



# ACA COMPLIANCE BULLETIN

## HIGHLIGHTS

- Exchanges have started notifying employers when their employees are eligible to receive health insurance subsidies.
- Employers have **90 days** to appeal incorrect Exchange subsidy eligibility determinations.
- There is no reason to appeal subsidy eligibility determinations that were correctly made.

## IMPORTANT DATES

### Spring 2016

Employers began receiving notices of Marketplace subsidy eligibility.

### December 31, 2016

Exchanges may require paper appeals through Dec. 31, 2016.

Provided By:  
Memorial Financial Services  
Corporation

## EMPLOYER APPEALS OF EXCHANGE SUBSIDY NOTICES

### OVERVIEW

Employers have started receiving notices from Health Insurance Marketplaces (or Exchanges) when their employees are eligible for Marketplace health insurance subsidies. Many employers are uncertain about what actions to take after receiving a notice. This ACA Compliance Bulletin outlines best practices for dealing with these notices.

### ACTION STEPS

Employers that receive notices should consider the following:

- An employee who is offered affordable, minimum value health coverage is not eligible for a subsidy. The employer may appeal the incorrect determination.
- If the employer is an applicable large employer (ALE), an appeal of an incorrect subsidy determination may help avoid pay or play penalties.
- An employee who was not offered affordable, minimum value health coverage may be eligible for a subsidy. Appeals of correct subsidy determinations are not necessary or appropriate.



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## Background

The Marketplace subsidy notifications relate to two aspects of the Affordable Care Act (ACA): the health insurance subsidies and the employer shared responsibility (or pay or play) penalties. Individuals are eligible for subsidies if they enroll in an Exchange plan, meet tax and income requirements and are not eligible for minimum essential coverage. Minimum essential coverage includes employer-provided coverage if it is affordable and provides minimum value.

Under the pay or play rules, ALEs may be subject to a penalty if they do not offer affordable, minimum value health coverage to their full-time employees. The penalty is triggered if any full-time employee receives an Exchange subsidy, and the penalty is imposed by the Internal Revenue Service (IRS). The IRS will send separate notifications of these penalties to ALEs.

***An appeal will allow an employer to correct any inaccurate information the Exchange may have received about the health coverage it offered to an employee who was deemed eligible for a subsidy.***

Each Exchange is required to send a notice to employers regarding any employees who receive subsidies to purchase Exchange coverage. These notices—called Section 1411 Certifications—will be sent to all employers with employees who receive a subsidy to purchase coverage through an Exchange (including ALEs and non-ALEs).

This certification must identify the employee and indicate that the employee has been determined to be eligible for a subsidy. It must also indicate that, if the employer has 50 or more full-time employees, the employer may be liable for an employer shared responsibility penalty, and it must inform the employer of the right to appeal the determination.

Because of this connection between subsidies and penalties, ALEs may be understandably concerned when they receive a subsidy notice. However, receiving a determination of subsidy eligibility does not always mean that a penalty will be imposed. Also, it is not always appropriate to appeal a subsidy determination. Employers that receive subsidy notices will have to determine if a subsidy determination should be appealed.

## Appealing Subsidy Determinations

Employers have the right to appeal incorrect Exchange eligibility determinations of their employees. Appealing incorrect determinations can help protect ALEs from employer shared responsibility penalties and help ensure that individuals do not mistakenly receive health insurance subsidies.

An appeal will allow an employer to correct any inaccurate information the Exchange may have received from an employee who was incorrectly deemed eligible for a subsidy. For example, the employer could show that it offered affordable, minimum value coverage to a particular employee, who would then not be eligible for a subsidy (and, for an ALE, would not trigger an employer shared responsibility penalty).

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Keep in mind that an ALE will not always be subject to a pay or play penalty when one of its employees receives a subsidy. For example, an employee who was not offered coverage because he or she was not a full-time employee or was in a limited non-assessment period (such as a waiting period) may be eligible for a subsidy, but will not trigger a penalty for the employer.

In these types of situations, where the employee is eligible for a subsidy and the eligibility determination was correct, an appeal of the subsidy determination itself is not necessary. The Exchange is interested only in whether individuals were properly deemed eligible for subsidies, not whether the employer will be subject to a penalty. Rather, the employer would have an opportunity to explain the situation to the IRS after receiving notice of a shared responsibility penalty.

## Employer Appeals Process

If the employer wishes to appeal a subsidy eligibility determination after receiving an Exchange certification, it must file an appeal request **within 90 days** from the date the notice was sent. Information on how to file an appeal request in the federally facilitated Exchanges, as well as some state-based Exchanges, is available at <https://www.healthcare.gov/marketplace-appeals/employer-appeals/>.

HHS [regulations](#) require Exchanges to accept appeal requests by telephone, by mail, in person (if possible) and online. However, HHS [guidance](#) issued in March 2016 permits Exchanges to require that appeals be filed on paper through Dec. 31, 2016.

Exchanges and any other appeals entities must provide assistance if an employer asks for help with the filing. Employers may include evidence supporting their appeal along with the initial request, but they will also have an opportunity to present this after filing the request as well.

When the Exchange or other appeals entity receives a request for an appeal, it will send an acknowledgment of the appeal and an explanation of the appeals process to both the employer and the employee. If the entity determines that an appeal request is not valid, it must send written notification to the employer and include instructions for curing the defects.

During the appeals process, the appeals entity must give the employer an opportunity to review the information that the Exchange used to make the eligibility determination. This information will not include the employee's tax return information.

An appeals entity must make, and send written notice of, an appeal decision **within 90 days** after the date it received the appeal request.

If the appeals decision affects the employee's eligibility, the Exchange must promptly make a redetermination. Employees and their household members, if applicable, will have the right to appeal an Exchange redetermination that occurs as a result of an appeals decision.