



INDEPENDENT OFFICE  
OF APPEALS

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

July 5, 2024

Control No. AP-08-0724-0014  
Expiration Date: 7/5/2026  
Affected IRM: 8.7.21, 8.20.5, 8.20.7

MEMORANDUM FOR ALL IRS INDEPENDENT OFFICE OF APPEALS (APPEALS)  
EMPLOYEES

FROM: Patrick E. McGuire /s/ *Patrick E. McGuire*  
Acting Director, Case and Operations Support

SUBJECT: Appeals procedures for paperless closures of certain  
Employer Shared Responsibility Payment (ESRP) liability  
cases

**Purpose:** This memorandum issues interim guidance for the Appeals employees working ESRP liability cases received from the IRS Small Business/Self-Employed Ogden Campus Exam/Automated Underreporter Operation (SB/SE Ogden Exam/AUR). Please ensure that this information is distributed to all affected Appeals employees.

**Background/Source(s) of Authority:** Under IRC 4980H, Shared Responsibility for Employers Regarding Health Coverage, certain employers (called applicable large employers or ALEs) must either offer minimum essential coverage that is "affordable" and that provides "minimum value" to their full-time employees (and their dependents), or potentially make an ESRP to the IRS. If the ALE disagrees with a proposed ESRP, the ALE can request Appeals consideration. For protested ESRP cases, the SB/SE Ogden Exam/AUR will upload the electronic case file (ECF) to Appeals' SharePoint site, provide Appeals with new ESRP calculations as needed and then complete the final processing actions based on Appeals' final determination. Appeals' current IRM procedures require the closing of a physical case file to the SB/SE Ogden Exam/AUR to complete the final IRS case closing actions.

**Procedural Change:** The requirement to create a paper file has been replaced with new procedures to electronically send certain closing documents to the SB/SE Ogden Exam/AUR.

**Effect on Other Documents:** This guidance will be incorporated into affected IRMs within two years from the date of this memorandum.

**Effective Date:** This guidance is effective as of the date of this memorandum.

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

Attachment(s): Updated Guidance

cc: [www.irs.gov](http://www.irs.gov)

Attachment AP-08-0724-0014, Appeals procedures for paperless closures for certain Employer Shared Responsibility Payment (ESRP) liability cases

*Delete IRM 8.7.21.3 and renumbered other IRM sections.*

### **~~IRM 8.7.21.3~~**

#### **~~Account and Processing Support (APS) – Receipt of ESRP Case~~**

~~(1) Appeals Account and Processing Support (APS) receives systemic email notification that the SB/SE ESRP Compliance group transferred a case to Appeals via the [Appeals Electronic Case Receipts \(AECR\) SharePoint intake site](#). Access this site from Appeals' intranet home page > Systems and Technology > SharePoint Sites > Shared Programs Hub > Electronic Case Receipts. Upon notification, APS will:~~

- ~~a. Card the case into Appeals Centralized Database System (ACDS);~~
- ~~b. Upload the electronic case file to ACDS;~~
- ~~c. Email the Appeals' point of contact that a new case is ready for assignment, and~~
- ~~d. Delete the electronic files on the AECR SharePoint intake site~~

~~**Note:** See [IRM 8.20.5.32.1](#), Employer Shared Responsibility Payment (SRP) Cases.~~

### **IRM 8.7.21.3 (formerly IRM 8.7.21.4)**

#### **Appeals Technical Employee (ATE) – Receipt of ESRP Case**

Add new sentence to the beginning of paragraph (1).

(1) **Access the electronic case file in ACDS.** Follow the procedures in [IRM 8.6.1.2](#), New Receipts and Initial Case Actions, that require the ATE to complete initial case actions within 45 days of receiving a newly assigned or transferred case. Mail [Letter 5157](#), Non-docketed Acknowledgement & Conference, with required enclosures.

### **IRM 8.7.21.4 (formerly 8.7.21.5)**

#### **Appeals Consideration of ESRP Liability**

Add new paragraph (2).

(2) The ATE will scan, if necessary, and upload to ACDS any Appeals generated documents and correspondence, using the ACDS existing case file naming convention. For example, an Appeals Case Memorandum (ACM) is uploaded as WUNO-XXXXXXXXXX-ACM (using the actual case WUNO in place of the X's). Other attachments that are uploaded will have a brief descriptive name following the WUNO.

**IRM 8.7.21.4.1** (formerly IRM 8.7.21.5.1)  
**Calculating the ESRP Under IRC 4980H**

Revise paragraphs (1) and (2).

(1) The SB/SE Ogden Exam/AUR group is responsible for calculating IRC 4980H liabilities for cases received from this group. If the ATE determines that an ESRP recalculation is needed, send an encrypted email to the **\*SBSE ESRP Issues** mailbox and include "ESRP recalculation request" in the subject line.

(2) Include in the "ESRP recalculation request" Appeals' changes to the information shown on SB/SE's PTC Listing. The ATE reflects the changes by:

1. Making appropriate changes on a copy of the examiner's [Form 14765](#), Employee Premium Tax Credit (PTC) Listing, and saving the updated file, and
2. Sending a secure email with the examiner's updated Form 14765 (containing Appeals' changes) to the **\*SBSE ESRP Issues** mailbox.

**IRM 8.7.21.5** (formerly IRM 8.7.21.6)  
**Closing Documents**

*Revised paragraphs (1) and (4)*

(1) This section provides information on documents needed for closing ESRP liability cases received from the SB/SE Ogden Exam/AUR group, who will keep the examination case control open to await Appeals' consideration of the ESRP liability dispute. See IRM 25.21.4.16, Appeals Procedures. Upon receipt of Appeals' closing documents, this compliance group will process any ESRP account adjustment based on Appeals' decision. An Appeals Case Memo (ACM) and Form 5402, Appeals Transmittal and Case Memo, are required for each work unit. The ACM must adequately explain and support the basis of the settlement. The ATE will complete Form 5402, as instructed below:

**Form 5402 Instructions for Closing ESRP Liability Cases**

<b>In the....</b>	<b>Take the following action...</b>
"Route Case To" section	Select "Follow APS Guidelines."
<del>Form 5402/ACM "APS Instructions</del> <del>"section</del>	<del>Cross out the entire block</del>
"Proposed Penalty" and "Revised Penalty" fields	Enter the proposed ESRP and revised ESRP amounts. (Leave "Proposed Tax" and "Revised Tax" fields blank.)
"Remarks" section	Enter the taxpayer representative's name and mailing address, in addition to including his or her name in the "Taxpayer Representative" field.
"Remarks" section	Add instructions for APS to forward to the SB/SE ESRP group via the <b>*SBSE ESRP Issues Outlook mailbox</b> .  Identify the specific file names that APS needs to email to the SB/SE ESRP group. (See IRM 8.7.21.5.1, Agreed Closures, and IRM 8.7.21.5.2, Unagreed Closure)

(4) The ATE will upload all Appeals closing documents to ACDS.

### 8.20.5.33.1, Employer Shared Responsibility Payment (ESRP) Cases

*Revised paragraph (1), requiring the "PL" feature code in ACDS for paperless cases.*

(1) APS receives systemic email notification that the SB/SE ESRP Compliance group transferred a case to Appeals via the **Appeals Electronic Case Receipts (AECR)** SharePoint intake site. Access this site from Appeals' intranet home page > Systems and Technology > SharePoint Sites > Shared Programs Hub > Electronic Case Receipts. Upon notification, APS will:

- a. Card in case to ACDS as follows:
- b. Type Code = EX
- c. MFT = 43
- d. PBC = 212 Employment Tax
- e. AIMS = E
- f. Statute Code = Blank
- g. Statute Date = N/A
- h. Proposed Penalty = Use the amount(s) provided by SB/SE ESRP compliance group (Leave Proposed Tax field blank)
- i. Notes = ESRP
- j. **FEATRCD = PL**

### 8.20.7.28, Employer Shared Responsibility Payment (ESRP) Cases

*Revise paragraph (2).*

(2) APS will take the following case closure actions:

- a. Make any necessary closing actions on ACDS.  
Note: SB/SE ESRP compliance group will make the ESRP assessment (if applicable) and will send the taxpayer a Letter 227N
- b. Date stamp and mail the closing letter (Letter 5917 with enclosures) to the Employer and representative (if applicable), upload a copy of the letter to ACDS.
- c. Send via encrypted email a dated copy of Letter 5917 with enclosures, Form 5402, ACM and agreement form (if applicable), to \*SBSE ESRP Issues. When emailing the closed case file to the SB/SE Compliance Group, APS will:
  - Request a read receipt
  - Include "closed case" in the subject line
  - Attach Form 3210, Document Transmittal and request the SB/SE ESRP group sign, date and return the Form 3210 to APS
  - Upload read receipt to ACDS