

HEALTH CARE REFORM

EMPLOYER MANDATE: REPORTING REQUIREMENTS

GENERAL BACKGROUND

Beginning in 2016, employers that sponsor fully insured or self-insured group health plans are required to report information to the IRS about the health coverage provided during the prior calendar year (2015). The reporting is meant to assist the federal government in enforcing compliance with both the employer and individual mandates, and, in turn, in administering the premium tax credit and cost-sharing subsidy eligibility and payments through both the federally facilitated and state-run health insurance exchanges. In addition, employers are required to provide employees with individual statements that summarize the IRS report, which is meant to assist individuals in complying with the individual mandate.

For employers there are two separate reporting and employee statement requirements: Internal Revenue Code (IRC) Sections 6055 (all employers that sponsor self-insured plans) and 6056 (all employers that are subject to the employer mandate). Employers subject to both 6055 and 6056 (i.e., those with 50 or more full-time employees (FTEs), including equivalents, that sponsor self-insured plans) may combine their reporting, as described below. Grandfathered status of a plan does not affect the employer's reporting obligations.

GENERAL PRINCIPLES FOR BOTH 6055 AND 6056

Before getting into specifics on the two reporting requirements, it is helpful to understand some general principles applicable to both, including due dates, actual IRS forms used for reporting, and methods for filing with the IRS and distributing statements to employees.

Due Dates

Generally, the 6055 and 6056 reporting due dates mirror the Form W-2 due dates. Specifically, employers must file their reports on or before Feb. 28 (March 31, if filing electronically) of the year following the calendar year to which the reporting relates. Therefore, for 2017 (reporting on 2016 calendar-year compliance), reports are due Feb. 28, 2017, or March 31, 2016, if filing electronically. These dates apply regardless of the plan year of the employer-sponsored coverage (e.g., reporting is due on those dates for 2016 compliance, even if the plan year runs from May 1 through April 30). In addition, like the Form W-2, employers must normally distribute employee statements by Jan. 31 of the following year. However, the period for providing statements in 2017 (reporting on 2016 compliance) has been extended by 30 days. The employee statements in 2017 must now be provided by March 2, 2017.

Forms for Reporting

With respect to reporting forms, reporting will be made on several different IRS forms. Generally, there are transmittal forms (IRS Forms 1094-B and 1094-C) that will accompany the actual information reports, IRS Forms 1095-B and 1095-C. Notably, 1095-C is divided into two sections to facilitate combined reporting. The specific forms that must be filed depend on the employer's size (small versus large, with "large" defined as those with 50 or more FTEs, including full-time equivalents — those subject to the employer mandate) and the plan type (self-insured versus fully insured), as outlined in the chart on the next page:

IRS reporting requirements applied beginning Jan. 1, 2015, with the first reports due in early 2016.



Employer Type	6055	6056	IRS Report	Employee Statement
Small Fully Insured	No	No	N/A	N/A
Small Self-insured	Yes	No	Form 1094-B Form 1095-B	Copy of Form 1095-B Or Substitute*
Large Fully Insured	No	Yes	Form 1094-C Form 1095-C Parts I & II only	Copy of Form 1095-C Or Substitute*
Large Self-insured	Yes	Yes	Form 1094-C Form 1095-C Parts I, II, and III	Copy of Form 1095-C Or Substitute*

*Substitute must include same information as actual form.

Reporting Methods

With respect to reporting methods, when filing with the IRS, employers may file by paper or electronically, although employers filing at least 250 Forms 1095-C must file electronically. Employers may also use third parties (such as a third-party administrator, etc.) to file on their behalf, although the employer remains liable for any reporting failures.

When distributing employee statements, employers may send statements via first-class mail to the recipient's last known address. As always, employers must keep accurate records evidencing the procedures used in case evidence is requested, such as in the event of an IRS audit. Importantly, employee statements may be included in the same mailing with Form W-2. Employers may also provide statements electronically, so long as the employee consents to electronic delivery.

6055 REPORTING: EMPLOYERS OF ANY SIZE WITH SELF-INSURED GROUP HEALTH PLANS

Section 6055 reporting applies to employers of any size that sponsor a self-insured group health plan, government agencies that administer government-sponsored health insurance coverage and any other entity that provides minimum essential coverage (MEC) to individuals. MEC includes any major employer-sponsored medical plan, including retiree-only coverage, such as a retiree-only HRA, but does not include excepted benefits (e.g., health FSAs, stand-alone dental and vision plans, supplemental coverage), HRAs for active employees, Medicare Part B, on-site medical clinics or wellness programs.

6055 requires employers to provide specific information in their reports, as follows:

1. Employer's name, address and employer identification number (EIN)
2. Each covered individual's name, address and taxpayer identification number (TIN); if the employer, after reasonable efforts, is unsuccessful in obtaining an individual's TIN, it may instead report the individual's date of birth (DOB)
3. For each covered individual, the months for which the individual was enrolled (for at least one day) in coverage and entitled to receive benefits
4. Whether coverage is Small Business Health Options Program (SHOP) coverage (and, if so, the SHOP identifier)

It is important to note that covered individuals include spouses, dependents and former employees. Employers also must include all covered individuals, even if those individuals are not common-law employees. For example, if an employer is covering independent contractors or board members, the employer must include them in the report. Thus, employers will need to gather the appropriate documentation to ensure that all covered individuals are provided with the required report.

6056 REPORTING: EMPLOYERS WITH AT LEAST 50 FTES SPONSORING FULLY OR SELF-INSURED GROUP HEALTH PLANS

Section 6056 reporting applies to all employers subject to the employer mandate (generally, those with 50 or more FTEs and full-time equivalents). 6056 requires employers to provide specific information in their reports, as follows:

1. Employer's name, address and EIN
2. Employer's contact person's name and telephone number
3. The calendar year for which the information is reported
4. Number of FTEs for each month during the calendar year
5. Months during the calendar year that MEC was available
6. Certification as to whether the employer offered its FTEs and their dependents the opportunity to enroll in MEC, by calendar month
7. Each FTE's share of the MEC's self-only premium, by calendar month
8. Name, address and TIN (or DOB) of each FTE employed during the calendar year
9. Months, if any, during which each FTE was covered under the plan

Simplified 6056 Reporting Options

Employers may be eligible for one of two simplified reporting options under 6056. The first option is available if the employer makes a “qualifying offer,” meaning it offered minimum value (MV) MEC to all FTEs and their dependents and the employee-only cost does not exceed 9.66 percent of the mainland single federal poverty line (in 2016; indexed annually). In that case, if the qualifying offer is made for all 12 months, then the employer will report only the employee’s name, address and TIN, plus an indication (via indicator code) that a qualifying offer was made for all 12 months. If the qualifying offer is made for only part of the year, then the employer will enter a code for the months in which the qualifying offer was made. Finally, the simplified report may also be provided as the employee statement.

The second option is available if the employer offers MV MEC that is affordable under one of the IRS safe harbors on affordability to at least 98 percent of all FTEs and their dependents. In that case, the employer may certify that it has done so and provide 6056 reporting with respect to all employees (rather than determining the number of FTEs or specifying whether a particular employee is an FTE and was offered coverage). In other words, in lieu of reporting items 4–8 above, the employer certifies that all FTEs were eligible for affordable MV MEC for all calendar months in the year. The simplified report may also be provided as the employee statement.

6056 Reporting for Multiemployer Group Health Plans

Generally, in the multiemployer/collectively bargained plan setting, the multiemployer group health plans provide the health coverage itself, and the participating employers contribute to the coverage. Generally, 6056 reporting applies only to the employer providing coverage to its employees (and not to the multiemployer plan itself). However, 6056 does allow the multiemployer plan administrator to prepare reports for FTEs covered by the collective bargaining agreement and who are participating in the multiemployer plan. So, while employers must submit returns for non-collectively bargained plan employees, the multiemployer plan administrator may handle 6056 reporting (and employee statements) on behalf of the employer with respect to the employees participating in the multiemployer plan. Note that the employer remains liable for any penalties for failure to comply.

No 6056 Reporting Transition Relief for Employers with 50–99 FTEs

Applicable large employers (ALEs) with 50–99 FTEs (including full-time-equivalent employees) providing non-calendar year plans that qualified for employer mandate transition relief for 2015 and for the portion of the 2015 plan year that falls in 2016 must still report under Section 6056 for the months in 2016 that relief applied.

COMBINED 6055 AND 6056 FILING FOR LARGE EMPLOYERS WITH SELF-INSURED PLANS

Most employers that sponsor self-insured plans will also be considered large employers and are therefore subject to both 6055 and 6056 reporting. Such employers may combine their two reports into one by using Forms 1094-C and 1095-C and completing all three sections of Form 1095-C. Such employers also need to distribute a copy of Form 1095-C or a substitute to all covered employees.

6055 AND 6056 REPORTING FOR CONTROLLED GROUPS

Special rules apply to employers that are part of a controlled group (as determined under IRC Section 414). A controlled group is one in which multiple employers share sufficient common ownership or control. For example, a parent company and a wholly owned subsidiary company would be under common control. Each member of the controlled group is referred to as a group “member.”

For controlled groups, group members may separately submit their 6055 and 6056 reports, or one member may submit reports on behalf of each member of the group. Regardless, each group member remains separately liable for its own 6055 and/or 6056 filing. For example, suppose a controlled group consists of a parent company and 10 subsidiaries (i.e., there are 11 ALEs), and the parent agrees to file on behalf of all 10 subsidiary group members. If, in fact, the parent fails to file on behalf of subsidiary 1, the IRS may still penalize subsidiary 1 for failing to file. Lastly, special rules apply to employers that are a qualified subchapter S subsidiary; see your advisor for more information.

PENALTIES

IRC Sections 6721 and 6722 contain penalties for employers that fail to execute their 6055 and 6056 reporting. The penalty is generally \$260 per failure per year, with a maximum penalty of \$3,178,500. For 2015 and 2016 reporting only (due in early 2016 and early 2017, respectively), no reporting penalties will apply where the employer is using good faith efforts to comply. In other words, the employer can escape penalties for incorrect or incomplete reports (e.g., those filings with missing TIN or DOBs), but not for a total failure to file.

SUMMARY

PPACA requires most employers sponsoring group health plans to report certain plan coverage information to the IRS and to provide statements to employees. Large employers (those with 50 or more FTEs, including equivalents), regardless of when they become subject to PPACA's employer mandate, will also have to report on their employer mandate obligations. The reporting requirements, found in IRC Sections 6055 and 6056, are meant to facilitate the enforcement of PPACA's individual and employer mandates and to assist the federally facilitated and state-run health insurance marketplaces in making premium tax credit and costsharing subsidy determinations.

Employers should prepare to report by familiarizing themselves with the rules, collecting employee information, and establishing processes and procedures to handle the reporting. Employers should work closely with their advisors in that preparation.

ADDITIONAL RESOURCES

Final Regulations on 6055 Reporting: <https://www.federalregister.gov/articles/2014/03/10/2014-05051/information-reporting-of-minimum-essential-coverage>

Final Regulations on 6056 Reporting: <https://www.federalregister.gov/articles/2014/03/10/2014-05050/information-reporting-by-applicable-large-employers-on-health-insurance-coverage-offered-under>

U.S. Treasury Fact Sheet: <http://www.treasury.gov/press-center/press-releases/Pages/jl2310.aspx>

2016 Draft Forms and Instructions

- IRS Form 1094-B: <https://www.irs.gov/pub/irs-pdf/f1094b.pdf>
- IRS Form 1095-B: <https://www.irs.gov/pub/irs-pdf/f1095b.pdf>
- IRS Form 1094-C: <https://www.irs.gov/pub/irs-pdf/f1094c.pdf>
- IRS Form 1095-C: <https://www.irs.gov/pub/irs-pdf/f1095c.pdf>
- Instructions for IRS Forms 1094-B and 1095-B: <https://www.irs.gov/pub/irs-pdf/i109495b.pdf>
- Instructions for IRS Forms 1094-C and 1095-C: <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>
- IRS FAQs on 6055 Reporting: <http://www.irs.gov/uac/Questions-and-Answers-on-Information-Reporting-by-Health-Coverage-Providers-Section-6055>
- IRS FAQs on 6056 Reporting: <http://www.irs.gov/uac/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056>

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