



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.7.21

DECEMBER 23, 2021

## EFFECTIVE DATE

(12-23-2021)

## PURPOSE

- (1) This transmits new IRM 8.7.21, Technical and Procedural Guidelines, Employer Shared Responsibility Payment (ESRP) Under IRC 4980H.

## MATERIAL CHANGES

- (1) Added new IRM 8.7.21.1, Program Scope and Objectives, and its subsections that contain internal control information required by IRM 1.11.2.2.5, Address Management and Internal Controls. Added the following new subsections:
  - IRM 8.7.21.1.1, Background
  - IRM 8.7.21.1.2, Authority
  - IRM 8.7.21.1.3, Responsibilities
  - IRM 8.7.21.1.4, Program Reports
  - IRM 8.7.21.1.5, Acronyms
  - IRM 8.7.21.1.6, Terms - Defined
  - IRM 8.7.21.1.7, Related Resources
- (2) Added to IRM 8.7.21.1.7, Related Resources, information on the Taxpayer Bill of Rights (TBOR), based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration)
- (3) Incorporated guidance from IGM# AP-08-0221-0003, Reissuance of Interim Guidance on Employer Shared Responsibility Payment (ESRP) Cases Under IRC § 4980H, dated February 2, 2021.
- (4) Added new IRM 8.7.21.1.2, Liability under IRC 4980H, that covers the statutory requirements for determining an ESRP liability and an employer's requirement for filing certain information returns.
- (5) Added new IRM 8.7.21.3, Account and Processing Support (APS) - Receipt of ESRP Case, that contains information on APS' receipt of Compliance's electronic case file (ECF).
- (6) Added new IRM 8.7.21.4, Appeals Technical Employee (ATE) - Receipt of ESRP Case, that contains information on the Appeals Technical Employee's initial case actions and Compliance's file documents regularly included in an ESRP ECF file.
- (7) Added new IRM 8.7.21.5, Appeals Consideration of ESRP Liability, and its subsections that contain Appeals' IRM and policy guidance on conference procedures, Appeals Case Memo (ACM) procedures, reaching settlements, and requesting recalculations.
- (8) Added new IRM 8.7.21.6, Closing Documents, and its subsections on case closing documents.
- (9) Added new IRM 8.7.21.7, Appeals Case Closing, on APS' case closing actions.
- (10) Added new IRM 8.7.21.8, Case Processing After Appeals, on the SB/SE ESRP Compliance group's case closing actions.
- (11) Added new IRM 8.7.21.9, Processing Payments, on ESRP remittance procedures.
- (12) Added new IRM 8.7.21.10, Claim or Request for Reconsideration, on criteria for reconsiderations.

- (13) Added new IRM 8.7.21.11, Time-Based Reviews, on the IRC 4980H(d)(3) requirement for IRS to establish rules for the coordination of an employer's Shared Responsibility payment with an employee's premium tax credit.

#### **EFFECT ON OTHER DOCUMENTS**

This new IRM 8.7.21 incorporates Interim Guidance Memorandum AP-08-0221-0003, Reissuance of Interim Guidance on Employer Shared Responsibility Payment (ESRP) Cases Under IRC 4980H, dated February 2, 2021.

#### **AUDIENCE**

Appeals employees

Steven M. Martin  
Director, Case and Operations Support

8.7.21

Employer Shared Responsibility Payment (ESRP) Under IRC 4980H

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8.7.21.1  
(12-23-2021)  
**Program Scope and Objectives**

- (1) *Purpose:* This IRM section provides procedures for Appeals Technical Employees working Employer Shared Responsibility Payment (ESRP) cases.
- (2) *Audience:* Appeals Technical Employees (ATEs)
- (3) *Policy Owner:* Director, Case and Operations Support.
- (4) *Program Owner:* Director, Policy, Planning, Quality and Analysis.
- (5) *Contact Information:* Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Content Point of Contact (POC) shown on the Product Catalog Information page for this IRM.

8.7.21.1.1  
(12-23-2021)  
**Background**

- (1) The mission of the IRS Independent Office of Appeals (Appeals) is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service. Appeals accomplishes its mission by considering protested and Tax Court cases and negotiating settlements in a manner which ensures Appeals employees act in accord with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers. See IRM 8.1.1.1, Accomplishing the Appeals Mission.
- (2) Under the Affordable Care Act (ACA), 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 employer shared responsibility payment (ESRP) to the IRS.
- (3) The ALEs also have information reporting responsibilities regarding minimum essential coverage offered to employees. These responsibilities require employers to send written statements to employees and to the IRS. An employer that sponsors self-insured health insurance coverage – whether or not the employer is an ALE – has insurer information reporting responsibilities as a provider of minimum essential coverage. See IRC 6055, Reporting of Health Insurance Coverage, and IRC 6056, Certain Employers Required to Report on Health Insurance Coverage. Compliance uses this information, along with other information reported by taxpayers, to build ESRP and ACA non-filer cases. See IRM 4.1.27.1.2, Background For ACA.
- (4) Failure to timely file and furnish information returns could result in the assessment of civil penalties under IRC 6721, Failure to File Correct Information Returns, and/or IRC 6722, Failure to Furnish Correct Payee Statements. Appeals considers these penalty liabilities in post-assessment status, as described in IRM 8.11.4, Penalty Appeals (PENAP).
- (5) IRS Small Business/Self-Employed (SB/SE) Specialty Tax, Employment Tax Policy, provides oversight for both the Filing Compliance and ESRP Programs. The SB/SE Specialty Tax, Tax Compliance Officer (TCO) group located in SB/SE Specialty Tax, Employment Tax (ET) Examination and the SB/SE Ogden Campus Exam AUR Operation are responsible for the administration of both programs. IRM 25.21.4, IRC 6056 Non-Filer and IRC 4980H Compliance Process, contains IRM guidance for examiners addressing the Filing Compliance and ESRP Program under ACA.

8.7.21.1.2  
(12-23-2021)  
**Authority**

- (1) IRC 36B, Refundable Credit for Coverage Under a Qualified Health Plan
- (2) IRC 4980H, Shared Responsibility for Employers Regarding Health Coverage
- (3) IRC 6055, Reporting of Health Insurance Coverage, requires every person who provides minimum essential coverage to an individual during a calendar year (such as health insurance issuers or carriers for insured coverage, and plan sponsors of self-insured group health plan coverage) to report coverage information by filing an information return with the IRS and furnishing a statement to individuals. For this purpose, the provider of minimum essential coverage (except an ALE that is submitting Forms 1094-C and 1095-C in accordance with paragraph (4) below) must submit the following:
  - Form 1095-B, Health Coverage - used to provide the statement on individual coverage to both the IRS and the individual
  - Form 1094-B, Transmittal of Health Insurance Coverage Information Returns - used to transmit Form(s) 1095-B to the IRS
- (4) IRC 6056, Certain Employers Required to Report on Health Insurance Coverage, requires an “ALE” to file information returns with the IRS and provide statements to their full-time employees about the health insurance coverage, if any, the employer offered. For this purpose, the ALE must submit the following:
  - Form 1095-C, Employer-Provided Health Insurance Offer and Coverage - used to report information about offers of health coverage and enrollment in health coverage for the ALE’s employees
  - Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns - used to report summary information for each ALE Member and to transmit Forms 1095-C to the IRS
- (5) The authority of Appeals in protested liability cases is delegated to Appeals Team Managers (ATMs) and Appeals Team Case Leaders (ATCLs) as to their respective cases. See IRM 1.2.2.9.8, Delegation Order 8-8 (Rev. 1) (formerly DO-66, Rev. 15).

8.7.21.1.3  
(12-23-2021)  
**Responsibilities**

- (1) The Director, Case and Operations Support is the executive responsible for Appeals’ policy and procedural guidance.
- (2) The Director, Policy, Planning, Quality and Analysis (PPQA) is responsible for program oversight.
- (3) The policy analyst shown on the Product Catalog page as the “Content POC (Point of Contact)” is the assigned author of this IRM.
- (4) The SB/SE ESRP Compliance group is responsible for calculating ESRP liabilities, processing ESRP adjustments, and mailing IRS’s ESRP case closing letter. See IRM 8.7.21.8, Case Processing After Appeals.

8.7.21.1.4  
(12-23-2021)  
**Program Reports**

- (1) PPQA provides trend and data analysis and detailed summary reports for Appeals.

8.7.21.1.5  
(12-23-2021)  
**Acronyms**

- (1) The following table lists commonly used acronyms.

Acronym	Definition
ACDS	Appeals Centralized Database System (IRM 8.20.3)
ACM	Appeals Case Memo (IRM 8.6.2)
AECR	Appeals Electronic Case Receipts SharePoint site
ALE	Applicable Large Employer
ATE	Appeals Technical Employee
ATM	Appeals Team Manager
ECF	Electronic Case File
ESRP	Employer Shared Responsibility Payment
IDRS	Integrated Data Retrieval System
MEC	Minimum Essential Coverage
PTC	Premium Tax Credit
PTC Listing	Form 14765, Employee Premium Tax Credit Listing
SB/SE	IRS Small Business/Self-Employed

(2) Also, see Exhibit 8.1.1-1, Common Terms Used in Appeals.

8.7.21.1.6  
(12-23-2021)

## Terms - Defined

(1) The following table identifies common terms and their definitions related to IRC 4980H:

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) of that employee's annual household income. See Q & A #39 and Q & A #40 (of the <i>Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act</i> ) at <a href="https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act#Affordability">https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act#Affordability</a> . 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).

Term	Definition
Applicable Large Employer (ALE)	An employer that employed an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year. For rules relating to the determination of applicable large employer status, see 26 CFR 54.4980H-2, Applicable Large Employer and Applicable Large Employer Member.
Dependent	For purposes of IRC 4980H, the term “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. See 26 CFR 54.4980H-1(a)(12).
Employer Shared Responsibility Payment (ESRP)	An assessable payment under IRC 4980H.
Full-time employee	Generally, an employee who, for a calendar month, has on average at least 30 hours of service each week or at least 130 hours of service during the month. See 26 CFR 54.4980H-1(a)(21), Full Time Employee. For special rules related to determination of full-time employee status under the look-back measurement method and the monthly measurement method, see 26 CFR 54.4980H-3. The look-back measurement method is used to determine full-time status only for purposes of determining and computing liability under section 4980H and not for determining ALE status.
Full-time equivalent (FTE) employee	A combination of employees, each of whom individually is not a full-time employee, but who, in combination, are counted as a full-time employee. See 26 CFR 54.4980H-1(a)(22), Full Time Equivalent Employee (FTE).
Hour of service	Generally, each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer. See 26 CFR 54.4980H-1(a)(24), Hour of Service.
Individual coverage health reimbursement arrangement (ICHRA)	A type of account-based group health plan that may be integrated with individual health insurance coverage. An ICHRA allows employers to reimburse employees for qualified medical expenses, including monthly premiums and cost sharing for individual health insurance coverage. Employees must be enrolled in individual health insurance coverage, student health insurance coverage, or Medicare to be covered under an ICHRA, and employers may not offer traditional group health plan coverage to the same class of employees as is offered coverage under an ICHRA. See 26 CFR 54.9802-4(c), General Rule.



Term	Definition
Marketplace/Exchange	The Health Insurance Marketplace (also known as the “Marketplace/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 workers are considered in determining ALE status, see IRM 25.21.4.7.2, Employees Not Included When Determining ALE Status.
Seasonal worker	A worker who performs labor or services on a seasonal basis as determined by the Department of Labor, including a retail worker employed exclusively during holiday seasons.
United States	Refers only to the 50 states and the District of Columbia. It does not include the U.S. territories (which include Puerto Rico, Guam, American Samoa and the U.S. Virgin Islands).

8.7.21.1.7  
(12-23-2021)

## Related Resources

- (1) This IRM is the primary source of policy and procedural guidance for Appeals employees working ESRP cases. Also, see the following related IRM sections:
  - a. IRM 4.1.27.1.2, Background For ACA
  - b. IRM 20.2.11.14, Affordable Care Act (ACA)
  - c. IRM 21.3.1.8.3, Employer Shared Responsibility Payment (ESRP) Notices
  - d. IRM 25.21.4, IRC 6056 Non-Filer and IRC 4980H Compliance Process
- (2) For additional information, visit Appeals' *Affordable Care Act (ACA) program page*, accessible from Appeals' Examination Policy Resources SharePoint page.
- (3) Also, visit [www.irs.gov](http://www.irs.gov) for additional resources as shown below:
  - a. Pub 5208, Affordable Care Act: Are you an applicable large employer?
  - b. Affordable Care Act Tax Provisions for Employers -See <https://www.irs.gov/affordable-care-act/employers>.
  - c. Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act. See <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act>.

- d. Questions and Answers about Information Reporting by Employers on Form 1094-C and Form 1095-C - See <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-about-information-reporting-by-employers-on-form-1094-c-and-form-1095-c>
  - e. ACA Information Center for Applicable Large Employers (ALEs) - See <https://www.irs.gov/affordable-care-act/employers/aca-information-center-for-applicable-large-employers-ales>
- (4) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

8.7.21.2  
(12-23-2021)  
**Liability under IRC  
4980H**

- (1) In 2010, The Patient Protection and Affordable Care Act (ACA), P.L. 111-148, added section 4980H to the Internal Revenue Code (IRC). IRC 4980H, Shared Responsibility for Employers Regarding Health Coverage, imposes on an applicable large employer (ALE) liability for an ESRP if either subsection (a) or (b) is met.
- (2) Under IRC 4980H(a), an ALE is liable for an ESRP if the ALE does not offer minimum essential coverage (MEC) to at least 95% (70% for 2015) of full-time employees (and their dependents) and at least one of its full-time employees is allowed a premium tax credit (PTC).
- (3) Under IRC 4980H(b), an ALE is liable for an ESRP if the ALE offers coverage to at least 95% (70% for 2015) of full-time employees (and their dependents), but at least one full-time employee is allowed the PTC because the coverage was unaffordable or did not provide minimum value, or the full-time employee was not offered coverage.
- (4) All ALEs are required to file information returns under IRC 6056. ALEs are only required to file information returns pursuant to IRC 6055 if they are the plan sponsor of a self-insured health insurance plan. Some ALEs can fall under the requirements of both IRC 6055 and IRC 6056 if they have both a self-insured health plan and a third party health plan. No matter which code section imposes the reporting requirement, ALEs will use a Form 1094-C with the attached Form(s) 1095-C to report information about offers of health coverage and enrollment in health coverage for their employees.
- (5) SB/SE issues Letter 226-J, ESRP Preliminary Contact, to certain ALEs to notify them that they may be liable for an ESRP, upon determining that, for at least one month in the calendar year under review, one or more of the ALE's full-time employees was enrolled in a qualified health plan for which a PTC was allowed (and the ALE did not qualify for an affordability safe harbor or other relief for the employee). See IRM 25.21.4.8, Affordability Safe Harbors. The determination of whether an ALE may be liable for an ESRP and the amount of the proposed ESRP in Letter 226-J are based on information from Forms 1094-C and 1095-C filed by the ALE and the individual income tax returns filed by the ALE's employees.
- (6) If the ALE disagrees with the IRS's proposed ESRP, the ALE can request a pre-assessment Appeals conference in response to one of the following letters:

- Letter 227-L, Revised ESRP Calculated
- Letter 227-M, ESRP Acknowledgment - Revised ESRP Unchanged

8.7.21.3  
(12-23-2021)  
**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.

8.7.21.4  
(12-23-2021)  
**Appeals Technical Employee (ATE) - Receipt of ESRP Case**

- (1) Follow the procedures in IRM 8.6.1.2, New Receipts and Initial Case Actions, that require the ATE 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.
- (2) On the IDRS account transcript, confirm that Transcript Code (TC) 971 and Action Code (AC) 782 IDRS are posted to the MFT 43 account for this ESRP liability.
- (3) Verify the case is correctly carded-in on ACDS, as described in IRM 8.20.5.32.1, Employer Shared Responsibility Payment (ESRP).
- (4) The ESRP administrative file should contain the following items:
  - a. ESRP Summary Table (ESRP Table)
  - b. Examining Officer's Activity Record
  - c. Explanation of Changes
  - d. Form 3198, Special Handling Notice for Examination Case Processing
  - e. Form 14765, Employee Premium Tax Credit (PTC) Listing
  - f. IRC 4980H calculation
  - g. Form 2848, Power of Attorney and Declaration of Representative, if applicable
  - h. Other documents, as needed

**Note:** The SB/SE ESRP Compliance group will retain control over the ESRP case during Appeals' consideration, process the ESRP account based on Appeals' decision, and mail IRS's final ESRP case closing letter. See IRM 8.7.21.8, Case Processing After Appeals.

8.7.21.5  
(12-23-2021)  
**Appeals Consideration of ESRP Liability**

- (1) Appeals has primary responsibility for resolving disputes without litigation to the maximum extent possible. For guidance on conference procedures, preparing an Appeals Case Memo (ACM) and settlement options, see the following:

- a. IRM 8.6.1, Conference and Issue Resolution
- b. IRM 8.6.2, Appeals Case Memo Procedures
- c. IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form
- d. IRM 1.2.1.9.6, Policy Statement 8-47, Consideration to be given to offers of settlement

**Caution:** “Specific dollar” settlements are not appropriate for reaching agreements in ESRP cases. See IRM 8.6.4.2.3, Specific Dollar Settlements.

#### 8.7.21.5.1 (12-23-2021)

##### **Calculating the ESRP Under IRC 4980H**

- (1) The SB/SE ESRP Compliance group is responsible for calculating IRC 4980H liabilities. If the ATE determines that an ESRP recalculation is needed, send an “ESRP recalculation request” via encrypted email to the SB/SE ESRP Compliance group contact found on Appeals’ *Affordable Care Act (ACA) program page*, accessible from the Examination Policy Resources SharePoint site.
- (2) Include on the “ESRP recalculation request” Appeals’ changes to the information shown on SB/SE’s PTC Listing. The ATE reflects the changes by:
  1. Saving the examiner’s PTC listing as a new Excel file,
  2. Making appropriate changes on the new Excel file and saving the updated file, and
  3. Sending a secure email with the new Excel file (containing Appeals’ changes) to the SB/SE ESRP Compliance Group contact.
- (3) The ATE will use a “read receipt” when emailing the SB/SE ESRP Compliance group contact.
- (4) The SB/SE ESRP Compliance Group will recalculate the ESRP and send via encrypted email the following documents:
  - Updated ESRP Summary Table, and
  - Form 14765, Employee PTC Listing
- (5) The following IRM guidance describes the calculations for determining an IRC 4980H liability:
  - IRM 25.21.4.9.1, Calculating the ESRP Under 4986H(a)
  - IRM 25.21.4.9.2, Calculating the ESRP Under 4980H(b)

#### 8.7.21.6 (12-23-2021)

##### **Closing Documents**

- (1) This section provides information on documents needed for closing ESRP liability cases. 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**

In the...	Take the following action...
“Route Case To” section	Select “Follow APS Guidelines.”
Form 5402/ACM “APS Instructions ”section	Cross out the entire block. (APS will send the entire Appeals paper case file to the SB/SE ESRP Compliance group.)

In the...	Take the following action...
"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	Enter the SB/SE ESRP Compliance group mailing address for APS to ship the Appeals closed case file.

- (2) In general, deficiency procedures are required in respect to a tax imposed by IRC subtitles A or B (income, estate, or gift) or chapter 41, 42, 43, or 44 tax. See IRC 6212, Notice of Deficiency. IRC 4980H falls under IRC Subtitle D-Miscellaneous Excise Taxes, Chapter 43 - Qualified Pension, Etc. Plans. However, this Chapter 43 liability is not subject to deficiency procedures because IRC 4980H(d), Administration and Procedure, provides that an ESRP liability will be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.
- (3) Prepare the closing documents identified for an agreed or unagreed closure. See:
  - IRM 8.7.21.6.1, Agreed Closure
  - IRM 8.7.21.6.2, Unagreed Closure
- (4) The ATE will maintain a hard copy of all Appeals case documents for the case file. The initial employer ECF received from SB/SE will not be returned to SB/SE.

## 8.7.21.6.1 (12-23-2021) Agreed Closure

- (1) For an agreed closure, provide the following:
  - a. Form 5402, Appeals Transmittal and Case Memo
  - b. ACM, unless Form 5402 is used as ACM
  - c. Form 14799, Agreement to the Assessment and Collection of Employer Shared Responsibility Payment (ESRP) IRC 4980H
  - d. Letter 5917, Employer Shared Responsibility Payment (ESRP) - Closing Letter, with enclosures - *APS will mail this letter*
  - e. ESRP Summary Table (reflecting any updates)
  - f. Form 14765, Employee PTC Listing (reflecting any updates)

**Note:** Use Letter 969, Agreement Form Transmittal - Non-Docketed Case, to solicit an agreement on Form 14799
- (2) Form 14799 - Select the appropriate paragraph (1 or 2) depending on whether an ERSP assessment was previously made.
- (3) Letter 5917 - Select the appropriate paragraphs for an agreed closure. Letter 5917 enclosures will include the following:
  - ESRP Summary Table (reflecting any updates)
  - Form 14765, Employee PTC Listing (reflecting any updates)

8.7.21.6.2  
(12-23-2021)  
**Unagreed Closure**

- (1) Prepare the following closing documents:
  - a. Form 5402, Appeals Transmittal and Case Memo
  - b. ACM, unless Form 5402 is used as ACM
  - c. Letter 5917, Employer Shared Responsibility Payment (ESRP) - Closing Letter, with enclosures- *APS will mail this letter*
- (2) Letter 5917 enclosures will include the following:
  - ESRP Summary Table (reflecting any updates)
  - Form 14765, Employee PTC Listing (reflecting any updates)

**Note:** For Letter 5917, select the appropriate paragraphs for an unagreed closure.

8.7.21.7  
(12-23-2021)  
**Appeals Case Closing**

- (1) APS will follow the procedures in IRM 8.20.7.28, Employer Shared Responsibility Payment (ESRP) Cases, that include:
  - a. Mailing Letter 5917, with enclosures
  - b. Closing case from ACDS
  - c. Sending the ESRP case file to the SB/SE ESRP Compliance group to process the account adjustments and mail Letter 227-N, ESRP Acknowledgement - Appeals Determination.

8.7.21.8  
(12-23-2021)  
**Case Processing After Appeals**

- (1) Per IRM 25.21.4.16.2, Processing Cases After Appeals, the SB/SE ESRP Compliance Group will:
  - a. Process the ESRP account adjustment,
  - b. Mail Letter 227-N, ESRP Acknowledgment - Appeals Determination, and
  - c. Close the case using the appropriate procedures and disposal code.

8.7.21.9  
(12-23-2021)  
**Processing Payments**

- (1) When Appeals receives a remittance, prepare Form 3244-A, Payment Posting Voucher-Examination, or Form 3244, Payment Posting Voucher. See IRM 8.7.17.3, Forms 3244-A and 3244, and IRM 8.7.17.3.1, Preparing Forms 3244-A and 3244.
- (2) For a pre-assessed ESRP payment, use TC 640 "Advance Payment on Deficiency," with Designated Payment Code (DPC) "43," as shown in the following:
  - IRM 25.21.4.17, Processing Payments
  - IRM 3.17.277.2.4.17.4, Employer Shared Responsibility Payment.
  - Document 6209, Section 11 - Collection, Designated Payment Codes (DPC)

8.7.21.10  
(12-23-2021)  
**Claim or Request for Reconsideration**

- (1) For a refund claim or request for reconsideration, the IRS can consider new information provided by an employer if the case was not previously closed using a closing agreement under IRC 7121, Closing Agreements, and/or Appeals did not settle the case based on hazards of litigation. See IRM 8.7.7.16, Reconsideration of Claims for Liabilities Previously Considered by Appeals, and IRM 1.2.1.9.3, Policy Statement 8-3 (Formerly P-8-50), Mutual Concession Cases Closed by Appeals Will Not be Reopened by Service Except Under Certain Circumstances.



- (2) If Compliance disallows the claim for refund or request for reconsideration of the new information and the employer appeals the disallowance, Compliance must document the reason for the disallowance before forwarding the protested case to Appeals following normal ESRP case procedures. See IRM 25.21.4.21, Claims of Requests for Reconsideration.

8.7.21.11  
(12-23-2021)  
**Time-Based Reviews**

- (1) IRC 4980H(d)(3), Coordination with Credits, Etc., requires the IRS establish rules, regulations, or guidance for the repayment of an ESRP (including interest) if:
  - a. The ESRP payment is based on the allowance or payment of an applicable PTC to an employee or cost-sharing reduction with respect to an employee,
  - b. The allowance or payment of the PTC or cost-sharing reduction is subsequently disallowed; and
  - c. The ESRP would not have been required to be made but for such allowance of the PTC or cost shared reduction.
- (2) IRS will administer this provision through a time-based review cycle to determine the need for reducing an ALE's ESRP. Appeals is not involved with the time-based review process.

