwise satisfied applicable requirements for relief. Form 1094-C Part II, Line 22, Box C and/or Part III column (e) was/were inadvertently left blank (or other error). Please correct Form 1094-C, Part III as follows: *insert requested corrections*.

In support of this signed statement, please find enclosed the following:

1. Completed Form 14764, ESRP Response
2. [Revised Form 14765, Employee Premium Tax Credit (PTC) Listing]
3. Supporting documentation

USI Comment.
Use this space to describe the supporting documentation that is included with the response. They type of supporting documentation will vary based on the facts and circumstances of the appeal. Following are some examples but is not exhaustive.

- Enrollment/waiver form – to show that an offer of coverage was made and/or accepted
- SBC – to show that the plan meets minimum value
- Plan Documents (SPD/Certificate of Coverage/Booklet) – to show who is eligible for the plan and when benefit coverage begins for new employees
- Contribution documentation (if not included on the enrollment form) – to show the amount the employee would pay for coverage such as an open enrollment guide
- If the employer used the Rate of Pay or W-2 Affordability Safe Harbor, include either of the following: Copy of the employee's pay stub or the previous year's Form W-2]

If you have any questions regarding this request, please contact me at [Contact phone number].

Sincerely,

[Name of contact person with title]
[Name of Employer]

Appendix B: 2015 Form 1095-C Codes

SERIES 1 CODES: Specify the type of coverage, if any, offered to an employee, the employee's spouse, and the employee's dependents.

1A	Qualifying Offer. Minimum essential coverage providing minimum value offered to full-time employee with employee contribution for self-only coverage equal to or less than 9.56% mainland single federal poverty line (For 2015, $93.77 or less) and at least minimum essential coverage offered to spouse and dependent(s).
1B	Minimum essential coverage providing minimum value offered to employee only.
1C	Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) (not spouse).
1D	Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to spouse (not dependent(s)).
1E	Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse.
1F	Minimum essential coverage NOT providing minimum value offered to employee; employee and spouse or dependent(s); or employee, spouse and dependents.
1G	Offer of coverage to employee who was not a full-time employee for any month of the calendar year (which may include one or more months in which the individual was not an employee) and who enrolled in self-insured coverage for one or more months of the calendar year.
1H	No offer of coverage (employee not offered any health coverage or employee offered coverage that is not minimum essential coverage, which may include one or more months in which the individual was not an employee)
1I	Qualifying Offer Transition Relief 2015: Employee (and spouse or dependents) received no offer of coverage; received an offer that is not a qualifying offer; or received a qualifying offer for less than 12 months.

SERIES 2 CODES: Safe Harbor

2A	Employee not employed during the month. Enter code 2A if the employee was not employed on any day of the calendar month. Do not use code 2A for a month if the individual was an employee of the employer on any day of the calendar month. Do not use code 2A for the month during which an employee terminates employment with the employer.
2B	Employee not a full-time employee. Enter code 2B if the employee is not a full-time employee for the month and did not enroll in minimum essential coverage, if offered for the month. Enter code 2B also if the employee is a full-time employee for the month and whose offer of coverage (or coverage if the employee was enrolled) ended before the last day of the month solely because the employee terminated employment during the month (so that the offer of coverage or coverage would have continued if the employee had not terminated employment during the month).
2C	Employee enrolled in coverage offered. Enter code 2C for any month in which the employee enrolled in health coverage offered by the employer for each day of the month, regardless of whether any other code in Code Series 2 (other than code 2E) might also apply (for example, the code for a section 4980H affordability safe harbor). Do not enter 2C in line 16 if code 1G is entered in the All 12 Months Box in line 14 because the employee was not a full-time employee for any months of the calendar year. Do not enter code 2C in line 16 for any month in which a terminated employee is enrolled in COBRA continuation coverage (enter code 2A).
2D	Employee in a section 4980H(b) Limited Non-Assessment Period. Enter code 2D for any month during which an employee is in a Limited Non-Assessment Period for section 4980H(b) (e.g., waiting periods, initial measurement period, etc.).
2E	Multiemployer interim rule relief. Enter code 2E for any month for which the multiemployer arrangement interim guidance applies for that employee, regardless of whether any other code in Code Series 2 (including code 2C) might also apply.
2F	Section 4980H affordability Form W-2 safe harbor
2G	Section 4980H affordability federal poverty line safe harbor.
2H	Section 4980H affordability rate of pay safe harbor.
2I	Non-calendar year transition relief applies to this employee. Enter code 2I if non-calendar year transition relief for section 4980H(b) applies to this employee for the month.

Final forms and instructions for 2015 are available here:

- Instructions: https://www.irs.gov/pub/irs-prior/i109495c--2015.pdf
- Form 1094-C: https://www.irs.gov/pub/irs-prior/f1094c--2015.pdf
- Form 1095-C: https://www.irs.gov/pub/irs-prior/f1095c--2015.pdf