

# REFORM *Update*

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The IRS recently released proposed guidance on the information reporting requirements for employers and health plans. The reporting requirements were initially scheduled to take effect for the 2014 calendar year. The first reports would have been due in early 2015. However, recognizing the complexity of these reporting requirements, the IRS has delayed compliance for one year.

The Affordable Care Act (ACA) includes two new reporting requirements. They are referred to as information returns and individual statements. They are referenced by their section numbers in the Internal Revenue Code:

- Section 6055 requires anyone providing minimum essential coverage to report that information to the IRS. In addition, the covered individual must also receive a statement.
- Section 6056 requires employers with 50 or more full-time and full-time equivalent employees to file an informational return. The IRS will use these reports to determine potential employer penalties under the “play or pay” mandate. The IRS will also use this data to verify an applicant is eligible for premium tax credits in the Health Insurance Marketplace. Employees eligible for affordable, minimum value employer-sponsored coverage are not eligible for subsidized coverage in the Marketplace.

In addition to these reporting requirements, most employers must report the value of employer-sponsored health plan coverage on their employees’ W-2s.

The IRS has requested suggestions on simplifying the reporting process. A less complex process will help all employers, especially certain self-funded employers that need to meet the 6055, 6056 and W-2 reporting requirements. The IRS is also seeking specific feedback on how best to limit overlap in the data required for each report.

This *Reform Update* reviews the proposed Section 6055 and 6056 reporting requirements, due dates for these returns and delivery requirements. It also outlines the IRS proposals for simplifying the reporting process.

## **Section 6055**

This section requires anyone providing minimum essential coverage to file an informational return. Minimum essential coverage means all of the following:

- Government-sponsored programs
  - Medicare Part A
  - Medicaid
  - Children’s Health Insurance Program (CHIP)

- TRICARE program
- Veterans' health programs
- Peace Corps coverage
- Employer-sponsored health plans that are not considered "excepted health benefit plans"
- Plans in the individual market (other than individual coverage purchased through the Marketplace)
- Grandfathered health plans
- Other coverage the Secretary of Health and Human Services designates as minimum essential coverage. For 2014, the Secretary has designated a state's health benefits risk pool plan and student health insurance plans as minimum essential coverage.

The annual reporting requirements will apply to calendar years as of January 1, 2015.

The following parties will be required to file informational returns:

- Health insurance carriers for all insured coverage, excluding qualified health plans (QHPs) offering individual coverage in the Marketplace
- Plan sponsors of self-funded group health plans
- The executive department or agency of a governmental unit that provides coverage under a government-sponsored program
- Anyone else who provides minimum essential coverage

Self-insured group plan sponsors include:

- The employer, when the plan is a single employer plan
- The association, committee, joint board of trustees or similar group of representatives maintaining a multiple employer plan
- The employee organization for a self-funded group health plan, or an arrangement that an employee organization itself maintains
- Each participating employer in a self-insured group health plan or a multiple employer welfare arrangement (MEWA) for the participating employer's own employees
- The designated plan sponsor or administrator for a self-funded group health plan

The information to be reported to the IRS includes:

- Name, address and employer identification number of the party required to file the return.
- Name, address and tax identification number or date of birth of the responsible individual. The responsible individual is the employee, former employee, uniformed services sponsor, parent or other related person who enrolls one or more people in minimum essential coverage.

- Name and tax identification number, **or** date of birth if a tax ID number is not available, for each person covered under the policy or program.
- The months each covered person was enrolled and entitled to receive plan benefits for at least one day.
- Any other information specified in forms, instructions or any additional published guidance.

Employers must also report additional information specific to their health plan benefit offerings:

- Name, address and employer identification number.
- Whether the coverage is a qualified health plan available through the Small Business Health Options Program (SHOP), and the SHOP's unique identifier.

Plans providing benefits to supplement a health plan or plans that **do not** offer minimum essential coverage do **not** need to file information returns. Also, organizations do **not** need to file reports for employees who are offered coverage but do not enroll.

The information is reported on Form 1029-B or a form the IRS designates as a substitute. A draft of 1029-B will be available in the future.

Section 6055 also requires entities to send each responsible individual a statement on minimum essential coverage. The entity needs to send this written statement only to responsible individuals included on the informational return. For employer group health plans, this generally means the employee or former employee.

The written statement must include:

- Contact phone number of the person filing the return, and a policy number if applicable.
- Name, address and employer identification number of the person filing the return.
- Name, address and tax identification number **or** date of birth of the responsible person. The responsible person is the employee, former employee, uniformed services sponsor, parent or other related person who enrolls one or more individuals in minimum essential coverage.
- Name and tax identification number, **or** date of birth if a tax ID number is not available, for each person the policy or program covers.
- The months each covered person was enrolled and entitled to receive plan benefits for at least one day.
- Any other information specified in forms, instructions or any additional published guidance.
- For employer-sponsored health plans only:
  - The name, address and employer identification number of the employer sponsoring the plan

- Whether the coverage is a qualified health plan available through the Small Business Health Options Program (SHOP), and the SHOP's unique identifier

The statement needs to be sent only to the responsible employee, not to each dependent the plan covers.

The employer can give the employee a copy of the information filed with the IRS or a substitute statement. The employer may provide a copy of Form 1029-B with only the information that applies to the responsible individual using a shortened taxpayer identification number in place of the full identification number on the employer return. The employer also has the option to provide the same information in the substitute statement. However, employers need more guidance on the substitute statement.

Employers still need more information to fully understand the reporting process. Self-funded employers should review the data they must include in the information return and the individual statement. They may need to update their systems to track this information.

During 2014, the IRS is likely to simplify the data it is requesting. See "Simplified Proposed Reporting Options" later in this *Reform Update* to get a sense of these changes.

### **Section 6056**

This informational reporting applies only to applicable large employers who are subject to the "play or pay" mandate. The IRS will use the data required in this report to determine whether the employer must pay a penalty under the employer mandate.

Section 6056 requires large employers to file specific information with the IRS using Form 1094-C. It also requires them to send employees an individual statement using Form 1095-C. Substitute forms designated by the IRS can use instead of 1094-C and 1095-C. The IRS will make drafts of 1094-C and 1095-C available in the future.

Section 6056 requires employers to report the following information for **each full-time employee (those working 30 or more hours a week)**:

- The name, address and employer identification number of the applicable large employer.
- The calendar year for which the information is reported.
- A certification as to whether the applicable large employer offers its full-time employees and their dependent children minimum essential coverage under an employer-sponsored health plan.
- The months during the calendar year when coverage was available.
- Each full-time employee's share of the lowest-cost monthly premium for self-only coverage, by calendar month, in the plan option providing minimum value to that employee.
- The number of full-time employees for each month of the calendar year.

- The name, address and taxpayer identification number for each full-time employee during the calendar year, and the months during which the employee was covered under the plan.
- Any additional information that the Secretary may require. Additional information expected to be requested includes:
  - Indicator code showing whether the plan provides minimum value coverage (60% value)
  - Indicator code showing whether the plan covers spouses
  - Indicator code showing whether a new-hire waiting period affected the employee's effective date

The statement sent to full-time employees must include the following information:

- The name, address and employer identification number of the applicable large employer.
- The information applicable to the full-time employee on the IRS reporting for Section 6056.

An employer can give an employee either a copy of Form 1095-C or a use a substitute form permitted by the IRS. Any substitute form must include all the required information and comply with published guidance on substitute forms.

### **Timing and Delivery Requirements**

The timing and delivery requirements are the same for Sections 6055 and 6056 reporting. However, the requirements differ for the IRS reporting and the individual statements.

### ***IRS Reporting***

Employers have time before the initial reporting is due. The reporting to the IRS is due on February 28 of the year following the year in which minimum essential coverage is provided. For the 2015 calendar year, the report is due by February 28, 2016. This due date applies only if the employer files a paper copy of the report.

The IRS will allow more time if the employer files the report electronically. The employer has until March 31 of the year following the calendar year for which data is reported. For the 2015 calendar year, electronic reporting is due by March 31, 2016. Electronic filing is mandatory for the employers required to file at least 250 informational returns during the calendar year. This number includes more than just Section 6055 and 6056 reports. It also includes Forms W-2 and Forms 1099, as well as income tax returns, employment tax returns and excise tax returns. The details on electronic formatting will be included in the instructions for Forms 1029-B and 1094-C.

The regulations provide a couple of examples:

- Company A is an applicable large employer. For the 2015 calendar year, Company A is required to file 275 Section 6056 information returns. Therefore, Company A must file the Section 6056 return electronically.
- Company B is an applicable large employer. For the 2015 calendar year, Company B is required file 200 W-2 returns and 150 Section 6056 returns. This means the Section 6056 returns must be filed electronically, because Company B is filing a total of 350 informational returns for 2015.

The Commissioner of the IRS may waive the electronic reporting requirement in hardship situations, primarily when the financial impact of electronic filing is an issue. A request for a waiver should be filed 45 days before the due date of the Section 6056 filing.

If an entity does not file the informational return in the electronic format when required, the entity is deemed to have failed to file the return.

Organizations that either do not file a return or file returns with incorrect information will pay a penalty. If the information reported is incorrect, the IRS will allow employers a reasonable period of time to correct it and avoid the penalties. The penalties are generally \$100 for each return, capped at \$1.5 million for all failures during a calendar year.

### ***Individual Statements***

Employers must provide the individual statements under both Sections 6055 and 6056 sooner than the informational returns. The statements are due on January 31 of the following applicable calendar year. For the 2015 calendar year, the individual statement is due on January 31, 2016.

The IRS may extend the deadline for 30 days if the employer has a good reason. The applicable employer must make a written request explaining the reason.

Employers can mail individual statements to the responsible individual's last known address. A reporting entity may also deliver the statement electronically if the electronic delivery requirements are satisfied.

In order to send an individual statement electronically, the employer must:

- Receive consent from the employee that the statement can be sent electronically. Employees can consent electronically or in any way that reasonably demonstrates that they will be able to access an electronic statement.
- Allow an employee to revoke the consent at any time. The employee must revoke consent in writing on paper. The employer will confirm consent is no longer valid in writing (either by paper copy or electronically).
- Notify employees of any changes in hardware or software requirements necessary to access the electronic statement.

- Notify employees of the scope and duration of the consent. Will consent apply only to the first statement? Will consent apply until an employee revokes consent?
- Notify employees if the employer will no longer deliver information electronically for all employees.
- Explain how to update the information the employer needs to send the statement; for example, information on how to update email addresses.
- Explain how to access and print the statement. The following sentence must be included in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." This statement must be the subject line if the instructions are sent by email.
- If an email is undeliverable and the employer doesn't have the correct electronic address, then the employer must send the statement by alternate means. The employer can send the statement by U.S. mail or, deliver the statement in person within 30 days after the return of the email.

The electronic version of the statement must contain all the required information.

A statement published on a website must remain on the website through October 15 of the following calendar year.

The proposed regulations provide some examples:

- Employer A sends Employee B a letter stating that Employee B may consent to receive the statement required under Section 6055 electronically through a website. If the employer does not receive electronic consent, then the employer will send a paper copy. The letter describes how to consent through a specific website. The employee would download the consent agreement and email it to a human resources representative. The consent document uses the same electronic format that Employer A will use to provide the individual statement. Employee B consents as required. This consent satisfies the requirement.
- Employer A posts a notice on its website stating that B may receive the statement required under Section 6055 electronically. The website includes instructions on how Employee B may access a secured web page and consent to receive the statement electronically. Employee B accesses the secured site and follows the instructions to provide consent. Employee B has consented to receive the statement electronically.

Penalties apply to organizations that either do not file a return or provide incorrect information on the return. The penalties are generally \$100 for each return, capped at \$1.5 million for all failures during a calendar year.

### **Simplified Proposed Reporting Options**

The IRS recognizes that there is some overlap between these reporting requirements. However, the informational returns themselves are not redundant.

Section 6055 reporting is used primarily to gather information to enforce the ACA individual mandate. Section 6056 reporting will be used to determine whether employers are complying with the “play or pay” mandate and to evaluate whether the employer owes penalties under that mandate. Finally, the IRS will use the data to determine whether employees are not eligible for tax credits for coverage they obtain through the Marketplace because they are eligible for employer-sponsored affordable, minimum value coverage.

Different organizations are subject to the Sections 6055 and 6056 reporting. However, self-funded employer group health plans reporting requirements can overlap significantly.

The IRS is actively seeking comments on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of the IRS, including whether the information will have practical utility.
- How to enhance the quality, utility and clarity of the collected information.
- How to minimize the burden of complying with the proposed collection of information, including using automated collection techniques or other forms of information technology.
- Estimates of capital or start-up costs and the costs of operating, maintaining and purchasing services to provide information.

The preamble to these proposed regulations discusses the following possible options to simplify reporting:

- Using specific codes on the employee W-2s to indicate whether employees, spouses and dependents have been offered coverage, rather than issuing a separate individual statement.
- Allowing employers to use a substitute form for the individual statements under Sections 6055 and 6056 so that one statement could meet the requirements of both sections.
- Modifying the reporting so that entities do not have to report specific dates of coverage, but just the months of coverage.
- Eliminating the need to determine full-time and part-time status when adequate coverage is offered to all employees who could potentially be considered full-time (30 or more hours a week).
- Allowing employers to report only the cost of coverage if the cost for single coverage exceeds a specified dollar amount.

The IRS is asking for any feedback that will allow it to obtain the information it needs as simply as possible.

### **Concluding Thoughts**

The IRS urges employers to comply for 2014 voluntarily. However, complying may be difficult unless the IRS releases drafts of the forms that employers will need to use for reporting. At a minimum, employers should start reviewing the data they know the IRS will request. Is this information currently housed in the system? Can they report it monthly?

The proposed regulations may allow some applicable large employers to use a third party for these filings. It is expected that third parties will offer services to provide the required reporting. In some cases, an applicable large employer may be a member of a larger IRS-controlled group. In that situation, one employer in the controlled group may submit the filings for other members within the controlled group.

Employers can now consider the best way to obtain the data they need. It is quite likely that the reporting requirements will change since the IRS requested very specific employer feedback in the proposed regulations. Employers hope the IRS will consider their comments and modify the regulations soon.

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