

ACA Minimum Essential Coverage and Shared Responsibility Reporting Disclosure Requirements

As you review year end compliance responsibilities and simultaneously look to next year (link to compliance calendar), don't forget to include the following two "information reporting" and disclosure requirements added by the Affordable Care Act (ACA):

- §6055 - Information Reporting of Minimum Essential Coverage (MEC) - enables the individual to prove and the IRS to verify the existence of individual coverage
- §6056 - Information Reporting by Applicable Large Employers (ALE) on Health Insurance Coverage - enables ALE to report compliance with ACA's shared responsibility requirements.

Both reporting requirements have a delayed effective date of January 1, 2015 (originally effective January 1, 2014) with initial reporting and disclosure in 2016. In September, 2013, the IRS issued proposed regulations regarding [ALE reporting](#) as well as [MEC reporting](#) which modify the statutory language but leave the door open for increased reporting requirements. Refer to our Minimum Essential Coverage Reporting (§6055) and Shared Responsibility (§6056) Reporting and Disclosure [Compliance Cue Card®](#) for a side by side comparison of key requirements.

Note: the late issuance of these regulations resulted in the delay of the shared responsibility requirements as well as the delay in the effective date of these reporting requirements. (see [IRS Notice 2013-45](#))

Purpose

These reporting requirements are intended to assist the IRS in the administration and verification of two key ACA requirements - the individual mandate and employer shared responsibility provisions.

The individual mandate requires that individuals obtain minimum essential coverage or be subject to penalty. The IRS will police the mandate by requiring that insurance companies (in the case of insured plans) and employers or their designee (in the case of self-insured plans) report who has minimum essential coverage. In addition, the individual must be sent a written statement providing the information that was reported.

The shared responsibility requirements require applicable large employers to provide minimum essential coverage that provides minimum value and is affordable. Failure to do so will result in penalties. (see ErisaALERTs [2013-01](#) and [2013-02](#)). The new reporting requirement will enable the IRS to verify compliance with the shared responsibility requirements. Written statements must be sent to individuals included in the report.

MEC reporting is applicable to all employers but the shared responsibility reporting applies to ALE. The IRS will consider utilizing a combined statement to satisfy the disclosure requirements.

The proposed regulations

In an attempt to simplify the statutory reporting requirements, the proposed regulations requirements differ from the statute in certain areas. However, the proposed regulations reserve the right to require additional information not contained in the statute. Public written comments and oral testimony held in November requested further simplification.

The proposed regulations streamline the reporting requirements by eliminating certain statutory requirements including:

- Length of the waiting period
- Reporting the employer's share of the total allowed costs of benefits
- Not requiring the reporting of monthly premium for the lowest cost option for each enrollment category
- Not requiring reporting of the months, if any, during which the employee's dependents were covered.

However, the proposed regulations indicate that the IRS and Treasury anticipate needing information not specifically required by the statute, including:

- Whether the coverage offered meets minimum value and whether the employee had the opportunity to enroll his or her spouse in the coverage including:
 - Total number of employees, by calendar month
 - Whether the employee's effective date of coverage was impacted by a waiting period
 - If the ALE was not conducting business during any particular month
 - If the ALE expects not to be an ALE in the following year
 - Information regarding whether the ALE is part of an aggregated group, e.g, controlled group

The list goes on with an incredible level of detailed data elements! The government will be looking into ways to comply with the requirement by use of codes reported on a W-2.

Where do the proposed regulations stand?

Comment letters were due and hearings held in November. A quick review of a sample of the comment letters revealed:

- a request for further simplification of the reporting requirements
- the tremendous burden that will be placed on reporting entities
- request for use of a certification regarding the provisions of the shared responsibility requirements

Key points for plan sponsors to remember

1. Insurance companies will be responsible for the reporting and disclosure for insured plans; employers will be responsible for the reporting and disclosure for self-insured plans but may outsource the requirement to their third party administrator.
2. The reporting is on a calendar year basis regardless of the plan or policy year.
3. If you are part of a controlled group, the reporting is required for each member of the controlled group.
4. A written statement must be provided to the individuals/employees included in the IRS reports. As noted earlier, the IRS is considering consolidating the statements into one report.
5. The reports and statements are first due in 2016; (January 31 to the individual; February 28 to the IRS if filed on paper, March 31 if filed electronically). Note the filing due date is the same as W-2 and 1099 reporting.
6. The reporting requirements are detailed and numerous; confirm that either your insurance company or third party administrator are aware of the requirements and will be able to comply. Don't forget to get it in writing, stay tuned for more developments and hope for continued simplification.

Disclaimer: This material is for the sole purpose of providing general information and does not under any circumstances constitute legal advice and should not be used as a substitute for legal advice. You should seek the advice of counsel when applying the requirements to your plan. For more information on this ErisaALERT contact us by phone at 610-524-5351 and ask for Mary Andersen, or 201-924-7216 and ask for Leanne Fosbre or 215-508-5629 and ask for Theresa Borzelli, Esq. (SFE&G).