



“I RECEIVED A NOTICE FROM THE EXCHANGE THAT AN EMPLOYEE GOT A PREMIUM SUBSIDY — NOW WHAT SHOULD I DO?”

We’re often asked how an employer will know if an employee receives a premium subsidy when discussing the “play-or-pay” penalties. The answer is really the first step in the play-or-pay assessment process. And, if things work the way they are supposed to (admittedly a big “if”), you could start seeing that first step as soon as fall 2014.

For employers too small to be subject to play-or-pay, don’t stop reading now. All employers will potentially receive the notices that make up the first step in the play-or-pay assessment process.

Play-or-pay assessment process

While a lot of the details still need to be worked out, the IRS and other federal agencies have provided a rough outline of the process that will lead to assessment and collection of the play-or-pay penalties.

1. §1411 Certification
2. §6056 reporting
3. Initial IRS contact
4. Demand for payment

Step 1: §1411 Certification

The process starts when an employee goes to the exchange and applies for a premium subsidy. As part of that application process, the exchange asks individuals whether they are employed and whether their employer offered them affordable, minimum-value coverage. If, based on those answers, the exchange determines the employee qualifies for a subsidy, the exchange is supposed to send you a notice, called a §1411

Certification, informing you that one of your employees has qualified for a subsidy and you may owe a play-or-pay penalty.

The exchange has no way of knowing if any given employer is an Applicable Large Employer (ALE) subject to the play-or-pay penalties. Consequently, all employers should receive §1411 Certifications, even if they are not subject to play-or-pay.

The §1411 Certification is also supposed to inform you how to appeal the subsidy determination. Because it’s the receipt of a subsidy that triggers a play-or-pay penalty, it’s generally in your best interests to contest a subsidy that the employee is not actually entitled to receive. For example, if the employee reported you did not offer coverage when you actually did, or the cost of coverage the employee reported is not accurate, that may affect whether the employee qualifies for a subsidy.

Open enrollment on the exchanges for 2015 begins November 15, 2014. At this point, we don’t know how quickly the exchanges will issue a §1411 Certification after an employee qualifies for a subsidy — odds are it won’t be until sometime in 2015. But some state exchanges may be more on top of it than others, so it’s certainly possible you could start receiving §1411 Certifications as early as November or December 2014.

Step 2: §6056 reporting

The next step in the assessment process is §6056 reporting. This reporting is required by all ALEs starting with the 2015 tax year. The first individual reports are due



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to employees in January 2016 with master reports to the IRS by February or March of 2016 (depending on if you file electronically or not). See our [April article](#) for more details.

Step 3: Initial IRS contact

Sometime in 2016, the IRS will supposedly take all the information contained in the §1411 Certifications, your §6056 report, your employees' individual tax returns and other relevant data and make an initial determination about whether you owe a play-or-pay penalty for 2015. The IRS will then send an initial notice indicating that they believe you owe a play-or-pay penalty and give you the opportunity to respond. At this point, we have no idea exactly when this initial contact will occur, what these notices will look like, or the time frame or process for disputing the IRS' initial determination that a play-or-pay penalty is owed.

Step 4: Demand for payment

Finally, after reviewing your response to the initial notice, if the IRS still believes you owe a play-or-pay penalty, the IRS will send you a demand for payment. It's at this point that you would actually pay any penalties you might owe.

Again, right now, we have no idea when these demands will be issued, what the notices will look like, or the time

limit for you to actually pay the penalty. It's also not clear what options you will have if you disagree with the IRS demand:

- A formal appeal process?
- Pay the demanded penalty and then file for a refund?
- Refuse to pay and wait for the IRS to file an enforcement action?

Presumably, the IRS will also have the ability to audit you during or after this process to verify that the information you provided was accurate and assess additional penalties if it was not. Conventional wisdom is the IRS will likely be lenient the first year of the assessment process. But, long term, we don't know how aggressive the IRS intends to be in pursuing these penalties or conducting audits, a decision which is likely to be heavily influenced by political considerations.

For more information on the play-or-pay assessment process, sign up for our webinar, [HC206W Strategic planning for large employers VI: Play-or-pay recordkeeping and reporting](#).

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