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IRS Final Regulations Impose Complex Information Reporting Requirements on Insurers, Employers and Other Entities Who Provide Health Coverage

Beginning in 2016 (for information on 2015), insurers and self-funded plans will be required to report information about health coverage provided during the prior year to all enrollees, including Taxpayer Identification Numbers of all covered individuals and the specific dates that such individuals had such health coverage, as required by Code section 6055. In addition, employers with 50 or more full-time equivalent employees will be required to report information about health coverage offered during the prior year to full-time employees, including information about the lowest cost option offered and whether the minimum value requirements were satisfied, as required by Code section 6056. In March, the IRS published long-awaited final regulations outlining these two new reporting requirements, which largely track proposed regulations issued on September 9, 2013. 79 Fed. Reg. 13231 (March 10, 2014); 79 Fed. Reg. 13220 (March 10, 2014). The regulations specify that the information will be reported on new IRS Forms 1094 and 1095, which have not yet been released, and not on Form W-2, as many had hoped. The proposed regulations were modified in a few respects in response to comments, but the reporting requirements generally remain complex.

Below, we address key questions related to the reporting, and summarize the information provided in a chart at the end of this article.

What transition relief is available for 2015? The final regulations contain two notable areas of transition relief:

- **Good Faith Standard for 2015 Penalty Relief.** Both the section 6055 and section 6056 final rules provide for no reporting penalties for any optional 2014 reporting, and a good faith effort standard for imposing 2015 reporting penalties for incorrect or incomplete filings.
- **Simplified Reporting for 2015.** The section 6056 final rules provide a simplified reporting method. For an employer that made a qualifying offer (see below) to at least 95% of its full-time employees and their spouses and dependents for 2015, the employer would be permitted to report simplified section 6056 return information with respect to those employees. Employers eligible for simplified reporting will report to the IRS the employee's name, TIN, and address and an indicator code either indicating that a qualifying offer was made for all 12 months or the specific months that it was not made. The employer will report to the employee the contact name and number where the employee can get more information regarding the offer of coverage and either (1) if the qualifying offer applied for all 12 months, a statement that the employee and the employee's spouse/dependent will not be eligible for a tax

credit for all 12 months; or (2) if the qualifying offer did not apply for all 12 months, a statement that the employee and the employee's spouse/dependent may be eligible to claim a tax credit for one or more of the 12 months.

Simplified reporting does not apply to minimum essential coverage reporting (section 6055).

Who must file these forms? An applicable large employer member (ALE member) who employs an average of 50 or more full-time employees or full-time employee equivalents in the prior calendar year must file the required section 6056 form (and furnish a copy to each full-time employee). In other words, if your company is subject to the employer responsibility rules, it must file the required form (and furnish a copy to each full-time employee). In addition, all employers who sponsor self-funded group health plans, insurers, government agencies and others that provide minimum essential coverage (reporting entities) must file the required section 6055 form (and furnish a copy to each "responsible individual," defined as a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage).

Notably, to report for employer responsibility purposes (section 6056), an ALE member may hire a third party agent (e.g., plan administrator) to file on its behalf, but the ALE member remains liable for the reporting. Special rules apply for governmental units and multiemployer plans.

What form is used to report this information? Form 1095-C (or a substitute form) will be used by self-insured employers to meet both the employer responsibility and the minimum essential coverage reporting requirements. An employer that provides insured coverage will also report on Form 1095-C, but will complete only the employer section.

Employers who are not subject to the employer shared responsibility requirements, health insurance issuers, self-insured multiemployer plans, and providers of government-sponsored coverage, will report on Form 1095-B (or a substitute form).

In addition, filers will be required to submit a single Form 1094-B and a single Form 1094-C as a "transmittal form" to the IRS with the Forms 1095-B or 1095-C, respectively.

Notably, there are two simplified reporting alternatives for employers subject to the employer responsibility requirements (section 6056):

- (i) Certification of Qualifying Offers. If the employer offered minimum essential coverage providing minimum value at an employee cost for employee-only coverage not exceeding 9.5% of the mainland single federal poverty line to one or more of its full-time employees, and offered minimum essential coverage to the employee's spouses and dependents (qualifying offer), simplified reporting generally applies for employees offered coverage for all 12 months of the calendar year.
 - Must provide employee's name, SSN, and address, and indicate via indicator code that qualifying offer was made for all 12 months. Can also provide simplified information to employees.
- (ii) Minimum Value Coverage Offered to At Least 98% of Employees For Whom the Employer is Reporting. If the employer offers minimum essential coverage providing minimum value that was

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affordable (based on a safe harbor in the employer shared responsibility final rule) to at least 98% of the employees for whom it is reporting (and their dependents), it may certify the same and provide section 6056 reporting with respect to such employees (i.e., instead of determining the number of full-time employees, or specifying whether a particular employee offered coverage is a full-time employee). However, follow-up may be required if an employee goes to the Exchange.

How are these forms filed? The forms are filed with the IRS, in either paper or electronic format (but electronic format is required if at least 250 such returns are filed). Statements are also required to be provided to the full-time employee or responsible individual. In order to deliver the form to the full-time employee or responsible individual electronically, actual consent from the full-time employee or responsible individual to receive the form electronically is required (similar to the W-2 process). If the form is mailed, sending it to the full-time employee or responsible individual's last known address, via first class mail satisfies these rules.

When are these forms due? The timelines track the Form W-2 rules. For example, the form is generally filed with the IRS by Feb. 28 (March 31 for electronic filing), and furnished to full-time employees or responsible individuals by January 31. The information on the form pertains to the prior calendar year and the first forms are due in 2016 (reporting information for 2015).

What information must be disclosed?

Employer Responsibility (section 6056): The following data is required (and any other information required as part of the form/instructions) to facilitate administration of the employer responsibility rules and the premium tax credit:

- Name, address, and employer identification number (EIN) of the employer
- Name and telephone number of the employer's contact person (which can be an employee or agent of the employer)
- Calendar year for which the information is reported
- Certification as to whether the employer offered its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under a eligible employer-sponsored plan, by calendar month
- Months during the calendar year that minimum essential coverage under the plan was available
- Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee under an applicable employer-sponsored plan, by calendar month
- Number of full-time employees for each month during the calendar year
- Name, address and taxpayer identification number (TIN) of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan (the TIN of the spouse or dependent is not required)
- Any other information prescribed by forms or instructions

In addition, information will be gathered by various indicator codes, including coverage offered (and why not offered), number of employees per month, waiting period information, controlled group information, multiemployer plan participation, contact information for a third party reporting agent or governmental unit, whether the employee was covered by the plan, if coverage was offered for the month when he/she was not a full-time employee, or if the employer met one of the affordability 4980H safe harbors.

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Minimum Essential Coverage (section 6055): The following data is required (and any other information required as part of the form/instructions) to facilitate administration of the individual responsibility and employer responsibility requirements:

- Name, address, TIN (or date of birth, if TIN is not available) for “responsible individuals,” unless the responsible individual is not enrolled in coverage.
- Name, address, TIN (or DOB, if TIN is not available) of each individual covered.
 - Reporting entities must make “reasonable efforts,” to obtain a TIN. “Reasonable efforts” are described in the rule.
 - No solicitation is required if the entity already has the TIN.
- For each covered individual, the months for which the individual was enrolled (for at least one day) in coverage and entitled to receive benefits.
- Any other information required on the reporting forms or subsequent guidance.

Group health plans must also provide certain information.

What reporting penalty may apply? Failure to timely and correctly report this information (including employee’s SSN) may result in reporting penalties under Code sections 6721 and 6722 for the ALE member, employer who is not an ALE, insurer or other entity providing minimum essential coverage, which together generally results in \$200 per return risk (maximum of \$3 million) per year. See above for special penalty relief for 2014 and 2015.

Conclusion

Notwithstanding requests by commentators for simplified reporting standards and efforts by Treasury/IRS to be responsive, insurers and sponsors of self-funded plans will be required to collect and report very detailed information about participants and coverage to the IRS and enrollees each year. Accomplishing this task will require close coordination among various individuals and departments within an organization and may also require an investment of resources to develop internal systems or to pay for outsourcing. Affected organizations should begin taking steps now to capture 2015 enrollment and coverage information to timely meet these reporting requirements in 2016. Below, we provide a chart that summarizes key information and required forms.

Provision	Who Reports?	What is reported to the IRS?	What is reported to the individual?	What Form is Used?
6055	<ul style="list-style-type: none"> • Self-funded employers • Insurers • Any others who provide “minimum essential coverage” 	<ul style="list-style-type: none"> • Name, address, TIN for “responsible individual” • Name, address, TIN for each individual covered • Months for which each individual was enrolled (for at least one day) and entitled to receive benefits 	<ul style="list-style-type: none"> • All the information reported to the IRS • Policy number (if applicable) • Name, address and contact information for reporting entity 	Applicable Large Employers <ul style="list-style-type: none"> • 1094-C • 1095-C (for insured, no 6055 information required) Insurers/Others

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Provision	Who Reports?	What is reported to the IRS?	What is reported to the individual?	What Form is Used?
		<ul style="list-style-type: none"> Any other information required <p>Group health plans must also provide:</p> <ul style="list-style-type: none"> Name, address, EIN of sponsor Whether coverage is SHOP coverage and if so, SHOP identifier Any other information required 		<ul style="list-style-type: none"> 1094-B 1095-B
6056	Applicable Large Employer Members (an employer that alone, or combined with members in its controlled group, has 50 or more full-time equivalent employees)	<ul style="list-style-type: none"> Name, address, and employer identification number (EIN) of the employer Name and telephone number of the employer's contact person (which can be an employee or agent of the employer) Calendar year for which the information is reported Certification as to whether the employer offered its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under a eligible employer-sponsored plan, by 	<ul style="list-style-type: none"> All the information reported to the IRS The name, address, and EIN of the ALE member 	<ul style="list-style-type: none"> 1094-C 1095-C

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Provision	Who Reports?	What is reported to the IRS?	What is reported to the individual?	What Form is Used?
		<ul style="list-style-type: none"> calendar month Months during the calendar year that minimum essential coverage under the plan was available Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee under an applicable employer-sponsored plan, by calendar month Number of full-time employees for each month during the calendar year Name, address and taxpayer identification number (TIN) of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan (the TIN of the spouse or dependent is not required) Any other information prescribed by forms or instructions 		

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Please contact your regular Groom attorney or one of the attorneys in the health and welfare practice group to determine how the final rules may apply to your business.

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