



Employee Benefits & Executive Compensation ADVISORY ■

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Health Care Reform Update – Treasury and IRS Issue Proposed Rules on Reporting Requirements for Employers and Group Health Plans

Proposed rules on two new reporting requirements under the Affordable Care Act (ACA) were published by the Department of Treasury and the Internal Revenue Service (IRS) (collectively, the “Treasury”) on September 9, 2013.¹ These requirements, contained in Internal Revenue Code (the “Code”) Sections 6055 and 6056, are intended to provide information to the Treasury and affected individuals in order to help enforce certain ACA requirements. In particular, the Section 6055 reporting applies generally to persons who provide minimum essential coverage (MEC) to individuals during the year and is primarily intended to help enforce the individual mandate. The Section 6056 requirement applies to “applicable large employers,” meaning those employers who are subject to the ACA pay or play penalties, and is designed as an aid to enforcing those requirements. The Section 6056 reporting will also be used for enforcement of the provisions relating to the premium tax credits.

There is considerable overlap between the two reporting requirements. Although the Treasury indicated that they were attempting to avoid unnecessary reporting and duplication, the provisions in the proposed regulations will create new administrative burdens for plan sponsors (and insurers), and in some cases, appear to go beyond the information needed for enforcement purposes.

Originally effective starting in 2014, the Treasury previously delayed the effective date until 2015 (along with the delay in the employer penalty provisions). Thus, the first required reports will occur in early 2016, based on information for 2015.

This advisory discusses the reporting requirements as they relate to group health plans.

The 6055 Reporting Requirement

1. What is the purpose of the 6055 reporting requirement?

The main purpose of the 6055 reporting requirement is to provide information regarding MEC, as an aid in enforcing the

¹ 78 Fed Reg 54986 (Sept. 9, 2013) (reporting of minimum essential coverage under Code Section 6055), and 78 Fed Reg 54996 (Sept. 9, 2013) (reporting by applicable large employers under Code Section 6056).

individual mandate provisions of the ACA. The information required under Section 6055 may also assist in enforcing the premium tax credit provisions.

2. Who is required to file a 6055 return?

Practice Pointer – Supplemental Coverage: The IRS requires 6055 returns to be filed only with respect to minimum essential coverage (MEC). Thus, reporting is not required with respect to excepted benefit coverage, such as specified disease coverage or stand-alone vision or dental coverage.

The following entities are responsible for filing the Section 6055 return with respect to MEC provided under a group health plan:

- The health insurance issuer with respect to fully insured coverage.²
- In the case of a self-insured group health plan, the “plan sponsor.”
 - Related employers are treated as separate employers for this purpose. Thus, for example, if a self-insured group health plan covers employees of related corporations, each separate employer within the controlled group is treated as a separate plan sponsor. However, one member of the controlled group may file returns for each member of the group and provide statements to employees on behalf of all members.
- In the case of a self-insured multiple employer welfare arrangement (MEWA), each participating employer.
- In the case of a self-insured multiemployer plan, the association, committee, joint board of trustees or other similar group of representatives of the parties who establish or maintain the plan.
- The employee organization (i.e., union) in the case of a self-insured plan maintained solely by the employee organization.
- In the case of a self-insured governmental group health plan, the governmental employer may enter into a written agreement with another governmental unit to make the required reporting.

Practice Pointer – Fully Insured Coverage: For fully insured health coverage, the proposed regulations clarify that only the insurer is responsible for 6055 reporting; the sponsor of the group health plan has no reporting responsibility in this situation.

3. When is the 6055 return required to be filed?

The 6055 return is required to be filed with the IRS no later than February 28 if filing non-electronically and March 31 if filing electronically.

Practice Pointer – Electronic Filing: The IRS requires 6055 returns to be filed electronically, unless the aggregate of all returns (W-2s, 6055 returns) the reporting entity is required to file is less than 250.

² In a departure from the statute, insurers are not required to report information on individual coverage purchased through an Exchange under the proposed rules because Exchanges are required to provide information with respect to such coverage. Insurers also are not responsible for reporting information with respect to coverage provided under Medicare or Medicaid or similar governmental entities; rather, the relevant governmental agency is responsible for reporting.

The related statement that must be provided to individuals identified on the 6055 return must be provided by January 31, so that the statement can be provided to the individual before the return is required to be filed with the IRS.

Extensions are available in certain circumstances.

4. What information is required to be provided to the IRS on the 6055 return?

The proposed regulations generally follow statutory provisions regarding the information that is required on the 6055 return, but also eliminate some of the items otherwise required under the statute. The following is a summary of the information and how it compares to the statutory requirements.

Information	Comments
Information Relating to the Reporting Entity	
1. Name, address and EIN for the person required to make the return	
Information Relating to Health Coverage	
2. Name, address and TIN (or date of birth if a TIN is not available) of the responsible individual	The statute refers to information for the "primary insured." The proposed rules adopt the term "responsible individual" to reflect self-insured plans. Thus, for example, in the case of a self-insured group health plan, the responsible individual would normally be the employee.
3. Name and TIN (or date of birth if a TIN is not available) of each individual covered under the plan	The entity required for reporting should make reasonable efforts to obtain the TIN of all persons covered under the plan (e.g., dependents). However, the preamble indicates that if such reasonable efforts are made, penalties will not be imposed for failure to provide the information. Reasonable efforts include two consecutive annual attempts to obtain the information after the first unsuccessful attempt.
4. For each covered individual, the months for which, for at least one day, the individual was enrolled in coverage and entitled to receive benefits	The proposed rules include additional detail on coverage periods that must be included in the return.
Information Relating to Fully Insured Employer-Provided Coverage	
5. Name, address and EIN of the plan sponsor	
6. Whether the coverage is SHOP coverage	The statute also provides that the 6055 return is required to include the amount of any required employer premium. This requirement is not included in the proposed regulations.

5. What information is required to be included in an employee statement?

The statement required to be provided to the "responsible party" (generally, the employee) must include the

information required to be provided on the 6055 return sent to the IRS and, in addition, a contact phone number for the person required to file the return and, if applicable, the policy number.

The 6056 Reporting Requirement

Note – Definition of Employer: The 6056 reporting requirements generally apply to each member of a single controlled group as defined in Code Section 414(b), (c) or (m). This is generally consistent with the proposed rules under the employer penalty provisions (which look to the entire controlled group to determine if the employer is an applicable large employer (ALE), but determine penalties separately for each member of the group). In this discussion, the term “employer member” is used to refer to each separate member of a controlled group.

1. What is the purpose of the 6056 reporting requirements?

The purpose of the 6056 reporting requirements is to assist the Treasury with administration of the pay or play employer penalty rules set forth in Code Section 4980H. The Treasury also notes that the 6056 reporting requirements are designed to assist the Treasury with administration of the premium tax credit under Code Section 36B. In order to do this, certain information must be reported both to the IRS *and* to the full-time employees.

Practice Pointer – What the IRS Needs: To properly administer the employer penalties and the premium tax credit with respect to full-time employees, the Treasury fundamentally needs from every employer member, at a minimum, the following elements of information *for each month during the calendar year*:

1. Whether any employees of the employer member who received a premium tax credit during a month are full-time employees of that employer member.
2. Whether the employer member offered the full-time employee the opportunity to enroll the employee and his/her dependents (if any) in MEC.
3. If yes, whether the coverage offered was both affordable and provided minimum value.
4. If not, whether the employee was enrolled in the plan.
5. If not enrolled or offered coverage, whether the employee was in a permissible waiting period.
6. The percentage of the employer’s full-time employees that were offered the opportunity that month to enroll in minimum essential coverage.

In addition, employees would need the information in 2 through 5 above to properly file their tax return and support any premium tax credit received.

2. Who is required to file a 6056 return?

Each employer member is required to satisfy the Section 6056 reporting requirements; however, employer members may contract with third parties to assist with the filing requirements. For example, the plan sponsor of a plan may report the information required by Section 6056 to the IRS on behalf of each participating employer member who participates in the plan; however, the employer member must sign the form and the employer member remains liable for penalties arising from the third party’s failure to accurately and timely file—i.e., the employer member is

not absolved of its obligation simply because a third party has agreed to prepare and file the form.

Practice Pointer – Multiemployer Plans: The multiemployer plan administrator may file a 6056 return for the contributing employer member with respect to the employer member’s full-time employees eligible for the plan, but the employer member must sign the form. The employer member would file a separate 6056 return for all other full-time employees.

3. When is the 6056 return required to be filed?

A return is required to be filed with the IRS by no later than February 28 if filing non-electronically—March 31 if filing electronically.

Practice Pointer – Electronic Filing: The IRS requires 6056 returns to be filed electronically unless the aggregate of all returns (W-2s, 6056 returns) the employer member is required to file is less than 250.

The statement required to be provided to the full-time employee must be furnished by January 31.

Extensions are available in certain situations.

4. What information is required to be provided to the IRS on the 6056 return?

The proposed regulations modify the list of information otherwise required by 6056—eliminating some of the information otherwise required by the statute, but also adding to it. The following is a summary of the information generally required by the proposed regulations. It is separated into two categories: information generally derived from the statutory requirements and new information not specifically prescribed by 6056.

A. Information from Statute

Information
1. Name, address and EIN of ALE employer member
2. Name and telephone number of contact person
3. Calendar year being reported
4. Certification as to whether the employer member offered to its full-time employees (and their dependents) the opportunity to enroll in an eligible employer-sponsored plan by calendar month
5. The number of full-time employees of the employer member each month
6. For each full-time employee, the name, address and TIN, and the number of months actually covered under the plan
7. For each full-time employee, the employee’s share of the lowest-cost monthly premium for self-only coverage that also provides minimum value

B. New Information

The following additional information is expected to be requested, in some cases using indicator codes:

Information
1. Whether coverage offered to the full-time employee provides minimum value
2. Whether the employee had the opportunity to enroll a spouse
3. Whether the employee's effective date of coverage was affected by a waiting period
4. Total number of employees for each calendar month <i>Practice Pointer: It is unclear what purpose this information serves. The penalty buckets described above are determined by reference to the percentage of full-time employees who are offered coverage—not the percentage of employees.</i>
5. If the employer member was conducting business during a month
6. If the employer member expects that it will be an ALE in the subsequent year
7. For each full-time employee, the level of coverage offered or, if not offered, the reason it wasn't offered. For example, an employer member would report the following through a code: (i) if coverage was offered, the level of coverage—employee only, employee and employee's dependent's only, employee and employee's spouse only, or family; (ii) that coverage was NOT offered during a month but (a) the employee was in a waiting period, (b) the employee was not full-time that month, (c) the employee was not employed that month or (d) no other exception applies; (iii) that coverage was offered, but the employee was not full-time; and (iv) the employer met one of the affordability safe harbors. <i>Practice Pointer: These specific codes are designed to fill gaps in the general reporting requirements identified in A above; however, the reporting required here is meticulous.</i>

5. What information is required to be included on the employee statement?

Generally speaking, a form must be furnished to the employee that identifies the following information from above that is relevant to the full-time employee.

6. What are the simplified reporting methods proposed by IRS?

The IRS proposes several simplified reporting methods that could be used regarding full-time employees that fit into the specific method. One or more of the following could be used during any particular year. The following is a summary of each method:

Method #1: Substituting W-2 reporting in lieu of 6056 employee statements.

The Treasury is considering allowing employers to report offers of minimum value coverage to the IRS and the employee on a W-2 in lieu of an employee statement if (i) the employee was employed for the entire calendar year and (ii) the offer of coverage, the individuals to whom the offer was made and the employee contribution for the lowest-cost option for self-only coverage all remained the same for the entire year.

In this case, a letter code would be shown on the W-2 indicating:

(A) that minimum value coverage was offered to:

- (i) the employee, employee's spouse and employee's dependents,
- (ii) the employee and the employee's spouse only,
- (iii) the employee and the employee's dependents, but not the spouse, or
- (iv) the employee only;

(B) that only MEC that doesn't provide minimum value was offered; or

(C) that no coverage was offered.

Practice Pointer – Limited Scope: Although this method may apply to a significant number of employees for whom reporting is required, it does not apply to all (e.g., those hired after the start of the year). Thus, employer members will be required to use multiple methods of reporting. A single method of simplified reporting would be more helpful.

Method #2: No need to identify full-time employees if MV coverage is offered to potentially all full-time employees.

If everyone to whom coverage is NOT offered is certified by the employer member as not being a full-time employee, then the employer member could forgo identifying full-time employees each month on the 6056 return (but the remainder of the required 6056 elements must presumably be provided).

Practice Pointer – Limited Scope: According to the example in the proposed regulations, a 6056 return and employee statement is still required for all of the employees to whom coverage is offered—you just do not have to identify them as full-time or not. This option provides little relief for employer members who believe that everyone to whom coverage is offered is full-time.

Moreover, this does not appear to be applicable at all if one or more employees to whom coverage is not offered qualify as full-time in any given month. For example, employer members may decide to forgo using a safe harbor method to identify full-time employees where only a few of the individuals to whom coverage is not offered will be full time in any given month (the penalty may be far less than the administrative costs to implement the safe harbor). In that case, it would be helpful if the employer member will be allowed to certify that all employees who weren't offered coverage, except for a specified few, were not full-time employees.

Method #3: Self-insured employers who offer mandatory no-cost coverage providing minimum value to all employees and all family members.

This method involves a rare situation in today's age of benefits. However, if applicable, no 6056 reporting or employee statements are required. Instead, the IRS would rely on the 6055 return for the needed information. Employer members would still be required to file the transmittal form, but it would note that this method was used.

The IRS also requested comments on two other potential methods:

- **Reporting 6056 elements during or prior to the year of coverage**
- **Reporting for employees who are potentially ineligible for the premium tax credit**

7. How is the 6056 information reported?

As noted above, the 6056 return will be filed electronically unless the employer member qualifies for a small-filer exemption, which is based on the number of all returns—not just the 6056.

It appears that the 6056 information will be reported on a yet to be developed form—1094 and 1095. Employer members will file an employee statement on 1095-C, as well as a transmittal form, 1094-C, for all returns.

Practice Pointer – Combined 6056/6055 Reporting: Except as otherwise noted with respect to Simplified Method #3 described in Section 6 above, 6055 and 6056 reporting generally cannot be combined.

Generally, the employee statement furnished to the employee must be mailed; however, it can be provided electronically provided the following requirements are satisfied:

- **Employee must affirmatively consent to receive the statement electronically. The consent must be electronic or on paper if confirmed electronically.**
- **Certain requirements regarding withdrawal of consent must be satisfied.**
- **Notice of a material change in software must be provided.**

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Members of Alston & Bird’s Employee Benefits & Executive Compensation Group

Robert A. Bauman 202.239.3366 bob.bauman@alston.com	John R. Hickman 404.881.7885 john.hickman@alston.com	Craig R. Pett 404.881.7469 craig.pett@alston.com	Carolyn E. Smith 202.239.3566 carolyn.smith@alston.com
Saul Ben-Meyer 212.210.9545 saul.ben-meyer@alston.com	H. Douglas Hinson 404.881.7590 doug.hinson@alston.com	Earl Pomeroy 202.239.3835 earl.pomeroy@alston.com	Michael L. Stevens 404.881.7970 mike.stevens@alston.com
Stacy C. Clark 404.881.7897 stacy.clark@alston.com	Emily C. Hootkins 404.881.4601 emily.hootkins@alston.com	Jonathan G. Rose 202.239.3693 jonathan.rose@alston.com	Daniel G. Taylor 404.881.7567 dan.taylor@alston.com
Emily Seymour Costin 202.239.3695 emily.costin@alston.com	James S. Hutchinson 212.210.9552 jamie.hutchinson@alston.com	Syed Fahad Saghir 202.239.3220 fahad.saghir@alston.com	Laura G. Thatcher 404.881.7546 laura.thatcher@alston.com
Patrick C. DiCarlo 404.881.4512 pat.dicarlo@alston.com	Johann Lee 202.239.3574 johann.lee@alston.com	Thomas G. Schendt 202.239.3330 thomas.schendt@alston.com	Elizabeth Vaughan 404.881.4965 beth.vaughan@alston.com
Ashley Gillihan 404.881.7390 ashley.gillihan@alston.com	Blake Calvin MacKay 404.881.4982 blake.mackay@alston.com	John B. Shannon 404.881.7466 john.shannon@alston.com	Kerry T. Wenzel 404.881.4983 kerry.wenzel@alston.com
David R. Godofsky 202.239.3392 david.godofsky@alston.com	Emily W. Mao 202.239.3374 emily.mao@alston.com	Richard S. Siegel 202.239.3696 richard.siegel@alston.com	Kyle R. Woods 404.881.7525 kyle.woods@alston.com

ALSTON & BIRD LLP

WWW.ALSTON.COM

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ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
 BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
 CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
 DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213-576-1100
 NEW YORK: 90 Park Avenue ■ 12th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
 RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260
 SILICON VALLEY: 275 Middlefield Road ■ Suite 150 ■ Menlo Park, California, USA, 94025-4004 ■ 650-838-2000 ■ Fax: 650.838.2001
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333
 VENTURA COUNTY: 2801 Townsgate Road ■ Suite 215 ■ Westlake Village, California, USA, 91361 ■ 805.497.9474 ■ Fax: 805.497.8804