



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

25.21.4

OCTOBER 22, 2021

## EFFECTIVE DATE

(10-22-2021)

## PURPOSE

- (1) This transmits revised IRM 25.21.4, Affordable Care Act - IRC 6056 Non-Filer and IRC 4980H Compliance Process.

## MATERIAL CHANGES

- (1) IRM 25.21.4.1(1). Purpose: Updated to add Tax Exempt/Government Entities (TE/GE) and additional organizations.
- (2) IRM 25.21.4.1(2). Audience: Updated to include TE/GE employees.
- (3) IRM 25.21.4.1(5). Primary Stakeholders: Updated to include Tax Exempt/Government Entities and Independent Office of Appeals.
- (4) IRM 25.21.4.1.5. Additional acronyms added.
- (5) IRM 25.21.4.1.6. Revised definitions of Affordable Coverage and Seasonal worker. Added Health Reimbursement arrangement (HRA), Individual coverage health reimbursement arrangement (individual coverage HRA), and Seasonal employee.
- (6) IRM 25.21.4.1.7. Updated Related Resources.
- (7) IRM 25.21.4.2. Definitions upgraded and (5) added to include table of per employee dollar amounts.
- (8) IRM 25.21.4.4.3(3). Added guidance to use approved form letters and have any original correspondence approved by the manager.
- (9) IRM 25.21.4.4.3(4). Added Note for Section 336(a) of the PATH Act.
- (10) IRM 25.21.4.4. Added table with links to Notices extending due dates.
- (11) IRM 25.21.4.4.1. Changed Examination Case Selection (ECS) throughout this section to Information Return Case Selection (IRCS).
- (12) IRM 25.21.4.4.4.2. Changes to duties for clerk, lead, manager, and examiner. Added (7) for procedures when employer is no longer in business.
- (13) IRM 25.21.4.4.4.2.1. New section: Employer Self-Identifies as a Church. Incorporates guidance from IGM SBSE 25-0420-0020, When an Employer or ALE Self-Identifies as Church during a Non-Filer or ESRP Inquiry Case.
- (14) IRM 25.21.4.5.1. Revised approval process and added instructions for Activity Code and statute date.
- (15) IRM 25.21.4.6.2. Title change to: Closing Non-Filer Inquiry Cases - With Penalties.
- (16) IRM 25.21.4.6.3. New section: Request for Correction of Non-Filer Penalties. Establishes procedures to correct non-filer penalties.
- (17) IRM 25.21.4.6.3.1. New section: Employer Response to Correcting Failure to Timely File and/or Failure to Timely Furnish Penalties.

- (18) IRM 25.21.4.6.3.2. New section: Closing a Request for Correction of Non-Filer Penalties.
- (19) IRM 25.21.4.6.4. Additional disposal codes 33 and 39 added.
- (20) IRM 25.21.4.7(3) and (4). Added information from Treas. Reg. 1.36B-2(c)(3)(v)(A)(3) “employee lock-in rule”.
- (21) IRM 25.21.4.7.8(1). List added expanding on employer-required coverage.
- (22) IRM 25.21.4.9. Added a reminder in (2) that the taxable period for an ESRP is a month and added verification of affordability based on household income to list of relief in (4).
- (23) IRM 25.21.4.11(1). Added Note that starting with TY 2018, the new inventory system will house the ECF and establishing the controls on ERCS will no longer be required.
- (24) IRM 25.21.4.12. Subsection title change to: Pre-Contact of ESRP Cases - Examination Field Only.
- (25) IRM 25.21.4.12.1. Interim Guidance Memorandum SBSE 25-0420-0022, Employer Shared Responsibility Payment (ESRP), dated April 14, 2020, incorporated. Instructions with regard to Form 5346 have been removed from the IGM guidance based on discussions with WSD and agreed upon by Director, Specialty Examination Policy.
- (26) IRM 25.21.4.13(6). Added guidance to use approved form letters and have any original correspondence approved by the manager.
- (27) IRM 25.21.4.14. Subsection title changed to: ALE Responses to Letter 226-J.
- (28) IRM 25.21.4.14.1. Revised instructions for revised Letter 5040-J, Preliminary ESRP – Second Notice.
- (29) IRM 25.21.4.14.3(3). Added instructions when an ALE requests in writing affordability verification. (4) Added managerial discussion. (5) New paragraph on IRCS submission.
- (30) IRM 25.21.4.14.3. Added (5) for instructions.
- (31) IRM 25.21.4.14.3.1. Added that examiners will not request additional supporting documentation if the information provided supports the changes or shows that the ALE met any of the Transition Relief provisions.
- (32) IRM 25.21.4.14.4. New subsection: ALE Self-Identifies as a Church.
- (33) IRM 25.21.4.18. Added Note: Starting with TY 2018, the new inventory system will house the ECF.
- (34) IRM 25.21.4.19.2. Title change to: Posting ESRP Assessments to MFT “43”, For Examination Field Cases Only.
- (35) IRM 25.21.4.19.4. Title changed to: Form 3198 - Examination Field Cases Only.
- (36) IRM 25.21.4.19.5(3). Responsibility for closing assigned to clerk.
- (37) IRM 25.21.4.21(1). Added: Request for claims or requests for reconsideration will only be considered on new information if Appeals did not previously close using a closing agreement under IRC 7121 and/or did not settle the case based on hazards of litigation.
- (38) IRM 25.21.4.21.2. Added Pub 5 and Pub 594 to enclosures and (12) to state that reasonable cause does not apply to ESRP.
- (39) IRM 25.21.4.22. Title change to: Guidance under IRC 4980H(d)(3) - Time-Based Review. Time-Based Review process updated and expanded.

- (40) IRM 25.21.4.23. New subsection: Individual Coverage Health Reimbursement Arrangements.
- (41) Editorial and technical changes have been made throughout this section.

### **EFFECT ON OTHER DOCUMENTS**

This material supersedes IRM 25.21.4, dated March 28, 2019.  
Interim Guidance Memorandum SBSE 25-0420-0020, When an Employer or ALE Self-Identifies as Church during a Non-Filer or ESRP Inquiry Case, dated April 14, 2020, incorporated into this IRM.  
Interim Guidance Memorandum SBSE 25-0420-0022, Employer Shared Responsibility Payment (ESRP), dated April 14, 2020, incorporated.  
Interim Guidance Memorandum SBSE 25-0420-0034, Establishing Examination Returns Control System (ERCS) Controls on Information Return Penalties under IRC 6056, dated June 5, 2020, incorporated.

### **AUDIENCE**

This section contains instructions and guidelines for all Small Business/Self Employed (SB/SE) and Tax Exempt/Government Entities (TE/GE) employees dealing with IRC 6056 and IRC 4980H.

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25.21.4  
IRC 6056 Non-Filer and IRC 4980H Compliance Process

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25.21.4.1  
(10-22-2021)  
**Program Scope**

(1) **Purpose:** This IRM section explains the law and procedures for examiners when addressing both the Filing Compliance and Employer Shared Responsibility Payment (ESRP) Program under the provisions of the Affordable Care Act. IRS Small Business/Self-Employed (SB/SE) Specialty Tax, Employment Tax Policy provides oversight for both the Filing Compliance and ESRP Programs. Currently responsible for the administration of both programs are:

1. SB/SE Specialty Tax, Tax Compliance Officer (TCO) Group located in SB/SE Specialty Tax, Employment Tax (ET) Examination,
2. SB/SE Ogden Campus Exam AUR Operation, and
3. Tax Exempt/Government Entities (TE/GE).

This IRM section also provides background information on the IRC 6056, "Certain employers required to report on health insurance coverage", and the IRC 4980H ESRP Process, for all SB/SE and TE/GE employees that need information on the program.

- (2) **Audience:** This section contains instructions and guidelines for all Small Business/Self-Employed (SB/SE) and Tax Exempt/Government Entities (TE/GE) employees when identifying, assigning and working these cases.
- (3) **Policy Owner:** Director, Specialty Examination Policy of the Small Business/Self-Employed Division.
- (4) **Program Owner:** Program Manager - Employment Tax Policy. The mission of Employment Tax Policy is to establish effective policies and procedures, to support compliance with laws pertaining to assigned programs.
- (5) **Primary Stakeholders:**
- SB/SE Information Return Case Selection (SE:S:E:HQ:ECS:IRCS)
  - Specialty Examination - Employment Tax (SE:S:DCE:E:SE:ET)
  - Specialty Examination Policy, Employment Tax (SE:S:DCE:E:HQ:S-P:ETP)
  - SB/SE Service Centers - Ogden Campus Exam/AUR - AUR Operations (BMF) (SE:S:E:CE:O:BMFO)
  - TE/GE Compliance, Planning & Classification (SE:T:HQ:CPC)
  - TE/GE Exempt Organizations/Government Entities (SE:T:EOGE)
  - Independent Office of Appeals (AP)

25.21.4.1.1  
(03-28-2019)  
**Background**

- (1) The Patient Protection and Affordable Care Act (ACA) added the employer shared responsibility provisions in IRC 4980H. Employers with 50 or more full-time employees, including full-time equivalent employees, are referred to as Applicable Large Employers (ALEs). Effective beginning in calendar year 2015, IRC 4980H provides that generally an ALE must offer minimum essential coverage (MEC) that provides minimum value (MV) and is affordable to its full-time employees and their dependents, or make an Employer Shared Responsibility Payment (ESRP) to the IRS if at least one of its full-time employees is allowed a premium tax credit (PTC) on their Form 1040, Individual Income Tax Return, in connection with purchasing health care coverage through the Health Insurance Marketplace, also known as the Exchange (Marketplace/Exchange).
- (2) The ACA also added IRC 6055 and IRC 6056. IRC 6055 requires every provider of MEC (such as health insurance issuers, plan sponsors of self-

insured group health plans, sponsors of multi-employer plans, and providers of government-sponsored plans) to report coverage information by filing an information return with the IRS and furnishing a statement to individuals.

Information returns filed by health insurance providers under IRC 6055 are:

- Form 1095-B, Health Insurance Coverage, and
- Form 1094-B, Transmittal of Health Insurance Coverage Statements.

Forms filed by Applicable Large Employers (ALEs) are:

- Form 1095-C, Employer-Provided Health Insurance Offer and Coverage and
- Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns.

ALEs that provide MEC self-insured group plans to their employees report coverage information by completing Part III of Form 1095-C rather than having to file both forms.

- (3) IRC 6056 requires an ALE to file information returns with the IRS and to provide statements to full-time employees about the health coverage offered. The IRS will use the information provided on Form 1094-C, and Form 1095-C, to administer the provisions of IRC 4980H. In addition, the IRS will use the information about offers of coverage to determine whether the employee may be eligible for the PTC under IRC 36B.

25.21.4.1.2  
(03-28-2019)

#### Authority

- (1) The Internal Revenue Code:

- IRC 36B, Refundable Credit for coverage under a qualified health plan
- IRC 4980H, Employer Shared Responsibility Payment (ESRP)
- IRC 6055 and IRC 6056, which provide filing requirements for Form 1094-C and Form 1095-C, used to administer the provisions of IRC 4980H.

**Note:** Under certain circumstances IRC 6055 requires the use of Form 1095-C.

- (2) The ESRP provisions are governed by Policy Statements and other internal guidance that apply to all Service personnel regardless of operating division. The Policy Statements found in IRM 1.2, Servicewide Policies and Authorities, Policies of the Internal Revenue Service, apply to all programs addressed in this IRM section. Examiners should review these Policy Statements to properly perform their assigned duties.
- (3) A website, Delegation Orders by Process, located at <https://www.irs.gov/uac/delegation-orders-by-process1>, summarizes data contained in the applicable IRM sections under IRM 1.2, relating to Delegation Orders, in a single, electronic source.
- (4) IRM 25.21.4 serves as the foundation for consistent administration of the ESRP provisions. By providing one source of authority, the Service greatly reduces philosophical and procedural inconsistencies.

25.21.4.1.3  
(03-28-2019)

#### Responsibilities

- (1) Director, Specialty Examination Policy, is responsible for the procedures and updates addressed in this IRM.

- (2) Director, Examination Specialty Tax, and Director, Examination Campus, are the executives responsible for operational compliance.

25.21.4.1.4  
(03-28-2019)

**Program Objectives and Review**

- (1) Program Reports: Information regarding the program effectiveness are included on, but not limited to:
- Examination Monthly Briefing
  - Examination Operational Review
  - Business Performance Review
- (2) Program Effectiveness: Program goals are measured with periodic program reviews that monitor whether established procedures are applied uniformly and consistently. The program reviews will be conducted periodically by the analysts assigned the program. The program goals will also be measured by Campus Embedded Quality Performance Reports that monitor whether quality attributes are applied uniformly and consistently.
- (3) Annual Review: Employment Tax Policy - Program Manager, is responsible for reviewing the information in this IRM annually to ensure accuracy and promote consistent tax administration.

25.21.4.1.5  
(10-22-2021)

**Acronyms**

- (1) The following table lists commonly used acronyms and their definitions:

Acronym	Term
AC	Action Code
ACA	Affordable Care Act
AIMS	Audit Information Management Systems
ALE	Applicable Large Employer
AUR	Automated Underreporter
BMF	Business Master File
CC	Command Code
CCP	Centralized Case Processing
CHIP	Children's Health Insurance Program
CI	Criminal Investigation
DC	Disposal Code
ECF	Electronic Case File
ECS	Exam Case Selection
EIN	Employer Identification Number
EO	Exempt Organization
EP	Employee Plans

<b>Acronym</b>	<b>Term</b>
ERCS	Examination Returns Control System
ESRP	Employer Shared Responsibility Payment
ET	Employment Tax
FSL-ET	Federal, State, Local Government-ET Area of Exempt Organizations Exam
FTE	Full-time Equivalent
HRA	Health Reimbursement Arrangement
IDRS	Integrated Data Retrieval System
IRCS	Information Return Case Selection
ITG	Indian Tribal Governments
IVL	Inventory Validation Listing
LB&I	Large Business & International
MEC	Minimum Essential Coverage
MFT	Master File Tax Code
MV	Minimum Value
NDC	National Distribution Center
PTC	Premium Tax Credit
SB/SE	Small Business/Self-Employed
TAS	Taxpayer Advocate Service
TBOR	Taxpayer Bill of Rights
TBR	Time-Based Review
TC	Transaction Code
TCO	Tax Compliance Officer
TE/GE	Tax Exempt/Government Entities

25.21.4.1.6  
(10-22-2021)

**Terms - Defined**

- (1) The following table lists the terms and their definitions:

TERM	DEFINITION
Affordable Coverage	Employer-provided coverage is considered affordable for an employee if the employee's required contribution for the applicable coverage does not exceed 9.5 percent (adjusted annually, see ( Q & A #39 and Q & A #40) of that employee's annual household income. Generally, the applicable coverage is the lowest-cost self-only coverage offered by the employer. Special rules apply for individual coverage health reimbursement arrangements (HRAs).
Applicable Large Employer (ALE)	An employer that generally employed on average at least 50 full-time employees, including full-time equivalent (FTE) employees, on business days during the preceding calendar year.
Dependent	For purposes of IRC 4980H, a dependent is defined as an employee's child, including a child who has been legally adopted or legally placed for adoption with the employee, who has not reached age 26. The term dependent excludes a child who is a stepson, stepdaughter or an eligible foster child. The term dependent does not include the spouse of an employee.
Employer Shared Responsibility Payment (ESRP)	An assessable payment under IRC 4980H.
Full-time employee	An employee who, for a month, has on average at least 30 hours of service each week or at least 130 hours of service during the month.
Full-time equivalent (FTE) employee	A combination of employees, each of whom individually is not a full-time employee, but who, in combination, are equivalent to a full-time employee.

TERM	DEFINITION
Health reimbursement arrangement (HRA)	A health reimbursement arrangement is a type of account-based health plan that employers can use to reimburse employees for their medical care expenses.
Hour of service	Each hour for which an employee is paid or entitled to payment for the performance of duties for the employer.
Individual coverage health reimbursement arrangement (individual coverage HRA)	An HRA integrated with individual health insurance coverage or Medicare.
"Marketplace" or "Exchange"	The Health Insurance Marketplace (also known as the "Marketplace" or "Exchange") provides health plan shopping and enrollment services through websites, call centers, and in-person help.
New Employer	An employer that was not in existence on any business day in the preceding calendar year.
Premium Tax Credit (PTC)	A refundable tax credit under IRC 36B for eligible individuals and families with low or moderate incomes to help with the cost of health coverage purchased through the Marketplace/ Exchange.
Seasonal employee	An employee who is hired into a position for which the customary annual employment is six months or less.
Seasonal worker	A worker who performs labor or services on a seasonal basis as determined by the Department of Labor, and a retail worker employed exclusively during holiday seasons. Seasonal workers are considered in determining ALE status, see IRM 25.21.4.7.2.

TERM	DEFINITION
United States	Refers only to the 50 states and the District of Columbia. It does not include the U.S. territories (Puerto Rico, Guam, American Samoa and the US Virgin Islands).

25.21.4.1.7  
(10-22-2021)

**Related Resources**

(1) The following table lists the primary sources of guidance:

Source	Description of Guidance
IRM 4.23, Employment Tax IRM	IRM sections owned by SB/SE Specialty Examination Policy. Provides Servicewide instructions for employees of all operating divisions involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions.
IRM 20.1.7, Penalty Handbook - Information Return Penalties	This section contains information on information return penalties.
Treasury Regulations 54.4980H-0 through 6	Provides information on the ESRP Provisions under IRC 4980H for those employers determined to be an ALE.
Treasury Regulations 1.6055-1 and 301.6056-1	Provides information on the information return filing requirements for ALEs.
Notice 2013-45	Provides authority for 2014 Transition Relief.
Notice 2016-4	Provides an extension for both furnishing 2015 information returns to individuals and filing with the Internal Revenue Service under IRC 6055 and for applicable large employers under IRC 6056.
Notice 2016-70	Provides an extension for furnishing 2016 information returns to employees.

Source	Description of Guidance
Notice 2018-06	Extends the due date for certain 2017 information-reporting requirements under IRC 6055 and for applicable large employers under IRC 6056.
Notice 2018-94	Extends the due date for certain 2018 information-reporting requirements under IRC 6055 and for applicable large employers under IRC 6056.
Notice 2019-63	Extends the due date for certain 2019 information-reporting requirements under IRC 6055 and for applicable large employers under IRC 6056.
Notice 2020-76	Extends the due date for certain 2020 information-reporting requirements under IRC 6055 and for applicable large employers under IRC 6056.

- (2) Helpful information sources include:
- Information about the ESRP provisions of the ACA at: <http://www.irs.gov/affordable-care-act/employers>
  - Information about Health Reimbursement Arrangements (HRAs) at: <https://www.irs.gov/newsroom/health-reimbursement-arrangements-hras>
- (3) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar and acting in accordance with taxpayer rights. See IRC 7803(a)(3). For additional information about the TBOR, see <https://irssource.web.irs.gov/SitePages/TaxpayerBillOfRights.aspx> and IRM 1.2.1.2.35, Policy Statement 1-236, “Fairness and Integrity in Enforcement Selection.”
- (4) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal procedures, or who believe that an IRS system or procedure is not working as it should. Pub 1546, Taxpayer Advocate Service - We Are Here to Help You, provides contact and additional information. The program is designed to alleviate taxpayer hardships that arise from systemic problems or the application of the IRC. In addition, see IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria, and IRM 13.1.19, Advocating With Operations Assistance Requests (OARs), for additional information.

25.21.4.2  
(10-22-2021)  
**Liability under IRC  
4980H**

- (1) Certain employers are subject to the ESRP in IRC 4980H. An ALE is generally an employer with on average 50 full-time employees, including full-time equivalent (FTE) employees, on business days during the preceding calendar year. See IRM 25.21.4.3, Determining an Employer Status as an ALE. An ESRP assessment can be made for a month under either IRC 4980H(a) or IRC 4980H(b), but not both, depending on whether appropriate health coverage was offered (see (2) below). The ESRP is calculated on a monthly basis but is assessed yearly. Although assessment of the ESRP is made for the calendar year, each month is a separate taxable period for purposes of IRC 4980H.
- (2) An ESRP assessment can be made for a month under IRC 4980H(a) or IRC 4980H(b), but not both, depending on whether appropriate health coverage was offered. An ALE may be liable for an ESRP under IRC 4980H(a) for a month if it did not offer Minimum Essential Coverage (MEC) to at least 95 percent (70 percent in 2015) of its full-time employees (and their dependents) and at least one full-time employee was allowed a Premium Tax Credit (PTC) to help pay for coverage obtained through a Marketplace/Exchange. An ALE may be liable for an ESRP under IRC 4980H(b) for a month if it offered MEC to at least 95 percent (70 percent in 2015) of its full-time employees (and their dependents) and one or more of its full-time employees was allowed a PTC to help pay for coverage obtained through a Marketplace/Exchange. Subject to the other PTC eligibility requirements, a full-time employee may be allowed a PTC if the employee was offered MEC but the MEC was unaffordable or did not provide minimum value, or if that full-time employee was not offered MEC.
- (3) Generally, the amount of the ESRP under IRC 4980H(a) for a month is equal to the number of full-time employees employed by the ALE for the month (minus up to 30 employees (30 employee-reduction)) multiplied by 1/12 of \$2,000 (as adjusted under IRC 4980H(c)(5)).
  - a. If the ALE is a member of an Aggregated ALE Group (see IRM 25.21.4.3), the 30-employee reduction is reduced to that member's allocable share of 30. The allocation to a specific ALE Member (as described in IRM 25.21.4.3) is based on the proportion of the number of full-time employees employed by the ALE Member to the total number of full-time employees employed by the Aggregated ALE Group during the month.
  - b. For an ALE that is a member of an Aggregated ALE Group, the ESRP amount under IRC 4980H(a) is calculated based solely on the number of full-time employees employed by the ALE Member during the month, without regard to the number of full-time employees employed by other members of the Aggregated ALE Group.
- (4) Generally, the amount of the ESRP under IRC 4980H(b) for a month is equal to the ALEs number of full-time employees allowed a PTC for that month multiplied by  $\frac{1}{12}$  of \$3,000 (as adjusted under IRC 4980H(c)(5)).
  - a. The amount of the ESRP under IRC 4980H(b) for any month may not exceed the amount for which the ALE would have been liable under IRC 4980H(a) if the ALE had been liable for such a payment for the month.
  - b. For an ALE that is a member of an Aggregated ALE Group, the ESRP under IRC 4980H(b) is calculated based solely on the ALE Member's number of full-time employees allowed a PTC, without regard to the

number of full-time employees allowed a PTC who are employed by other members of the Aggregated ALE Group.

- (5) Applicable per-employee dollar amounts adjusted annually for IRC 4980H(a) and 4980H(b) are listed in the table below:

Tax Year	Applicable per-employee dollar amount - IRC 4980H(a) adjusted \$2,000 amount	Applicable per-employee dollar amount - IRC 4980H(b) adjusted \$3,000 amount
2015	\$2,080	\$3,120
2016	\$2,160	\$3,240
2017	\$2,260	\$3,390
2018	\$2,320	\$3,480
2019	\$2,500	\$3,750
2020	\$2,570	\$3,860
2021	\$2,700	\$4,060

**Note:** See Q & A #55 of the “Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act” for updated rates.

25.21.4.3  
(10-22-2021)  
**Determining an Employer Status as an ALE**

- (1) An ALE generally is, for a calendar year, an employer that employed on average at least 50 full-time employees, including full-time equivalent employees, on business days during the preceding calendar year. For purposes of determining whether an employer is an ALE, certain seasonal workers and employees who had health coverage under TRICARE or a Department of Veterans Affairs health care program are not taken into account. See IRC 4980H(c)(2) and Treas. Reg. 54.4980H-1(a)(4) and Treas. Reg. 54.4980H-2. This is true even if the employer dropped below 50 full-time employees, including full-time equivalent employees, in the current year.

**Example:** An employer with 52 full-time employees, including full-time equivalent employees, in 2014 is an ALE for 2015 even if the number of full-time employees (including equivalents) decreases below 50 in 2015.

For definitions on who is a full-time employee and full-time equivalent employee, see IRM 25.21.4.7.3, Full-Time Employee for Purposes of Determining ALE Status Defined and IRM 25.21.4.7.4, Full-Time Equivalent Employee for Purposes of Determining ALE Status Defined.

- (2) In addition, to be considered an ALE, the employer must have 50 full-time employees, including full-time equivalent employees, performing work in the United States. For purposes of determining ALE status, the term “United States” refers only to the 50 states and the District of Columbia. It does not include the U.S. territories (Puerto Rico, Guam, American Samoa and the US Virgin Islands). For this purpose, the hours of service that an employee works do not include an hour of service to the extent the compensation for services performed constitutes income from sources outside the United States. Thus,

employees (U.S. citizens or non-citizens) working only abroad generally are not taken into account for purposes of determining whether an employer is an ALE or for purposes of determining whether the employer owes an ESRP or the amount of any such payment.

- (3) An ALE Member is a single entity that is an ALE, or if applicable, each entity that is a member of an Aggregated ALE Group. An Aggregated ALE Group is a group of ALE Members with a certain level of common or related ownership that are treated as a single employer under IRC 414(b), (c), (m), or (o), and are combined for purposes of determining whether they collectively employ at least 50 full-time employees (including full-time equivalent employees). If the combined total of their employees meets the ALE threshold, then each separate entity is considered to be an ALE Member of an Aggregated ALE Group, and is therefore subject to the employer shared responsibility provisions and the related information reporting requirements. An ALE is a member of an Aggregated ALE Group for a month if treated as a single employer with the other members of the group on any day of the calendar month. See IRC 4980H(c)(2)(C)(i) and Treas. Reg. 54.4980H-1(a)(5) and (16).
- (4) An Aggregated ALE Group is considered a single employer for purposes of determining whether 50 or more full-time employees (including full-time equivalent employees) are employed. When an employer is part of an Aggregated ALE Group with 50 or more full-time employees, including full-time equivalent employees, the provisions of IRC 4980H and the information return requirements will apply to each entity in the Aggregated ALE group regardless of whether that separate entity individually meets the 50 or more full-time employee requirement. Each separate entity is referred to as an ALE Member. The only exception is when an ALE Member has no full-time employees for the year. In those situations, the ALE is not subject to the filing requirements for the information returns nor will they be liable for a potential ESRP.

**Note:** Section 336(a) of the Protecting Americans from Tax Hikes Act of 2015 (Public Law 114-113 (129 Stat. 2242)) (PATH Act) modified the aggregation rules applicable to churches and church-related organizations. See IRC 414(c)(2) and Notice 2018-81 for additional information.

25.21.4.4  
(10-22-2021)  
**Filing Compliance**

- (1) An ALE is required to file Form 1094-C with Form(s) 1095-C for each full-time employee with the IRS by February 28 (March 31 if filing electronically) of the year following the calendar year to which the return relates.

**Note:** For calendar year 2015, the return due date was extended to May 31, 2016 (June 30, 2016 if filing electronically).

- (2) An ALE must also furnish Form 1095-C to each full-time employee on or before January 31 of the year immediately following the calendar year to which the information relates.

**Note:** Beginning in calendar year 2015, the due date to furnish a copy of the Form 1095-C to their employees was extended. See the table below:

Calendar Year	Notice	Extended Due Date to Furnish
2015	2016-70	March 31, 2016
2016	2016-70	March 2, 2017
2017	2018-06	March 2, 2018
2018	2018-94	March 4, 2019
2019	2019-63	March 2, 2020
2020	2020-76	March 2, 2021

- (3) Failure to timely file and furnish these information returns may result in a civil penalty under IRC 6721, Failure to File Correct Information Returns and IRC 6722, Failure to Furnish Correct Payee Statements. Assessing the appropriate penalties will follow established procedures for failure to file and furnish information returns.

25.21.4.4.1  
(10-22-2021)

**Identification and Assignment of Potential Form 1094-C and Form 1095-C Information Return Non-Filers**

- (1) Information Return Case Selection (IRCS) will use a list of identified non-filers to establish selection criteria and prioritize the information return non-filer cases in anticipation of work requests. Selected cases will be controlled on the Examination Returns Control System (ERCS), data will be provided to the assigned group and letters will be mailed by the National Distribution Center (NDC).
- (2) Cases will be established on ERCS using the following for case controls and coding:
- MFT: Y1
  - Activity Code: 561
  - Source Code: 99
  - Project Code: 1273
  - Tracking Code: 8073 (Non-filers - did not file)
  - Tracking Code: 8251 (Stop-filers - filed in previous year but not the next)
- (3) Cases will only be established on ERCS; they will not be on Master File. The Inventory Control Listing (IVL) from ERCS will be used to help monitor inventory. Management will use reports from ERCS and other sources to provide information on program results.
- (4) Cases established on ERCS that will not receive an inquiry letter will be closed using a non-examined disposal codes (DC) defined below:

If...	Then...
The information returns were filed prior to the inquiry letter being mailed	The controls will be closed using DC "37", Return Previously Filed
Controls were established in error	The controls will be closed using DC "33", Error Account

25.21.4.4.2  
(03-28-2019)  
**Information Return  
Non-Filer Case File  
Assembly**

- (1) An electronic case file folder for each selected case will be established on the shared server established specifically for working information return non-filer cases. The following naming convention will be used for all case folders: “YYYYNF\_NNNNN” where:
  - YYYY = Year
  - NF = Non-filer
  - NNNNN = assigned case number established by IRCS
- (2) All electronic case file folders will include:
  - Scanned copies of all correspondence received
  - Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, and
  - Form 3645, Computation of Information Return Penalty for penalty case files, if applicable
- (3) If delinquent information returns are submitted, the examiner will submit them for processing using the appropriate address found in the instructions: Instructions for Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns. The returns will not be scanned into the electronic case file folder, but the examiner will document receipt and processing in the case notes.

25.21.4.4.3  
(10-22-2021)  
**Initial Contact for  
Information Return  
Non-Filer Cases**

- (1) Letter 5699, Missing Information Return Form 1094/1095-C Letter, is used to make initial contact with the employer. These letters are mailed by NDC through batches provided by IRCS.
- (2) Letter 5699 provides the employer a reason for the contact and gives them general information about the filing requirements for Form 1094-C and Form 1095-C. It asks the employer to respond to the letter by marking the appropriate block and returning it as directed in the letter.
- (3) All correspondence should be prepared using approved form letters with approved language. Original correspondence created by examiners must be:
  - a. Approved by the manager,
  - b. Documented in the case file, and
  - c. Maintained in a group file for one year, containing correspondence that **does not** use a standard approved letter.
- (4) The letter can be signed using an electronic signature.
- (5) At the time the inquiry letter is mailed, the MFT “43” will be updated with a Transaction Code (TC) “971” and Action Code (AC) “784” by following local procedures for making the update. These codes will indicate an information return inquiry letter was sent. If no MFT “43” module is present, input of this code will establish it on the system.

25.21.4.4.4  
(03-28-2019)  
**Employer Response to  
Letter 5699**

- (1) The Letter 5699 gives the employer response choices regarding their filing situation. The letter asks the employer whether they:
  - Filed the forms under a different EIN. (They are asked to provide the name, EIN and date for when the returns were filed.)

- Should have filed the forms, but did not. (They are asked to either submit the delinquent forms with the response or provide an explanation of when the returns will be electronically submitted.)
- Was not an ALE, and thus not required to file.
- Had an “Other” reason to not file.

See IRM 25.21.4.4.4.2, Response Received, for additional procedures.

25.21.4.4.4.1  
(03-28-2019)

**No Response to Letter  
5699**

- (1) Issue a Letter 5698, Corrected Form 1094/1095-C, if the employer does not respond to the inquiry letter within the allowed time.
- (2) If there is no response to the Letter 5698, the case will be assigned to an examiner to consider pursuing a penalty case file for Failure to File and Failure to Furnish.
- (3) Before starting the penalty case, the examiner will attempt to contact the employer by telephone if a phone number is available on IDRS.
- (4) If no contact is made, the examiner will use established procedures for working a penalty case file. (See IRM 25.21.4.5, Penalty Case File Procedures.)
- (5) When the Form 8278, and Form 3645, have been prepared, the examiner will request manager approval and signature.
- (6) Notification of the approved documents will be forwarded to clerical with the information necessary to complete and issue Letter 5005-A, Information Return Penalty Cover Letter.
- (7) Form 886-A, Explanation of Items, will be issued with the Letter 5005-A to give the employer the facts, law and conclusion regarding the penalty application.
- (8) The examiner will hold the non-filer case until they complete the penalty case file allowing them to close both cases at the same time.

25.21.4.4.4.2  
(10-22-2021)

**Response Received**

- (1) If the employer responds that the information returns were filed under a different EIN, the examiner will obtain the EIN (if not provided in a written response) and research IDRS command code (CC) IRPOL to ensure the information returns were filed under the EIN they provided.
  - a. Information returns are required to be filed using the current EIN of the employer and not the EIN of a related company, parent company, or third-party payor. When a related company, parent company, or third-party payor files “on behalf of” the employer, they are required to use the employer’s name and EIN on the information returns.
  - b. Once the examiner verifies the returns have been filed under the EIN provided, the case can be closed and Letter 5840, IRC Section 6056 - Information Return Closing Letter, will be issued to the employer.
  - c. If the examiner is unable to verify the returns have been filed under the EIN provided, contact with the employer must be made to determine why returns have not been filed under the EIN provided and to request additional information to resolve the case. If the employer is not willing to provide the delinquent returns or provide information to resolve the issue, the examiner will consider whether penalties are appropriate. Discuss with the manager and if penalties will be pursued, follow IRM 25.21.4.5, Penalty Case File Procedures.

- (2) If the ALE provides paper information returns:
  - a. The clerk will date stamp the transmittal and information return(s).
  - b. The examiner will verify whether the information returns are submitted under the name/EIN of the ALE contacted and verify that the number of information returns submitted are 250 or less. Returns in excess of 250 are required to be filed electronically.
  - c. If the name and EIN match and there are 250 or fewer returns, the examiner will mail the original returns to the appropriate location to be processed using the mailing address found in Instructions for Forms 1094-C and 1095-C and document receipt of the missing information returns.
  - d. If the name and EIN do not match or the ALE provided more than 250 returns, the examiner will determine the disposition of the information returns.
  - e. If the employer meets the requirements for electronic filing the examiner will need to inform the employer they need to submit the delinquent returns electronically, otherwise they may be subject to a penalty for failure to file returns using the correct media.
  - f. If the response provided does not give a reason for the late filing, the examiner will contact the employer to determine why the returns were not timely filed and will use this information to determine if penalties are applicable.
- (3) If the ALE provides proof of electronic filing:
  - a. The examiner will verify posting of returns and document the case file with the findings.
  - b. If the examiner is unable to verify the returns have posted using IDRS CC IRPOL, the examiner will contact the ALE to resolve the issue.
  - c. If the response provided does not give a reason for the late filing, the examiner will contact the employer to determine why the returns were not timely filed and will use this information to determine if penalties are applicable.
- (4) If the employer states they are not an ALE but does not provide an explanation, the examiner will contact the employer to determine why they believe they are not an ALE:
  - a. If the response and/or supporting documents support the employer's position, document the conclusion in the case file and close the case with no further action. The examiner will complete steps to input TC "971"/ AC "785" on the MFT "43" and the clerk will mail Letter 5840.
  - b. If the information provided does not support the response, discuss the case with the manager to determine the next steps.
- (5) If the employer states they are not an ALE and provides documentation:
  - a. Determine if the response and/or supporting documents support the employer's position and document the conclusion in the case file.
  - b. If the information provided supports the response, the case will be closed with no further action. The examiner will close the case indicating the employer was not an ALE.
  - c. The examiner will complete the steps to input TC "971"/ AC "785" on the MFT "43" and the clerk will mail Letter 5840.

- d. If the information provided does not support the response, discuss the case with the manager to determine the next steps.
- (6) If the employer checks the "Other" box, the examiner will:
    - a. Determine if further development is necessary. (Discuss with the manager, if necessary.)
    - b. Document the facts and conclusions in the case file.
    - c. Determine if penalties are applicable.
  - (7) If the employer states they are no longer in business and provides documentation:
    - a. The examiner will determine if the response and/or supporting documents support the employer's position.
    - b. The examiner will obtain the manager's approval, document the conclusion in the case file and close the case with no further action.
    - c. The manager will email the clerk. The clerk will complete and mail Letter 5840.
    - d. The clerk will prepare and process Form 10904, Request for Record Deletion from AIMS/ERCS, using DC "39".
    - e. If the information provided does not support the response, the examiner will discuss the case with the manager to determine the next steps.

25.21.4.4.4.2.1  
(10-22-2021)

**Employer Self-Identifies  
as a Church**

- (1) IRC 7611 provides guidelines and a procedural framework for certain examinations of churches. Also see Treas. Reg. 301.7611-1.
- (2) If the employer self-identifies as a church in response to the Letter 5699 or subsequent correspondence, the examiner will stop processing the case immediately. These cases will be worked by TE/GE.
- (3) Provide the EIN, electronic case file folder and/or Record Number of the case to the group manager. The group manager will transfer the case to TE/GE Compliance Planning & Classification using local procedures.

25.21.4.5  
(03-28-2019)

**Penalty Case File  
Procedures**

- (1) Penalties for these forms fall under IRC 6721, Failure to File Correct Information Returns and IRC 6722, Failure to Furnish Correct Payee Statements. The assertion of the penalty will be made on MFT "13" on master file using Form 8278.
- (2) The penalty case file is a separate case file with separate ERCS controls from the electronic MFT "Y1" file. The penalty case file will follow normal closing procedures.
- (3) If no penalties are proposed, provide the reasons for non-assertion of penalties in the MFT "Y1" non-filer case and close the case using the appropriate disposal code. (See IRM 25.21.4.6.4, Disposal Codes for Non-Filer Inquiry (MFT "Y1") Cases).

25.21.4.5.1  
(10-22-2021)

**Establishing a Penalty  
Case File**

- (1) If penalties are appropriate, the examiner will:
  - Document the reason penalties are being recommended,
  - Prepare Form 8278, Form 3645, and Form 886-A, and
  - Request managerial approval on Form 8278.

- (2) The manager will review the penalty case file and sign the penalty request upon approval.
- (3) The clerk will establish ERCS Controls for non-filed Forms 1094-C and/or Forms 1095-C using:
  - MFT: P9
  - Project Code: Use the same project code as the Y1 case
  - Tracking Code: Use the same tracking code as the Y1 case
  - Activity Code: 506
  - Statute Date: 01/EE/YYYY for non-filed Form 1094-C or Form 1095-C.
- (4) The clerk will print Letter 5005-A and the Form 886-A enclosure and mail the package to the ALE.

## 25.21.4.5.2 (03-28-2019) Processing a Penalty Case File

- (1) Use normal group procedures to compute and assess the penalties. See IRM 20.1.7, Information Return Penalties, for additional information.
- (2) The examiner will prepare Form 8278 and Form 3645 for each tax year. The examiner will also complete Form 886-A outlining all pertinent information; issues, facts, law, employer's position, and conclusion

**Note:** Do not provide a copy of either Form 8278 or Form 3645 to the employer.

- (3) The case will be submitted for managerial review and signature on Form 8278.
- (4) Upon approval, Letter 5005-A will be prepared by clerical and mailed to the ALE with a completed Form 886-A. This letter provides information to the ALE about the penalties and next steps depending on whether they disagree or agree with the proposed penalties.

## 25.21.4.6 (03-28-2019) Closing Non-Filer Inquiry Cases

- (1) Upon completion of the review, a case closure will involve either:
  - a. A non-filer inquiry case, no penalties, or
  - b. A non-filer inquiry case with penalties.

## 25.21.4.6.1 (03-28-2019) Closing Non-Filer Inquiry Cases - No Penalties

- (1) Non-filer inquiry cases (MFT "Y1") with no related penalty case file will be closed using the following procedures:
  - a. Examiner will ensure all documents and correspondence are available in the electronic system.
  - b. Examiner will ensure all transaction and action codes have been input to MFT "43" before closing the case.
  - c. Examiner will update the electronic case indicating the case is being closed without a penalty. The examiner will select the appropriate closing category which will indicate the disposal code and determine closing steps for clerical.
  - d. A Letter 5840 will be systemically generated. Clerical will print the letter and issue it to the employer.
  - e. Clerical will take steps to close the case controls in ERCS. See IRM 25.21.4.6.4, Disposal Codes for Non-Filer Inquiry (MFT "Y1") Cases, for the appropriate DC.

25.21.4.6.2  
(10-22-2021)  
**Closing Non-Filer  
Inquiry Cases - With  
Penalties**

- (1) A two-step closing process is required when there is a penalty case file. Both cases should be resolved and closed at the same time.
- (2) For the non-filer inquiry case,
  - a. Examiner will ensure all documents and correspondence are available in the electronic system.
  - b. Examiner will ensure all transaction and action codes have been input to MFT "43" before closing the case.
  - c. Examiner will update the electronic case indicating the case is being closed with a penalty.
  - d. The examiner will select the appropriate closing category which will indicate the disposal code and determine closing steps for clerical. See IRM 25.21.4.6.4, Disposal Codes for Non-Filer Inquiry (MFT Y1) Cases, for the appropriate DC.
  - e. Clerical will take steps to close the case controls in ERCS.

**Note:** Letter 5840 will not be issued.

- (3) The penalty case will be closed using the following steps:
  - a. Examiner will ensure the supporting documents for the penalty assessment are present in the electronic system, including all proper managerial signatures on the appropriate forms.
  - b. Examiner will input the penalty assessment on MFT "13".
  - c. Clerical will close the case controls in ERCS. DC "12" will be used for all penalty case file closures.

25.21.4.6.3  
(10-22-2021)  
**Request for Correction  
of Non-Filer Penalties**

- (1) ERCS controls will be established as follows:
  - a. MFT: P9
  - b. SC: 99
  - c. Project Code: 1273
  - d. Tracking Code: Same as on original control: 8073 (Non-filers) or 8251 (Stop-filers)
  - e. Activity Code: 506
  - f. Statute Date: 01/EE/YYYY
- (2) Open TXMOD control on MFT "13", enter Activity: FIRSTREAD
- (3) Determine if information provided by employer supports correcting Failure to Timely File and/or Failure to Timely Furnish Penalties. See IRM 25.21.4.6.3.1, Employer Response to Correcting Failure to Timely File and/or Failure to Timely Furnish Penalties, for guidance.
- (4) The penalty case will be closed using procedures in IRM 25.21.4.6.3.2, Closing a Request for Correction of Non-Filer Penalties.

25.21.4.6.3.1  
(10-22-2021)  
**Employer Response to  
Correcting Failure to  
Timely File and/or  
Failure to Timely  
Furnish Penalties**

- (1) If the employer's response **supports** correcting the failure to timely file and/or failure to timely furnish penalties:
  1. Document the new information in the case notes,
  2. Prepare Form 8278,
  3. Obtain manager's approval, and
  4. Process the correction.

- (2) If the employer’s response **does not support** correcting the failure to timely file and/or failure to timely furnish penalties, prepare and mail Letter 6145, Employer Shared Responsibility Payment Additional Information, to the employer confirming information provided was considered and the penalty still applies.
- (3) All correspondence should be prepared using approved form letters with approved language. Original correspondence created by examiners must be:
  - a. Approved by the manager,
  - b. Documented in the case file, and
  - c. Maintained in a group file for one year, containing correspondence that **does not** use a standard approved letter.

25.21.4.6.3.2  
(10-22-2021)  
**Closing a Request for Correction of Non-Filer Penalties**

- (1) Clerical will upload the supporting documents for the penalty correction in the Non-Filer electronic system, including all proper managerial signatures on the appropriate forms, including Form 8278.
- (2) Examiner will input the penalty correction on MFT “13” using the following guidance, with two entries for TC 290:
  - TC 290 “0” with Reference Code “600” with negative amount of abatement
  - TC 290 “0” with Reference Code “612” (post delayed) with negative amount of abatement
  - Enter appropriate Penalty Reason Code (PRC): “015”, General IRS error, or “027”, Timely mailed/timely filed, as shown in IRM 20.1.1
  - Close TXMOD control on MFT “13”, enter Activity: ABATEPEN or NOABATE.
- (3) Clerical will close the case controls in ERCS. DC “12” will be used for all penalty case file closures.

25.21.4.6.4  
(10-22-2021)  
**Disposal Codes for Non-Filer Inquiry (MFT “Y1”) Cases**

- (1) The following disposal codes are used with non-filer inquiry cases:

Disposal Code	Explanation	Notes or Further Requirements
01	The entity is a reporting agent filing Form(s) W-2 for themselves and their clients, but they are not an ALE because they have fewer than 50 full-time employees (including full-time equivalent employees).	This DC requires a TC “971”/ AC “785” to be input on the MFT “43”.

Disposal Code	Explanation	Notes or Further Requirements
02	Employer indicates that they filed the returns prior to receipt of the inquiry letter and the examiner verifies submission.	Also, use this DC when the employer indicates the returns were filed by a related, parent, or third-party payor and the examiner verifies the filing.
03	Employer submitted returns in response to inquiry letter.	N/A
08	Employer provides no response to inquiry letter or refuses to file when information returns are required.	N/A
12	Employer indicates they are not an ALE because they had less than 50 full-time employees (including full-time equivalent employees), or they are not required to file because none of their employees worked in the 50 states or Washington, D.C.	This DC requires TC“971”/ AC “785” to be input on the MFT “43”.
33	Controls were established in error.	N/A
37	Information returns filed and posted before the initial inquiry letter is mailed.	N/A
39	Employer provides a response that indicates they are no longer in business.	N/A

25.21.4.7  
(10-22-2021)  
**Employer Shared  
Responsibility Payment  
(ESRP)**

- (1) IRC 4980H provides that ALEs are subject to the employer shared responsibility provisions. An assessable payment under IRC 4980H is commonly referred to as the Employer Shared Responsibility Payment (ESRP). Although assessment of an ESRP is made for the calendar year, each month is a separate assessable period for purposes of IRC 4980H. For any month, an ESRP may be imposed under either IRC 4980H(a) or IRC 4980H(b), but not both. However, for any month, an ALE will be liable for an ESRP if certain conditions are met:
- a. An ALE may be liable for an ESRP under IRC 4980H(a) for a month if it did not offer minimum essential coverage (MEC) to at least 95 percent of its full-time employees (and their dependents) and at least one full-time employee was allowed a PTC to help pay for coverage obtained through a Marketplace/Exchange; or

- b. An ALE may be liable for an ESRP under IRC 4980H(b) for a month if it offered MEC to at least 95 percent of its full-time employees (and their dependents) and one or more of its full-time employees was allowed a PTC to help pay for coverage obtained through a Marketplace/Exchange; because the offered coverage was: either not affordable or did not provide Minimum Value (MV) or the full-time employee allowed the PTC was not offered coverage.

**Note:** For 2015 substitute 70 percent for 95 percent when determining offers of coverage.

**Note:** An ALE will not be liable for an ESRP for any month if certain conditions (i.e., 2015 Transition Relief) are met, even if the criteria in (a) or (b) are met.

- (2) Subject to other PTC eligibility requirements, a full-time employee may be allowed a PTC if the employee was offered MEC but the MEC was unaffordable or did not provide MV, or if that full-time employee was not offered MEC.
- (3) An eligible employer-sponsored plan is not affordable for an employee or a related individual for a plan year **if**, when the employee or a related individual enrolls in a qualified health plan (QHP) for a period coinciding with the plan year (in whole or in part), a Marketplace/Exchange determines that the eligible employer-sponsored is not affordable for that plan year. See Treas. Reg. 1.36B-2(c)(3)(v)(A)(3), "Employee safe harbor". (Also referred to as the employee lock-in rule.)
- (4) Treas. Reg. 1.36B-2(c)(3)(v)(A)(3) does not apply to a determination made as part of the redetermination process described in 45 CFR 155.335 unless the individual receiving a Marketplace/Exchange redetermination notification affirmatively responds and provides current information about affordability. Treas. Reg. 1.36B-2(c)(3)(v)(A)(3) does not apply for an individual who, with intentional or reckless disregard for the facts, provides incorrect information to a Marketplace/Exchange concerning the portion of the annual premium for coverage for the employee or related individual under the plan. A reckless disregard of the facts occurs if the taxpayer makes little or no effort to determine whether the information provided to the Marketplace/Exchange is accurate under circumstances that demonstrate a substantial deviation from the standard of conduct a reasonable person would observe. A disregard of the facts is intentional if the taxpayer knows that the information provided to the Marketplace/Exchange is inaccurate. See Treas. Reg. 1.36B-2(c)(5)(iv) for an employee safe harbor that applies when a Marketplace/Exchange determines that an HRA or other account-based group health plan described in Treas. Reg. 1.36B-2(c)(3)(i)(B) of this section is not affordable for an employee or a related HRA individual for the period of enrollment in a qualified health plan.
- (5) An employer is an ALE for any calendar year if the employer had on average 50 or more full-time employees (including full-time equivalent employees) in the prior calendar year. See IRM 25.21.4.7.3, Full-Time Employee for Purposes of Determining ALE Status Defined, and IRM 25.21.4.7.4, Full-Time Equivalent (FTE) Employee for Purposes of Determining ALE Status Defined, for definitions of full-time employees and full-time equivalent employees.
- (6) PTCs are only available to individuals purchasing health care coverage through the Marketplace/Exchange.

- (7) IRC 4980H applies to all employers, including for-profit, non-profit (whether or not a tax-exempt organization), federal, state, local, and Indian tribal government employers that are ALEs.
- (8) The employer prepares Form(s) 1094/1095-C to report offers of coverage to all full-time employees. The ALE furnishes the Form 1095-C to each full-time employee and files the Forms 1094-C and 1095-C with the IRS. The IRS uses these forms, along with the filed Form 1040 from each full-time employee, to determine if the employer is subject to IRC 4980H. Procedures for addressing non-filers of Form(s) 1094/1095-C are addressed in IRM 25.21.4.4, Filing Compliance, through IRM 25.21.4.6, Closing Non-filer Inquiry Cases.

25.21.4.7.1  
(03-28-2019)  
**Employees Included  
When Determining ALE  
Status**

- (1) An employer determines if it is an ALE for a current year based on the number of its full-time employees (including full-time equivalent employees) during the preceding calendar year.
- (2) A “new employer” is defined as an employer that was not in existence on any business day in the preceding calendar year. A new employer is an ALE for the current calendar year if it reasonably expects to employ, and actually employs, on average, at least 50 full-time employees (including full-time equivalent employees) on business days during the current calendar year.
- (3) Generally, IRC 4980H applies to an employer with employees working abroad (U.S. citizens or non-citizens) only if the employer has at least 50 full-time employees (including full-time equivalent employees) performing work in the 50 states and Washington, D.C. For this purpose, the hours of service that a full-time or full-time equivalent employee works do not include an hour of service to the extent the compensation for services performed constitutes income from sources outside the United States.

25.21.4.7.2  
(03-28-2019)  
**Employees Not Included  
When Determining ALE  
Status**

- (1) Generally, all employees in the preceding year are counted (either as full-time or full-time equivalent employees) when an employer is determining if it is an ALE. However, some employees are not taken into account, such as seasonal workers or those covered by TRICARE/Veterans Administration.
- (2) **Seasonal Workers:** Seasonal workers are defined as workers who perform labor or services on a seasonal basis as determined by the Department of Labor, and retail workers employed exclusively during holiday seasons. An employer is not considered to have more than 50 full-time employees (including full-time equivalent employees) if both of the following apply:
  1. The employer’s workforce exceeds 50 full-time employees (including full-time equivalent employees) for 120 days or fewer during the preceding calendar year, and
  2. All of the employees in excess of 50 employed during that period of 120 days or fewer are seasonal workers.

For this purpose, employers may apply a reasonable, good faith interpretation of the term “seasonal worker” and a reasonable, good faith interpretation of the Department of Labor’s definition of seasonal worker. For the application of the seasonal worker exception to new employers see Treasury Regulation 54.4980H-2(b).

- (3) **TRICARE/Veterans Administration Coverage:** An employee is not counted toward the 50 full-time employee (including full-time equivalent employees)

threshold for a month in which the employee has coverage through TRICARE or a Veterans Administration health program (as described in IRC 4980H(c)(2)(F), “Exemption for Health Coverage Under TRICARE or the Veterans Administration”).)

- (4) **Other Employees Not Taken into Account:** If an employer hires additional employees, including some part-time employees, during the current year, the employer will take those employees into account when determining whether it is an ALE for the next year.
- (5) Employees (U.S. citizens or non-citizens) working only outside the United States generally are not taken into account in determining whether an employer is an ALE and whether the employer owes an ESRP, or the amount of any such payment.
- (6) Except as noted above, an employer must count all of its employees from the preceding year in determining whether it is an ALE, even if an employee is exempt from the individual shared responsibility provision. Exempt employees include members of a Health Care Sharing Ministry, members of a Federally-recognized Indian tribe, or an employee eligible for coverage through another source, such as Medicare, Medicaid, or a spouse’s employer.

25.21.4.7.3  
(03-28-2019)  
**Full-Time Employee for  
Purposes of Determining  
ALE Status Defined**

- (1) A “full-time employee” is an employee who, for a month, has on average at least 30 hours of service each week or at least 130 hours of service during the month.

**Note:** 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week.

- (2) For purposes of determining whether an employer is an ALE, an employee is an individual who is an employee under the common-law standard for determining employer-employee relationships.
- (3) For IRC 4980H, an employee does not include:
  - A sole proprietor,
  - A partner in a partnership,
  - An S corporation shareholder who owns at least two percent of the S corporation,
  - A leased employee within the meaning of IRC 414(n),
  - A statutory employee, or
  - A worker who is a qualified real estate agent or direct seller.

25.21.4.7.4  
(03-28-2019)  
**Full-Time Equivalent  
(FTE) Employee for  
Purposes of Determining  
ALE Status Defined**

- (1) An employer determines its number of “full-time equivalent employees” for a month by combining the number of hours of service of all non-full-time employees for the month (but not including more than 120 hours of service per employee), and dividing the total by 120. For detailed rules on how to determine full-time equivalent employees, see Treas. Regs. 54.4980H-2(c).
- (2) The number of full-time equivalent employees is relevant only to determine if an employer is an ALE. Full-time equivalent employees are not taken into account in determining whether an ALE owes an ESRP or when calculating the amount of any payment.

- (3) **Example:** An employer that employs 40 full-time employees and 20 part-time employees each with 60 hours of service per month is treated as having 50 full-time employees for determining ALE status, determined as:
1. Full-time employees: 40
  2. Non full-time employees: 20
  3.  $20 \times 60 = 1,200$
  4.  $1,200 / 120 = 10$
  5. Total full-time and full-time equivalent employees:  $40 + 10 = 50$

25.21.4.7.5  
(03-28-2019)  
**Hours of Service**

- (1) Under IRC 4980H, an hour of service is each hour for which an employee is paid or entitled to payment for the performance of duties for the employer. Hours of service also include each hour for which an employee is paid or entitled to payment for any period during which no duties are performed due to holiday, vacation, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.
- (2) In certain situations, some hours for services performed are excluded from the definition of hour of service and not counted as hours of service for purposes of determining whether the employer is an ALE. These situations include hours of service:
- Performed as a bona fide volunteer of a government entity or tax-exempt organization,
  - Performed by students as part of a Federal Work-Study Program as defined under 34 CFR Part 675 (or substantially similar program of a state or political subdivision),
  - Performed by an employee who receives compensation that is taxed as income from sources outside the United States (generally meaning work performed outside the United States), or
  - Performed by an individual who is subject to a religious vow of poverty. For this exclusion to apply, the employee must be a member of a religious order and must be performing tasks that are usually required of active members of that order.
- (3) When an employee has hours that are challenging to identify or track, an employer must use a reasonable method of crediting hours consistent with IRC 4980H. See IRM 25.21.4.7.5.1, Crediting Hours, for examples of how to calculate hours.

25.21.4.7.5.1  
(03-28-2019)  
**Crediting Hours**

- (1) **Adjunct faculty:** One reasonable method credits an employee with  $2\frac{1}{4}$  hours of service for each hour of classroom teaching (the additional  $1\frac{1}{4}$  hours account for activities such as preparation and grading), and one hour of service per week for each additional hour outside the classroom performing required duties. Hours could include such things as required office hours or attendance at faculty meetings.
- (2) **Employees with on-call hours:** An employer will credit an employee with an hour of service for any on-call hour for which payment is made or due (including an hour of service for which the employee is paid a reduced hourly wage) if the employee must remain on the employer's premises, or if the employee's activities are subject to substantial restrictions.

25.21.4.7.6  
(03-28-2019)  
**Dependent Defined**

- (1) For purposes of IRC 4980H, a dependent is defined as an employee's child, including a child who has been legally adopted or legally placed for adoption with the employee, who has not reached age 26. A child reaches age 26 on the 26<sup>th</sup> anniversary of the date the child was born and is treated as a dependent for the entire calendar month during which he or she reaches age 26.
- (2) For purposes of this provision, a dependent does not include a stepchild, a foster child, or a child who does not reside in the United States (or a country contiguous to the United States) and who is not a United States citizen or national. In addition, a dependent does not include a spouse.

25.21.4.7.7  
(10-22-2021)  
**Premium Tax Credit (PTC) Defined**

- (1) The PTC is a refundable tax credit for eligible individuals and families with low or moderate incomes to help with the cost of health coverage purchased through the Marketplace/Exchange. The PTC generally is available to help pay for coverage purchased through the Marketplace/Exchange for individuals who:
  - Have household income of at least 100 percent but not more than 400 percent of the federal poverty line and enroll in coverage through a Marketplace/Exchange,
  - Are not eligible for coverage through a government-sponsored program like Medicaid, Medicare or the Children's Health Insurance Program (CHIP), or
  - Are not eligible for coverage offered by an employer or are eligible only for employer coverage that is unaffordable or that does not provide minimum value.

25.21.4.7.8  
(10-22-2021)  
**Affordable Coverage Defined**

- (1) Employer-provided coverage is considered affordable for an employee if the employee's required contribution does not exceed 9.5 percent (adjusted annually - see "Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act" Q & A #39 and Q & A #40) of that employee's annual household income.
  - Generally, the employee's required contribution is the employee's share of the monthly cost for the lowest self-only coverage offered to the employee by the ALE Member.
  - Special rules apply for individual coverage HRAs, which employers may offer for plan years beginning on or after January 1, 2020. See Treas. Reg. 1.36B-2(c)(5)(ii).
- (2) Determining whether coverage is affordable for an employee requires a calculation based on many components, including:
  - How much the employee is required to contribute toward the employer-provided coverage ("employee required contribution") reported on line 15 of Form 1095-C,
  - The employee's household income reported on line 3 of Form 8962, Premium Tax Credit (PTC) and
  - The correct adjusted "affordability threshold" for the year coverage was offered by the employer.

25.21.4.8  
(03-28-2019)  
**Affordability Safe Harbors**

- (1) Because ALE's generally do not know their employees' household incomes, Treas. Reg. 54.4980H-5(e)(2) includes three affordability safe harbors that ALEs may use that are based on information the ALE does have available, such as an employee's Form W-2 wages, or an employee's rate of pay. The affordability safe harbors are available only for an ALE that offers minimum essential coverage to at least 95 percent (70 percent in 2015) of its full-time employees and their dependents.
- (2) If an employer's offer of coverage meets the requirements of any of these safe harbors, the offer of coverage is deemed affordable for purposes of IRC 4980H(b) regardless whether it was affordable to the employee for purposes of the PTC.
- (3) The three affordability safe harbors in Treas. Reg. 54.4980H-5(e)(2) are:
  1. **The Form W-2 wages safe harbor:** Generally based on the amount of wages paid to the employee that are reported in Box 1 of that employee's Form W-2.
  2. **The rate of pay safe harbor:** Generally based on the employee's rate of pay at the beginning of the coverage period, with adjustments permitted for an hourly employee if the rate of pay is decreased (but not if the rate of pay is increased).
  3. **The federal poverty line safe harbor:** Generally treats coverage as affordable if the employee contribution for the year does not exceed 9.5 percent (adjusted annually - see "Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act" Q & A #39 and Q & A #40), multiplied by the federal poverty line for a single individual for the applicable calendar year.
- (4) These safe harbors are optional and, if an ALE chooses to use one or more of the safe harbors, it should be reported for the employee on line 16 of the Form 1095-C. An ALE may use one or more of the safe harbors only if the ALE offers 95 percent (70 percent in 2015) or more of its full-time employees and their dependents the opportunity to enroll in MEC under an eligible employer-sponsored plan that provides MV for the self-only coverage offered. The safe harbors are not available for an ALE that fails to offer coverage to 95 percent (70 percent in 2015) or more of its full-time employees and their dependents.
- (5) An ALE Member may choose to use one or more of the safe harbors for all of its employees or for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category.
- (6) If an ALE Member offers multiple health care coverage options, the affordability test applies to the lowest-cost self-only coverage option available to the employee that provides MV.

25.21.4.9  
(10-22-2021)  
**Liability for the ESRP**

- (1) Each ALE, whether an individual entity or a member of an Aggregated ALE Group, is responsible for its own ESRP.
- (2) The ESRP is calculated on a month-by-month basis and is added together to determine the yearly assessment.

**Reminder:** The taxable period for an ESRP is a month.

- (3) The ALE may be subject to both a IRC 4980H(a) or a IRC 4980H(b) assessment during the year, but not both for the same month. The amount calculated

under IRC 4980H(b) can never be greater than the amount that would have been owed under IRC 4980H(a) had the employer been liable under that section.

- (4) The ALE may be subject to a IRC 4980H(a) or a IRC 4980H(b) assessment if they have at least one assessable full-time employee. An assessable full-time employee is an individual who for at least one month in the year was a full-time employee allowed a PTC and for whom the ALE did not qualify for an affordability safe harbor, a verification of affordability based on household income, or other relief from the ESRP.

### 25.21.4.9.1 (03-28-2019) Calculating the ESRP Under 4980H(a)

- (1) If the ALE offers coverage to less than 95 percent (70 percent for 2015) of its full-time employees and their dependents, and at least one full-time employee was allowed a PTC for coverage purchased through a Marketplace/Exchange, there is a potential ESRP under IRC 4980H(a).

**Example:** The potential ESRP under IRC 4980H(a) for one month is calculated as: Multiply  $\frac{1}{12}$  of \$2,000 (adjusted annually) by the total number of full-time employees that exceeded 30. The monthly amounts are added together to determine the ESRP assessment for the year.

- (2) For the purpose of IRC 4980H(a), all full-time employees are taken into account even if they were offered coverage by the ALE, have coverage from another source, or are not required to have coverage under the individual shared responsibility provisions. ALEs report the number of their full-time employees for each month on Form 1094-C, lines 23-25, column (b).
- (3) **Under IRC 4980H(a), the ESRP liability may be reduced by up to 30 full-time employees.** If the ALE Member is in an Aggregated ALE Group, the reduction of 30 full-time employees is allocated among all related ALE Group Members in proportion to each ALE Member's number of full-time employees.

**Note:** For 2015 only, substitute 80 for 30 if the ALE elects Transition Relief "B" on Form 1094-C or in response to contact made by the IRS.

### 25.21.4.9.2 (03-28-2019) Calculating the ESRP Under 4980H(b)

- (1) If the ALE Member offers coverage to at least 95 percent (70 percent for 2015) of its full-time employees and their dependents but one or more full-time employees were allowed the PTC for coverage purchased through the Marketplace/Exchange, there is a potential ESRP under IRC 4980H(b) if:

- The ALE Member did not offer coverage to that particular employee,
- The coverage the ALE Member offered to that employee is not affordable to the employee and no safe harbor applies, or
- The coverage the ALE Member offered to that employee does not provide minimum value.

- (2) The potential ESRP under IRC 4980H(b) for one month is calculated as:

**Example:** Multiply  $\frac{1}{12}$  of \$3,000 (adjusted annually) by the number of full-time employees who were allowed a PTC. The ESRP under this provision is based upon the total number of full-time employees (without reduction)

who received a PTC and not the total number of full-time employees. The monthly amounts are totaled to determine the ESRP assessment for the year.

- 25.21.4.10  
(03-28-2019)  
**Transition Relief**
- (1) Several forms of transition relief under IRC 4980H were available for 2014 and 2015. Only some of these forms of transition relief continue to apply in 2016, and they apply with respect to employer coverage with a plan year that is different than the calendar year (referred to as a non-calendar-year plan) and only for employers that meet the other requirements for the applicable relief. See “Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, Limited Transition Relief in 2016” (Questions 59-63) at: <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act#Limited>.
- 25.21.4.10.1  
(03-28-2019)  
**2014 Transitional Relief**
- (1) Although IRC 4980H originally was intended to apply in 2014, transition relief provides that IRC 4980H and the corresponding information reporting requirements first apply in 2015, and an ESRP will not be assessed with respect to 2014. See Notice 2013-45.
- 25.21.4.10.2  
(03-28-2019)  
**2015 Transitional Relief**
- (1) There are eight forms of transition relief for 2015 that apply to various aspects of IRC 4980H. Each form of relief is described briefly in the following subsections below, but is fully described in section XV.D of the preamble to the final Treasury Regulations 54.4980H. In addition, see the “Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act” at: <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act>.
- 25.21.4.10.2.1  
(03-28-2019)  
**ALEs with Fewer than 100 Full-time Employees (Including Full-time Equivalent Employees): Transition Relief “A”**
- (1) An ALE (or ALE Member if part of an Aggregated ALE Group) with fewer than 100 full-time employees (including full-time equivalent employees) on business days in 2014 will not be assessed an ESRP for 2015 provided certain conditions are met regarding the ALE’s maintenance of workforce and pre-existing health coverage. This relief also includes an ALE with a non-calendar year plan year, for the months in 2016 that are part of the 2015 plan year. Even if an ALE is eligible for this relief, the ALE is still required to complete the related information reporting for 2015. For more information on this relief, see section XV.D.6 of the preamble to the final Treasury Regulations. To meet the conditions for Transition Relief “A”, the ALE:
- Did not reduce the size of their workforce or overall hours of service for the period beginning on February 9, 2014, and ending on December 31, 2014 (except for a bona fide business reason),
  - Did not materially reduce or eliminate health coverage, if any, it offered as of February 9, 2014, during the period beginning on February 9, 2014, and ending on the last day of the 2015 plan year, and
  - Must certify that it meets the requirements for the relief on Form 1094-C, by checking “Box C” in Part II, line 22, and entering “A” in Part III, lines 23-35, column (e) for the applicable months.

- 25.21.4.10.2.2  
(03-28-2019)  
**Shorter Period Permitted for Determining ALE Status for 2015**
- (1) Solely for determining ALE status for 2015, rather than being required to determine its ALE status based on the number of full-time employees (including full-time equivalent employees) for all twelve months of 2014, an employer may instead use any consecutive six-month period (as chosen by the employer) during 2014.
- 25.21.4.10.2.3  
(03-28-2019)  
**Certain Non-Calendar Year Plans**
- (1) Transition relief is available for certain employers sponsoring non-calendar year plans for the months in 2015 prior to the beginning of the 2015 plan year with respect to certain employees, if the employer and plan meet various conditions. See section XV.D of the preamble to the final regulations for a more detailed description of the transition relief available for non-calendar year plans.
- 25.21.4.10.2.4  
(03-28-2019)  
**Offers of Minimum Essential Coverage for Pay Periods in January 2015**
- (1) Generally, if an ALE fails to offer coverage to a full-time employee for any day of the calendar month, that employee is treated as not having been offered coverage during the entire month. Under this relief, however, if an ALE offered coverage to a full-time employee no later than the first day of the first payroll period that began in January 2015, the employee will be treated as having been offered coverage for January 2015.
- 25.21.4.10.2.5  
(03-28-2019)  
**Offers of Minimum Essential Coverage to Dependents**
- (1) In general, an ALE is considered to have made an offer of coverage to a full-time employee only if it also makes an offer of coverage to the full-time employee's dependents. An ALE may treat an offer of coverage to a full-time employee but not his or her dependents under a non-calendar year plan as an offer of coverage to the full-time employee and his or her dependents for the calendar months in 2016 that fall within the 2015 plan year, under certain circumstances. Specifically, this transition relief applies if the ALE took steps during the 2014 or 2015 plan year (or both) to extend coverage under the plan to dependents not offered coverage during the 2013 or 2014 plan year (or both) and if the employee was not already offered dependent coverage during the 2013 or 2014 plan year.
- 25.21.4.10.2.6  
(03-28-2019)  
**Offers of Minimum Essential Coverage to at Least 70 Percent of Full-time Employees (and their Dependents)**
- (1) The ESRP under IRC 4980H(a) relates to whether an ALE offered coverage to at least 95 percent of its full-time employees (and their dependents). For 2015 (and, in addition, for ALEs with a non-calendar year plan year, for the months in 2016 that are part of the 2015 plan year), 70 percent is substituted for 95 percent. However, even if an ALE offered coverage to at least 70 percent of its full-time employees (and their dependents) for 2015, it still may be assessed an ESRP under IRC 4980H(b) if a full-time employee is allowed the PTC for coverage purchased through the Marketplace/Exchange because the coverage was not affordable or may not have provided MV.
- 25.21.4.10.2.7  
(03-28-2019)  
**Shorter Measurement Periods Permitted for Identifying Full-time Employees**
- (1) In general, under the look-back measurement method for determining full-time employee status, the length of the stability period must be at least six consecutive calendar months but no shorter in duration than the measurement period. For stability periods beginning in 2015, an ALE may adopt a transition measurement period to determine full-time employee status (for purposes other than determining ALE status) that is shorter than 12 consecutive months, but that is no less than six consecutive months, under certain conditions. This tran-

sition measurement period may begin no later than July 1, 2014 and end no earlier than 90 days before the first day of the 2015 plan year.

25.21.4.10.2.8  
(03-28-2019)

**Calculation of ESRP for ALEs with at Least 100 Full-time Employees (Including Full-time Equivalent Employees) on Business Days During 2014**

- (1) For 2015, and any calendar month in 2016 that falls within an ALE's non-calendar 2015 plan year, if an ALE with at least 100 full-time employees (including full-time equivalent employees) on business days during 2014 does not offer coverage to at least 95 percent (or 70 percent, if applicable) of its full-time employees (and their dependents), it will owe an ESRP for a month equal to the number of full-time employees employed for the month multiplied by  $\frac{1}{12}$  of \$2,000 (adjusted annually based), provided that at least one full-time employee is allowed a PTC for that month. For 2015 and any calendar month in 2016 that falls within an ALE's non-calendar 2015 plan year, the number of full-time employees used to calculate the payment will be reduced by 80 rather than 30. For the rules on how the 80-employee reduction is allocated among ALE in an Aggregated Group, see Treas. Reg. 54.4980H-4(e).

25.21.4.10.3  
(03-28-2019)

**Transition Rule for Employer's First Year as an ALE**

- (1) In general, if an employee was not offered coverage at any point during the prior calendar year and the ALE offers coverage to the employee on or before April 1 of the first calendar year for which the employer becomes an ALE, the ALE will not be subject to an ESRP by reason of its failure to offer coverage to the employee for January through March of that year, and with respect to potential liability under IRC 4980H(b) for January through March of that year, only if the coverage offered by April 1 provides minimum value. This rule only applies during the first year that an employer is an ALE. See Treas. Reg. 54.4980H-2(b)(5) for additional information.

25.21.4.11  
(10-22-2021)

**Identification and Assignment of Potential ESRP Cases**

- (1) IRCS will use a list of identified ALEs that potentially owe an ESRP to establish selection criteria and prioritize the cases in anticipation of work requests. Upon receipt of an inventory order, IRCS will select and forward the selected inventory to the group or NDC for processing. IRCS will provide a list to the contact establishing ERCS controls and will provide the Electronic Case File (ECF) for each case to the group. The examiner will use the ECF to work the ESRP case.

**Note:** Starting with TY 2018, the new inventory system will house the ECF and establishing the controls on ERCS will no longer be required.

- (2) The case building unit will establish all cases on the ERCS system using the following for case controls and coding:

- MFT: Y2
- Activity Code: 561
- Source Code: 99
- Project Code: 1274
- Tracking Code: See Table

Tracking Code	ACA Code
8074	ACA 4980H(a)
8076	ACA 4980H - TE/GE

Tracking Code	ACA Code
8077	ACA 4980H - Aggregate Group > 5
8078	ACA 4980H - Aggregate Group 5 or Less
8079	ACA 4980H(b)
8080	ACA 4980H(a) and (b)

(3) Cases will only be established on ERCS; they will not be on AIMS. Examination field examiners will use their Inventory Control Listing (IVL) from ERCS to help monitor their inventory. Management will use the ERCS reports for program monitoring and results, as needed.

25.21.4.12  
(10-22-2021)  
**Pre-Contact of ESRP  
Cases - Examination  
Field Only**

(1) For cases worked in examination field groups, the group manager will assign the case to the examiner by moving the ECF to the specific examiner’s folder on the shared server and having the group secretary update the controls on ERCS. The examiner will establish a case file folder for each assigned case. The ECF and all other documents and workpapers used for the ESRP case will be housed in the folder.

(2) The naming convention for each assigned case folder will be: “YYYYESRP\_ABCD1234\_EX” where

- YYYY: Year
- ESRP: Employer Shared Responsibility Payment
- ABCD: Name control
- 1234: Last four digits of EIN
- EX: Examiner Initials

(3) Before contacting the employer, the examiner must conduct Integrated Data Retrieval System (IDRS) research to determine if:

- The employer is a TE/GE or LB&I taxpayer (CC - INOLES),
- The employer is assigned to a Revenue Officer in Collection (Status Code “26” on CC BMFOLI),
- A “-Z” freeze code is present to indicate CI involvement (CC - BMFOLI), or
- Disaster freeze codes “-O” and “-S” are present (CC - BMFOLI).

(4) Examiners will take the following actions based on the research results in (3) above:

If...	Then....
The employer has a TE/GE indicator and is considered TE/GE taxpayer...	The examiner will coordinate with TE/GE per local instructions. Procedures will depend on the type of TE/GE entity involved (i.e., EP, ITG, EO).

If...	Then....
The employer has a Large Case Indicator (LCI) and is considered an LB&I taxpayer...	The examiner will need to contact the appropriate Large Case Technical Unit (LCTU) campus unit to coordinate efforts before contacting the employer. There are two LCTUs, Cincinnati and Ogden. Taxpayers are assigned to one of these units based on the geographic location of the primary reporting entity. See <a href="https://irssource.web.irs.gov/LBI/Lists/ReturnRelated/DispltemForm.aspx?ID=23">https://irssource.web.irs.gov/LBI/Lists/ReturnRelated/DispltemForm.aspx?ID=23</a> .
The employer is assigned to a Revenue Officer in Collection...	The examiner will determine the assigned Revenue Officer and notify them that they are beginning the IRC 4980H inquiry process.
The employer has a “-Z” freeze on any module...	The examiner will discuss the case with the group manager, then contact CI to determine if proceeding with the IRC 4980H inquiry will affect the investigation. Resolution of this issue will be on a case-by-case basis.
The employer has a disaster code on any module. (“-O” or “-S”)...	The examiner will proceed with the case using normal disaster code operating procedures.

**Note:** Campus employees should use the table if they become aware of one of these situations after case assignment.

25.21.4.12.1  
(10-22-2021)  
**Addressing Related  
Entities**

- (1) If the assigned examiner finds the ALE is part of an aggregated group, steps will be taken to work the cases together.
- (2) The examiner will take steps to have all existing cases assigned to them to work together. This may involve having the manager transfer the ECF from other examiners. If one of the related entities is not an existing case, the examiner will coordinate with the manager to obtain information from IRCS and establish a new case when necessary to allow for all related entity cases to be worked together.
- (3) The examiner will determine if the related entities have filed the information returns by using CC IRPOL.
  - a. If information returns were filed for the year assigned, the examiner will assign an aggregated group number to all existing cases, if necessary. If one of the related cases does not contain an ECF, the examiner will coordinate with the manager to contact IRCS to check their master list to determine if the related employer is listed. If listed, IRCS will send the

ECF to the manager. The manager will have controls established and assign the case to the examiner, allowing all related cases to be worked together.

**Note:** IRCS will attempt to identify and assign related entity cases at the same time.

- b. If the related entities are not on the list, this means the related entity is not subject to a potential ESRP because none of their employees were allowed a PTC. The examiner will document the case file regarding the findings and continue with the review of the assigned entity.

**Note:** The examiner will still consider the entity when allocating the 30 full-time employees between the group members even if it is not subject to an ESRP.

25.21.4.13  
(10-22-2021)  
**Initial Contact**

- (1) **Examination Field cases:** Before issuing the initial contact letter, the examiner will verify the employer contact information (e.g., name, EIN and address) is correct in the ECF and will also check IDRS CC CFINK to determine if there is a Power of Attorney on file specifically for Form 1094-C, Form 1095-C, or MFT "43". Update incorrect information within the ECF to ensure the forms and letters used in this process will auto-populate.
- (2) **Campus cases:** The NDC will use the most current information available when issuing batch letters.
- (3) The Letter 226-J, ESRP Preliminary Contact, will be issued to an ALE if the IRS determines that, for at least one month in the year, one or more of the ALEs full-time employees were an assessable full-time employee and, therefore, the ALE may be liable for the ESRP.

**Note:** An assessable full-time employee is a full-time employee who was allowed a PTC and for whom no provision providing relief is applicable under IRC 4980H(a); and, a full-time employee who was allowed a PTC and for whom no safe harbor or other provision providing relief is applicable under IRC 4980H(b),

- (4) The determination of whether an ALE may be liable for an ESRP and the amount of the proposed ESRP are based on information from Forms 1094-C and 1095-C filed by the ALE and the individual income tax returns filed by the ALEs employees. Letter 226-J certifies, under section 1411 of the Affordable Care Act, that, for at least one month in the year, one or more of the ALE's full-time employees were enrolled in a qualified health plan for which a PTC was allowed.
- (5) Letter 226-J asks the ALE to respond in writing to the IRS by the response date shown in the letter, which is generally within 30 days. In addition to providing the proposed ESRP, Letter 226-J will also include an ESRP Summary Table itemizing the proposed ESRP by month and indicating for each month whether the ALE is liable for an ESRP under IRC 4980H(a) or IRC 4980H(b). Letter 226-J also will include:
- Form 14764, ESRP Response, and
  - Form 14765, Employee Premium Tax Credit (PTC) Listing.

The Form 14765 is a monthly list of the ALEs assessable full-time employees identified by the IRS, and shows the indicator codes that the ALE reported on lines 14 and 16 of each assessable full-time employee's Form 1095-C. Letter 226-J will contain a description of the actions the ALE should take if it agrees or disagrees with the proposed ESRP, as well as the actions the IRS will take if the ALE does not timely respond to the letter.

- (6) All correspondence should be prepared using approved form letters with approved language. Original correspondence created by examiners must be:
  - a. Approved by the manager,
  - b. Documented in the case file, and
  - c. Maintained in a group file for one year, containing correspondence that **does not** use a standard approved letter.
- (7) Letter 226-J is signed by the manager; an electronic signature is valid for this letter.
- (8) Transaction Code (TC) "971" and Action Code (AC) "782" are input on MFT "43" when a Letter 226-J is issued. Input of these codes will establish the MFT "43" module if not present on IDRS.
  - a. For examination field cases, this is done by completing Form 3177, Notice of Action for Entry on Master File, and submitting to Cincinnati Centralized Case Processing (CCP) using local procedures to request input.
  - b. For campus cases, input is done when the campus receives notification from NDC that Letter 226-J has been mailed.

25.21.4.14  
(10-22-2021)  
**ALE Responses to  
Letter 226-J**

- (1) The ALE may submit a Form 2848, Power of Attorney and Declaration of Representative, to authorize disclosure to the person designated by the ALE. The examiner will follow normal Form 2848 processing guidelines. The ALE may also authorize someone to contact the IRS concerning the ESRP issue by completing the Authorization section of Form 14764.
- (2) There are three potential responses to the Letter 226-J:
  1. No response,
  2. Agreement with proposed ESRP assessment, or
  3. Partial/Total disagreement with the proposed ESRP assessment.

25.21.4.14.1  
(03-28-2019)  
**No Response**

- (1) **For Examination Field cases:** If the ALE does not respond to the Letter 226-J within thirty days, the examiner will attempt to make phone contact with the ALE. If the examiner is able to make phone contact, they will take the following steps to resolve any issues:
  - a. If the ALE agrees, the examiner will ask the ALE to sign and return the ESRP response form indicating agreement. If the examiner receives the signed Response Form, follow the procedures in IRM 25.21.4.14.2, Agreement with the Proposed ESRP Assessment. If the examiner does not receive the signed Response Form, send the appropriate Letter 227. See IRM 25.21.4.15, Letter 5040-J Follow Up Letter and Letter 227 ESRP Acknowledgement Letters, for a list of the various letter options.
  - b. If the ALE does not agree and requests changes be made to information reported on the Form 1094-C or Form 1095-C, the examiner will request

the ALE follow the instructions in Letter 226-J and submit their request in writing, making any corrections specific to their employees on the Form 14765 included with the letter. The examiner will use the accepted information received to recalculate the ESRP assessment and issue the appropriate Letter 227 . See IRM 25.21.4.15 for a list of the various letter options.

c. If the examiner is unable to make contact with the ALE by phone or Letter 226-J, the examiner will send Letter 5040-J , Preliminary ESRP – Second Notice, with a copy of Letter 226-J and all attachments to the ALE. The Letter 5040-J allows the ALE fifteen days to respond. If the ALE does not respond, the case will be prepared for assessment. If the ALE does respond, the examiner will follow the appropriate procedures to address the response.

(2) If the case is being worked by a campus examiner, Letter 5040-J, a copy of Letter 226-J and all attachments will be mailed to the ALE when there is no response to the Letter 226-J. The Letter 5040-J allows the ALE fifteen days to respond. If the ALE does not respond, the case will be prepared for assessment. If the ALE does respond, the examiner will follow the appropriate procedures to address the response.

25.21.4.14.2  
(03-28-2019)  
**Agreement with the  
Proposed ESRP  
Assessment**

(1) If the ALE returns a signed and dated ESRP Response Form with the “Agreement with proposed assessment” box checked, Letter 227-J, Employer Shared Responsibility Payment (ESRP) Acknowledgment Closing Letter, will be mailed to the ALE. The examiner will assess the ESRP using local procedures and close the case.

25.21.4.14.3  
(10-22-2021)  
**Partial/Total  
Disagreement with the  
Proposed ESRP**

(1) If the ALE returns the ESRP Response Form with the “Partial/Total disagreement with proposed assessment” box checked, a signed statement or other supporting documentation explaining the partial or total disagreement should be enclosed. If the ALE indicates disagreement with the ESRP via a telephone conversation, the examiner will ask them to follow instructions in the Letter 226-J and provide their reasons for disagreement with any requested corrections in writing.

(2) If the ALE returns the ESRP Response Form but does not provide either a signed statement or other supporting documentation explaining any disagreement with the proposed ESRP, the examiner will attempt to contact the ALE to resolve the issues. If no signed statement or reason for disagreement is provided, the examiner will issue the appropriate Letter 227. See IRM 25.21.4.15, Letter 5040-J Follow Up Letter and Letter 227 ESRP Acknowledgment Letters, for a list of the various Letter 227 options.

(3) If the ALE requests in writing affordability verification by providing their computation for reconsideration of affordability based on household income, Form W-2, federal poverty line or rate of pay safe harbor, the examiner will recompute affordability to determine if coverage is affordable. After the examiner documents the case file, the examiner will respond to the ALE with either Letter 227-K or Letter 227-L and the Explanation of Recalculated Employer Shared Responsibility Payment.

- (4) The examiner will review the signed statement and any reason for disagreement to determine if it supports making changes to the proposed ESRP. If the information provided does not support the response, discuss the case with the manager to determine the next steps. See IRM 25.21.4.14.3.1, Review Techniques.

25.21.4.14.3.1  
(10-22-2021)  
**Review Techniques**

- (1) The reason for disagreement provided by the ALE must support the ALE's position before the examiner revises the information in the ECF. An ALE should provide a signed written statement explaining:
  - Any requested changes to the Form 1094-C or Form 1095-C,
  - Any correction on the Form 14765, or
  - A statement and explanation how they qualified for 2015 Transition Relief or other form of relief.
- (2) The ALE may choose to provide documents to support any requested changes. Examples include:
  - Employment contracts that show when an employee was hired, terminated, number of hours, seasonal, etc.
  - Payroll records that show total number of hours worked and rate of pay.
  - Employee handbook that explains insurance benefits offered, waiting periods, and costs.
  - Substantiation for 2015 Transition Relief.

If the information provided supports the changes or shows that the ALE met any of the Transition Relief provisions, the examiner will recalculate the proposed ESRP and issue the appropriate Letter 227. Examiners will not request additional supporting documentation.

25.21.4.14.4  
(10-22-2021)  
**ALE Self-Identifies as a Church**

- (1) IRC 7611 provides guidelines and a procedural framework for certain examinations of churches. Also see Treas. Reg. 301.7611-1.
- (2) If the ALE self-identifies as a church in response to the Letter 226-J or subsequent correspondence, the examiner will stop processing the case immediately. These cases will be worked by TE/GE.
- (3) Provide the EIN, ECF and/or Record Number of the case to the group manager. The group manager will transfer the case to TE/GE using local procedures.

25.21.4.15  
(03-28-2019)  
**Letter 5040-J Follow Up Letter and Letter 227 ESRP Acknowledgement Letters**

- (1) The following letters are used depending on the response to Letter 226-J:

Letter	Description
Letter 5040-J	Follow-up letter used when there has been no response to Letter 226-J.

Letter	Description
Letter 227-J	Letter acknowledges receipt of the signed agreement form and informs the ALE that the ESRP will be assessed. After issuance of this letter, the case will be processed and closed. No response is required from the employer if this version of the Letter 227 is issued.
Letter 227-K	Letter acknowledges receipt and acceptance of information provided and shows the proposed ESRP has been reduced to zero. After issuance of this letter, the case will be processed and closed. No response is required from the employer if this version of the Letter 227 is issued.
Letter 227-L	Letter acknowledges receipt of information provided and informs the ALE that the proposed ESRP has been revised. The letter provides an updated Form 14765 and gives the ALE the opportunity to agree, disagree, or request an appeal.
Letter 227-M	Letter acknowledges receipt of information provided and informs the ALE that the ESRP did not change. The letter provides a Form 14765 and gives the ALE the opportunity to agree, disagree, or request an appeal.
Letter 227-N	Letter acknowledges the position reached in the Independent Office of Appeals and provides the appropriate ESRP amount. After issuance of this letter, the case will be processed and closed. No response is required from the employer if this version of the Letter 227 is issued.

- (2) The following table identifies the letters available for use based on the response (or lack of response) to contacts made, describes the purpose of the letters, and provides the procedures to follow:

<b>Employer Response to Letter 226-J or Letter 227</b>	<b>Subsequent Letter to be Sent by Examiner</b>	<b>Purpose</b>	<b>Use and Procedure</b>
No response to Letter 226-J	Letter 5040-J, Preliminary ESRP Second Notice	A follow-up letter to the Letter 226-J sent when there has been no response from the ALE within 30 days	See IRM 25.21.4.14.1, No Response
No response to Letter 227-L or 227-M	None	Since the ALE did not respond, no letter is issued and the case will be closed based on the information in the Letter 227-L or Letter 227-M	See IRM 25.21.4.15.2, No Response to Letter 227-L or Letter 227-M
Agreement to Letter 226-J, Letter 227-L or 227-M	Letter 227-J, ESRP Acknowledgement - Closing Letter	An acknowledgement letter sent when the ALE has agreed to the proposed ESRP assessment on the Letter 226-J, Letter 227-L or Letter 227-M	See IRM 25.21.4.14.2, Agreement with the Proposed ESRP Assessment or IRM 25.21.4.15.3, Agreement with Letter 227-L or Letter 227-M
Disagreement to Letter 226-J, Letter 227-L or Letter 227-M, additional information provided results in zero ESRP	Letter 227-K, ESRP Acknowledgement – No Change	An acknowledgement letter sent when the ALE has provided information and the proposed ESRP assessment is reduced to zero	After issuance of Letter 227-K, process case as a no-change. See IRM 25.21.4.19.1, Appropriate Disposal Codes

Employer Response to Letter 226-J or Letter 227	Subsequent Letter to be Sent by Examiner	Purpose	Use and Procedure
Disagreement with Letter 226-J, Letter 227-L or Letter 227-M, additional information provided results in a change to the ESRP	Letter 227-L, Revised ESRP Calculated	An acknowledgement letter sent when the ALE has provided information and the proposed ESRP assessment has been revised	Depending on response to Letter 227-L, follow appropriate IRM 25.21.4.15.2, IRM 25.21.4.15.3, or IRM 25.21.4.15.4
Disagreement with Letter 226-J, Letter 227-L or Letter 227-M, additional information may have been provided but no-change warranted to ESRP	Letter 227-M, ESRP Acknowledgement – Revised ESRP Unchanged	An acknowledgement letter sent when the ALE response does not result in a change to the proposed ESRP	Depending on response to Letter 227-L, follow appropriate IRM 25.21.4.15.2, IRM 25.21.4.15.3, or IRM 25.21.4.15.4
After the Appeals conference	Letter 227-N, ESRP Acknowledgement – Appeals Determination	An acknowledgement letter sent to the ALE after the Appeals conference	Process case based on Appeals results. See IRM 25.21.4.19.1, Appropriate Disposal Codes

25.21.4.15.1  
(03-28-2019)  
**Responses to Letter 227**

- (1) The ALE may not have responded to the preliminary Letter 226-J but may provide a response to a Letter 227-L, Revised ESRP Calculated, or Letter 227-M, ESRP Acknowledgement - Revised ESRP Unchanged. There are three potential responses:
1. No response,
  2. Agreement with the proposed ESRP assessment, or
  3. Partial/Total disagreement with the proposed ESRP assessment. This response may include a request for an appeal.

25.21.4.15.2  
(03-28-2019)  
**No Response to Letter 227-L or Letter 227-M**

- (1) If the ALE does not respond to the Letter 227-L or Letter 227-M by the date indicated in the letter (generally within 30 days), the examiner will close the case using the appropriate procedures and disposal code. See IRM 25.21.4.19, Case Closing Procedures, for appropriate closing procedures.

25.21.4.15.3  
(03-28-2019)  
**Agreement with Letter  
227-L or Letter 227-M**

- (1) If the ALE returns a signed and dated ESRP Response Form with the “Agreement with proposed assessment” box checked, the examiner will mail the Letter 227-J to the ALE, assess the ESRP, and close the case. See IRM 25.21.4.19, Case Closing Procedures.

25.21.4.15.4  
(03-28-2019)  
**Disagreement with  
Letter 227-L or Letter  
227-M**

- (1) The employer may still disagree with the proposed ESRP and may either:
- Request a meeting or telephone conference with the examiner’s supervisor, or
  - Request a meeting with Appeals.
- (2) If the ALE requests a meeting with the supervisor, the examiner will forward the information to their supervisor. The supervisor will contact the ALE to discuss the issue. The case will be processed based on the outcome of the meeting.
- (3) An ALE request for an Appeals conference must include a valid protest. When the total amount of the proposed ESRP for all months of the applicable year is \$25,000 or less, a small case request may be requested by letter for an Appeals hearing along with the reasons the ALE does not agree. When the amount of the proposed ESRP for all months of the applicable year is more than \$25,000, the ALE must submit a formal written protest. See IRM 25.21.4.16, Appeals Procedures.

**Note:** If new issues are raised when the ALE requests an Appeal that do not require a recalculation, the examiner must prepare an Explanation of Recalculated Employer Responsibility Payment addressing the new issues and the Government’s position and send this document to the ALE using a Letter 227-M. The case will be held for 30 days to allow the ALE time to respond before forwarding to Appeals.

25.21.4.16  
(03-28-2019)  
**Appeals Procedures**

- (1) Unagreed cases involving a proposed ESRP are subject to pre-assessment appeal rights. If appealed, the examiner will prepare the case for review by Appeals following IRM 25.21.4.16.1, Preparing the Case for Appeals.

**Note:** The examiner will not close the case to Appeals. Controls will remain with the examination group while Appeals addresses the case.

25.21.4.16.1  
(03-28-2019)  
**Preparing the Case for  
Appeals**

- (1) The examiner will prepare the ECF to be submitted to Appeals by taking the following steps:
1. Ensure the Explanation of Recalculated Employer Shared Responsibility Payment addresses all issues raised by the ALE. (See Note in (3) of IRM 25.21.4.15.4, Disagreement with Letter 227-L or Letter-M.)
  2. Prepare the Appeals Suspense Log.
  3. Update the case to Status Code “19”.
  4. **Examination Field Cases:** Prepare Form 5348, AIMS/ERCS Update (Examination Update), and forward to manager for approval for input.
  5. **Campus Cases:** Update the case status to “Appeals”. This will provide clerical with the necessary information to make the ERCS update.
  6. Scan and upload all documents into the ECF.

- (2) The group manager will send the ECF to Appeals by uploading it to an Appeals SharePoint site for Appeals' consideration.
- (3) Controls will remain with the examination group while Appeals works the case.

25.21.4.16.2  
(03-28-2019)

## Processing Cases After Appeals

- (1) After Appeals has worked with the employer to resolve the unagreed issues, the Appeals Officer will make a determination based on the information provided regarding the proposed ESRP.
- (2) When changes are made to the proposed ESRP, the Appeals Officer will return the Form 14765 with any changes via *\*SBSE ESRP Issues* mailbox requesting the revised ESRP computation.
- (3) The examiner will use the information provided by Appeals to recalculate the ESRP and will return the revised ESRP Summary Table and updated Form 14765 to Appeals.
- (4) The Appeals Officer will provide the revised ESRP Summary Table and Form 14764 to the ALE and request a signed agreement form.
- (5) Upon case completion and approval, Appeals will mail the paper documents to the group via Form 3210, Document Transmittal, to associate with the file. Any electronic documents will be forwarded in a secure email via *\*SBSE ESRP Issues*.
- (6) The examiner will prepare and mail Letter 227-N, ESRP Acknowledgement - Appeals Determination, to the ALE and close the case using the appropriate procedures and DC. See IRM 25.21.4.19, Case Closing Procedures.

25.21.4.17  
(03-28-2019)

## Processing Payments

- (1) **Examination Field cases:** When payment is received, complete Form 3244-A, Payment Posting Voucher – Examination, as follows:
  - SSN/EIN
  - Form number/MFT: “43”
  - Tax Period: “20XX12”
  - Transaction/Received date
  - Taxpayer name, address, and ZIP code
  - Remarks, if applicable
  - Prepared by (Name and unit symbol)
  - Transaction Data: Amount Code 640, “Advance Payment on Deficiency”, with DPC “43”
  - Transaction Data, Total Payment

Follow normal payment processing procedures to remit the payment.

- (2) **Campus cases:** Campus has a service level agreement for processing ESRP payments and will follow those procedures.

25.21.4.18  
(10-22-2021)

## Case File Assembly

- (1) Examiners will use the ECF or case folder for each assigned ALE to store the all information pertaining to the ESRP case, including:
  - Information provided by IRCS,
  - Form 9984, Examining Officer's Activity Record (if not using the one contained in the ECF),

- Screen prints of research conducted as part of the case actions,
- Copies of all correspondence,
- Copies of scanned responses and documentation received,
- Copies of forms completed (e.g., Form 3177, Form 3870, Request for Adjustment), and
- Copies of documents provided by Appeals.

- (2) The ECF will be maintained on the server to retain original documents for use during the Time-Based Review or future ALE contact, (e.g., Form 843, Claim for Refund and Request for Abatement.)

**Note:** Starting with TY 2018, the new inventory system will house the ECF.

25.21.4.19  
(03-28-2019)  
**Case Closing  
Procedures**

- (1) The following case closing steps will be taken in all ESRP cases:
- Determine the appropriate DC based on the outcome of the review,
  - Ensure all paper documents are uploaded into the ECF or case folder.
- (2) **Campus cases:** Input the adjustment and any other information (i.e. TC 971/AC XX when required) to MFT “43”. Update the case status to closed and indicate the appropriate disposal code. Once the examiner updates the status, clerical will take steps to print and mail the appropriate letter and make applicable ERCS updates.
- (3) **Examination Field cases:** Prepare and process Form 3870 to get the assessment posted to MFT “43”. Prepare Form 3198, Special Handling Notice for Examination Case Processing. Move the ECF into the Final Closed Case Folder on the ESRP Shared drive.

25.21.4.19.1  
(03-28-2019)  
**Appropriate Disposal  
Codes**

- (1) The following table provides the disposal code and definition for use when closing the ESRP case file in ERCS. As there are no controls on AIMS, there is no need for a Form 5344 , Examination Closing Record.

Disposal Code	Definition
01	No Change with Adjustments. (Transitional Relief and below tolerance)
02	No Change. (No ESRP Assessment after recalculation of ESRP or Appeals)
03	Agreed after issuance of Letter 226-J
04	Agreed after issuance of Letter 227-J, Letter 227-L, Letter 227-M, or Appeals
08	Unagreed Case, no signed agreement after Letter 227-L, Letter 227-M, or Appeals

Disposal Code	Definition
36	Selected by IRCS but not worked by examiner; no ALE contact

25.21.4.19.2  
(03-28-2019)  
**Posting ESRP  
Assessments to MFT  
“43”, For Examination  
Field Cases Only**

- (1) For all examination field cases, Form 3870 must be completed to start the closing process. Form 3870 is available in the ECF. There are three potential edits to the Form 3870 by the examiner:
  1. To make an ESRP assessment (TC 298),
  2. To make an ESRP abatement (TC 299), or
  3. To reflect an ESRP of zero (TC 290).
- (2) All three edits are stored within the ECF and will be automatically populated for the examiner. It is the examiner’s responsibility to ensure the information is correct before submitting the Form 3870 to CCP for input.
- (3) The examiner will electronically sign a PDF of Form 3870 and forward to the group manager for review and signature.
- (4) After the group manager has signed the Form 3870, it will be sent via e-fax to CCP for input.
- (5) All ESRP cases must have a TC 29X input to ensure a subsequent reviewer knows the outcome of the review or to allow for a release of a freeze code when there is a credit balance on the module. Without input of this transaction, any credit balance cannot be refunded to the employer.

25.21.4.19.3  
(03-28-2019)  
**Posting ESRP  
Assessments to MFT  
“43”, For Campus Cases  
Only**

- (1) There are three potential entries for use by the examiner:
  1. To make an ESRP assessment (TC 298),
  2. To make an ESRP abatement (TC 299), or
  3. To reflect an ESRP of zero (TC 290).
- (2) The examiner will make the assessment on MFT “43” and mark the case as closed with the appropriate disposal code. Clerical will use this information to close the case on ERCS.
- (3) All ESRP cases must have a TC 29X input to ensure a subsequent reviewer knows the outcome of the review or to allow for a release of a freeze code when there is a credit balance on the module. Without input of this transaction, any credit balance cannot be refunded to the employer.
- (4) Input of a TC 298 or TC 299 requires an interest start date. The interest start date will equal the “23C” date and will be entered by the person making the assessment.

25.21.4.19.4  
(10-22-2021)  
**Form 3198 - Examination  
Field Cases Only**

- (1) The Form 3198, will be completed for use by the group secretary. The Form 3198 will not be sent to CCP.

- (2) The Form 3198 is stored within the ECF and will automatically populate. It is the examiner's responsibility to ensure the information is correct before sending the Form 3198 to the manager for approval.
- 25.21.4.19.5  
(10-22-2021)  
**Closing ERCS Controls**
- (1) The group manager will approve the case for closure.
- (2) **Examination Field cases:** The group manager will forward the Form 3198 to the group secretary to close the case on ERCS.
- (3) **Campus Cases:** Approval is done through local procedures.
- (4) The clerk is responsible for closing the case directly to Status "90" for manager approval.
- (5) The ECF will be maintained on the server for use in working Form 843 claim requests or the required Time-Based Reviews (TBR) .
- 25.21.4.20  
(03-28-2019)  
**Processing Transition Relief "A" Cases**
- (1) Transition Relief "A" is only available for 2015 calendar year or for fiscal plan years that begin in 2015 and end in 2016.
- (2) Cases with the potential for Transition Relief "A" will be processed based on the following:
- Assigned cases where ALE certifies in response to examiner contact that they meet "A" relief. See IRM 25.21.4.20.1, Assigned ESRP Cases Resulting in Transition Relief "A".
  - Cases meeting "A" relief based on filed information returns, with a credit balance. See IRM 25.21.4.20.2, Transition Relief "A" Cases with Credit Balances on MFT "43".
- 25.21.4.20.1  
(03-28-2019)  
**Assigned ESRP Cases Resulting in Transition Relief "A"**
- (1) Cases assigned as an ESRP case can result in meeting Transition Relief "A" based on a response from the ALE after receipt of Letter 226-J, Letter 227-L, or Letter 227-M. If the examiner is accepting information from the ALE certifying that they met Transition Relief "A" no ESRP assessment will be made.
- (2) Transaction Code "971" and Action Code "781" will be input on MFT "43" to indicate Transition Relief "A" was met.
- **Examination Field cases:** The examiner will submit Form 3177 to CCP for input.
  - **Campus cases:** The examiner will input the TC/AC before closing the case.
- (3) Since no assessment is being made due to "A" relief, the examiner will take steps to input a TC 290 "0".
- **Field cases:** The examiner will submit Form 3870 to CCP for input.
  - **Campus cases:** The examiner will input the TC before closing the case.
- (4) The case will be closed as a no-change using DC "01". See IRM 25.21.4.19.1, Appropriate Disposal Codes.

25.21.4.20.2  
(03-28-2019)

**Transition Relief “A”  
Cases with Credit  
Balances on MFT “43”**

- (1) Cases designated as having Transition Relief “A” based on information returns filed by the ALE but have a credit balance on the module will be assigned to the examiner to ensure resolution of the credit balance.
  - **Examination Field exam:** Process Form 3177 to CCP requesting input of TC “971” and AC “781” on MFT “43” to indicate Transition Relief “A” for IRC 4980H.
  - **Campus exam:** Input the TC “971” and AC “781”.
- (2) The case will be closed as a no-change, DC “01” after the input of the TC 290 “0” using local procedures. The input of the TC “290” will release the freeze code and allow the credit balance to be resolved.
- (3) Since the ALE does not owe an ESRP due to claimed transition relief, there will be no letters issued to the ALE. The case will simply be closed as a no-change DC “01” to release the credit balance back to the ALE.

25.21.4.21  
(10-22-2021)

**Claims or Requests for  
Reconsideration**

- (1) ESRP procedures allow employers to file either a claim for refund or request for reconsideration. Employers filing a claim for refund must use a Form 843, Claim For Refund and Request for Abatement. However, employers requesting a reconsideration after the ESRP has been assessed are not required to file Form 843, but may make the request in writing.
- (2) New information provided by an employer for a claim for refund or request for reconsideration may be considered if the case was not previously closed using a closing agreement under IRC 7121 and/or Appeals did not settle the case based on hazards of litigation. If claim for refund or request for reconsideration of the new information results in a disallowance and the employer appeals the disallowance, document the reason for the disallowance and forward the protested case to Appeals following normal ESRP case procedures.
- (3) Before filing a claim for refund, employers must pay the full amount of the ESRP assessment or, if they are only in disagreement with certain months of the ESRP, they must pay the entire amount attributable to those months.
- (4) Claims for Refund or Requests for Reconsideration will be assigned to the same group or examiner that previously worked the ESRP case. To determine if it is a Claim for Refund or a Request for Reconsideration, review the MFT “43” to see if the ESRP assessment has been paid.
  - If paid, the request will be treated as a claim for refund. If a claim for refund and no Form 843 was submitted, the examiner will request it from the ALE.
  - If not paid, the request will be treated as a request for reconsideration.

25.21.4.21.1  
(03-28-2019)

**Claim For Refund**

- (1) ERCS controls will be established as follows:
  - a. MFT: “Y2”
  - b. SC: “99”
  - c. Project Code: “1276”
  - d. Tracking Code: Same as on original control
  - e. Statute Date: None

- (2) Input TC “971”, AC “013” (**Examination Field cases**) or AC “015” (**Campus cases**) on MFT “43” to indicate a claim was forwarded to Exam to be worked. When resolved, the module will reflect either a TC 290 “0” (indicating the claim was not accepted/disallowed in full), or a TC “299” (to abate the portion of the claim that was allowed).
- (3) Contact the employer to let them know you have received the request:
  - a. Campus will call or issue Letter 2645, Interim Letter, to acknowledge,
  - b. Examination Field will call the employer to acknowledge.
- (4) Determine if information provided supports recalculating the ESRP. If not, call the employer to discuss what information is needed. If so, enter the new information in the ECF and recalculate the amount.
- (5) Issue Letter 570, Claim Allowed in Full, if the amount requested will be allowed in full.
- (6) Issue Letter 5985, Claim for Refund Full or Part Disallowance, if the amount requested is being allowed in part or disallowed in full.
- (7) Letter 5985 will include:
  - Form 2297, Waiver of Statutory Notification of Claim Disallowance,
  - Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit,
  - An Explanation of Recalculated Employer Shared Responsibility Payment to explain how the request is being processed,
  - The ESRP Summary Table,
  - Form 14764, if applicable,
  - Form 14765, if applicable,
  - Publication 5, Your Appeal Rights and How to Prepare a Protest If You Don’t Agree, and
  - Publication 594, The IRS Collection Process.
- (8) If Appeals is requested, following normal procedures for ESRP cases. Appeals will follow the established ESRP procedures and request recalculation from the examiner, if appropriate. Appeals will resolve the claim for refund with the employer and return the file to the examiner to complete the final assessment (if any) and close the case. If no agreement is reached, Appeals will issue the formal Notice of Claim Disallowance. A copy of that letter will be provided to the examiner for inclusion in the ECF. The examiner will issue Letter 227-N to the employer.
- (9) If the ALE does not agree with the full or partial claim disallowance and does not request an appeal, the examiner will prepare the case for the issuance of the Statutory Notice of Claim Disallowance.
- (10) **Examination Field cases:** The Statutory Notice of Claim Disallowance is issued by Technical Services:
  - a. Notify Technical Services and provide them with the information necessary to issue the appropriate claim disallowance letter (Letter 905, Final Partial Claim Disallowance or Letter 906, Final Full Claim Disallowance). Technical Services will need a copy of the Form 843, the Claim Letter issued by the examiner, a Computation of ESRP, a full explanation of the issue, and the Activity Record.

- b. Email the information to the Technical Services contact; once they issue the letter a copy will be provided to the examiner to be included in the ECF.
- c. Once the letter has been issued by Technical Services, the examiner will take steps to make the assessment and close the case.

(11) **Campus cases:** The Statutory Notice of Claim Disallowance will be issued when appropriate.

25.21.4.21.2  
(10-22-2021)  
**Request for  
Reconsideration**

- (1) ERCS controls will be established as follows:
  - a. MFT: "Y2"
  - b. SC: "99"
  - c. Project Code: "1275"
  - d. Tracking Code: Same as on original control
  - e. Statute Date: None
- (2) Input TC "971", AC "013" (**Examination Field cases**) or AC "015" (**Campus cases**) on MFT "43" to indicate a reconsideration was forwarded to Exam. When resolved, the module will reflect either a TC 290 "0" (indicating the reconsideration was not accepted/disallowed in full), or a TC 299 (to abate the portion of the reconsideration that was allowed).
- (3) Contact the employer to let them know you have received the request:
  - a. Campus will call or issue Letter 2645 to acknowledge.
  - b. Examination Field will call the employer to acknowledge.
- (4) Determine if the request for reconsideration meets established criteria. If it does not, the examiner will inform the employer the request will not be considered. Letter 916-C, Claim Incomplete for Processing; No Consideration, can be used.
- (5) If the employer has information that was not previously considered, review it to determine if it supports recalculating the ESRP:
  - If not, call the ALE to discuss what is needed to resolve
  - If so, enter the new information in the ECF and recalculate the amount
- (6) Issue Letter 2738, Audit Reconsideration-Complete Abatement, if the amount requested will be allowed in full.
- (7) Issue Letter 5983, ESRP Recon Request Disallowed in Full, if there will be no change made to the previous assessment.
- (8) Issue Letter 5984, ESRP Recon Request Allowed in Part, if there is a change to the original assessment.
- (9) Letter(s) 5983 and 5984 will include:
  - Explanation of Recalculated Employer Shared Responsibility Payment to explain how the request was resolved,
  - ESRP Summary Table,
  - Form 14764,
  - Form 14765,

- Publication 5, and
- Publication 594.

- (10) If the employer appeals, send case to Appeals following ESRP procedures. Appeals will follow the established ESRP procedures and request recalculation from the examiner, if appropriate. Appeals will resolve the request for reconsideration and return the file to the examiner to complete the final abatement (if any) and close the case. The examiner will issue Letter 227-N to the employer.
- (11) If no agreement is reached and the ALE does not request Appeals, the examiner will close the case based on the recalculation, if any, made after the information provided with the request has been considered.
- (12) Reasonable Cause is not applicable to ESRP.

25.21.4.22  
(10-22-2021)  
**Guidance under IRC  
4980H(d)(3) -  
Time-Based Review**

- (1) **IRC 4980H(d)(3) - Guidance for the repayment of an ESRP if the payment is based on a subsequent disallowance of the PTC.** Under IRC 4980H(d)(3), the IRS is required to prescribe rules, regulations or guidance for the repayment of any ESRP (including interest) if the ESRP is based on the allowance of an applicable PTC for an employee, the allowance of the PTC is subsequently disallowed and the ESRP would not have been required to be made but for the allowance of the PTC. The IRS refers to this process as a Time-Based Review (TBR).
- (2) This Time-Based Review requires the IRS to adjust, when appropriate, a previous ESRP assessment due to a full-time employee's PTC changes.
- (3) The Time-Based Review will be a one-time review of each tax year performed after the general three year statute of limitations on the assessable employee's Form 1040, U.S. Individual Income Tax Return, has expired.
- (4) A systemic process will be used to identify all ALEs who were assessed an ESRP. All ALEs will have TC 971 with AC 787, 4980H Time-Based Review Completed, indicated on MFT 43 to identify the TBR has been performed.
- (5) There are three potential determinations based on the TBR:
1. No changes to the assessable employee's PTC, and no changes to the previously assessed ESRP.
  2. Changes to the assessable employee's PTC, and no changes to the previously assessed ESRP.
  3. Changes to the assessable employee's PTC, and changes to the previously assessed ESRP.
- (6) No changes to the assessable employee's PTC, and no changes to the previously assessed ESRP:
- a. Input TC 290 "0" on MFT 43
  - b. Document the ECF(2) Form 9984 with "TBR – No changes to PTC, no changes to previously assessed ESRP"
- (7) Changes to the assessable employee's PTC, and no changes to the previously assessed ESRP:
- a. Locate ECF(2) and save as ECF(3) in TBR Folder on the Server
  - b. Verify that the PTC being removed was included in original computation
  - c. Recalculate the ESRP

- d. Input TC 290 "0" on MFT 43
  - e. Document the ECF(2) and ECF(3)(2) Form 9984 with: "TBR – Recalculated ESRP based on changes to PTC, No Change to previously assessed ESRP."
- (8) Changes to the assessable employee's PTC, and changes to the previously assessed ESRP:
- a. Locate ECF(2) and save as ECF(3) in TBR Folder on the Server
  - b. Verify that the PTC being removed was included in original computation
  - c. Recalculate the ESRP
  - d. Input TC 299 with the abatement amount on MFT "43"
  - e. Prepare and mail Letter 6228, ESRP Time-Based Review, and include updated ESRP Summary Table
  - f. Document the ECF(2) and ECF(3)(2) Form 9984 with: "TBR – Recalculated ESRP based on changes to PTC, Abatement of \$XXX to previously assessed ESRP. Issued Letter 6228."
  - g. Upload Letter 6228 and ESRP Summary Table in ECF(2) and ECF(3)(2)

25.21.4.23  
(10-22-2021)  
**Individual Coverage  
Health Reimbursement  
Arrangements**

- (1) On November 19, 2018, the IRS and the Department of the Treasury issued Notice 2018-88 describing the application of the employer shared responsibility provisions in IRC 4980H to an ALE that offers an individual coverage HRA, the application of certain nondiscrimination rules in IRC 105(h) to certain individual coverage HRAs, and potential safe harbors for those provisions. The IRS and the Department of the Treasury also requested comments on the issues addressed in Notice 2018-88.
- (2) On September 30, 2019, the IRS and the Department of the Treasury issued proposed regulations clarifying the application of the employer shared responsibility provisions in IRC 4980H and the nondiscrimination rules in IRC 105(h) to individual coverage HRAs, and providing proposed safe harbors for the application of those provisions to individual coverage HRAs, with certain changes compared to the potential safe harbors described in Notice 2018-88. Generally, taxpayers are permitted to rely on the proposed regulations. *Link to individual coverage HRA Proposed Regulations.*
- (3) Special rules apply for individual coverage HRAs: Generally, the Employee Required Contribution for the individual coverage HRA means the required HRA contribution, as defined in Treas. Reg. 1.36B-2(c)(5)(ii). However, for purposes of the individual coverage HRA safe harbors in Prop. Reg. 54.4980H-5(f), the required contribution is determined based on the applicable lowest cost silver plan, as defined in Prop. Reg. 54.4980H-5(f)(7)(iii) and the monthly premium for the applicable lowest cost silver plan is determined based on the employee's age, as defined in Prop. Reg. 54.4980H(f)(7)(i), and the employee's applicable location, as defined in Prop. Reg. 54.4980H(f)(7)(ii). For an employee offered an individual coverage HRA, the Employee Required Contribution is the excess of the monthly premium for the applicable lowest cost silver plan based on the employee's applicable age over the monthly individual coverage HRA amount (generally, the annual individual coverage HRA amount divided by 12). An individual coverage HRA that is affordable is treated as providing minimum value.

- a. **Applicable lowest cost silver plan.** Generally, the lowest cost silver plan for an employee for a calendar month is the lowest cost silver plan for self-only coverage of the employee offered through the Marketplace/Exchange for the ZIP code of the employee's applicable location for the month. If there are different lowest cost silver plans in different parts of a rating area, an employee's applicable lowest cost silver plan is the lowest cost silver plan in the part of the rating area in which the employee's applicable location is located. The lowest cost silver plan for an employee is the lowest cost silver plan for the lowest age band in the individual market for the employee's applicable location. For more information, see "Employer Lowest Cost Silver Plan Premium Look-up Table".
  - b. **Applicable age.** For an employee who is or will be eligible for an individual coverage HRA on the first day of the plan year, the employee's applicable age for the plan year is the employee's age on the first day of the plan year. For an employee who becomes eligible during the plan year, the employee's applicable age for the remainder of the plan year is the employee's age on the date the individual coverage HRA can first become effective for that employee. Note that for non-calendar year plans or for employees who become eligible during the plan year, the applicable age may not be the age reported in Part II of Form 1095-C.
  - c. **Applicable location.** An employee's applicable location is where the employee resides for the calendar month, or if the ALE Member is applying the location safe harbor, the employee's primary site of employment for the calendar month.
- (4) The three affordability safe harbors for the individual coverage HRA are defined in IRM 25.21.4.8, Affordability Safe Harbors.
  - (5) **Location safe harbor for individual coverage HRAs.** For purposes of IRC 4980H(b), an employer may use the cost of self-only coverage for the lowest cost silver plan for the employee for self-only coverage offered through the Marketplace/Exchange where the employee's primary site of employment is located for determining whether an offer of an individual coverage HRA to a full-time employee is affordable. The ZIP code for the employee's primary site of employment is used to identify the applicable lowest silver plan to determine affordability.
  - (6) For additional information, see individual coverage HRA Frequently Asked Questions (FAQs) on irs.gov at: <https://www.irs.gov/newsroom/health-reimbursement-arrangements-hras>