

Marketplace Appeals Process

Last week, many employers received notice from the Marketplace indicating one of their employees was qualified for advance premium tax credits. Many are asking what is this notice and how should you deal with it. The following explains what the notice is and what steps an employer should take.

What is this Notice?

A Marketplace is required to notify an employer if any of its employees are determined to be eligible for a premium assistance credit (or the cost-sharing subsidy) because the employer does not provide minimal essential coverage through an employer-sponsored plan, or the employer does offer such coverage but it is not affordable.

The notice must:

- Identify the employee;
- State that the employee has been determined eligible for advance payments of the premium tax credit, listing the potential reasons for the determination (instead of the actual reason) and without providing tax return information;
- indicate that, if the employer has 50 or more full-time employees, the employer may be liable under the employer responsibility rules of Code Section 4980H; and
- Notify the employer of its right to appeal the determination.

A Marketplace must provide this notice regardless of the size of the employer even though the employer mandate penalties only apply to applicable large employers (ALEs). In addition to the above notice, a Marketplace may also contact the employer to determine whether its employees are enrolled in or are eligible for affordable, minimum value coverage under an eligible employer-sponsored plan.

What should an employer do after receiving this notice?

The employer may appeal that an employee is eligible for advance payments of the premium tax credit based in part on a finding that the employer did not offer qualifying coverage to the employee. While a Marketplace's determination does not itself trigger the employer mandate penalties (those penalties are assessed by the IRS), employers offering coverage that should not result in the receipt of advance payment of premium tax credits may wish to use the appeals process to ensure, as much as possible, that their employees are not mistakenly receiving such payments.

The appeal may be conducted by either a Marketplace or by HHS if a Marketplace has not established an appeals process.

A Marketplace must allow employers to request an appeal within 90 days from the date of the notice from the Marketplace and permit employers to submit relevant evidence to support the appeal. An employer may request an appeal by completing an appeal request form. Click on link below to obtain a copy of the request form:

<https://www.healthcare.gov/downloads/marketplace-employer-appeal-form.pdf>

An employer may mail or fax an appeal request.

This appeals process must give employers the opportunity to:

- Present information to a Marketplace for review of the determination, including evidence of the employer-sponsored plan and employer contributions to the plan; and
- Have access to the data used to make the determination to the extent allowable by law.

Once a Marketplace receives a valid appeal request, it must:

- Timely acknowledge the receipt of the request,
- Provide an explanation of the appeals process,
- Inform the employee of the appeal, and
- Provide the employee with instructions for submitting any additional evidence for consideration by the appeals.

The Marketplace's decision is required to be provided to both the employer and employee generally within 90 days of the date the appeal request is received.

If the employer's appeal is successful, a Marketplace will send a notice to the employee encouraging the employee to update his or her Marketplace application to reflect that the employee has access to or is enrolled in other coverage.

This appeal decision does not foreclose any future appeal rights the employer may have under the Internal Revenue Code for excise tax liabilities. While an appeal of a notice by the Exchange may be beneficial, employers are not necessarily required to make this appeal to preserve their rights against the later potential assessment of Code Section 4980H liability.

For a copy of the employer appeals process regulations, please click on the link below:

<https://www.law.cornell.edu/cfr/text/45/155.555>

