

ACA Reporting and Disclosure (§6055 and §6056)

ErisaALERT 2013-05 discussed the statutory requirements and the proposed regulations regarding the new reporting and disclosure requirements imposed by the Affordable Care Act (ACA) relating to the individual mandate and shared responsibility.

On March 10, 2014 final regulations were issued for [§6055](#) Information Reporting of Minimal Essential Coverage (MEC) and [§6056](#) Information Reporting by Applicable Large Employers (ALE) on Health Insurance Coverage Offered Under Employer Sponsored Plans. The MEC reporting is required for purposes of the individual mandate allowing individuals to report and the IRS to verify the existence of individual MEC. The ALE reporting will enable employers to demonstrate compliance with the shared responsibility requirements and the information provided will enable the IRS to administer the tax credit/premium subsidy aspects of the Affordable Care Act (ACA).

In this ALERT we will update you on the key provisions of the regulations as they relate to plan sponsors.

Key compliance points

- "Providers" of minimum essential coverage are responsible for the §6055 reporting. This means insurance companies in the case of insured plans and employers in the case of self-insured plans must report MEC information (§6055).
- ALEs must report shared responsibility information (§6056).
- Both regulations are effective January 1, 2015.
- The first return is due to the IRS on February 28, 2016 if filed on paper and March 31 if filed electronically.
- The first individual statement is due January 31, 2016.
- Reporting is based on a calendar year regardless of the plan year.
- Forms are being developed to report the information (Form 1095-B and C as well as transmittal Forms 1094 B and C).
- An ALE that is reporting under §6056 will file the §6055 return on Form 1094-C and Form 1095-C or other form designated by the IRS.
- A plan sponsor that is not an ALE will file the §6055 return on Form 1094-B and Form 1095-B or other form designated by the IRS.
- Combined reporting is permitted for ALEs with self-insured plans that must submit both §6055 and §6056 returns.
- Electronic filing is required if there are 250 or more returns.
- The §6055 reporting requires Taxpayer Identification Numbers (TINs) of all covered individuals while the §6056 requires only the TIN of the primary insured.
- Electronic delivery of the individual statements is permitted if the individual affirmatively consents.

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.

Reporting Minimum Essential Coverage aka §6055 Reporting

Every person that provides minimum essential coverage to an individual during a calendar year must file a return with the IRS as well as provide a statement to the individual. "Providers" of minimum essential coverage include:

- Plan sponsors of self-insured group health plan coverage,
- Health insurance issuers,
- Governmental units and
- Any other person that provides minimum essential coverage.

Reporting to the IRS

Information which must be reported:

- Name, address, EIN of reporting entity
- Name, address, EIN of employer sponsoring the plan
- Name, address, TIN of each person covered under the plan including the months for which the individual was enrolled (even if the individual was covered for one day). A date of birth may be used instead of a TIN if reasonable efforts were made to obtain the TIN. Reasonable efforts including asking for the TIN when the "relationship with the payee is established". If the TIN is not received, "the first annual solicitation" is generally required by the December 31 of the year in which the relationship begins. If no TIN is provided, a second solicitation is required by December 31 of the following year. No further solicitation is required if the reporting entity does not receive the TIN. More details regarding TIN solicitation can be found in the preamble to the regulations.
- Whether the coverage is a qualified health plan offered through the Small Business Health Options Program (SHOP) and if so the SHOP's unique identifier
- Any other information specified in forms, instructions or published guidance

As noted above the report and transmittal form must be reported on or before February 28 (March 31 if filed electronically) following the year for which the information is reported.

Information Reporting by Applicable Large Employers (ALE) on Health Insurance Coverage Offered Under Employer Sponsored Plans aka §6056 Reporting

§6056 reporting is needed for the administration of the shared responsibility provisions (§4980H - see ErisaALERT 2014-03) as well as the premium tax credit. Applicable large employers subject to ACA's shared responsibility provisions must file a §6056 information return with the IRS as well as provide a statement to full-time employees.

Reporting to the IRS

Information which must be reported:

- ALE name, address, EIN, name and telephone number of contact person
- Calendar year for which the information is being reported
- The number of full-time employees for each month during the calendar year
- A certification as to whether the ALE offered its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer sponsored plan, by calendar month
- The months during the calendar year for which MEC was available
- Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value under an eligible employer sponsored plan, by calendar month
- The name, address, TIN of each full-time employee during the calendar year and the number of months during which the employee was covered under the plan
- Any other information specified in forms, instructions, or published guidance

Note: Returns may be made on Forms 1094-C and 1095-C or a substitute.

The report and transmittal form must be reported on or before February 28 (March 31 if filed electronically) following the year for which the information is reported.

Alternative §6056 Reporting available for specific groups of employees

In an effort to simplify the reporting burden, alternative methods of reporting are available:

1. *Reporting based on Certification of Qualifying Offers* - an ALE must certify that it made a qualifying offer to full-time employees. The ALE must certify that it offered MEC for all months during the calendar year in which the employee was a full-time employee, at an employee cost not exceeding 9.5 percent of the mainland federal poverty level and offered MEC to the employee's spouses and dependents. It is important to note that an ALE utilizing the §4980H transition relief regarding dependent coverage will not be able to use this alternative. ALEs eligible for this transition rule will satisfy the §6056 reporting requirement by reporting only the full-time employee's name, social security number, address and an indicator code that a qualifying offer was made for all the 12 months of the calendar year.
2. *Reporting Method based on certification of Qualifying Offers for 2015 only* - an ALE must certify that it has made a qualifying offer to at least 95 percent of its full-time employees and to their spouses and dependents in lieu of providing a Form 1095-C to its employees, an ALE may furnish a statement to its employees in a format to be prescribed the IRS. As noted above, the ALE reporting requirement will be satisfied by reporting only the full-time employee's name, social security number, address and an indicator code that a qualifying offer was made for all the 12 months of the calendar year or the specific number of months it was offered.
3. *Option to report without separate identification of full-time employees qualifying offers made to 98% of full-time employees* - an ALE must certify that it made a qualifying offer to 98% of its full-time employees. An ALE that meets this requirement does not have to identify or specify the number of full-time employees.
4. *Reporting for ALEs with at least 50 full-time employees but less than 100 full-time employees* must certify that they meet the requirements of §4980H with respect to the 50-100 employee 2015 transition rule. For this group, it appears that the ALE reports on IRS prescribed forms that it satisfies the §4980H criteria.

Reporting to the individual

Every person required to file a §6055 or §6056 return must furnish a statement to the "responsible individual" in the case of §6055 reporting and to full-time employees in the case of §6056 reporting. The statement must basically provide the information reported to the IRS and the name and phone number of the reporting entity's contact person for §6055 reporting. The §6055 statement must also include a policy number.

The individual statement can be a copy of the return filed with the IRS or a substitute which includes the information reported to the IRS. Truncated Social Security numbers can be used on the individual statement.

The individual statement must be furnished by January 31 of the year following the calendar year in which the minimum essential coverage is reported. It is possible to obtain an extension of up to 30 days for good cause. The individual statement may be provided with the W-2.

Penalties

There are penalties for failure to file the return (§6721) and failure to provide the individual statement (§6722). The penalties can be up to \$100 for each failure. However, the IRS will not impose penalties for good faith attempts to comply with the 2015 reporting and disclosure made in 2016.

What should plan sponsors focus on now?

The simple answer is data.

- Do you have it?
- If you don't, how will you collect it?
- What can current service providers do to help you?
- Do any of the alternative reporting rules apply for your situation?

Whatever you do, always remember that you may have to prove it! So, you must document, document, document.

Note: all links are active as of the date of issuance of this ErisaALERT.

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 201-857-1137 and ask for Leanne Fosbre or 215-508-5629 and ask for Theresa Borzelli of SFE&G.