



American Benefits Council

Preparing for PPACA

May 22, 2014

Session #30

Employer Information Reporting Requirements

(Internal Revenue Code Sections 6055 and 6056)

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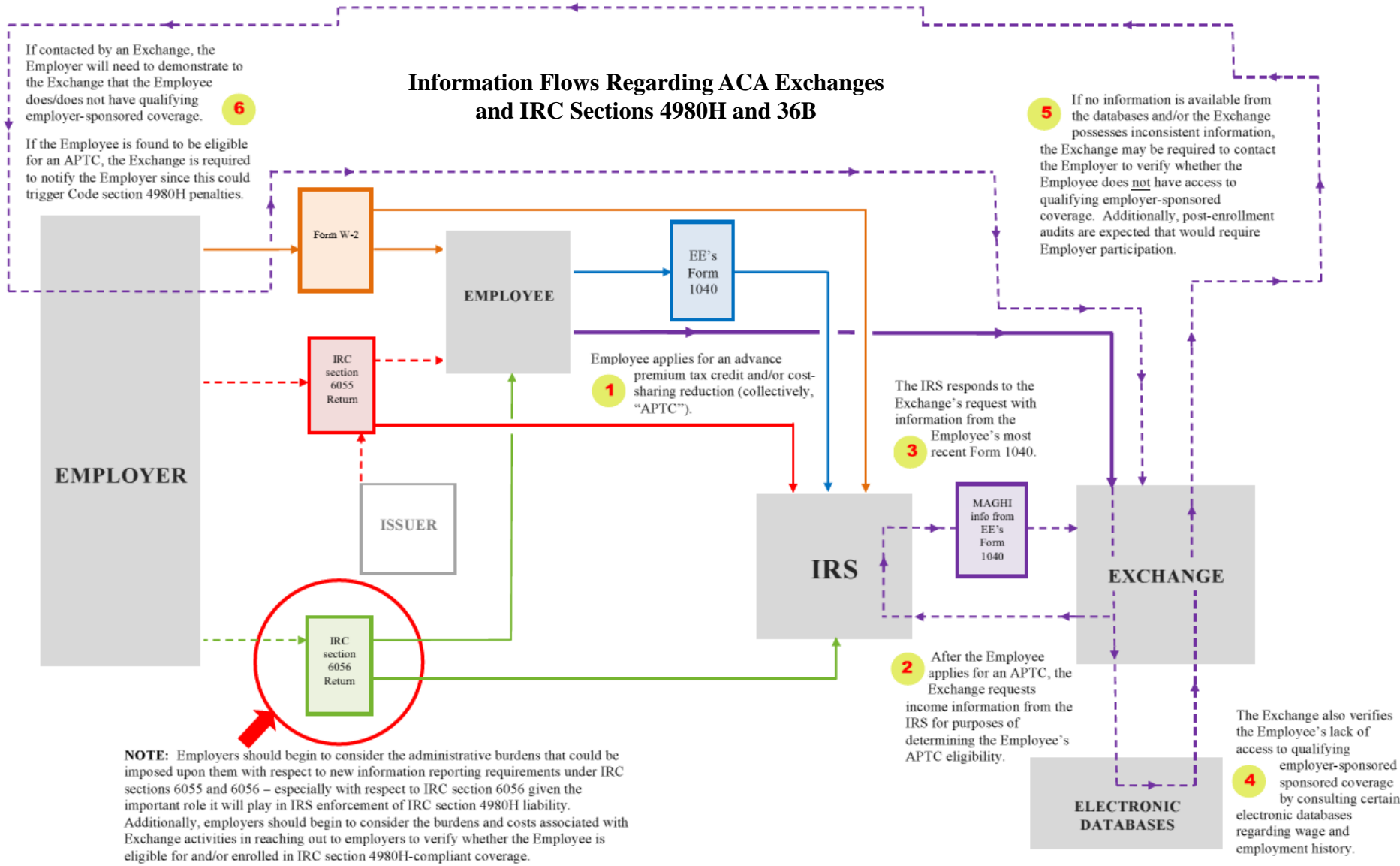
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*** Slides 12, 15, 17, 18, 27 and 38 have been updated to reflect certain comments made by our presenters on the webinar presentation on May 22, 2014. ***

Overview

- New tax reporting requirements are the 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
 - IRC section 6056 – Employer mandate

Information Flows Regarding ACA Exchanges and IRC Sections 4980H and 36B



Overview

- IRS issued Notices 2012-32 and 2012-33 with respect to the new reporting requirements, requesting comments
- On July 2, 2013, 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 were issued on September 9, 2013
- Final Rules were issued on March 5, 2014

Timing of Reporting: Generally

- Returns must be provided to the IRS by March 31st of the following year (or February 28th if filing by paper)
- 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
- Voluntary reporting for 2014 (i.e., returns and statements to be sent in early 2015)



6055
“MEC”
Reporting



6055 Reporting: Generally

- Purpose: providing individuals and IRS with information regarding “minimum essential coverage” (or “MEC”) and whether an individual satisfied the individual mandate for the preceding calendar year
- Reporting requirements apply to:
 - Issuers of individual and group insurance
 - Employers who sponsor a self-funded medical plan REGARDLESS of the number of employees

6055 Reporting: What is Reported?

What must be reported?	What <u>doesn't</u> have to be reported?
(1) Name, address and EIN of reporting entity	
(2) Name, address, and TIN (i.e. SS#) for most "responsible individuals"	<i>[If responsible individual is not enrolled in the coverage, don't have to report TIN]</i>
(3) Name and TIN of each covered individual	
(4) Months when the individual was covered during the calendar year	<i>[Don't have to report <u>exact dates</u>- just <u>months</u>]</i>
(5) For insured group health plans, the name, address and EIN of the employer sponsoring the plan	<i>[Don't have to report portion of premium paid by employer]</i>
(6) Whether coverage is a QHP enrolled through the SHOP exchange, and the SHOP's unique identifier	

6055 Reporting: What is Reported?


- Statute called for reporting of certain data elements that were deemed irrelevant by the IRS. The Regulations provide that those unnecessary items don't have to be reported.
- Specifically:
 - those set forth on preceding slide, and
 - amount of advance payments of the premium tax credit and cost-sharing reductions received by QHP with respect to individual on-exchange insurance

6055 Reporting: Who Must Report?

Who must report?	Who <u>doesn't</u> have to report?
(1) Employer plan sponsors of <u>self-funded</u> group health plans providing MEC -- Note special rule for participating employers in self-funded MEWAs	Employer plan sponsors of <u>insured</u> group health plans [<i>issuer reports on their behalf</i>] Employer plan sponsors of HIPAA-excepted self-funded coverage [<i>not MEC</i>]
(2) Issuers of large-group MEC health insurance	Issuers of HIPAA-excepted insured coverage [<i>not MEC</i>]
(3) Issuers of small group SHOP insurance	
(4) Issuers of small group non-SHOP insurance	
(5) Issuers of individual <u>non</u> -Exchange-based insurance	Issuers of individual <u>Exchange-based</u> insurance [<i>information will be reported to the IRS by the Exchanges</i>]

6055 Reporting: Who Must Report?

Other exceptions to reporting:

- 
- **No reporting required** for employers participating in an insured arrangement sponsored by another entity
 - **No reporting required** for health savings accounts (“HSAs”), which are provided in conjunction with an insured high-deductible health plan (“HDHP”)
 - **No reporting required** for health reimbursement arrangements (“HRAs”) that supplement MEC
 - **No reporting required** for issuer providing health insurance coverage in connection with government-sponsored program (i.e. Medicaid, CHIP, Medicare Advantage)
 - **No reporting required** for wellness programs that are an element of other MEC
 - **No reporting required** for MEC that supplements a primary plan of the same plan sponsor or that supplements government-sponsored coverage

6055 Reporting: Who Must Report?

How do self-funded, single employer plans report?

- Generally, each separate employer entity of controlled group has its own reporting obligation
- HOWEVER, IF employers in a controlled group are not applicable large employer members (after applying aggregation rules), they may report as separate entities, or one entity may report for the group.
- Third party reporting is generally permitted; HOWEVER, liability remains with employer

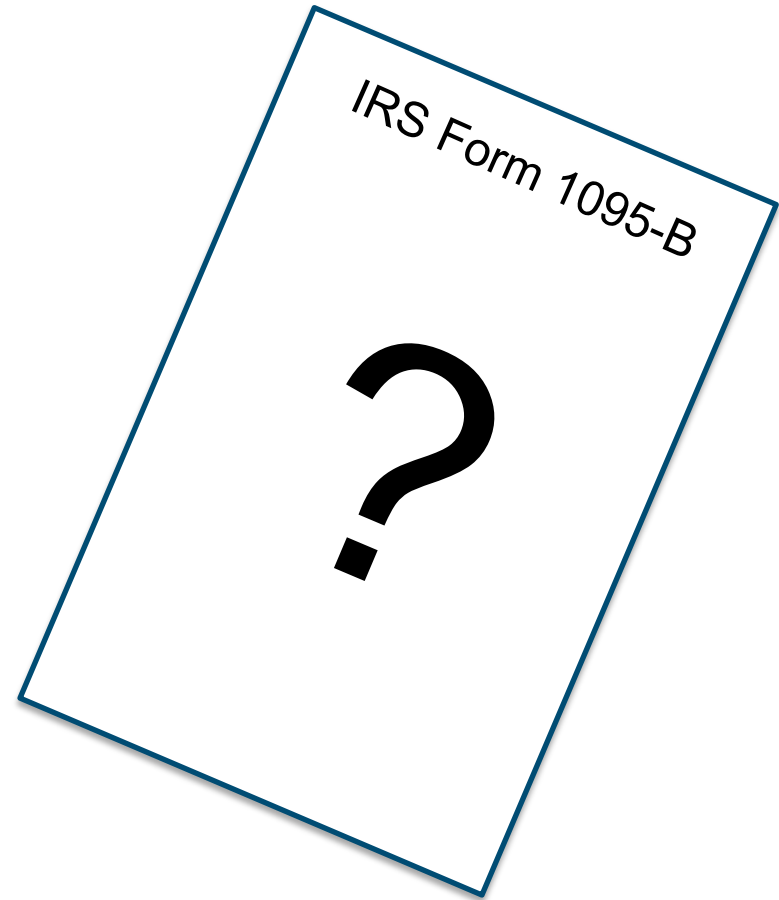
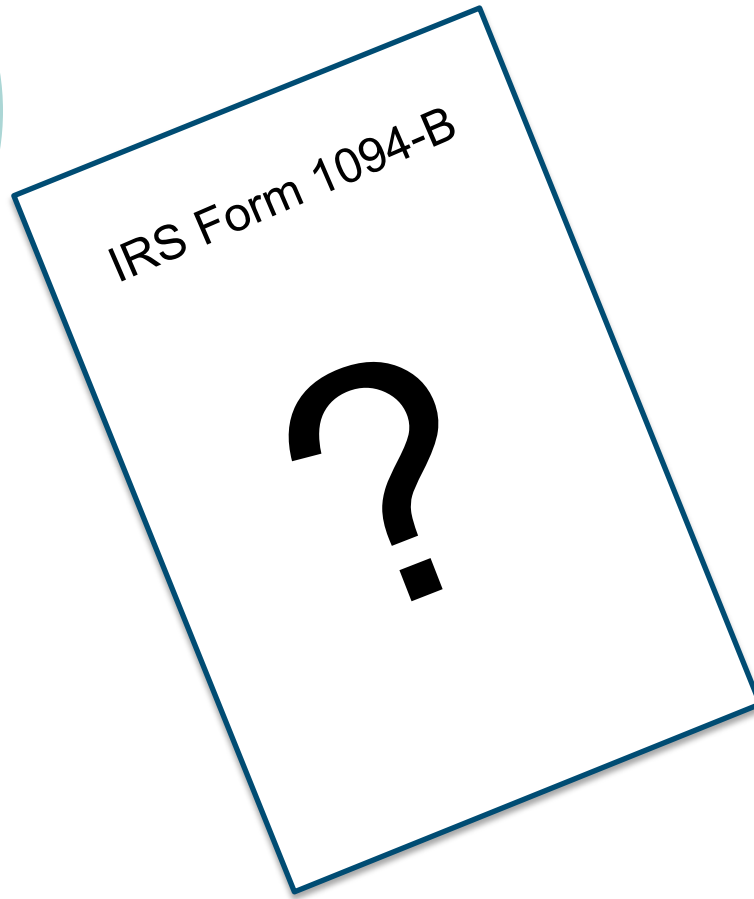
How do self-insured MEWAs report?

- Each participating employer must report with respect to the participating employer's own employees

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
 - Draft versions of 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
 - Same timing applies to non-calendar year plans
 - Appears that extensions of up to 60 days may be granted (30 day automatic extension if requested, followed by additional 30 day extension if explanation of need is provided)
 - Electronic filing is required if the reporting entity is required to file at least 250 of the Form 1095-B

6055 Reporting: Timing and Form



6055 Reporting: Timing and Form

- Individual Statements
 - Must provide statement to responsible individual; no requirement to provide statements to beneficiaries or dependents (such as spouses or covered adult children)
 - Must include:
 - Phone number of contact person at reporting entity
 - Same information that is sent to IRS on the return
 - Paper Delivery
 - Only need to send one copy to last known address
 - If statement is returned, no requirement to resend
 - Electronic delivery is permitted in limited instances
 - Need affirmative participant consent; regulators have indicated that one can't piggyback off of prior consent for Form W-2 delivery
 - Must furnish the statement by January 31st of each year (with respect to the prior calendar year coverage)
 - Same schedule that applies to Forms W-2 and 1099
 - If can show "good cause," can apply for up to a 30 day extension

6055 Reporting: TIN Troubles?

- Regarding the collection of TINs:
 - Health issuers 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
 - Many employers and issuers have not been collecting TINs for dependents
 - Note: Rules permit use of truncated TINs

6055 Reporting: TIN Troubles?

- Can use a date of birth only if:
 - Individual does not have a TIN, **OR**
 - TIN is not available after “reasonable efforts” to obtain it (per the rules of IRC section 6724)
 - Must make at least one initial solicitation, then two qualifying follow-up attempts to obtain the TIN
 - IRS published a correction to the final regulation in the Federal Register on April 30, 2014 correcting the example on TIN reporting (see 79 Fed. Reg. 24331)
- No need to report TINs for individuals not enrolled in the coverage

6055 Reporting: TIN Troubles?

Example:

- ACME Corp. employs Ethel Employee. Ethel's 21 year-old dependent child, Danny Dependent, is covered under ACME's self-insured major medical plan
- ACME realizes they don't have Danny's TIN. In December 2014, an HR employee asks Ethel for Danny's TIN. Ethel ignores the request
- ACME writes to Danny in January 2015 and asks him to provide his TIN. Danny ignores the request
- ACME makes a third and final request in December 2015, but again, Danny ignores ACME's request
- When ACME files the 6055 return in early 2016 (reporting for 2015), it reports Danny's DOB in place of his TIN
- It appears from the Final Rule, as corrected, that after the final follow-up, attempt in December 2015, ACME no longer has an obligation to continue to solicit Danny's TIN – **THUS, NO POTENTIAL PENALTIES FOR FAILING TO REPORT THE TIN**

6055 Reporting: Penalties

- Penalties may apply if they fail to make a return to IRS or furnish a statement to individuals
- Very generally, penalties may be up to \$100 per return, with a maximum of \$1.5 million
- Waiver available where failure is due to reasonable cause and not due to willful neglect
- Penalties are reduced if the corrected return is filed within 30 days of the required filing date
- Penalties are reduced (by a lesser amount) if the corrected return is filed by the following August 1st
- No “cut-off” for correcting returns
- Limited relief for returns and statements filed or furnished in 2016 (for 2015 coverage), if incorrect or incomplete information is reported (including TINs, DOBs)



6056
"ALE"
Reporting



6056 Reporting

- Dual Purposes:
 - Employer mandate tracking
 - Individual eligibility for federal subsidies through an exchange

6056 Reporting: Who Must Report?

- Only applies to employers that were an “ALE” during the year being reported
- “ALE” = an applicable large employer subject to the employer shared responsibility provisions of Code section 4980H.
 - Very generally, an ALE is an employer that employed on average 50 or more full-time employees or equivalents during the preceding calendar year
- Transition relief for 2015 - ALEs with between 50 and 100 full-time employees or equivalents may not be subject to 4980H
- 6056 requirements apply to each ALE “member,” even though determination of whether an entity is an ALE is made at the aggregated group member
 - Example: if an ALE is comprised of a parent corporation and 10 subsidiaries, there are 11 ALE members. Each of the 11 ALE members must file under section 6056, regardless of the number of full-time employees of ALE member
 - One ALE member may facilitate the filing of returns/furnishing statements on behalf of another
 - ALEs with no full-time employees are not required to report



2015

6056 Reporting: What Must Be Reported?

- Name, address, and employer identification number (EIN) of the ALE member (employer)
- Name and telephone number of the ALE member's (employer's) contact person (which can be an employee or agent of the employer)
- Calendar year for which the information is reported

6056 Reporting: What Must Be 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
- The 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
- Note:
 - The preamble to the final rule says that "individuals who are full-time employees ... for a particular calendar month generally may be identified on a weekly basis or a payroll basis that approximates the calendar month," but ALE members are required to report on the basis of the twelve calendar months with respect to coverage offered (or not offered) to each full-time employee

6056 Reporting: What Must Be Reported?

- 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
 - Note: the TIN of the spouse or dependent is not required
- Any other information prescribed by forms or instructions

6056 Reporting: What Must Be Reported?

In addition, the Final Rule provides that the following information will be reported through the use of indicator codes:

- (1) Information as to whether the coverage provides minimum value, and whether the employee had the opportunity to enroll his or her spouse in the coverage
- (2) Total number of employees, by calendar month
- (3) Whether an employee's effective date of coverage was affected by a permissible waiting period, by calendar month
- (4) Whether the ALE member had no employees or otherwise credited any hours of service during any particular month, by calendar month
- (5) Whether the ALE member is in an aggregated group, and if so, the name and EIN of each employer member of the aggregated group constituting the ALE
- (6) If a person is reporting on behalf of a governmental unit or instrumentality, the name, address, and ID # of that person
- (7) If the ALE is contributing to a multiemployer plan, whether the ALE is not subject to a 4980H penalty due to contributions to that plan
- (8) If a third party is reporting, the name, address and ID # of the third party

6056 Reporting: Timing and Form

- IRS Return like Form W-2, need to use separate return for each full-time employee and transmittal form for all returns filed
 - 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
 - Employer will need to file the authoritative transmittal form (even where permitted third party reporting occurs, such as with multiemployer plans)
 - Electronic filing
 - Mandatory electronic filing for most employers
 - Smaller employers can file on paper (i.e., ALE member that files fewer than 250 returns under Section 6056 for the year)
 - Filing is due February 28 (March 31 if filed electronically)
 - Appears that extensions of up to 60 days may be granted (30 day automatic extension if requested, followed by additional 30 day extension if explanation of need is provided)
 - Deadline is the same for employers regardless of whether plan is on a calendar year basis

6056 Reporting: Timing and Form

- Combined Reporting (6055 and 6056)
 - Applicable large employers that provide minimum essential coverage on a self-insured basis are subject to the reporting requirements of both section 6055 and 6056
 - Final Rule provides that they “will” file a combined return and statement for all filing under sections 6055 and 6056
 - Will report on 1095-C only, completing both sections to report the information required under sections 6055 and 6056
- Note: reported “tricky parts,” *e.g.*, only one 6056 statement per employee

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
 - Must be provided no later than January 31st (with respect to the preceding calendar year);
 - 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
 - Permissible to combine mailing with additional information returns (i.e. 6056 statement and Form W-2 can be sent to an employee in the same mailing)

6056 Reporting

Who reports?	What is reported to the IRS?	What is reported to the individual?
<p>Applicable Large Employer Members (an employer that alone, or combined with members in its controlled group, has 50 or more full-time equivalent employees)</p>	<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 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), and •Any other information prescribed by forms or instructions 	<ul style="list-style-type: none"> •All the information reported to the IRS, and •The name, address, and EIN of the ALE member

6056 Reporting: Alternative methods

- Final Regulations include certain filing methods that may be used as an alternative to the default filing method
- Unclear whether these methods will be widely used

6056 Reporting: Alternative Filing Methods

Method A – Reporting Based on Certification of Qualifying Offers

- What is a “Qualifying Offer”?

An offer to one or more of its full-time employees for **all months during the year** in which the employee was a full-time employee and for which a **section 4980H penalty could apply**, of **MEC** providing **minimum value** at an employee cost for employee only coverage **not exceeding 9.5% of the mainland single federal poverty line**, and that includes an offer of MEC to the employee’s **spouses and dependents**.

6056 Reporting: Alternative Filing Methods

Method A – Reporting Based on Certification of Qualifying Offers

- With respect to employees for whom the Qualifying Offer was made for all 12 months of the year, the ALE member will likely have to provide less information on the Form 1095-C:
 - Employee name
 - Employee TIN (Social Security Number)
 - Employee address
 - Indicator Code indicating that a Qualifying Offer was made for all 12 months
- Employee statement requirement for these employees will be met by providing them with either a copy of the Form 1095-C or a general statement informing them that they received a Qualifying Offer for all 12 months and therefore are generally ineligible for a premium tax credit for these months
- If employee received a Qualifying Offer for fewer than 12 months, 6056 returns and statements must be filed and furnished under the general reporting method

6056 Reporting: Alternative Filing Methods

Method A (2015) – Certification of Qualifying Offers

**** 2015 Relief Only ****

- For 2015 (i.e., the 2016 report), if an ALE member:
 - Can certify that it has made a Qualifying Offer to at least 95% of its full-time employees and to their spouses and dependents;
 - Can furnish a statement to each of its full-time employees by the following January 31 that informs the employee of their potential eligibility (or ineligibility, depending on the circumstances) for a premium tax credit during the preceding year;
- Then the employer will be treated as meeting the 6056 reporting requirement if it files a Form 1095-C with the following information (and provides the statement to the employee):
 - Employee name
 - Employee SS#
 - Employee address
 - Indicator Code indicating that a Qualifying Offer was made for all 12 months, or the specific months for which a Qualifying Offer was made, or no Qualifying Offer was made

6056 Reporting: Alternative Filing Methods

Method B – No Requirement to Identify Full-Time Employees (98% Offers)

- This method may help employers who:
 - offer MEC to all or nearly all of their employees
 - are confident that the only employees not offered coverage are not full-time employees
 - don't want to expend the effort of determining whether a particular employee is considered "full-time" under the 4980H rules
- Example: Employer that offers coverage to all employees whose hours of service average at least 20 hours per week

6056 Reporting: Alternative Filing

Method B – No Requirement to Identify Full-Time Employees (98% Offers)

- To use this method, Employer must certify, on its transmittal form, that it offered MEC providing the minimum value that was affordable under section 4980H to at least **98%** of the employees (and their dependents) with respect to whom it reports under section 6056.
- If this certification is provided, the employer does not have to identify in its 6056 return whether a particular employee was a full-time employee during particular months, or report the total number of its full-time employees for the reporting year.
- Note: this method does not exempt the employer from any penalties that might apply for failure to report with respect to any full-time employee



6056 Reporting: Alternative Filing Methods

Method C – ALE with At Least 50, But Fewer Than 100 Full-Time Employees

**** 2015 Relief ****

- This method only applies for 2015 (i.e., the 2016 report), and only to ALEs with **at least 50 but fewer than 100** full-time employees who are utilizing the section 4980H relief for 2015
- As part of the 4980H transition relief, the ALE member must certify on the section 6056 transmittal form that will be filed in 2016 that it meets the eligibility requirements for the transition relief

6056 Reporting: Penalties

- Penalties may apply if fail 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 available where failure is due to reasonable cause and not due to willful neglect
- Limited relief for returns and statements filed or furnished in 2016 (for 2015 coverage), if incorrect or incomplete information is reported

Questions

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