Treasury and IRS Issue Final Regulations for Reporting Compliance With Affordable Care Act Mandates

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The Treasury Department and the Internal Revenue Service (IRS) issued final regulations on March 10, 2014 for employers and insurers to report compliance with two of the Patient Protection and Affordable Care Act’s (Affordable Care Act’s) most significant provisions—the employer shared responsibility rules (the employer mandate) and the requirement that all Americans either carry health insurance or pay a tax (the individual mandate). This Aon Hewitt bulletin discusses the application of the reporting rules to employers and group health plans.

Overview of the Affordable Care Act Reporting Rules

The Affordable Care Act requires employers and group health plans to file two reports under the Internal Revenue Code (Code) to establish compliance with the employer mandate and the individual mandate:

- **Code Section 6055 Reports—Enrollment in Minimum Essential Coverage (MEC).** Under Code Section 6055, insurers and plan sponsors of self-insured group health plans must issue a return and transmittal form to the IRS and a statement to individuals stating whether an individual has MEC. These reports will be filed by insurers and multiemployer plans on Forms 1094-B (transmittal to the IRS) and 1095-B (statement to employee). Employers will file these reports on Forms 1094-C (transmittal to the IRS) and 1095-C (an employee statement).

- **Code Section 6056 Reports—Offer of MEC to Full-Time Employees (FTEs).** Under Code Section 6056, an employer is required to issue a return and transmittal form to the IRS and a statement to the employer’s FTEs notifying them whether the employee has been offered MEC that is affordable and provides minimum value. These reports will be filed on Forms 1094-C (transmittal to the IRS) and 1095-C (statement to employee).

The final reporting regulations apply to calendar years beginning after December 31, 2014. Employers will not be subject to any penalties for failing to comply for 2015 if employers timely file reports by the applicable due dates in 2016.

**Code Section 6055—Reporting an Individual’s Enrollment in MEC**

The insurer or the employer\(^1\) (in the case of a self-insured group health plan) that provides MEC to an individual during a calendar year must notify the IRS whether an individual has MEC for purposes of complying with the individual mandate. The employer or insurer, as applicable, also must issue a corresponding statement to the responsible individual so that they can properly file their tax returns and demonstrate that an individual is not required to make a payment under the individual mandate.

\(^1\) See details on combined Code Section 6055 and 6056 reporting since applicable large employer members in the same controlled group must file a single information return by employer member.
A “responsible individual” includes a primary insured, employee, former employee, and an individual who
enrolls one or more individuals, including himself or herself, in MEC. An individual means any individual
enrolled in MEC, including full-time and part-time employees, pre-65 retirees, COBRA beneficiaries, and
eligible dependents.

A Code Section 6055 report is not required for an individual who is offered MEC but who does not enroll.
Supplemental health plan coverage does not have to be reported if the primary and supplemental
coverage have the same plan sponsor or the coverage is secondary to government-sponsored coverage
such as Medicare.

Information to Be Reported Under Code Section 6055

Under Code Section 6055, entities required to report must submit a statement to the IRS containing the
following information for each individual enrolled in MEC:

- The name, address, and employer identification number (EIN) of the reporting entity;
- The name, address, and taxpayer identification number (TIN) (or date of birth if TIN is not available)
of the responsible individual, except that reporting the TIN of a responsible individual not enrolled in
coverage is optional;
- The name and TIN (or date of birth if TIN is not available) of each individual who is covered under the
policy or program; and
- For each covered individual, the months for which, for at least one day, the individual was enrolled in
coverage and entitled to receive benefits.

TINs
Reporting entities must provide TINs for all covered individuals. Entities may provide a date of birth if a
TIN is not available, but only after reasonable efforts have been made to obtain the TIN. Efforts to obtain
a TIN are considered reasonable if the reporting entity:

- Makes an initial solicitation at the time a relationship with the individual is established, such as when
an individual is hired;
- A first annual solicitation is made by December 31 of the year in which the relationship with the payee
begins (January 31 of the following year if the relationship begins in December); and
- A second solicitation is made by December 31 of the following year.

If at that point a TIN is still not provided, the reporting entity does not need to ask again. Although the
reporting entity would need to obtain a TIN for any newly added individual, this would not trigger a new
obligation to solicit a TIN from existing covered individuals.

EINs
Sponsors of multiemployer plans do not have to report the EINs of the participating employers. Health
insurance issuers, however, must report the EIN of the employer sponsoring the insured group health
plan.
Code Section 6056—Reporting an Offer of MEC to FTEs

Code Section 6056 requires an employer that is subject to the employer shared responsibility mandate to report to the IRS about the health care coverage offered to FTEs. Code Section 6056 also requires that the employer furnish a statement to employees that may be used to determine whether, for each month of the calendar year, they may claim on their individual tax returns a premium tax credit under Code Section 36B.

If an employer is subject to the employer shared responsibility mandate, then the Code Section 6056 reporting requirement applies to each entity in the employer’s controlled group. (The final regulations refer to each employing entity within a controlled group that must report as an applicable large employer member.) A Code Section 6056 statement has to be sent to each FTE, even if the FTE was not offered MEC. Any entity within the controlled group that does not have any FTEs is not subject to the Code Section 6056 reporting requirements.

Although the employer or, if applicable, the employing entity remains responsible for the Code Section 6056 reporting, the employer may contract with a third party administrator to facilitate filing Code Section 6056 returns/transmittals and providing Code Section 6056 statements to FTEs. The employing entity (each applicable large employer member within the controlled group), however, remains responsible for any penalties for noncompliance.

Similarly, a governmental unit may report on its own behalf or designate another person or persons to report on its behalf. The designated person must be part of, or related to, the same governmental unit as the employing entity. For example, a political subdivision of a state may designate the state or another political subdivision of the state to report on its behalf. While the designated person would be liable for any penalties for noncompliant reporting, the employing entity would remain liable for any employer shared responsibility penalties.

The administrator of a multiemployer plan may prepare Code Section 6056 reports related to the FTEs covered by a collective bargaining agreement. The employing entity would complete Code Section 6056 returns for any other FTEs who are not eligible to participate in a multiemployer plan and would remain liable for any penalties for noncompliance.

Code Section 6056—Reporting Methods

Employers may use one of four permissible reporting methods to meet the requirements under Code Section 6056:

- The **General Reporting Method** is available for all FTEs.
- The **Qualifying Offer Method** is available only for certain groups of FTEs.
- The **98% Offer Method** is available if the employing entity offers coverage to 98% of its employees.
- The **Optional Method** is available only for 2015.
General Reporting Method

Under the General Reporting Method, each employing entity (i.e., each applicable large employer member of the controlled group) must submit a Code Section 6056 return to the IRS for each FTE. The Code Section 6056 return must contain the following information:

- The name, address, and EIN of the employing entity;
- The name and telephone number of a contact person for each entity in the controlled group that includes the employing entity;
- The calendar year for which the information is reported;
- Certification that the employing entity offered its FTEs (and their dependents) the opportunity to enroll in MEC by calendar month;
- The months during the calendar year that MEC was available;
- Each FTE’s share of the lowest cost monthly premium for self-only minimum value coverage offered to that FTE by calendar month;
- The number of FTEs for each calendar month; and
- The name, address, and TIN of each FTE during the calendar year and the months, if any, during which the employee was covered under the plan.

The employing entity must report the following information through indicator codes:

- Whether the coverage offered to FTEs and their dependents under an employer-sponsored plan provides minimum value;
- Whether the employee had the opportunity to enroll the employee’s spouse in MEC;
- Total number of employees, by calendar month;
- Whether an employee’s effective date of coverage was delayed by a permissible waiting period, by calendar month;
- Whether the employing entity had no employees or otherwise credited any hours of service during any particular month, by calendar month;
- Whether the employing entity is part of a controlled group and, if applicable, the name and EIN of each employing entity of the controlled group;
- Whether an appropriately designated person is reporting on behalf of an employing entity that is a governmental unit or any agency or instrumentality of the governmental unit;
- If an employing entity is a contributing employer to a multiemployer plan, whether the employer’s contributions to the multiemployer plan relieve the employer of the employer shared responsibility mandate; and,
- If a third party is reporting, the identification of the third party.

The Treasury and IRS anticipate that additional indicator codes may be used for information that is reported to the FTE (e.g., whether MEC was offered to the employee only; to the employee and the employee’s dependents only; to the employee and the employee’s spouse only; or to the employee, the
employee’s spouse, and dependents.) Indicator codes may also be added to indicate that MEC was not offered—for example, because the employee was in a limited non-assessment period.

Qualifying Offer Method
An employing entity may also file a Code Section 6056 return using the simpler Qualifying Offer Method. Under the Qualifying Offer Method, the employing entity must certify that, for all 12 months during the calendar year in which the employee was a FTE, the employing entity made a qualifying offer of health care coverage to the employee as follows:

- Offered the employee MEC that provides minimum value at a cost for employee-only coverage not exceeding 9.5% of the federal poverty line (approximately $1,100 per year); and
- Offered MEC to the employee’s spouse and dependents.

With respect to employees to whom a qualifying offer was made, the employing entity must report the employee’s name, social security number, and address, and indicate that a qualifying offer was made for all 12 months of the calendar year. A copy of the information provided to the IRS must also be provided to the employee, the employee’s spouse, and dependents to inform them that they received a qualifying offer and are, therefore, not eligible for a premium tax credit.

98% Offer Method
If an employing entity offers affordable, minimum value MEC to 98% of its employees and their dependents, then the employing entity will not have to identify its FTEs nor specify the number of FTEs. Reporting is still required for all FTEs, including those employees not offered coverage. In addition, if an employee declined coverage and receives a premium tax credit, when the IRS contacts the employing entity about the potential for an employing entity’s shared responsibility payment, the employing entity will at that point have to determine whether the employee was a FTE for the months a premium tax credit was received.

Optional Method for 2015
For 2015 only, an employing entity may use the following reporting method if the employing entity:

- Certifies that it has made a qualifying offer to at least 95% of its FTEs and to their spouses and dependents; and
- Provides a simplified statement to employees.

The IRS will prescribe the format of the statement, which will vary depending on whether the employee received a qualifying offer for all, some, or none of the months of the calendar year. If the employing entity meets the conditions above, it will be treated as meeting the Code Section 6056 requirements if it files Form 1095-C that includes the employee’s name, social security number, address, and indicates, using an indicator code, either that a qualifying offer was made for all 12 months or the specific months coverage was offered and provides the statement to the employee. The IRS anticipates that the statement will convey that the employee, the employee’s spouse (if any), and the employee’s dependents (if any) will not be eligible to claim a premium tax credit for any of the 12 months. Or, if the individual did not receive a qualifying offer for a particular month(s), the statement will indicate that the premium tax credit will be available for one or more of the 12 calendar months, as applicable.
Combined Code Section 6055 and 6056 Statements

Employers that sponsor self-insured plans may combine the information required to be reported in Code Sections 6055 and 6056 into one report by completing both sections of Form 1095-C. An employer that sponsors a fully insured plan may report the applicable information on the portion of the Form 1095-C that relates to Code Section 6056. Reporting entities that are not employers, such as insurance issuers and sponsors of multiemployer plans, will report separately under Code Section 6055 using Form 1095-B. Employers may use a third party administrator to prepare the returns and be listed as a contact under both Code Sections 6055 and 6056.

Filing With the IRS

The annual return and transmittal must be filed with the IRS no later than February 28 (March 31 if filed electronically) of the year immediately following the calendar year to which the return relates. This is the same filing schedule as for other information returns, such as Form W-2. The first Code Section 6056 returns for the 2015 calendar year must be filed no later than March 1, 2016 (March 31, 2016 if filed electronically).

Employing entities not using the combined statement may satisfy the Code Section 6056 general reporting requirement by filing Form 1094-C. Employer members that provide fully insured coverage will complete the relevant portions of Form 1095-C.

Under Code Section 6055, reporting entities, such as insurance issuers, self-insured multiemployer plans and providers of government-sponsored coverage will file Forms 1094-B and 1095-B.

Statements for both Code Sections 6055 and 6056 may be furnished using the applicable forms provided by the IRS or may be made on a substitute form that provides the required information.

Both Code Section 6055 and 6056 information returns must be filed with the IRS electronically if the employer member or reporting entity is required to file at least 250 of the specific form, either under Code Section 6055 or 6056.

Reporting to Individuals

Under Code Section 6056, employees must be provided the name, address, and EIN of the applicable large employer member plus the information provided shown on the Code Section 6056 return to the IRS with respect to the FTE. Under Code Section 6055, individuals must be provided the telephone number of a reporting entity's contact person and policy number, if any, plus the information provided to the IRS. Code Section 6055 information is not required for individuals who are offered coverage but do not enroll. Code Section 6055 information is still required to be provided to a covered individual who dies during the year.

The Code Section 6055 information must be provided on or before January 31 of the year following the calendar year in which MEC is provided. An extension of up to 30 days will be allowed for good cause. The Code Section 6056 information must also be provided on or before January 31. Both the Code Section 6055 and 6056 statements may be provided in the same mailing as the Form W-2.
Code Section 6055 statements sent by first class mail to the recipient’s last known permanent address or temporary address, discharges the requirement to furnish the statement, even if the statement is returned. If a reporting entity does not have an address, it should send the statement to the address where the individual is most likely to receive it.

Code Section 6055 and 6056 statements may be provided electronically but only if the recipient affirmatively consents to receiving the specific statement. The consent must be in a manner that reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished. Consent may be provided in response to a notice on a website.

Penalties and Penalty Relief

An employing entity that does not comply with the Code Section 6055 and 6056 reporting requirements may be subject to penalties under Code Sections 6721 (failure to file correct information returns) and 6722 (failure to furnish correct payee statement). For statements and returns due in 2016, the IRS will not impose penalties on employers that made a good faith effort to comply with the requirements but may have provided incorrect or incomplete information, including social security numbers. This relief is not applicable if a good faith effort to comply is not made or for failure to timely file an information return or statement, unless for reasonable cause.

Resources


Aon Hewitt’s Regulatory Guidance Under the Affordable Care Act page, which provides links to Aon Hewitt bulletins on Affordable Care Act guidance and regulations, is available at: http://www.aon.com/human-capital-consulting/thought-leadership/leg_updates/healthcare/index_regulatory_guidance_affordable_care.jsp
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