

REFORM *Update*

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The government recently released final Affordable Care Act (ACA) reporting requirements/regulations. The proposed regulations were issued last fall and were explained in our Reform Update at http://www.mcgrawwentworth.com/Reform_Update/2013/Reform_Update_72.pdf.

The final regulations significantly changed the two employer reporting requirements:

- Section 6055 – applies to organizations that offer Minimum Essential Coverage (MEC).
- Section 6056 – applies to all Applicable Large Employers (ALEs). An ALE is an employer with 50 or more full time equivalent employees and subject to the ACA “play or pay” rules.

The IRS will use Section 6055 reports to monitor compliance with the individual mandate requiring taxpayers to either obtain MEC or pay a tax penalty. It will use Section 6056 reports to determine whether an employer needs to pay a penalty for failing to offer minimum value, affordable coverage. The IRS will also use Section 6056 reports to audit the premium credits individuals receive to purchase subsidized coverage in the Marketplace.

The reporting requirements were originally set to apply in 2014. However, the IRS delayed the reporting requirements until 2015 out of concern that reporting parties did not have enough time to comply. The reporting requirements will apply for the 2015 calendar year and reports will be due in early 2016.

The final regulations significantly changed the Section 6056 reporting. This *Reform Update* reviews the final reporting requirement rules.

Section 6055 Reporting

Section 6055 requires any organization offering MEC to report certain information related to MEC. Government plans, insurance carriers and self-funded employers are subject to this reporting. The final rules recognized self-funded employers would be burdened because they would be subject to both Section 6055 and 6056. The final rules do not subject Section 6055 reporting to self-funded employers. Instead, the IRS will issue an addendum to Section 6056 reporting to cover the information required by both 6055 and 6056 reporting for self-funded employer-sponsored health plans.

The Section 6055 reporting has two parts. Reporting entities must submit an aggregate report to the IRS and an individual statement to the responsible person, generally the policyholder under an individual insured plan. The responsible person would be the primary insured under government programs or the employee under fully-insured group health plans.

The final rules clarify that the Section 6055 reporting is meant for MEC **only**, not for supplemental coverage. Thus the IRS does not require reports for health reimbursement arrangements (HRAs) tied to a medical plan or for onsite clinics, wellness plans or any other medical benefits ancillary to the MEC.

Since self-funded employers do not have to complete the Section 6055, this *Reform Update* will not cover the information that needs to be included. However, a tax identification number (social security number for most) must be reported for **all** covered members. Reporting entities must make reasonable efforts to obtain the tax ID number (TIN) for all covered members. Reasonable efforts are defined as follows:

- A reporting entity must ask for the dependent's TIN when the relationship with the reporting entity is first established. For health plans, this will typically be when an employee or dependent enrolls.
- If the reporting entity does not receive the TIN at first, it must try again by December 31 of that year. For most employers this time frame will align with open enrollment.
- If the dependent does not provide the TIN after the first two attempts, the plan sponsor must try again by December 31 of the following year. If the TIN is still not reported, the employer is seen as making reasonable efforts.

Reporting entities can use a birth date if they cannot obtain a tax ID number after making reasonable efforts. Since the process can last between 2 and 3 years, employers should use birth dates when they cannot obtain TINs before the report is due. For this purpose, employers need to understand their insurance carriers will make reasonable efforts to obtain the tax ID numbers of covered dependents. Self-funded employers may also need the dependents' TINs for the addendum to the Section 6056 reporting. Self-funded employers should also make reasonable efforts as described above to secure TINs for all covered members.

Finally, reporting entities need only report individuals enrolled in the health plan. This reporting will not require them to include eligible individuals that are not enrolled.

Section 6056 Reporting

Section 6056 reporting applies to employers with 50 or more full-time employees or full-time equivalent employees. This determination is made based on the IRS controlled group. However, penalties under the "play or pay" rules are administered at the employer level. Each member of the IRS controlled group must submit a Section 6056 informational return. Employers can use a third party to file the report.

The final rules include a general reporting method and a number of alternative reporting methods. All employers can use the general method. The alternative methods apply only in limited situations. They can replace the general reporting method.

General Method

This general method uses Form 1094-C for aggregate IRS reporting and Form 1095-C for individual statements. Employers must submit a separate return for each full-time employee, similar to how they submit separate W-2s. The IRS may designate substitute forms as well. The IRS has not released model forms yet.

Since the IRS combined Section 6055 and 6056 reporting for self-funded plans, the Form 1094-C and 1095-C sections employers need to complete are different.

- *Self-Funded Medical Plans* - Employer uses Form 1094-C. The employer will need to complete both sections of the form to submit all the information required under both Sections 6055 and 6056.
- *Insured Medical Plans* - Employers also use Form 1094-C, but the employer completes only the information that applies to the Section 6056 reporting. Health insurers, self-insured multi-employer plans, and providers of government-sponsored coverage report the required Section 6055 information on Form 1095-B.

The final rules have slightly changed the information required for Section 6056. The following information needs to be included on the Section 6056 reporting:

- Name, address and EIN of the employer (each separate employer in a multiple subsidiary situation).
- Address and telephone number for the employer's contact person (can be a third party).
- Calendar year for which the information is reported.
- Certification as to whether full-time employees (and dependents) could enroll in minimum essential coverage (MEC).
- Number of full-time employees each month.
- For each full-time employee:
 - the months MEC was available
 - the employee's share of the lowest cost monthly premium for self-only coverage providing minimum value available to that employee (by month)
 - name, address and social security number and the months, if any, when the employee was covered under an eligible employer-sponsored health plan

Indicator codes to report the following information:

- Whether coverage provides minimum value and whether the employee could enroll his or her spouse.
- Whether an employee's effective date of coverage was affected by a permissible waiting period, by month.
- Whether the employer had no employees or otherwise credited hours of service, by month.

- Whether the employer is part of a controlled group and, if so, the name and EIN of each member that is part of the applicable large employer on any day of the year.
- For those that contribute to a multi-employer plan (such as a union plan), whether the employer does not have to pay the employer penalty because the employer contributed to that plan.
- If a third party is reporting for the employer, the name, address and ID number of the third party

The following information may also need to be reported for each full-time employee:

- Whether the employer offered MEC to the employee only, employee and dependents only, employee and spouse only, or employee and family.
- If the employer did not offer coverage, whether no penalty applies because the employee was not full-time or not employed during that month or whether any other exception applies.
- Whether the employer offered coverage even though the employee was not full-time.
- Whether the employer met any affordability safe harbor.
- Information on the number of months that the plan covered any dependents. This applies only to self-funded plans because it is required under Section 6055

For employers with employees covered by a union trust plan or a multiple employer welfare arrangement (MEWA), the plan sponsor should help collect data. The plan sponsor may prepare statements for employers on employees covered by a trust plan or MEWA. This is required so employers can submit the Section 6056 reporting on all of their full-time employees. Further details will be provided with the instructions and model forms.

Section 6056 still requires an individual statement. This statement may be Form 1095-C or a substitute statement.

Alternative Reporting Options

The purpose of the Section 6056 reporting is to help the IRS administer the penalties under “play or pay” rules and audit premium tax credits offered in the Marketplace. These reporting requirements may present a challenge. Based on employer comments, the IRS has now provided simpler reporting options for employers. These alternatives apply only in certain employer situations. If an alternative reporting method applies, it can be used instead of the general reporting method.

Certification of Qualifying Offers Alternative

Under this alternative, employers certify on the Section 6056 transmittal form that they presented a “qualifying offer” of coverage to full-time employees and can provide a simple statement to the employee (as opposed to providing a Form 1095-C). An employer can use this reporting alternative if for **all** months during the **applicable year** in which the employee works full-time (30 or more hours a week), the employer makes a “qualifying offer.”

A “qualifying offer” of coverage means the employer:

- Offered MEC providing minimum value at a cost for employee-only coverage of not more than 9.5% of the **single mainland federal poverty line**. In 2014 that would be an annual contribution for employee only coverage of roughly \$1,100.
- Offered MEC to the employee’s spouse and dependent children (natural and adopted).

Employers taking advantage of this alternative will need to report only:

- Employee name
- Employee address
- Employee tax identification number

Employers can use a code for each month they make a qualifying offer to an employee who was not offered coverage for the full 12 months of the year.

This alternative is not available to an employer that does not offer dependent coverage in 2015.

2015 Transitional Rules for Qualifying Offers Alternative

For 2015, this option is available to employers able to certify that they made a qualifying offer of coverage to at least 95 percent of full-time employees, their spouses and their dependent children. The employer must send a simple statement to the employee about the coverage by the following January 31. The IRS will provide the format for this statement.

For 2015, coverage for all twelve months of the applicable year is not required for this transitional reporting method. Simply filing the Form 1095-C satisfies the IRS filing requirement. This form requires the employee’s name, social security number and address. It will also have codes to indicate the following possibilities:

1. A qualifying offer was made for all 12 months.
2. A qualifying offer was made for specific months.
3. A qualifying offer was not made.

The IRS will make model forms and instructions available. These forms will help employers evaluate whether this alternative reporting option is workable.

Reporting without Separate Identification of Full Time Employees Alternative

This method is available to employers making an offer of MEC to at least 98 percent of the employees whose information they report under Code Section 6056. For this purpose, employers can determine affordability under any of the applicable safe harbors. The employer in this case is not required to identify which employees are full-time.

The final regulations give an example of this situation. ABC Company has 1,000 employees expected to work at least 27 hours a week. The employer does not want to determine whether any of

these employees are full-time under the employer mandate. Instead, the employer offers minimum value, affordable coverage to the 990 of these 1,000 employees working 25 or more hours a week. Under this alternative, the employer is not required to report either the total number of full-time employees for the year or whether an employee was considered full-time for any month in the calendar year. If any of these employees go to the Exchange to purchase subsidized coverage, the IRS will contact the employer. The employer will have to determine full-time status if the IRS needs that information to monitor premium subsidies.

Transition Reporting for Mid-Size Employers (50 to 99 Full-Time Employees)

Employers eligible for transition relief from employer penalties must still report for 2015. However, under this reporting method, the employers need simply certify that they meet the eligibility requirements for the 50 to 99 transitional relief.

To be eligible for the 50 to 99 delay in penalties (until 2016) employers must certify the following:

- **Limited Workforce Size** –the number of full-time employees and equivalents falls between 50 and 99.
- **Maintenance of Workforce and Aggregate Hours of Service** – From February 9, 2014, to December 31, 2014, they did not deliberately reduce the size of their workforce or overall hours of service worked in order to qualify for this transitional relief. Reducing the workforce or overall hours of service is permitted only for a bona fide business reason.
- **Maintenance of Previously Offered Health Coverage** - From February 9, 2014, to December 31, 2015, the employer will not eliminate or materially reduce health care coverage that was offered as of February 9, 2014. For non-calendar year plans, the reduced health care coverage cannot occur before the last day of the 2015 plan year. Employers are not considered to be eliminating or reducing coverage if:
 - They continue to offer employer funding for coverage that is at least 95 percent of the contribution they offered on February 9, 2014, or they offer the same contribution percentage.
 - If benefits are modified, the plan retains minimum value after any benefit changes.
 - The employer does not alter the terms of eligibility for the group health plan to narrow or reduce the class of employees or dependents offered coverage under the plan as of February 9, 2014.

This option will allow employers to certify they meet the requirements for delaying penalties.

These alternatives may be options for some employers and not others. Employers should review the model forms and instructions once they are released. The instructions will provide useful details for all the reporting options available to meet the Section 6056 requirements.

Timing and Process

The timing and process for filing both Sections 6055 and 6056 reporting remains the same as in the proposed rules.

Electronic filing of Forms 1094-C and 1095-B is required, except for employers filing fewer than 250 returns under Section 6056 during the calendar year.

Employers can send the required individual statements electronically if the employer follows the rules that apply, such as obtaining the employee's consent to electronic disclosure of ***this specific form***. An employee's consent to receive the W-2 electronically does not apply. Employers would need to receive consent specific to this form. The process for securing consent is the same process used to consent to receive the W-2 electronically.

Employers can mail these individual statements if they do want to send them electronically. The final rules indicate that the Form 1095-C can be included in the same mailing as the W-2. Employee statements must be provided annually on or before January 31 (these are the same filing due dates as apply for Forms W-2).

Annual filings related to the aggregate reporting are due no later than February 28 of the year following the year to which the information relates if sent in paper format. If filed electronically, the electronic file must be sent by March 31.

These deadlines apply even to plans that are not calendar year plans. Thus the first filings and statements will be due in early 2016 for the 2015 calendar year.

Penalties

Two different sections of the Internal Revenue Code discuss the penalties for not complying with Section 6056 reporting:

- Section 6721 discusses failing to send correct returns to the IRS. The basic penalty is \$100 for each incorrect return. The total fine during any calendar year will not exceed \$1,500,000.
- Section 6722 discusses failing to provide employee statements. The penalty is the same as above but applies for not providing individual statements.

The IRS will recognize good faith efforts to comply with this reporting in 2015. For reports filed in 2016 (with 2015 information), no penalties will apply to reporting entities that report incorrect or incomplete information, if they can show they made good faith efforts to comply with the reporting requirements. This relief will not apply if an employer does not file on time or has not made a good faith effort to comply.

Concluding Thoughts

Employers now have many of the details they need to prepare for the reporting requirements. They will need to determine formatting when the model forms are released. The model forms will likely provide more details on the General Method and alternative reporting options available to employers.

Employers can begin to identify the data the General Method requires and determine where their systems house this data. Several proposed simplified data reporting options may not apply to some employers. However, other simplified reporting options may be available. Employers may use different alternative reporting methods for different segments of employees. The IRS will provide more details with the sample forms and instructions.

Employers can start planning based on these final rules. Remember, all applicable large employers must submit this data for the 2015 calendar year.

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