

TWO PPACA EMPLOYER NOTICE PROCESSES

By Emily Tonkovich

The U.S. Department of Health and Human Services (HHS) recently announced it will begin notifying employers whose employees enrolled in the Marketplace and are receiving subsidies in 2016. This process is called the Marketplace's Employer Notice Program.

It is important for employers to understand that the Marketplace's Employer Notice process is **separate** from the process the IRS will use to issue penalties to employers who are subject to the Employer Mandate. According to HHS, the IRS will make the Employer Mandate penalty determination independently and "without regard to whether the Marketplace issued a notice or the employer engaged in any appeals process."

Below is a comparison of the two processes:

The Marketplace's Employer Notice Process	The Employer Mandate Penalty Process
<ul style="list-style-type: none">Beginning this spring, HHS will notify an employer if one of its employees enrolls in the Marketplace and receives a subsidy during 2016.HHS will send the notice to the employer address the employee listed on his/her Marketplace application. If HHS does not have an address for the employer, the employer will not receive a notice.The employer will have 90-days to appeal the notice.If the employer is successful, the Marketplace will send a letter to the employee asking the employee to update his/her Marketplace application and advising that failure to do so could result in a tax liability.	<ul style="list-style-type: none">The IRS will contact the employer to inform the employer of the potential penalty after the due date for the employee's tax return and after the due date for the employer to file the 1094/1095 forms.The employer will have an opportunity to respond.The IRS will then determine whether the employer is liable for a penalty.If the IRS determines the employer is liable, it will send the employer a notice and demand for payment. The notice will include instructions on how to make the payment.

For the Marketplace's Employer Notice process, if the employee does not list the correct address, the employer may never receive a notice from HHS. As noted above, this will not necessarily result in a penalty for the employer.

Employers may still want to address the Marketplace's Employer Notices as quickly as possible. Doing so can help the employer or employee address any errors or miscalculations earlier on in the year and avoid further potential tax liabilities.

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