

Benefits BULLETIN

1st Quarter 2019

Benefits Tips Brought to You by Bandal Consulting, LLC

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IRS Begins Pay or Play Enforcement

In late 2018, the IRS began issuing enforcement letters related to employers' compliance with the employer shared responsibility rules under the Affordable Care Act (ACA) for the 2016 calendar year. These letters, known as [Letter 226-J](#), inform employers of their potential liability for an employer shared responsibility penalty, if any, for 2016.

These letters are only sent to employers subject to the employer shared responsibility rules, known as applicable large employers (ALEs). The determination of whether an ALE may be liable for a penalty, and the amount of the proposed penalty in Letter 226-J, are based on information from Forms 1094-C and 1095-C filed by the ALE and the individual income tax returns filed by the ALE's employees.

What is Letter 226-J?

The IRS will issue [Letter 226-J](#) to an ALE if it determines that, for at least one month in the year, one or more of the ALE's full-time employees was enrolled in a qualified health plan for which a premium tax credit was allowed (and the ALE did not qualify

for an affordability safe harbor or other relief for the employee).

How Should Employers Respond to Letter 226-J?

Letter 226-J is not a bill. It is the initial proposal of the employer shared responsibility penalty that the ALE may owe. ALEs must respond to Letter 226-J—either agreeing with the proposed employer shared responsibility penalty or disagreeing with part or all of the proposed amount—before any employer shared responsibility liability is assessed and notice and demand for payment is made.

Letter 226-J provides instructions for how the ALE should respond in writing, as well as the name and contact information of a specific IRS employee that the ALE should contact if the ALE has questions about the letter.

If the ALE does not respond by the response date on the first page of Letter 226-J, the IRS will send a Notice and Demand (or bill) for the penalty that was proposed and assessed. The penalty will be subject to IRS lien and levy enforcement actions.

For More Information

Contact Bandal Consulting, LLC today for more information or visit the IRS' Letter 226-J [website](#) to learn more.

2019 Benefit Plan Limits Announced

Many employee benefits are subject to annual dollar limits that are periodically increased for inflation. The IRS recently announced cost-of-living adjustments to the annual dollar limits for various welfare and retirement plan limits for 2019. Although some of the limits will remain the same, many of the limits will increase for 2019.

The annual limits for the following commonly offered employee benefits will increase for 2019:

- High deductible health plans (HDHPs)
- Health savings accounts (HSAs)
- Health flexible spending accounts (FSAs)
- 401(k) plans
- Transportation fringe benefits
- QSEHRA limits

Employers should update their benefit plan designs for the new limits and make sure that their plan administration will be consistent with the new limits in 2019. Employers may also want to communicate the new benefit plan limits to employees.

HDHPs and HSAs

The IRS limits for HSA contributions and HDHP maximum out-of-pocket limits will also increase for 2019. The HSA contribution limits will increase effective Jan. 1, 2019, while the HDHP limits will increase effective for plan years beginning on or after Jan. 1, 2019.



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2019 Benefit Plan Limits Announced

The increased 2019 limits are as follows:

- HSA contribution limit
 - Self-only—\$3,500 (up \$50)
 - Family—\$7,000 (up \$100)
- HDHP maximum out-of-pocket expense limit
 - Self-only—\$6,750 (up \$100)
 - Family—\$13,500 (up \$200)

The HDHP minimum deductible amount will not change from 2018 to 2019, and the catch-up contribution limit that applies to HSA-eligible individuals who are age 55 or older will remain at \$1,000.

Health FSAs

The health FSA contribution limit will increase \$50 for 2019, bringing the FSA dollar limit on employee salary reduction contributions to \$2,700 for taxable years beginning in 2019. There is no change for dependent care FSA contributions.

401(k) Plan Contributions

The employee elective deferrals for 401(k) contributions will increase \$500 for 2019, bringing the limit to \$19,000. The limit on catch-up contributions will remain at \$6,000.

Transportation Fringe Benefits

The monthly limits on transit pass and vanpooling (combined), and parking will increase \$5 each for 2019, bringing the monthly limit to \$265.

QSEHRA Limits

The payment and reimbursement limits for qualified small employer health reimbursement arrangements (QSEHRAs) will increase in 2019 as well. For employee-only coverage, the

limit will increase to \$5,150 (up \$100), while the family coverage limit will increase to \$10,450 (up \$200).

For More Information

These are not the only benefit plan limits that will change for 2019. Contact us to learn about what other limits will be changing.

ACA Repeal and Replace Efforts Updates

Following the midterm elections, Republicans in the U.S. Senate have indicated that they will no longer attempt to repeal and replace the ACA. The midterms created a power split in Congress, with Democrats retaking control of the U.S. House of Representatives and Republicans retaining control of the Senate.

Although Republican lawmakers have indicated that they will no longer attempt to repeal the ACA in its entirety, the Trump administration will likely continue to use the regulatory process to lessen the impact of certain ACA reforms.

Many Democrats campaigned on health care issues, including retaining the ACA's popular protection for individuals with pre-existing conditions. Senate Majority Leader Mitch McConnell (R-Ky) has recognized that the Democrat-controlled House will not support any proposals to repeal and replace the ACA. Instead, lawmakers have indicated that they may work together, on a bipartisan basis, to make small changes to improve the ACA.

Texas v. United States Update

On Dec. 14, 2018, a federal judge [ruled](#) in Texas v. United States that the **entire ACA is invalid** due to the elimination of the individual mandate penalty in 2019. The decision was not stayed, but the White House announced that **the ACA will remain in place pending appeal**.

This lawsuit was filed by 20 states as a result of the 2017 [tax reform law](#) that eliminates the individual mandate penalty. In 2012, the U.S. Supreme Court upheld the ACA on the basis that the individual mandate is a valid tax. With the penalty's elimination, the court in this case ruled that the ACA is no longer valid under the U.S. Constitution.

What Does This Mean for my Organization?

The Dec. 14 ruling left many questions as to the current state of the ACA, because it did not order for anything to be done or stay the ruling pending appeal. However, this ruling is expected to be appealed, and the White House announced that the ACA will remain in place until a final decision is made. Many industry experts anticipate that the Supreme Court will likely take up the case, which means that a final decision will not be made until that time.

While these appeals are pending, all existing ACA provisions will continue to be applicable and enforced. Although the individual mandate penalty will be reduced to zero beginning in 2019, employers and individuals must continue to comply with all other applicable ACA requirements. This ruling does not impact the 2019 Exchange enrollment, the ACA's employer shared responsibility (pay or play) penalties and related reporting requirements, or any other applicable ACA requirement.



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PCORI Fee Amount Adjusted for 2018

The ACA imposes a fee on health insurance issuers and self-insured plan sponsors in order to fund comparative effectiveness research. These fees are widely known as Patient-Centered Outcomes Research Institute (PCORI) fees.

On Nov. 5, 2018, the IRS published [Notice 2018-85](#), which increased the PCORI fee amount for plan years ending on or after Oct. 1, 2018, and before Oct. 1, 2019 (that is, 2018 for calendar year plans), to \$2.45 multiplied by the average number of lives covered under the plan.

Background on PCORI Fees

The PCORI fees were created to help patients, clinicians, payers and the public make informed health decisions by advancing comparative effectiveness research. Fees paid by health insurance issuers and sponsors of self-insured health plans fund the institute's research, in part.

The PCORI fees apply for plan years ending on or after Oct. 1, 2012, but do not apply for plan years ending on or after Oct. 1, 2019. For calendar year plans, the fees will be effective for the 2012 through 2018 plan years. Therefore, the 2018 plan year is the last plan year that these fees will be effective, for calendar year plans.

Issuers and plan sponsors must pay PCORI fees annually on IRS [Form 720](#) by July 31 of each year. The fee will generally cover plan years that end during the preceding calendar year. For the 2018 plan year, PCORI fees are due by July 31, 2019.

Who Must Pay the PCORI Fees?

The entity responsible for paying the PCORI fees depends on whether the plan is insured or self-insured.

- For insured health plans, the **issuer** of the health insurance policy is required to pay the fees.
- For self-insured health plans, the fees are to be paid by the **plan sponsor**.

Although sponsors of fully insured plans are not responsible for paying PCORI fees, issuers may shift the fee cost to sponsors through a modest premium increase.

The Department of Labor (DOL) has advised that, because the PCORI fees are imposed on the plan sponsor under the ACA, it is not permissible to pay the fees from plan assets under ERISA, although special circumstances may exist in limited situations. On Jan. 24, 2013, the DOL issued a set of [frequently asked questions](#) regarding ACA implementation that include a limited exception allowing multiemployer plans to use plan assets to pay PCORI fees (unless the plan document specifies another source of payment for the fees).

What's Next?

PCORI fees are reported and paid annually using [IRS Form 720](#) (Quarterly Federal Excise Tax Return). These fees are due each year by July 31 of the year following the last day of the plan year. This means that, for plan years ending in 2018, the PCORI fees are due by July 31, 2019. Covered employers should have reported and paid PCORI fees for 2017 by July 31, 2018.

Contact Bandal Consulting, LLC for more information.