



## 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



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.)





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



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



- 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





*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 <sup>i</sup>	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"> <li>· Health care insurance issuers with respect to coverage that is not a qualified health plan offered on the individual market through the Exchange</li> <li>· Employers sponsoring self-insured group health plans<sup>ii</sup></li> <li>· Joint boards of trustees responsible for multiemployer plans</li> <li>·</li> </ul>	



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.



8. If an ALE member is a contributing employer to a multiemployer plan, whether a full-time