

Health Care Reform Update

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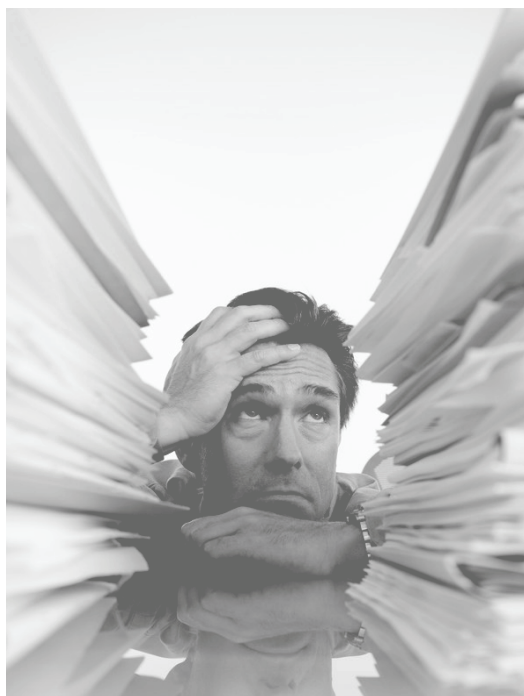
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Final Employer Reporting Regulations

On March 5, 2014, the Internal Revenue Service (“IRS”) released the long-awaited final regulations pertaining to how employers and insurance companies will report information that the IRS needs to enforce both the Individual and Employer Mandates of the Affordable Care Act (“ACA”). The new IRS information reporting requirements will significantly impact employers that sponsor self-funded major medical coverage. While the final regulations provide some welcome relief for employers in the way of simplification, they still require employers to pay close attention to detail. This communication will attempt to break down the regulations into FAQs.

While the information reports will not have to be submitted to the IRS until 2016 for reporting on 2015 coverage, this will be a significant undertaking for employers so it would be wise for employers to begin now to plan for what items they will need to collect to satisfy their future reporting obligations. In order to help employers and other reporting entities prepare for the new reporting requirements, the IRS recently released draft instructions¹, revised draft forms², and FAQs³ regarding the information reporting process.

FAQ 1: When will the reporting requirements become effective?

The reporting requirements are effective for coverage provided on or after January 1, 2015, with the first information returns to be filed with the IRS and statements provided to individuals in early 2016.

FAQ 2: Is there more than one type of reporting?

Yes. The IRS has set forth two different types of reporting. Both types are described below:

Code Section 6055 Reporting – “Minimum Essential Coverage Reporting”

- Applies to all insurers, sponsors of self-insured plans, governmental entities, and other parties (Form 1094-B and Form 1095-B);
- Insurers complete on behalf of fully-insured plans;
- Plan sponsors (employers) complete on behalf of self-funded plans;

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- Must report information to the IRS for each individual to whom the entity provided minimum essential coverage (“MEC”4);
- A statement (Form 1095-B) must be provided to each “responsible individual” (policy holder); and
- Primary purpose is to enforce the Individual Mandate

Code Section 6056 Reporting – “Employer Mandate Reporting”

- Applies to “applicable large employers” subject to the Employer Mandate;
- Employer completes the reporting regardless of whether fully insured or self-funded (Form 1094-C and Form 1095-C);
- A fully insured large employer will only complete parts 1 & 2 on Form 1095-C while a self-funded large employer will complete parts 1, 2, & 3;
- Must report information to the IRS about the health care coverage provided to full-time employees;
- A statement must be provided to each employee (Form 1095-C);
- Primary purpose is to enforce the Employer Mandate; and
- The individual statement is to be used by employees to determine eligibility for the individual premium tax credit.

FAQ 3: What is required for each type of reporting?

The Code 6055 Return – Form 1094-B and Form 1095-B

- Name, Address and Employer Identification Number (“EIN”) of Reporting Entity;
- Name, Address, Social Security number of the responsible individual (ex: primary insured);
- Name and Social Security number of each individual covered by the plan or policy;
- The months for which each individual was enrolled in coverage or entitled to receive benefits for at least one day; and
- Any other information required by the IRS
- The report must specify the actual months in which coverage was provided rather than the dates on which coverage began and ended.

The Code 6056 Return – Form 1094-C and Form 1095-C

- Name, Address and EIN of the employer;
- Name and telephone number of the employer’s contact person (can be a designated third party);
- The calendar year for which the information is filed;

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- A certification as to whether the applicable large employer offered its full-time employees and their dependents the opportunity to enroll in MEC under an employer sponsored plan, by calendar month;
- The months in which MEC was available;
- Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value by calendar month;
- The number of full-time employees by calendar month;
- The name, address, and Social Security number of each full-time employee during the calendar year and months, if any, during which each employee was covered under the employer's plan; and
- Any other information required by the IRS.

The 6056 Return will also include "indicator codes" for employers to report:

- Whether coverage provides minimum value and whether employees had an opportunity to enroll their spouses and dependents in coverage;
- Whether an employee's effective date of coverage was affected by a permissible waiting period;
- Whether an employer had no employees during a particular month;
- Whether an employer was a member of an affiliated group, and the name and taxpayer identification number of all other members;
- The designated person to file returns for a governmental agency;
- If an employer is a contributing employer to a multiemployer plan, and whether the employer is not subject to an employer responsibility penalty because of its contribution to the plan;
- If a third party is reporting on behalf of an aggregated employer group, the name, address, and identification number of the third party;
- Whether coverage was offered to the employee only, the employee and children only, the employee and spouse only, or the employee, spouse and children;
- Listed reasons why coverage was not offered to an employee;
- Whether coverage was offered to an employee even though the employee was not full-time;
- Whether the employee was covered under the plan; and
- Whether the employer met one of the affordability safe harbors under the Employer Mandate.

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FAQ 4: Can 6055 and 6056 reporting be combined for self-insured plans?

Yes. The final regulations permit large employers who sponsor self-insured plans to satisfy their reporting obligations under both sections if they use transmittal Form 1094-C and complete all three parts of Form 1095-C. Insurers will complete the 6055 return (Form 1094-B and Form 1095-B) on behalf of fully insured plans.

FAQ 5: Do the common ownership/common employer/aggregation rules apply to the employer reporting requirements?

No. Each employer must file a separate reporting even if deemed a common employer for other purposes.

FAQ 6: Is reporting required for supplemental coverage?

No. Reporting is not required for supplemental coverage that is not minimum essential coverage. Examples of supplemental coverage would be Health Savings Accounts, on-site medical clinics, Medicare Part B, wellness programs, Medicare supplement policies, or other excepted benefits.

FAQ 7: Can returns be filed electronically?

Yes. In fact, employers that file 250 or more Forms 1095-B or 250 or more Forms 1095-C during the calendar year must file electronically. The 250 return threshold applies separately to each type of return required to be filed and only Forms 1095-B or 1095-C are counted. If the 250 threshold applies, Forms 1094-B and 1094-C (the transmittal forms) must also be filed electronically. Reporting entities that are under the 250 threshold can choose to file on paper or electronically.

FAQ 8: When must returns be filed?

The returns must be filed by February 28 (March 31 if filed electronically) of the year following the calendar year subject to the reporting. The individual statements must be furnished to the responsible individuals by January 31st of the year following the calendar year subject to the reporting. These dates apply regardless of an employer's plan year. In 2016, the first returns must be filed with the IRS no later than February 29, 2016, or March 31, 2016, if filed electronically. The first individual statements must be furnished on or before February 1, 2016 since January 31, 2016 is a Sunday.

FAQ 9: What about "mid-sized" large employers (50 -99 FTEs) that are not subject to the Employer Mandate for 2015?

Mid-sized large employers still must file Form 1094-C and Form 1095-C for 2015, but they will indicate on the form that they are not subject to the mandate.

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FAQ 10: What is the “additional statement ” that must accompany a 6056 return?

- Applicable large employers must also provide a statement to each of their employees including the name, address, EIN of the employer and the information included in the 6056 return (Form 1095-C) with respect to that employee.
- The statement furnished to the employee can use a truncated Social Security number (all forms filed with the IRS must report complete Social Security numbers).
- The statement will either be a copy of completed Form 1095-C or a substitute statement devised by the employer that includes the required information.
- The additional statement can be mailed together with the employee’s W-2.
- The statement must be provided by January 31 of each year following a covered year, unless the IRS approves a thirty (30) day extension (which is not common).
- The statement must be sent to the employee’s last known address.
- It can also be distributed electronically with prior consent.

FAQ 11: Are there any alternative reporting methods?

Yes. The final rule offers several alternatives to the standard report that can be used by employers.

1. Qualifying Offer Method

Under the Qualifying Offer Method, an employer can provide less detailed 6056 information and furnish a simplified statement to full-time employees. To be eligible to use this method the employer must certify that for all months during the year in which the employee was a full-time employee for whom a §4980H employer shared responsibility payment could apply, the employer made a “qualifying offer⁶”. If the conditions of a “qualifying offer” are met, then the employee will not be eligible for premium tax credits and the employer has satisfied the Employer Mandate requirements.

2. 2015 Qualifying Offer Method Transition Relief

An employer that has provided a “qualifying offer” to 95% of its full-time employees and their spouses and dependents may provide each of its full-time employees with a statement informing the employee that they will not be eligible for premium tax credits, if the “qualifying offer” was made to the full-time employees and their spouses and dependents for each of the 12 months of the year, or that they may be eligible for premium tax credits for any months in which a qualifying offer was not made. The statement must also include contact information for the employer.

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3. Section 4980H Transition Relief

If 4980H transition relief applies, an employer will report it on Form 1094-C by indicating either (1) it qualifies for “mid-size large employer” transition relief (in 2015 it employed 50-99 full-time plus full-time equivalent employees and met the associated requirements) or (2) it qualifies for 2015 transition relief for calculation of assessable payments under §4980H(a) for applicable large employers with 100 or more full-time plus full-time equivalent employees (penalty is calculated by reducing the employers number of full-time employees by 80 instead of 30).

4. 98% Offer Method

An employer that offers affordable, minimum value coverage to at least 98% of its employees, regardless of whether they are full-time or part-time, does not need to determine (for reporting purposes) whether its employees are full-time or part-time and does not need to provide a total count of its full-time employees. If an employee who is not covered applies for premium tax credits, the IRS can query whether the particular employee was covered or not.

FAQ 12: Can an employer hire a third party to fulfill its information reporting obligations?

Yes. Reporting arrangements are not prohibited. However, entering into such an arrangement does not transfer the liability of the employer (except in the case of a related entity properly designated by a governmental unit).

FAQ 13: Can reporting entities rely on the draft forms and instructions?

No. The draft forms and instructions explicitly state they should neither be filed with the IRS nor relied upon and that they are subject to public comment, possible legislative changes, potential revisions, and final approval before being officially released.

FAQ 14: What are the penalties for noncompliance with the Code 6055 and 6056 reporting requirements?

The penalties for both types of reporting will be assessed under Internal Revenue Code sections 6721 and 6722. However, the IRS has indicated that for 2015 coverage and the associated filing and furnishing requirements in 2016, the penalties for incomplete or inaccurate information will be waived if the reporting entity makes a good faith effort to comply with the rules. This relief from penalties will not be available for groups that fail to file/furnish the returns.

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Foot Notes:

1 Draft instructions for Forms 1094-C and 1095-C (employer mandate reporting) can be found here: <http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf> and draft instructions for Forms 1094-B and 1095-B (minimum essential coverage reporting) can be found here: <http://www.irs.gov/pub/irs-dft/i109495b--dft.pdf>

2 Draft Form 1094-B <http://www.irs.gov/pub/irs-dft/f1094b--dft.pdf> ; Draft Form 1095-B <http://www.irs.gov/pub/irs-dft/f1095b--dft.pdf> ; Draft Form 1094-C <http://www.irs.gov/pub/irs-dft/f1094c--dft.pdf> ; Draft Form 1095-C <http://www.irs.gov/pub/irs-dft/f1095c--dft.pdf>

3 Section 6055 minimum essential coverage reporting FAQs: <http://www.irs.gov/uac/Questions-and-Answers-on-Information-Reporting-by-Health-Coverage-Providers-Section-6055> and Section 6056 employer mandate reporting FAQs: <http://www.irs.gov/uac/Questions-and-Answers-on-Reporting-of-Offer-of-Health-Insurance-Coverage-by-Employers-Section-6056>

4 As defined by the Individual Mandate (IRC §5000A)

5 50 or more full-time plus full-time equivalent employees.

6 Employer offered employee for each of the 12 months of the year minimum essential coverage providing minimum value at a cost of 9.56% or less of the applicable federal poverty level for employee-only coverage and offered minimal essential coverage for the employee's spouse and children.

Special Thanks to The Benecon Group, Inc, for providing the content for this bulletin.

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