

COMPLIANCE CHRONICLE

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BEYOND THE OPEN ENROLLMENT CHECKLIST

As open enrollment takes center stage, this month's Compliance Chronicle breaks down what employers should do when an IRS penalty notice arrives, launches a new feature to help brokers better understand Level Funded plans, and highlights a benefit worth considering during open enrollment.



THIS EDITION'S KEY TAKEAWAYS



IRS PENALTY NOTICES

An IRS notice doesn't necessarily mean an employer failed to comply. Knowing what to review, what documentation to gather and how to respond can help employers address a proposed penalty effectively.



LEVEL FUNDING CORNER

Predictable monthly costs doesn't mean there's no risk. We break down where the risk actually sits in a Level Funded arrangement – and why renewal may be the bigger consideration.



OPEN ENROLLMENT

Open enrollment is a good time to look for gaps in an employer's benefits package. For groups offering an FSA without a dependent care option, a Dependent Care FSA may be a valuable addition for employees managing daycare and other eligible care expenses.



IRS PENALTY NOTICES

Don't Panic. Document.

When an employer receives an IRS notice tied to an employee receiving a Premium Tax Credit, the employer needs to demonstrate that qualifying coverage was offered and that it met applicable affordability requirements.

If your client receives IRS Letter 226-J, use this five-step roadmap to organize the response process.

1 REVIEW

Understand what the IRS is challenging.

Start with the notice and Form 14765 to identify:

- Which employees received a Premium Tax Credit
- Which months are being challenged
- Whether the proposed penalty falls under §4980H(a) or §4980H(b)*

2 DOCUMENT

Gather employee enrollment records.

Pull documentation showing:

- The employee was eligible for coverage
- An offer of coverage was made
- The effective date of the offer
- Whether the employee enrolled or waived coverage

Supporting records may include enrollment records, signed waiver forms, new-hire eligibility notices and open enrollment communications.

3 VERIFY

Minimum Value

Confirm that the plan provided minimum value (60% actuarial value or higher) and retain supporting documentation, such as the SBC, carrier confirmation or plan documents.

Affordability

Determine which ACA affordability safe harbor applied:

- W-2
- Rate of pay
- Federal Poverty Line

Calculate affordability for the months identified by the IRS and retain the supporting worksheet.

ACA Reporting

Review Forms 1094-C and 1095-C to confirm what was reported, paying particular attention to:

- Line 14: Offer of coverage code
- Line 16: Safe harbor or other relief code

A proposed penalty may be the result of a reporting issue rather than an underlying compliance failure."

*The IRS provides this information on the attached employee listing (Form 14765).

4 RESPOND

Tell the IRS whether the employer agrees – and support the response.

If the employer disagrees with the proposed assessment:

Complete Form 14764

- Indicate that the employer disagrees and provide an explanation.

Update Form 14765, if necessary

- Identify corrections to offer-of-coverage or affordability codes for affected employees.

Prepare the written explanation

- Clearly explain why the employee should not have generated an Employer Shared Responsibility Payment.

Attach the supporting documentation

- Include applicable waiver forms, eligibility records, affordability calculations and enrollment documentation.

Submit everything by the deadline stated in the notice.

5 RETAIN

Keep the response package and watch for IRS follow-up.

Retain copies of everything submitted.

After reviewing the employer's response, the IRS typically issues a Letter 227-series response indicating whether the proposed assessment is:

- Withdrawn
- Reduced
- Upheld



RESPONSE CHECKLIST

Before submitting, make sure the file includes:

- ☐ Form 14764
- ☐ Corrected Form 14765, if applicable
- ☐ Written explanation
- ☐ Supporting documentation
- ☐ Copy of the complete response retained for the employer's records

Key Takeaway

Receiving an IRS penalty notice does not automatically mean an employer failed to comply. Before responding, review what was reported, gather documentation of the coverage offered and verify affordability. Strong records can make the difference between a proposed penalty and a successful response.



LEVEL FUNDING CORNER

*Practical answers to common
Level Funded questions*

Can a Level Funded Plan Leave an Employer With a Surprise Claims Bill?

Fixed Costs → Claims Funding → Stop-Loss Protection

One of the most common misconceptions about Level Funded plans is that an employer could receive a large, unexpected claims bill during the year. In most Level Funded arrangements, that is not how the plan works. The employer pays a predetermined monthly amount known as the Maximum Funded Rate.

EXAMPLE:

COMPONENT	MONTHLY AMOUNT
Expected Claims Funding	\$15,000
Stop-Loss Premium	\$2,500
Administrative Fees	\$2,000
Total Monthly Funding	\$19,500

The employer typically pays the same amount each month regardless of actual claim activity.

What's the difference from Fully Insured?

In a fully insured plan, the carrier assumes all claims risk. In a level-funded plan, stop loss coverage protects the employer from large risks, and the employer assumes limited claims risk but may share in savings through a surplus refund if claims are favorable.

THE THREE LEVELS OF RISK



MONTHLY COST RISK

The employer's monthly obligation is generally fixed throughout the contract year.



CLAIMS RISK

The employer's claims liability is limited by stop-loss protection and the aggregate attachment point.



RENEWAL RISK

For most employers, this is the greatest risk. Poor claims experience may result in:

- Reduced or no refund
- Higher renewal increases
- Underwriting restrictions



TALK WITH YOUR CLIENTS ABOUT LEVEL FUNDING

"Your monthly cost is fixed much like a fully insured plan. The difference is that favorable claims may result in money back, while unfavorable claims are generally reflected at renewal rather than through a claim bills during the year."

Key Takeaway

Level Funding provides predictable monthly costs, but that doesn't eliminate risk — it changes where the risk occurs. Stop-loss protection generally limits claims exposure during the year, while unfavorable claims experience is more likely to show up at renewal through reduced refunds, higher rates or underwriting restrictions.



OPEN ENROLLMENT TIP

Is a Dependent Care FSA Missing From Your Client's Benefits Package?

If your client offers an FSA but not a Dependent Care Flexible Spending Account (DCFSA), consider starting the conversation.

With the cost of daycare and other dependent care expenses, a DCFSA can allow employees to set aside a portion of their paychecks in a pretax account to cover eligible care expenses, such as daycare, preschool and after-school programs. Employees set aside a portion of their pay on a pretax basis and generally submit eligible expenses for reimbursement.

For employers, DCFSA programs can be relatively cost-effective to administer while potentially providing tax advantages for the employer and participating employees, and boosting employee morale.

A DCFSA can be offered alongside other FSA options or as a stand-alone benefit, and is available through FSA vendors.



BROKER OPPORTUNITIES

Use open enrollment conversations to ask a simple question: Does your client offer an FSA but not dependent care? If so, this may be an opportunity to add a benefit that provides meaningful value to employees without dramatically expanding the benefits package.



Ask Janet!

**Have compliance, regulatory, or legislative questions?
Submit them [here](#)!**

Check out all of our compliance and legislative resources [here](#).