

Treasury Releases Proposed Regulations for Health Care Law's Information Reporting Requirements for Employers, Insurers

The Department of the Treasury and the Internal Revenue Service (IRS) on Thursday, September 5, 2013, released long-awaited notices of proposed rulemaking on information reporting requirements for employers and health insurers under Internal Revenue Code sections 6055 and 6056 as enacted by the Affordable Care Act (ACA). Under section 6056, large employers subject to the ACA's employer mandate (section 4980H) must file a return with the IRS and provide a statement to each full-time employee with information regarding the offer of employer-provided health care coverage. Under section 6055, employers who offer self-funded plans and insurers generally must file a return with the IRS and provide a statement to each individual on who is covered by plans that constitute minimum essential coverage.

Notice 2013-14 issued earlier this summer provided 2014 transition relief for information reporting required under sections 6055 and 6056. The proposed regulations incorporate this relief and provide that the first filings to be filed on a mandatory basis will be for calendar year 2015 and will be filed in early 2016.

The proposed regulations repeatedly request comments on ways to streamline the reporting rules and avoid duplicative reporting. At the same time, Treasury and IRS want taxpayers to be mindful that the information being reported is designed to assist the IRS and individuals with the fair and efficient administration of the individual mandate (section 5000A), the employer mandate (section 4980H), and also the premium tax credit (section 36B).

The proposed rules are scheduled for publication in the September 9, 2013, Federal Register, and comments are due by Friday, November 8, 2013, after a 60-day comment period. A public hearing on reporting under section 6056 is scheduled for Monday, November 18, 2013, at 10 am, and a public hearing on reporting under section 6055 is scheduled for Tuesday, November 19, 2013, at 10 am.

ACA Reporting Provisions

The ACA enacted three separate information reporting provisions requiring employers and health insurance issuers to report to the IRS and furnish statements to individuals with information regarding health care coverage. Each reporting provision was enacted for a particular purpose.

- Section 6051 requires employers to report on an annual basis all wages and wage-related information on the Form W-2. Beginning for 2012 (the Form W-2 provided to employees in January 2013), employers who file 250 or more Forms W-2 are required to report the aggregate cost of employer-sponsored health care coverage. This provision of section 6051 was enacted to provide employees a transparent view of the

value of the employer-sponsored health care coverage that is provided on a pre-tax basis.

- Section 6055 requires employers sponsoring self-insured group health plans, insurance issuers, and governmental units to report to the IRS and provide a statement to individuals with information regarding minimum essential coverage. Employers and health insurance issuers report the information only if the individual is actually enrolled in coverage. This annual filing tabulates the individual's health care coverage information on a monthly basis. Section 6055 was enacted to provide the IRS and individuals with the requisite information to administer the individual mandate.
- Section 6056 requires large employers (those employers with 50 or more full-time equivalent employees, including governmental units) to report to the IRS and provide a statement to all full-time employees with information about the applicable offer of employer-provided coverage, whether or not the offer of coverage was accepted. This annual filing reports the offer of health care coverage on a monthly basis. Section 6056 was enacted to provide the IRS with information necessary to administer the employer mandate. It also provides the IRS and individuals with information necessary to administer the premium tax credit under section 36B.

Employers and health insurance issuers repeatedly raised the concern that they are subject to duplicative reporting requirements. In fact, section 6056(d) provides that combined reporting under sections 6051, 6055, and 6056 should be permitted to the maximum extent feasible. Treasury and IRS acknowledge these comments and the statutory authority, but nonetheless the proposed regulations generally do not permit combined reporting based on the reasoning that each of the reporting provisions requires different types of information, applies to different entities, and is compiled on a different timeframe (section 6051 reports annual information and sections 6055 and 6056 report monthly information). The proposed regulations state that Treasury and IRS are considering ways to combine the reporting by providing an option to use an indicator code on the Form W-2 in certain circumstances. The proposed regulations also provide some concrete proposals for combined reporting in unique cases including:

- Permitting an employer that offers an insured health care plan to its employees to enter into an agreement with a health insurance issuer to include information required under section 6056 with the return and statement to be provided by the issuer under section 6055.
- Permitting an employer that offers a no-cost or very low-cost employer-provided self-insured coverage to report only on the section 6055 return to the IRS and the Form W-2 provided to the employee.
- Permitting employers sponsoring a self-insured group health plan to fulfill their obligation to furnish an employee statement under both sections 6055 and 6056 through the use of a single substitute statement.

Treasury and the IRS requested comments on how to combine the reporting, but still maintain the integrity of the tax administration.

See Appendix A with side-by-side chart of the reporting requirements for each of the reporting provisions.

Section 6056: Employer reporting on coverage offered under employer-sponsored plans

For large employers, section 6056 requires the collection and reporting of detailed information regarding all full-time employees and the offer of employer-provided health care coverage. Treasury and the IRS met with and received comments from employers to address alternative ways to simplify the reporting requirements and avoid duplication.

Although the proposed regulations under section 6056 attempt to streamline the reporting requirements, the default, general method of reporting continues to require employers to report detailed information about the employer-provided health care plans and the number of employees who are employed and offered coverage on a month-by-month basis. In response to comments from employers, the proposed regulations propose options for alternative simplified methods of reporting that would reduce the amount of information to be reported and attempt to avoid duplication. The simplified reporting alternatives may be helpful for some employers, but offer little or no relief for others.

General method of reporting. The default, general method of reporting requires large employers to report all information required by the statute with some limited changes where Treasury and the IRS concluded that the information reported should be modified or was not needed. (See Appendix A for a full list of information required to be reported under the general method). Tabulating information on a month-by-month basis during the calendar year with respect to each full-time employee likely will be one of the most challenging aspects of the general reporting method for employers. This information includes:

- The number of the employer's full-time employees for each month during the calendar year
- For each full-time employee, the months during the calendar year for which coverage under the plan was available
- For each full-time employee, the employee's share of the lowest-cost monthly premium for self-only coverage providing minimum value that the large employer offered to that full-time employee, by calendar month

In addition to all of the required statutory information that must be reported, Treasury and IRS expect to request additional information that the IRS believes is necessary for the verification process. In some cases the additional information will be reported through the use of indicator codes as part of the information return. Included in the list of additional information to be reported is whether the employee had the opportunity to enroll his or her spouse in coverage that meets the minimum value standard and whether coverage was offered to employees who are not full time. (See Appendix A for a full list of the additional information to be reported.)

Statements to full-time employees. Every employer required to file a section 6056 return with the IRS must also furnish a section 6056 statement to each of its full-time employees. This statement would include the name, address, and EIN of the employer and the information required to be shown on the return with respect to the full-time employee. The section 6056 statement to employees would be made on a form published by the IRS. Alternatively, the proposed regulations contemplate that employers would comply with this section 6056 requirement by providing employees a substitute statement, provided the substitute statement includes all required information. It is proposed that the section 6056 employee statement will be included in the proposed IRS truncated TIN program.

Time for filing. The proposed rules apply the same filing schedule used for Forms W-2 and 1099 to the section 6056 reporting. The rules provide that section 6056 returns must be filed annually with the IRS by March 31 if filing electronically (or by February 28 otherwise) of the year immediately following the calendar year to which the return relates. Statements to employees must be provided annually by January 31.

Taking into account the transition relief for 2014, the first mandatory section 6056 reporting will be for the 2015 calendar year and will be due to the IRS by March 31, 2016, if filed electronically. (If filed otherwise, the reporting will be due by March 1, 2016, because February 28, 2016, is a Sunday.) The first section 6056 employee statements must be furnished no later than February 1, 2016 (January 31, 2016, is a Sunday).

Large employers who do not comply with the requirements for filing and furnishing statements under section 6056 may be subject to penalties for failure to file a correct information return under section 6721 and failure to furnish correct payee statements under section 6722. However, section 6724 permits such penalties to be waived if the failure is due to reasonable cause and not to willful neglect.

Potential simplified methods of reporting. The proposed regulations outline several options under consideration for section 6056 reporting that are intended to offer large employers more streamlined approaches to information reporting. Large employers would be permitted to use different simplified methods for different employees at the employer's election.

- *Form W-2 reporting for certain groups of employees.* Treasury and the IRS are considering allowing large employers to report offers of minimum value coverage on an employee's Form W-2 instead of reporting the offers on a section 6056 employee statement filed with the IRS and furnished to the employee. This approach could only be used for an employee who was employed by the employer for the entire calendar year when the offer is made and for whom the employee contribution for the lowest-cost, self-only option remained the same for all twelve months of the year.

Employers with limited turnover in their workforces might find this alternative attractive because it would eliminate an additional statement to be provided to full-time employees by combining the section 6056 employee statement with the Form W-2. To take advantage of this option, however, employers would need to keep track of the employees who are employed for the full year versus those who worked only a

partial year. In addition, any employer with a non-calendar year plan would not be able to take advantage of this alternative if the employee contribution to the plan changes in the middle of the calendar year.

- *Minimum value coverage offered to all or potentially all full-time employees.* Treasury and IRS are considering an option of permitting an employer to certify that all of its employees to whom an offer coverage was not made during the calendar year were not full-time employees (or were otherwise ineligible for coverage, for example because they were in the initial permitted waiting period following the date of hire). This method would permit large employers to forgo identifying the full-time status of its employees prior to filing a section 6056 return. Under this option employers would be permitted to make a section 6056 filing with the IRS that would not be required to:
 - Identify the number of full-time employees, or
 - Specify whether a particular employee offered coverage is a full-time employee.

If one of the employer's employees claimed a premium tax credit, the IRS could ask the large employer at a later date (e.g., after the filing of the section 6056 return and the relevant 1040 form) to confirm whether that employee was a full-time employee during that calendar year.

This alternative may be attractive to employers who have designed their health care plans to offer minimum value coverage to all full-time employees. However, the large employers still would be required to provide employees offered minimum value coverage with a section 6056 employee statement by the end of January following the reporting calendar year. In addition, employers would also be required to identify all of their full-time employees and retain this information in the event that the IRS contacts them about an employee who claimed the premium tax credit.

- *Self-insured employers offering employees, their spouses and dependents mandatory no-cost minimum value coverage.* In limited circumstances, large employers provide mandatory coverage that meets the ACA's minimum value standard under a self-insured group health plan to an employee and an employee's spouse and dependents with no employee contribution. For these large employers, the Administration is considering whether the large employer could file and furnish only:
 - The section 6055 return,
 - A code on the Form W2, and
 - Summary information provided in the section 6056 transmittal form.
- *Other options for streamlined reporting.* Treasury and the IRS acknowledged comments they had received proposing voluntary prospective section 6056 reporting by large employers and section 6056 reporting by large employers only on employees whose Form W-2 wages are between 100% and 400% of the federal poverty level and therefore might be eligible for premium tax credits. Employers had offered these proposals as options that could make it possible for Exchanges to make more accurate determinations of eligibility for premium tax credits and that would avoid asking

employers to report on individuals who were unlikely to be eligible for premium tax credits.

The Administration requested comments on the proposals but did not indicate that Treasury and the IRS currently are considering such approaches. The Administration raised concerns that voluntary prospective reporting by large employers would be difficult for the IRS to administer and could make it more difficult for employees to file their tax returns. With regard to reporting only on employees whose Form W-2 wages indicate they might be eligible for a premium tax credit, the Administration stated that “employers will not be in a position to know the correlation between an employee’s Form W-2 wages and household income with sufficient accuracy to determine whether an employee may be eligible for the premium tax credit.”

Additional considerations. Whether a large employer follows the default, general method of reporting or one of the alternative methods, the following issues addressed in the proposed regulations are important considerations.

- Separate filing by each member of the large employer controlled group. The proposed regulations provide that the section 6056 IRS filing and employee statement requirements are applied separately to each employer in the large employer controlled group. For example, if the large employer is made up of a parent corporation and several 80% or more owned subsidiaries that each have employees, each subsidiary must separately make the section 6056 filing with the IRS and furnish the statement to the full-time employees. Furthermore, if an employee provides services for more than one member of the controlled group and the employee’s combined hours of service make the employee a full-time employee, both members of the controlled group must make the section 6056 filing with respect to the employee. The proposed regulations permit a third party to make the section 6056 filing on behalf of the employer (e.g., the parent corporation that operates the employer-sponsored plan could make the filing). However, the employer (the subsidiary, in this example) is responsible for and is required to sign the return. This separate filing requirement may present recordkeeping and IT systems challenges for large employer with a number of members in the controlled group.
- Filing Date. Employers with non-calendar year plans had requested an alternative filing date because they may collect information on the basis of a plan year, rather than on a calendar year. The IRS retained the calendar year filing date to accommodate employees who must receive their section 6056 statements early in the calendar year in order to complete their income tax return and properly reflect any available premium tax credit.
- Multiemployer plans. The Administration anticipates providing a bifurcated approach to section 6056 reporting for full-time employees eligible to participate in a multiemployer plans. Under this bifurcated approach, one section 6056 return would pertain to the full-time employees eligible to participate in a multiemployer plan, and

another section 6056 return would pertain to the remaining full-time employees (i.e., those who are not eligible to participate in a multiemployer plan).

- Governmental entity. Governmental employers are permitted to designate a person to comply with the section 6056 reporting requirements.
- Full-time employee transition rule. Section 4980H defines who is a full-time employee for purposes of the employer mandate excise tax. This same definition of full-time employee applies for purposes of the section 6056 reporting. The proposed regulations under section 4980H provided some important transition relief for 2014 for determining which employees are considered full-time and when employers could face an excise tax under 4980H(b) if coverage did not meet the law's affordability and minimum value standard. Future guidance will address whether this transition relief will be provided for 2015.

Section 6055: Information reporting of minimum essential coverage

For employers that sponsor self-insured plans and health insurance issuers that provide individuals with minimum essential coverage, the section 6055 proposed regulations provide helpful accommodations for reporting to the IRS and furnishing statements to covered individuals. However, the proposed regulations do not address all of the concerns raised by employers and insurers about the information filings required to be made to primary insureds and all covered dependents.

Background. Reporting under section 6055 is primarily focused on administration of the individual mandate enacted with the ACA under section 5000A. The information reporting required under section 6055 is intended to allow taxpayers to establish and the IRS to verify that the taxpayers were covered by minimum essential coverage and their months of enrollment. Section 5000A defines minimum essential coverage to include:

- Health insurance offered in the individual market, including a qualified health plan offered through an Exchange
- An eligible employer-sponsored plan, including a self-insured plan
- Government-sponsored program such as Medicare, Medicaid, Children's Health Insurance Program (CHIP), TRICARE, certain veterans programs, and coverage for Peace Corps volunteers

Consequently, health insurance issuers, employers offering self-insured group health plans, governmental entities, and other providers of minimum essential coverage under the ACA must report under section 6055.

Persons subject to reporting requirements. The proposed regulations address a number of issues regarding which persons are responsible for the section 6055 reporting. Some of the rules to be highlighted include:

- Insurers of qualified health plans on an Exchange. The proposed rules state the insurers of qualified health plans on an Exchange are not required to submit section 6055 returns because the Exchanges already must report information to individuals and IRS that is needed to comply with or administer the individual mandate. Insurers are still required to report on qualified health plans enrolled in through a SHOP Exchange because annual reporting by Exchanges does not include these plans.
- Employers sponsoring self-insured plans. Similar to the section 6056 proposed rules requiring separate reporting by each employer in a controlled group, the section 6055 proposed regulations provide that the employer, determined without application to the controlled group rules, is responsible for the filing. The proposed rules also state that reporting entities may use third parties to facilitate filing returns and furnishing statements to comply with section 6055 reporting. These arrangements do not transfer the potential liability for failure of the reporting entity to report and furnish under the regulations.
- Multiemployer self-insured plans. The association, committee, joint board of trustees, or other representatives of the parties who establish or maintain the multiemployer plan is responsible for the section 6055 filing.
- Governmental entity sponsor of a self-insured plan. The governmental entity may designate a person to make the section 6055 filing on behalf of the governmental employer.

Information required to be reported. The section 6055 information return must include the name, address, and taxpayer identification number (TIN) of the primary insured and each individual covered under the policy and the months that the individuals were covered. (See Appendix A for a list of all of the information required to be reported.)

Health insurance issuers and employers expressed concern that they do not typically collect TINs for covered dependents and suggested allowing alternative means of identifying these individuals. The proposed regulations follow the statute and require TIN reporting of all covered individuals including dependents. While TIN reporting is required, reporting entities will not be subject to penalties if they make a reasonable effort to collect the TIN, but were unable to do so. As a backstop to TIN reporting, the proposed regulations allow the reporting entities to report the enrollee's date of birth.

Statement to individuals. Insurance issuers and employers have been concerned about the requirement to deliver separate statements to the primary insured and each other covered individual. The proposed regulations permit electronic delivery of the statement to individuals who consent to such delivery. In addition, the proposed regulations permit furnishing only one statement per address. This is welcome news to issuers and employers.

Issuers and employers will also welcome the flexibility to provide a substitute statement and to report using the IRS truncated TIN program.



Combined filings. As discussed above, Treasury and IRS are considering alternatives for combined sections 6051, 6055 and 6056 filings.

Time for filing. The proposed rules provide that sections 6055 returns must be filed annually with the IRS by March 31 if filing electronically (or by February 28 otherwise) of the year immediately following the calendar year to which the return relates.

Statements to individuals must be furnished annually by January 31.

The proposed rules state that reporting entities who file at least 250 returns must report the information under section 6055 to the IRS electronically.

More information

For more information, please contact any of the following:

Washington Council Ernst & Young
Anne Phelps
Principal, Washington Council Ernst & Young, Ernst & Young LLP

Heather Meade
Senior Manager, Washington Council Ernst & Young, Ernst & Young LLP

Sarah Egge
Senior Manager, Washington Council Ernst & Young, Ernst & Young LLP

Daniel Esquibel
Senior Manager, Washington Council Ernst & Young, Ernst & Young LLP

EY Compensation & Benefits Group
Helen Morrison
Principal, Ernst & Young LLP

Catherine Creech
Principal, Ernst & Young LLP

Christa Bierma
Senior Manager, Ernst & Young LLP

Appendix A

Summary of employer information reporting requirements under the Affordable Care Act			
	Section 6051(a)(14)	Section 6055	Section 6056
Information to be reported	Aggregate cost of coverage of plans subject to reporting requirement ⁱ	Information on enrollment in minimum essential coverage (Details on following page)	Information on offer of employer-sponsored coverage (Details for general method of reporting on following page)
Entity required to report	All employers issuing 250 or more Forms W-2 in the prior year	<ul style="list-style-type: none"> • Health care insurance issuers with respect to coverage that is not a qualified health plan offered on the individual market through the Exchange • Employers sponsoring self-insured group health plansⁱⁱ • Joint boards of trustees responsible for multiemployer plans • Designated entities of governmental units 	<ul style="list-style-type: none"> • Large employers (50 or more full-time equivalent employees)ⁱⁱⁱ • Designated entities of governmental units
Who receives the report/statement	<ul style="list-style-type: none"> • IRS (via Social Security Administration) Forms W-3 and W-2 • All employees who otherwise receive Forms W-2 and participate in employer-sponsored plan subject to reporting requirement 	<ul style="list-style-type: none"> • IRS • Individuals who are enrolled in coverage. Covered dependents may be included on report for primary insured^{iv} 	<ul style="list-style-type: none"> • IRS • All full-time employees (as defined in I.R.C. § 4980H and the underlying regulations) • All employees who are offered coverage^v
Due date to furnish statement to the recipient (i.e., employee or covered individual)	On or before January 31 of following year	On or before January 31 of following year	On or before January 31 of following year
Due date to file information return	On or before February 28 (or March 31 if filed electronically) of following year	On or before February 28 (or March 31 if filed electronically) of following year	On or before February 28 (or March 31 if filed electronically) of following year

Section 6055
Information to be reported on the IRS information return

The following information is to be reported on an information return to IRS under section 6055:

1. The name and tax payer identification number (TIN) of each individual enrolled in minimum essential coverage;
2. The name and address of the primary insured or other related person (e.g., a parent or spouse) who submits the application for coverage (referred to in the proposed regulations as the responsible individual); and
3. Months during which the individual is treated as having minimum essential coverage (in place of dates of coverage).

Section 6056
Information to be reported on the IRS information return

The following information is to be reported under section 6056:

1. The name, address, and employer identification number (EIN) of the large employer, the name and telephone number of the large employer's contact person, and the calendar year for which the information is reported;
2. A certification as to whether the large employer offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, by calendar month;
3. The number of full-time employees for each month during the calendar year;
4. For each full-time employee, the months during the calendar year for which coverage under the plan was available;
5. For each full-time employee, the employee's share of the lowest-cost monthly premium for self-only coverage providing minimum value that the large employer offered to that full-time employee, by calendar month.
6. The name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under an eligible employer-sponsored plan.

The proposed regulations anticipate that the following additional information will be required to be reported, some of which may be provided by indicator codes:

1. Information as to whether the coverage offered to employees and their dependents under the employer-sponsored plan meets minimum value and whether the employee had the opportunity to enroll his or her spouse in the coverage;
2. The total number of employees, by calendar month;
3. Whether an employee's effective date of coverage was affected by a waiting period;
4. If the large employer was not conducting business during any particular month, by month;
5. If the large employer expects that it will not be large employer the following year;
6. Information regarding whether the large employer is a member of a controlled group, determined under I.R.C. §§ 414(b), 414(c), 414(m), or 414(o), and, if applicable, the name and EIN of each employer member of the controlled group constituting the applicable large employer on any day of the calendar year for which the information is reported;
7. If an appropriately designated entity is reporting on behalf of a large employer that is a governmental unit or any agency or instrumentality thereof for purposes of I.R.C. § 6056, the name, address, and identification number of the appropriately designated person;

8. If an ALE member is a contributing employer to a multiemployer plan, whether a full-time employee is treated as eligible to participate in a multiemployer plan due to the employer's contributions to the multiemployer plan;
9. If the administrator of a multiemployer plan is reporting on behalf of the large employer with respect to the large employer's full-time employees who are eligible for coverage under the multiemployer plan, the name, address, and identification number of the administrator of the multiemployer plan (in addition to the name, address, and EIN of the large employer already required under the proposed regulations).

The proposed regulations anticipate that the following information will be reported for each full-time employee for each calendar month using an indicator code:

1. Minimum essential coverage meeting the ACA's minimum value standard was offered to:
 - a. The employee only;
 - b. The employee and the employee's dependents only;
 - c. The employee and the employee's spouse only;
 - d. The employee, the employee's spouse and the employee's dependents.
2. Coverage was not offered to the employee, and:
 - a. The employee was in a waiting period that complies with Public Health Services Act § 2708 and its implementing regulations (e.g., does not exceed 90 days);
 - b. The employee was not a full-time employee;
 - c. The employee was not employed by the ALE member during that month;
 - d. No other code or exception applies.
3. Coverage was offered to the employee for the month although the employee was not a full-time employee during that month.
4. The ALE member met one of the affordability safe harbors under proposed implementing regulations for I.R.C. § 4980H.

ⁱ With limited exceptions, group health plans are generally subject to the reporting requirement. Certain other plans (such as FSAs, employee assistance plans, wellness programs, on-site medical clinic, or integrated dental or vision coverage) are also subject to section 6051 reporting in some cases.

ⁱⁱ The proposed regulations provide that for arrangements covering employees of related corporations, each employer participating in a plan covering multiple entities is treated as the plan sponsor responsible for reporting with respect to its employees.

ⁱⁱⁱ The proposed regulations provide that the section 6056 IRS filing and employee statement requirements are applied separately to each employer in the large employer controlled group.

^{iv} Proposed regulations permit multiple covered individuals to be included on one return filed with the IRS.

^v The proposed regulations indicate that it is anticipated that an offer of coverage will be reportable for an employee for the month even if the employee was not a full-time employee during that month.