

“HEALTH INSURANCE MARKETPLACE” NOTIFICATIONS, APPEALS, AND HOW ALL THIS PENALTY STUFF WORKS

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- IRS issues §1411 for qualifying employees
- Employer can challenge information on § 1411

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So, how will all this work after the appeal?

- IRS issues §1411 for qualifying employees
- Employer can challenge information on § 1411
- Then, employer will send 1094/5-C
- IRS will send “notice” of potential penalties
- Employer can respond/refute IRS’s determinations
- IRS “sends the bill”
- Employer pays, or else...?

PPACA Considerations for Appeals

- Offer v. No Offer
- Affordable v. Unaffordable Offer
- Affordability safe harbors

Important PPACA Considerations **NOT** RELEVANT for Appeals

- Large v. Small Employer
- Transition Relief
- Cash-in-lieu or Section 125 Plan...unless done properly

Affordability

“Shared Responsibility Taxes”

A. Penalty A (“Death Penalty”)

Fail to offer insurance to 95% or all but 5 FT employees, *triggered if one employee goes to the exchange:*

$(FT - 30) \times \$2,180/\text{year}$

B. Penalty B (“Unaffordable Penalty”)

Offer “unaffordable” insurance to any FT employee, *triggered if that employee goes to the exchange*

Affordable v. Unaffordable

- Employee can't pay more than 9.66% of **household income** on the cheapest **single only** plan offered
- *Tax* is \$3,120 (\$260/mo.) for each employee
 1. Who receives "unaffordable" insurance;
 2. Who buys insurance in marketplace/exchange; and
 3. Who obtains government assistance toward cost

Eligibility for Government Assistance

- Qualifications
 - AGI less than 400% of poverty
 - No other gov. insurance eligibility
- 400%
 - 1: \$47,520
 - 2: \$64,080
 - 4: \$97,200
- You have received an appeal because the named employee qualified for the assistance in the Marketplace

2016 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

PERSONS IN FAMILY/HOUSEHOLD	POVERTY GUIDELINE
For families/households with more than 8 persons, add \$4,160 for each additional person.	
1	\$11,880
2	16,020
3	20,160
4	24,300
5	28,440
6	32,580
7	36,730
8	40,890

The Marketplace Appeals: the IRS's Explanation of How This Works

It starts with the “§ 1411 Certification”

- The employee filled out an application and obtained insurance on the Marketplace (aka “Exchange”)

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- The employee filled out an application and obtained insurance on the Marketplace (aka “Exchange”)
- Then you receive the “Health Insurance Marketplace” **notification**, known as the §1411 Certification

Dear Benefits Manager:

The person listed below submitted an application for health coverage through the Health Insurance Marketplace in Nebraska and indicated that he or she is an employee of: [REDACTED] at the address shown above.

This person reported that he or she:

- didn't have an offer of health care coverage from [REDACTED]
- did have an offer of health care coverage, but it wasn't affordable or didn't provide minimum value; or
- was in a waiting period and unable to enroll in health care coverage.

The employee has been determined eligible for advance payments of the premium tax credit (APTC) or cost-sharing reductions (CSRs) for at least one month during 2016 to help pay for Marketplace coverage and has enrolled in coverage through the Marketplace.

Employee Name	Birthday	Last 4 digits of Social Security Number (if available)	Marketplace Application ID
[REDACTED]	March 11	[REDACTED]	[REDACTED]

Why am I getting this notice?

This notice informs you that your employee was found eligible for APTC or CSRs and that, if various conditions are met, you may have to pay an employer shared responsibility payment to the Internal Revenue Service (IRS) in the future. It also notifies you of your opportunity to appeal this eligibility determination.

Certain employers (those with at least 50 full-time employees or full-time equivalent employees, called applicable large employers) might have to pay an employer shared responsibility payment for any month that at least one full-time employee enrolled in Marketplace coverage and receives APTC or CSRs.

If [REDACTED] is an applicable large employer, at least one of its employees received APTC or CSRs for at least one month during 2016, and it meets other Internal Revenue Service (IRS) criteria, the IRS may determine that it must pay an employer shared responsibility payment.

Important: This is only a notification that [REDACTED] may have to pay an employer shared responsibility payment. **Only the IRS, not the Marketplace, can determine whether this employer will owe an employer shared responsibility payment.**

What can I do next?

To learn more, you can visit [IRS.gov/aca](https://www.irs.gov/aca) or contact the IRS at 800-829-4933 Monday – Friday, 7 a.m. – 7 p.m. your local time (Alaska & Hawaii follow Pacific Time).

You may file an appeal to the Marketplace if you believe there's been a mistake regarding the employee's eligibility for APTC or CSRs. If you believe your employee was incorrectly determined eligible for APTC or CSRs because you offered the employee affordable, minimum value health coverage, filing an appeal could help reduce the employee's potential tax liability. Filing an appeal could also eliminate reports from the Marketplace to the IRS that your employee received APTC or CSRs following an appeal decision in your favor. **However, filing an appeal won't necessarily affect whether you have to pay an employer shared responsibility payment to the IRS, because the IRS will determine independently whether you have to pay.**

If you appeal, the Marketplace will consider evidence provided by both you and your employee to determine if the employee is eligible for APTC or CSRs.

Remember, it's a violation of the Fair Labor Standards Act to discriminate against any employee because he or she received APTC or CSRs.

What are my appeal rights?

You have 90 days from the date of this notice to request an appeal from the Marketplace. For more information about the employer appeal process and to download the employer appeal request form, visit [HealthCare.gov/marketplace-appeals/employer-appeals](https://www.healthcare.gov/marketplace-appeals/employer-appeals) and mail the completed form to:

Health Insurance Marketplace
465 Industrial Blvd.
London, KY 40750-0061

You may also fax the form through this secure fax line: 1-877-369-0129.

You must include a copy of this notice with your appeal request.

It starts with the “§ 1411 Certifications”

- The employee filled out an application on the Marketplace (aka “Exchange”)
- Then you received the “Health Insurance Marketplace” notification, known as the §1411 Certification
- Now, you have a chance to **appeal**



Employer Appeal Request Form

Form Approved
OMB No. 0938-1213
Appeal Request Form - Employer

Use this form to appeal a Marketplace determination that an employee was eligible for advance payments of the premium tax credit and cost-sharing reductions (if applicable) in part because your business didn't offer health coverage that met minimum value requirements and was affordable with respect to this employee.

Please print in capital letters using black or dark blue ink only.

SECTION 1: Tell us about the employer who's requesting this appeal.

1. Business Name		Federal Employer ID Number (EIN)	
<input type="text"/>		<input type="text"/> - <input type="text"/>	
Primary business mailing address			Suite #
<input type="text"/>			<input type="text"/>
Business's phone number			
<input type="text"/> - <input type="text"/> - <input type="text"/>			
City		State	ZIP code
<input type="text"/>		<input type="text"/>	<input type="text"/>
Name of the primary contact (First name, Middle initial, Last name)			
<input type="text"/>			
Title of primary contact			
<input type="text"/>			
Primary contact mailing address			Suite #
<input type="text"/>			<input type="text"/>
City		State	ZIP code
<input type="text"/>		<input type="text"/>	<input type="text"/>
Primary contact phone number			
<input type="text"/> - <input type="text"/> - <input type="text"/>			

SECTION 2: Designate a secondary contact. (optional)

This is someone who may act on your organization's behalf regarding this appeal request.

Name of the secondary contact (First name, Middle initial, Last name)

Title

Secondary contact's phone number

 - -

Organization name (if applicable)

Secondary contact mailing address

Suite #

City

State

ZIP code

Secondary contact's phone number

 - -

Organization's phone number (if applicable)

 - -

SECTION 3: Tell us why you're appealing the Marketplace determination of this employee's eligibility for help with the costs of Marketplace coverage.

What's the date on the Marketplace notice? (mm/dd/yyyy)

<input type="text"/>	/	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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What's the employee's first and last name?

<input type="text"/>

What's the employee's date of birth (if available)?

<input type="text"/>	/	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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What's the employee's Application ID # (if available on your notice)?

<input type="text"/>

An individual may qualify for help with the costs of Marketplace coverage if the coverage that's offered by an employer doesn't meet minimum value requirements or isn't affordable with respect to the employee.

Use the space below to explain why this employee shouldn't have been eligible for advance payments of the premium tax credit and cost-sharing reductions (if applicable). Use extra paper, if necessary. If you're including documents to support your request, send us copies. Keep all original documents.

<input type="text"/>
<input type="text"/>

SECTION 4: Signature

By completing, signing, and dating below, I authorize the Marketplace Appeals Center to perform a review of whether the employer named on this form offered minimum essential coverage through an employer-sponsored plan that's considered affordable with respect to the relevant employee, and meets the minimum value standard.

I understand I may request a copy of my Marketplace appeal record and that certain information about the relevant employee's eligibility determination may or may not be made available to me as described in 45 CFR §155.555(g)(2) and 45 CFR §155.555(h).

By signing this form under penalty of perjury, I declare that I've provided true answers to all the questions that I've answered to the best of my knowledge. I know that I may be subject to penalties under federal law if I provide false information.

Signature

1. Printed name of primary contact (First name, Middle name, Last name)

Title

Signature

Date (mm/dd/yyyy)

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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So, what are the grounds for appeal?

Under the health care law, certain employers with 50 or more full-time employees (or equivalents) must offer health insurance coverage to their full-time employees (and their dependents) that meets certain minimum standards or pay a fee called the [Employer Shared Responsibility Payment](#).

Employers that get a notice from the Marketplace stating they may be subject to the fee can file an appeal if they believe they offered coverage to an employee that **both**:

- Is [affordable](#) **and**
- [Meets minimum value standards](#)

This appeal may determine if an employee (and any household members) got help with costs through the Marketplace at the same time their employer offered them affordable health coverage that met the minimum value standard.

IMPORTANT: This appeal will NOT determine if an employer has to pay the fee. Only the Internal Revenue Service (IRS), not the Health Insurance Marketplace or the Marketplace Appeals Center, can determine which employers are subject to the fee. Learn more about the Employer Shared Responsibility Payment on [IRS.gov](#).

So, what are the grounds for appeal?

- Grounds for Appeal
 - Offered “affordable” insurance (which met “minimum value” and “minimum essential coverage”)
 - Met an “affordability” safe harbor?
 - *That’s it?!*
- Not Grounds for Appeal...?
 - Not a “large employer”
 - In “transition relief”
 - Not a “full time” employee
- Keep in mind that non-full-time employees are still eligible for credits on the exchange

What happens after filing the appeal?



What happens next?

1. We'll send you a notice letting you know that that we received your appeal request. If there's a problem with the appeal request, we'll tell you how to correct the issue. We'll also send a notice to the employee listed on the notice you received from the Marketplace.
2. We'll review your appeal including any additional documentation provided by you and/or the associated employee. We may request additional information.
3. We'll send appeal decision notices explaining the outcome of our review to you and to the associated employee.

- Your employees will know you are “trying to kick them off their insurance...”
- Consider discussing the issue with your board before filing, since boards made insurance determinations

Remember how this works?

- IRS issues §1411 for qualifying employees
- Employer can challenge information on § 1411
- Then, employer will send 1094/5-C
- IRS will send “notice” of potential penalties
- Employer can respond/refute IRS’s determinations
- IRS “sends the bill”
- Employer pays, or else...?

Should We Appeal?



Should We Appeal?

- Check your “offer” and the 1095-C (from 2015) for that employee
- If you have offered (or will soon offer) affordable insurance to this employee, you probably will appeal
- If you have not, you probably will not appeal (but that doesn't mean you'll automatically pay the tax)

Questions?

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