



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 2, 2021

Control No. AP-08-0221-0003
Expiration Date: 02/02/2022
Affected IRM: IRM 8.7.21

MEMORANDUM FOR APPEALS EMPLOYEES

FROM: Steven M. Martin /s/ *Steven M. Martin*
Director, Case and Operations Support

SUBJECT: Reissuance of Interim Guidance on Employer Shared
Responsibility Payment (ESRP) Cases Under IRC § 4980H
– 2/2/2021

This memorandum reissues procedural guidance in AP-08-0120-0001, Reissuance of Employer Shared Responsibility Payment (ESRP) Cases Under IRC § 4980H, issued on January 22, 2020, to Appeals Technical Employees (ATEs) in employer shared responsibility payment (ESRP) cases under IRC § 4980H. Please ensure that this information is distributed to all affected employees within your organization.

Background/Source(s) of Authority: In 2010, The Patient Protection and Affordable Care Act, P.L. 111-148, added section 4980H to the Internal Revenue Code. Section 4980H imposes on an applicable large employer (ALE) liability for an ESRP if either subsection (a) or (b) is met. Under 4980H(a), an ALE is liable for an ESRP if the ALE does not offer minimum essential coverage to at least 95% (70% for 2015) of full-time employees (and their dependents) and at least one of its full-time employees is allowed a premium tax credit (PTC). Under 4980H(b), an ALE is liable for an ESRP if the ALE offers coverage to at least 95% (70% for 2015) of full-time employees (and their dependents), but at least one full-time employee is allowed the PTC because the coverage was unaffordable or did not provide minimum value, or the full-time employee was not offered coverage.

In the Fall of 2017, the IRS issued Letters 226J to certain ALEs upon determining that, for at least one month in the 2015 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). If the ALE disagrees with the IRS's proposed ESRP or revised ESRP, the IRS will issue Letter 227L or Letter 227M to the ALE, which provides the ALE with an opportunity to request a pre-assessment conference with Appeals. Calendar year 2015 is the first year for which an ALE may be liable for an ESRP. For additional information on the ESRP, refer to the [Questions and Answers](#) on the IRS's ACA webpage.

Effective Date/Effect on Other Documents: This guidance is effective as of the date of this memorandum and supersedes AP-08-0120-0001, Reissuance of Employer Shared Responsibility Payment (ESRP) Cases Under IRC § 4980H. Appeals will incorporate this guidance into new IRM 8.7.21, Employer Shared Responsibility Payment (ESRP) Under IRC 4980H Guidelines, by the expiration date of this memorandum.

Contact: Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on [How to Contact an Analyst](#).

Attachment:

ESRP IRC §4980H Step-by-Step Procedural Guidance for ATEs

cc: www.irs.gov

ESRP IRC §4980H Step-by-Step Procedural Guidance for ATEs

Step No.	Description	Notes
1	SB/SE ESRP compliance group sends a pre-Appeals Letter 227L or Letter 227M to the applicable large employer (Employer) and Employer timely requests Appeals hearing. SB/SE ESRP compliance group sends the unagreed ESRP case to Appeals via an Appeals SharePoint site.	Pre-Appeals Letter 227L and Letter 227M give an Employer 30 days to request a pre-assessment Appeals hearing. SB/SE ESRP compliance group will transmit an Employer Electronic Case File to Appeals via the SharePoint site.
2	APS receives notification of the new receipt. Upon notification, APS will card the case into the Appeals Centralized Database System (ACDS) following APS guidance. APS will email the designated Appeals project lead that a new ESRP case is available on ACDS for assignment.	Refer to IG AP-08-0218-0003, <i>Account and Processing Support (APS) Guidelines for Employer Shared Responsibility Payment (ESRP) Cases</i> , for APS guidelines.
3	The Appeals project lead reviews the new receipt and selects an Appeals technical employee (ATE) to be assigned on ACDS.	
4	The ATE sends Letter 5157 within 45 calendar days of the assignment, holds a hearing with Employer and/or its representative and reaches a case decision.	Letter 5157, <i>Non-docketed Acknowledgement & Conference</i> , is an Appeals initial contact letter.
4(a)	If recalculation of the proposed ESRP is necessary, the ATE sends a request, via encrypted email, to the SB/SE ESRP compliance group contact (found on the Appeals ACA webpage under ESRP) for a recalculation.	The ATE's request will contain the ATE's changes to the A-PTC Listing found in the Employer Electronic Case File. The ATE reflects the changes by: <ul style="list-style-type: none"> • Saving the <i>A-PTC Listing</i>, found in the Employer Electronic Case File, as a

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Step No.	Description	Notes
		<p>new Excel file.</p> <ul style="list-style-type: none"> • Making appropriate changes on the new Excel file and saving the file. • Sending a secure email with the new Excel file (i.e., the file containing the ATE's changes) to the SB/SE ESRP compliance group contacts found on the Appeals ACA webpage to request a revised ESRP computation. <p>The ATE will use read receipt when emailing SB/SE ESRP compliance group.</p>
4(b)	SB/SE ESRP compliance group will recalculate the ESRP and send it to the ATE via encrypted email.	The recalculation from SB/SE ESRP compliance group will consist of: (1) an updated ESRP Summary Table and (2) an updated Form 14765, <i>Employee PTC Listing</i> .
5	The ATE sends an agreement form to the Employer (unless full concession by government).	<p>The ATE will send to the Employer the following:</p> <ul style="list-style-type: none"> • Letter 969, <i>Agreement Form Transmittal - Non-Docketed Case</i>. The ATE will use selectable paragraph 3 (ESRP) • Form 14799, <i>Agreement to Assessment and Collection of Employer Shared Responsibility Payment (ESRP) IRC § 4980H</i>. The ATE will select paragraph 1 or 2. • The updated ESRP Summary Table provided by SB/SE ESRP compliance group

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Step No.	Description	Notes
		<ul style="list-style-type: none"> The updated Form 14765, <i>Employee PTC Listing</i>, provided by SB/SE ESRP compliance group
6	The ATE prepares closing documents for case approval.	<p>The ATE will prepare the Appeals closing letter, Letter 5917, <i>Employer Shared Responsibility Payment (ESRP) Closing Letter</i>, by selecting the applicable paragraph that reflects the recommended determination.</p> <p>Letter 5917 must include these enclosures (unless full concession):</p> <ul style="list-style-type: none"> The updated ESRP Summary Table provided by SB/SE ESRP compliance group The updated Form 14765, <i>Employee PTC Listing</i>, provided by SB/SE ESRP compliance group <p>The ATE will maintain a hard copy of all Appeals case documents for the case file.</p> <p>Note: The Employer Electronic Case File received from SB/SE ESRP compliance group in Step 1 will not be returned to SB/SE ESRP compliance group.</p> <p>The ATE submits the entire case to the ATM for approval following existing procedures.</p> <p>Form 5402 instructions for ATE:</p> <ul style="list-style-type: none"> In the “Route Case To” section, select “Follow APSGuidelines.” In the F5402/ACMInstructions section, cross out the entire

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Step No.	Description	Notes
		<p>block. (APS will send the entire Appeals paper case file to SB/SE ESRP compliance group.)</p> <ul style="list-style-type: none"> • Fill in the “Proposed Penalty” and “Revised Penalty” fields for the proposed ESRP and the revised ESRP, respectively. (Leave Proposed Tax and Revised Tax fields blank). • If the Employer has a representative, include the representative’s name and mailing address. • Include SB/SE ESRP compliance group mailing address for returning closing documents.
7	The ATM approves case closing.	The ATM will electronically sign Form 5402 and input an ATM Approval Date (ACAP) into ACDS and forwards the case file to APS.
8	APS performs closing actions.	Refer to IG AP-08-0218-0003, <i>Account and Processing Support (APS) Guidelines for Employer Shared Responsibility Payment (ESRP) Cases</i> , for APS guidelines.
9	Upon receipt of the closed Appeals case, SB/SE ESRP compliance group makes the ESRP assessment (if applicable) and sends the Employer a closing letter, Letter 227N. The IRS will send a notice and demand letter, Notice CP 220J, to the Employer.	