

American Benefits Council
Preparing for PPACA

Session #24: Employer Reporting Requirements

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Seth T. Perretta

Overview

- New tax reporting requirements are foundation of IRS enforcement of various tax provisions of the ACA
 - Individual mandate (IRC section 5000A)
 - Employer mandate (IRC section 4980H)
 - Premium tax credits (“PTCs”) (IRC section 36B)
- Reporting requirements largely focus on different ACA provisions
 - IRC section 6055 – Individual mandate, PTCs
 - IRC section 6056 – Employer mandate

Overview

- IRS issued Notices 2012-32 and 2012-33 with respect to the new reporting requirements, requesting comment
- On July 2nd, Treasury announced a one-year delay in the application of the employer mandate penalties – stated justification was need to streamline the tax reporting requirements
- Proposed Rules issued on September 9th
- Written comments due by **November 8th**

Timing of Reporting – Generally

- Returns to IRS must be provided to the IRS by February 28th (March 31st, if electronic) of the following year
- Statements must be provided to applicable taxpayers/employees by January 31st of the following year
- These rules apply regardless of calendar or non-calendar year plans
- Hoped-for voluntary reporting for 2014 (i.e., returns and statements to be sent in early 2015)
- Reporting ***required*** for **2015** (i.e., returns and statements to be sent in early **2016**)

Possibility for Additional Simplification and Combined Reporting

- Appears possible, although probably only in limited instances, that “... under future guidance, [an employer] may include furnishing a single substitute statement to covered individuals for both sections 6055 and 6056”
- “[W]hile the rules ... do not assume full combined reporting ... they reflect other means of avoiding duplication and simplifying reporting”
- “We continue to seek comments on other ways to streamline the reporting methods that would be permissible under the statute”

6055 Reporting

- Largely related to providing individuals and IRS with information regarding “minimum essential coverage” and whether an individual satisfied the individual mandate for the preceding calendar year
- Reporting requirements apply to:
 - Issuers of individual and group insurance
 - Self-insured employers who sponsor a medical plan REGARDLESS OF # of EEs

6055 Reporting

- The statute would require reporting of the following information:
 - Name, address, and EIN of employer plan sponsor (if group coverage)
 - Name, address, and TIN (i.e. SSN#) of the “responsible individual” and of each other individual obtaining coverage under the policy or plan
 - Dates (versus months) when the individual was covered during the calendar year
 - The portion of the premium (if any) required to be paid by the employer
 - For insured minimal essential coverage, information regarding whether or not the coverage is a qualified health plan offered through an Exchange and, in the case of a qualified health plan, the amount (if any) of the advance payment of any cost-sharing reduction, or of any premium tax credit with respect to such coverage
 - If the health insurance is a qualified health plan in the small group market offered through an Exchange, such other information as the IRS may require for administering the tax credit for employee health insurance expenses of small employers
 - With respect to all individual and group insurance (whether sold inside or outside of an exchange), as well as self-funded plans

6055 Reporting

- The NPRM proposes to simplify the content requirements as follows:
 - Excused from having to report the portion of the premium paid by the employer
 - Only requires reporting of coverage by month versus specific dates
 - This is because MEC is determined on a monthly basis
 - Issue of terminated or reinstated coverage; IRC section 6724 rules allow for waiver of penalties
 - NPRM rejects “snapshot” approach
 - No need to report with respect to HSAs (just underlying HDHPs)
 - No need to report with respect to HRAs that are supplemental to MEC
 - But is HRA is not “integrated”, then reporting appears mandatory for HRA

6055 Reporting

- The NPRM proposes the following to simplify and/or clarify the rules regarding WHO must report:
 - No reporting requirement for issuers with respect to Exchange-based individual insurance
 - Because of duplicative reporting requirement by Exchange to IRS under IRC section 36B
 - Exception does NOT apply to SHOP coverage
 - No reporting requirement for employer plan sponsors of fully-insured group health plans
 - Regarding self-funded employer plans:
 - Each separate employer entity of controlled group has reporting obligation
 - One member of group may assist other members by preparing and filing returns on their behalf, but liability remains with employer entity
 - Third party reporting is generally permitted; HOWEVER, liability remains with employing entity
 - For multiemployer plans, joint board of trustees, association, committee or other similar group will be responsible for doing the reporting
 - Requests comments related to foreign employers (in part, because they may lack an EIN)

6055 Reporting – Timing and Form

- IRS Return
 - Return may be made on IRS Form 1095-B (or another form the IRS designates, or on a substitute form subject to IRS rules for substitute forms)
 - Return will need to be submitted with a transmittal form, IRS Form 1094-B
 - Mandatory electronic filing for high-volume filers
 - Permissive electronic filing for others
 - NPRM indicates a draft version of these forms will be available at a later date
 - Return and transmittal form to IRS by February 28th of each year (with respect to the prior calendar year); or March 31st if filed electronically
 - NPRM rejects different timing rule for non-calendar year plans

6055 Reporting – Timing and Form

- Individual Statements
 - Must provide statement to primary insured
 - No requirement to provide statements to beneficiaries or dependents (such as spouses of covered adult children)
 - Must include:
 - Policy number (if applicable)
 - Name, address and telephone number of reporting entity
 - Same information that is sent to IRS on the return
 - May include truncated TIN (subject to program rules)
 - Paper Delivery
 - Only need to send one copy to any given address
 - Electronic delivery is permitted in limited instances
 - Need participant consent
 - Must furnish the statement by January 31st of each year (with respect to the prior calendar year coverage); March 31st if delivered electronically
 - Same schedule that applies to Forms W-2 and 1099

6055 Reporting

- Regarding the collection of TINs and addresses
 - Health issuers may have moved away from collecting individuals' social security numbers
 - Additionally, employers have been concerned about employees' privacy and potential identity theft, especially with paper delivery
 - Nonetheless, NPRM imposes mandatory TIN reporting, but allows for use of truncated TINs on individual statements
 - NPRM provides for limited relief where reasonable efforts are undertaken to collect the TIN (per the rules of IRC section 6724):
 - Must make at least two reasonable efforts to obtain the TIN
 - May use birth date if reasonable efforts fail to secure a TIN
 - Special rule for overseas individuals

6055 Reporting

- Penalties
 - Apply for failure to make return to IRS or furnish statement to individuals
 - Very generally, may be up to \$100 per return, with a maximum of \$1.5 million
 - Waiver and reasonable case exceptions available where failure is not due to willful neglect

6056 Reporting

- Largely focused on providing individuals and the IRS with information regarding an employer's compliance with the employer mandate, as well as information regarding "minimum value" and "affordability" (but based solely on IRC section 4980H safe harbor definition)
- Only applies to employers that were an "applicable large employer" during the year being reported
 - No reporting requirement for issuers
 - No reporting requirement for employers not subject to the employer mandate, i.e., smaller employers

6056 Reporting

- Statute generally would require report/notice the following information:
 - Name and EIN of the applicable large employer
 - Date the return is filed
 - Certifications as to whether the applicable large employer offers its full-time employees (and their children up to age 26) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan and, if so:
 - The duration of any waiting period with respect to such coverage
 - The months during the calendar year when eligible for coverage
 - The monthly premium for the lowest cost option in each enrollment category under the plan
 - The employer's share of the total allowed costs of benefits provided under plan
 - The number of full-time employees for each month of the calendar year
 - For each full-time employee, the name, address, and TIN of the employee
 - The months (if any) during which the full-time employee (or any dependents) were covered under the eligible employer-sponsored plan
 - Such other information as may be required by Treasury

6056 Reporting

- The NPRM proposes to simplify the content requirements as follows:
 - No requirement to report the length of any waiting period
 - However, will likely need to use a code to indicate whether coverage was not effective for a given month because of a waiting period
 - No requirement to report the employer’s share of the total allowed costs of benefits provided under the plan
 - However, will need to use indicator code to demonstrate whether the coverage provided “minimum value”
 - No requirement to report the monthly premium for the lowest-cost option in each enrollment category
 - However, will need to provide relevant information on the lowest-cost self-only coverage option (presumably that provides minimum value, to the extent any)
 - No requirement to report the months, if any, during which the employee’s dependents were covered under the plan
 - Since actual dependent enrollment is irrelevant under IRC section 4980H interpretation

6056 Reporting

- The NPRM proposes the following to simplify and/or clarify the rules regarding WHO must report:
 - Clarifies that each ALE member is responsible
 - ALE member that is member of aggregated group may file returns on behalf of other member of group; but liability remains with employing ALE member
 - Third party reporting is permissible, but liability cannot be transferred
 - Regarding multiemployer plans
 - Bifurcated approach anticipated
 - One return would pertain to FTEs eligible to participate in multiemployer plan
 - Second return would pertain to FTEs NOT eligible to participate in the multiemployer plan
 - Administrator of multiemployer plan can report on behalf of contributing employers, but liability remains with such employers

6056 Reporting

- NPRM proposes to use indicator codes to report the following information for each calendar month with respect to each employee:
 - Whether MEC that provides MV was offered to:
 - The employee only
 - The employee and dependents only
 - The employee and spouse only
 - The employee, dependents and spouse

6056 Reporting

- NPRM proposes to use indicator codes to report the following information for each calendar month with respect to each employee:
 - If coverage was not offered to the employee:
 - Because the employee was in a permissible waiting period
 - The employee was not a full-time employee
 - The employee was not employed by the ALE during that month
 - No exception applies

6056 Reporting

- NPRM proposes to use indicator codes to report the following information for each calendar month with respect to each employee:
 - Whether coverage was offered to the employee for the month even though he or she was not a full-time employee during that month

6056 Reporting

- NPRM proposes to use indicator codes to report the following information for each calendar month with respect to each employee:
 - The ALE met the employer safe harbors for “affordability” for purposes of 4980H

6056 Reporting – Timing and Form

- IRS Return
 - Like Form W-2, use separate return and single transmittal form
 - Returns may be made by filing Form 1095-C (employee statement) and Form 1094-C (transmittal form) – or other forms designated/substituted by the IRS
 - Electronic filing
 - Mandatory electronic filing
 - Small employer exception (i.e., ALE member files fewer than 250 returns for the year, including ALL returns, such as Forms w-2)

6056 Reporting – Timing and Form

- Employee Statement
 - Each ALE member must provide a qualifying employee statement to each full-time employee
 - No requirement to provide to non-full-time employees or non-employees
 - May use Form 1095-C or other substitute statement
 - May use truncated TIN (subject to program rules)
 - Must be provided no later than February 28th (with respect to the preceding calendar year); March 31st if filed electronically
 - Same schedule that applies to Forms W-2 and 1099
 - No special rule for non-calendar year plans
 - Certain limited extensions for filing are provided (apparently, based on IRC section 6081 rules)
 - Electronic delivery permitted following consent

6056 Reporting – Potential Alternatives

- NPRM indicates IRS and Treasury are continuing to consider ways to simplify reporting
 - If adopted, could substantially reduce the data elements reported using the general method
 - If a simplified method is used, the employer would indicate on the reporting form which method was used and the number of employees for which the method was used

6056 Reporting – Potential Alternatives

- **Proposed Simplified Method “A”- Eliminating 6056 Employee Statements in Favor of Form W-2 Reporting**
 - Use an existing box on the Form W-2 to provide monthly \$\$ amount of required employee contribution for the lowest cost minimum value self-only coverage offered, and use a letter code to describe the offer (i.e. who was offered MV coverage- Employee only? Spouse? Dependents?)
 - Method available if this data remained the same for the employee for all 12 months of the year
 - Result: Employer does not have to provide 6056 employee statements

6056 Reporting – Potential Alternatives

- **Proposed Simplified Method “B”- No Need to Determine FTEs if Minimum Value Coverage Offered to All Potential FTEs**
 - If employer can certify that all employees to whom it didn't offer coverage during the year were not FTEs (or were ineligible for coverage for other reasons), employer wouldn't have to confirm every employee reported on the 6056 return was a FTE
 - This method targets employers that can accurately represent that the only employees not offered coverage are not full-time, but haven't reviewed whether every employee to whom coverage is offered is full-time
 - If an employee offered coverage subsequently applies for a PTC, employer may have to later confirm full-time status
 - Employer would have to furnish employee statement for each employee reported

6056 Reporting – Potential Alternatives

- **Proposed Simplified Method “C”- Self-Insured Employers Offering Employees/Spouses/Dependents Mandatory No-Cost Minimum Value Coverage**
 - Individuals covered by such a plan couldn't be eligible for a PTC
 - 6055 reporting will indicate all months for which coverage was provided for each individual
 - Employer could file the 6055 return, a code on the W-2, and summary information on the 6056 return- and no further reporting necessary

6056 Reporting – Potential Alternatives

- **Proposed Simplified Method “D”- Voluntarily Reporting Section 6056 Elements During/Prior Year of Coverage**
 - Some employers have suggested voluntarily reporting information about coverage prior to end of coverage year; would allow IRS to transmit data to Exchanges to assist with verification of eligibility for PTCs
 - But IRS has concerns:
 - IRS has no authority to share taxpayer information in this manner
 - Individuals won't receive information needed to prepare their returns during tax season
 - Different mandatory vs. voluntary filings occurring at different time periods would be administratively complex
 - Offer of coverage made at start of year may change during the calendar year
 - IRS has asked for comments on how voluntary partial early reporting could be structured

6056 Reporting – Potential Alternatives

- **Proposed Simplified Method “E”- Reporting for Employees Potentially Ineligible for the PTCs**
 - Targeted for employers whose employees are highly paid (and therefore likely household income > 400% of FPL)
 - Employee would not benefit from receiving a 6056 statement, and information would not be useful to IRS in administering 4980H(b)
 - *But...* employers would still need to report to the IRS the months during which the employee was a FTE
 - *Also...* IRS concerned that an employee’s high Form W-2 wages does not necessarily mean family income is too high for PTC eligibility (other factors include family size, losses or expenses incurred, etc.)
 - Meeting affordability safe harbor based on wages for section 4980H does not make employees ineligible for PTCs based on household income
 - IRS requests comments on whether there is a level of Form W-2 wages at which such a determination might be made with sufficient confidence

QUESTIONS?

Seth Perretta
sperretta@crowell.com
(202) 624-2525