IRS Reporting Compliance with the PPACA under Section 6055 and 6056 of the Internal Revenue Code:

Five Things Employers Need to Know

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Executive Summary

The IRS recently released final regulations that explain the health plan sponsor and large employer reporting requirements under Sections 6055 and 6056 of the Affordable Care Act. The good news is that the actual reporting to the IRS is not particularly complex; it is, in some ways, similar to W-2 wage reporting, so the basic process should be familiar to most employers. The bad news is that making sure one has accurate information can be quite complex. There are two sections of the Affordable Care Act that specify the reporting requirements, with some overlap between the two. As we go through the five questions, you will see that some effort was made so as to not require duplicate effort for employers who may have to report under both 6055 and 6056.

This paper distills the high-level reporting requirements to provide a sense of the task ahead. It is important to note that the required reporting for both Sections 6055 and 6056 has been eliminated for the 2014 calendar year; but the IRS will be accepting voluntary reporting in 2015 for the 2014 calendar year. Many large employers are already taking steps to evaluate systems and establish processes in order to gauge their readiness for beginning measurement and tracking for 2015.

Section 6055

1. Who must report and to whom?

Section 6055 applies to plan sponsors – anyone who issues "Minimum Essential Coverage, " including health plan issuers, government employers, multi-employer plan sponsors (multi-employer plans under collective bargaining agreements).[1] In addition, employers who sponsor self-insured group health plans must meet Section 6055 requirements. If your company is self-insured and an "Applicable Large Employer" (more on that in the Section 6056 section below), be prepared to report under both sections 6055 and 6056.

Much like W-2 reporting, these providers must file the information statements to the IRS, and in addition, provide statements to the individuals who were enrolled in the plan during the calendar year.

2. What must be reported?

The information requirements for Section 6055 reporting are fairly basic:

1. The Employer Identification Number, together with the name and address of the plan sponsor;
2. The Taxpayer Identification Number (usually SSN) for all individuals covered by "Minimum Essential Coverage.[2] "
3. Coverage Dates – employers must report, for each full time employee, all months for which the individual is enrolled in "minimum essential coverage" and is, for at least one day in such month, entitled to receive benefits.

Of course, this means that the plan sponsor must track when covered individuals enroll and are benefits eligible, and when they drop off of the plan. It is important to note that "covered individuals" includes not only employees but all dependents and family members also covered under the plan.

1 Defined under Internal Revenue Code Section 414(f)
2 Defined under Internal Revenue Code Section 5000A

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While it is permissible to substitute a birthdate for the Taxpayer Identification Number, reasonable efforts must be made to obtain the TIN. Additionally, TINs should be truncated so as not to pose an unreasonable risk of identity theft for the persons whose information is reported.[3]

One additional item of information that must be provided to covered individuals is the name, address and contact phone number for the person required to file the returns; it is important to note the IRS allows a plan sponsor to designate an agent or third-party representative to be the contact for the purposes of responding to covered individuals.

3. When must this information be reported?

If filing electronically, the information returns must be transmitted to the IRS before April 1. If filing by paper, then the returns must be postmarked before March 1. These are the same filing deadlines for W-2 statements. And accordingly, the annual deadline for providing the information statements to employees/covered individuals is the 31st of January.

4. How must this information be reported?

For employers (self-insured plan sponsors), the information will be filed on forms 1094-C and 1095-C. The 1094-C is a transmittal form and the 1095-C is an informational form. For other plan sponsors (such as multi-employer plans, health plan issuers, etc.) similar forms, designated 1094-B and 1095-B, will be utilized. It is important to note that any person who has to file at least 250 individual returns of any specific form (not counting the transmittal forms) must do so electronically. The IRS has not, as of the publication date of this paper, issued the 1094 or 1095 forms. Tango will provide links to the actual forms upon release by the IRS.

Additionally, the information must also be provided to the enrolled individuals by the plan sponsor. While it is contemplated that plan sponsors will provide a version of the filed statement to the enrolled individuals, the IRS has provided for the use of substitute forms, so long as the substitute meets IRS guidance, which has yet to be issued. Tango will provide additional information on the guidance as soon as it is released.

The statements must be sent to the last known permanent address of the covered individual, but if it is not known, then sent to the last known temporary address. Doing so discharges the requirement to provide the statement, even if the statement gets returned. The IRS will allow employers to provide the statements in the same envelope as the W-2, which can cut down on administrative costs of compliance.

While the statements may be provided to covered individuals electronically, the IRS requires that the covered individual provide affirmative consent to receiving the specific form electronically. If consent is acquired with other electronic consents, the specific form must be listed in the request. Additionally employers must continuously track consent revocation status.

5. Why does the IRS need this information?

The purpose of Section 6055 reporting is to give the IRS sufficient information to be able to identify individuals who have obtained Minimum Essential Coverage, and from where they obtained it. The information helps determine which individuals would be qualified to obtain a premium tax credit if such individuals purchased health coverage through the state or federal marketplaces instead of through their employers. It also helps the

3 http://www.irs.gov/irb/2013-07_IRB/ar10.html

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IRS determine which individuals do not have Minimum Essential Coverage and therefore would be subject to the individual shared responsibility payment under Section 5000A, unless they qualified for an exemption.

6055 Summary

Since information reporting under Section 6055 is an obligation for plan issuers and sponsors, most employers will not have to comply with Section 6055 unless they sponsor a self-insured plan. As we will discuss below, however, most employers will be responsible for reporting under Section 6056, including self-insured large employers, which will be required to report under both sections. The information required for 6056 reporting is somewhat more involved, but you may notice similarities in the information and process.

Section 6056

1. Who must report and to whom?

Section 6056 requires reporting by "Applicable Large Employers ("ALE")" - that is, employers who employed an average of at least 50 full-time employees[4] on business days during the previous calendar year.[5] Employers who are treated as a "single employer" under Section 414(b), (c), (m) or (o)[6] are one employer for determining large employer status.

This is the same definitional standard that is used to determine whether or not employers are subject to the "pay or play" penalties under the ACA; that subject is covered in more depth on the Tango blog site[7] and below in Section 5.

In addition, all "ALE Members" of an aggregated group that is determined to be an ALE are obligated to file under Section 6056. Let's take, for example, a corporation with 5 wholly-owned subsidiary corporations. The parent corporation has 30 full-time employees, but together with the subsidiaries there is a total of 500 full-time employees in the organization. Regardless of the distribution of the full-time employees among the ALE member subsidiaries, the organization is determined to be an ALE since it has over 50 full-time employees, so each subsidiary member and the parent must report regardless of whether the parent and subsidiary corporations each respectively have over 50 full-time employees. While this can be daunting for smaller companies, the good news is that the guidance allows consolidation of reporting by the parent or any ALE member if the company so chooses Employers are also allowed to engage third-party agents and service providers to assist in generating the necessary information, providing the reporting, and responding to any resulting inquiries from employees or the IRS. However, liability for reporting cannot be transferred to third parties.

It's obviously important to accurately calculate the number of full-time employees to determine if a company is subject to reporting. The standard definition of a "full-time employee" is any employee that is employed at least 30 hours of service per week (averaged over the previous calendar year). However, companies must add to that figure an additional number of full-time equivalent employees. This number calculated by dividing the monthly aggregate hours of service of all sub-30 hour per week employees by 120. The total full time employee number is calculated on a monthly basis for the prior year to determine if the company qualifies as an ALE. For many

4 Defined in Section 4980H(c)(4)(a)
5 Defined in Section 4980H(c)(2)
6 See Section 414 generally
7 http://www.tangohealth.com/blog/posts/patient-protection-and-affordable-care-act/

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companies, the 50 employee mark will be a foregone conclusion due to size, but for smaller companies or companies with a large variable-hour or seasonal employee population this quickly becomes more complex, especially given the information that needs to be reported, as will be evident in the following section.

2. What must be reported?

This is the list of all of the items the 1095-C will cover, and it is a lot of information. First, the easy items:

- Name, address and EIN of the ALE member reporting
- The calendar year for the report
- Whether the ALE is a member of a Section 414 group and, if applicable, the name and EIN of the aggregated group for any day of the calendar year for which information is reported
- Whether or not a designated person is reporting on behalf of an ALE member that is a government unit or agency, including their name, address and identification number
- The name and telephone number of a contact person (may be a third party, agent or rep) acting on behalf of the ALE for purposes of 6056 reporting
- If a third party is reporting for an ALE member, include the name, address and EIN of the third party in addition to the ALE member information

The following items will require tracking through the calendar year, which is greatly complicated by the requirement to track who are full-time employees on a monthly basis. For most companies, this means gathering and parsing the required information out of various systems – payroll, HRIS, enrollment platforms, etc. in order to provide complete and accurate information. For most companies, this will require access to multiple systems to gather and analyze the necessary data.

- Certification that the ALE member offered to its full-time employees ("FTEs") and their dependents the opportunity to enroll in minimum essential coverage under an employer-sponsored plan, by calendar month
- The number of FTEs for each calendar month of the calendar year, by month
- For each FTE, include the months during which minimum essential coverage was available under the plan
- For each FTE, include the employee's share of the lowest cost monthly premium for the self-only coverage providing minimum value offered to that employee under an employer-sponsored plan, by calendar month (in dollars)
- The name, address and TIN for each FTE during the calendar year and the months during which the employee was covered under the employer-sponsored plan (the TIN is not necessary for dependents or spouses, however it is for Section 6055 reporting)
- Information as to whether the coverage offered to FTEs and dependents under employer-sponsored plan provides minimum value, and whether or not the employee had the option to enroll their spouse in the coverage
- Whether FTE's effective date of coverage was affected by a permissible waiting period.
- Whether the ALE member had no employees or otherwise credited any hours of service during a month, by month
- If the ALE member is a contributing employer to a multiemployer plan, whether, with respect to a FTE, the employer is not subject to a penalty due to the employer's contributions to a multiemployer plan

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3. When must this information be reported?

The filing deadlines for Section 6056 are the same as for Section 6055 and therefore the same as for W-2 reporting. To recap, if filing electronically, the information returns must be transmitted to the IRS before April 1. If filing by paper, then the returns must be postmarked before March 1. And accordingly, the deadline for providing the information statements to employees/covered individuals is January 31, again matching the W-2 provision deadline (a 30-day extension may be allowed for good cause).

4. How must this information be reported?

Applicable Large Employers and ALE members are required to file on form 1094-C and 1095-C, which are the same forms self-insured employers will also provide their Section 6055 reporting. The same rules as Section 6055 apply with respect to electronic reporting: any organization which has to file at least 250 individual Section 1095-C returns (not counting the transmittal forms) must do so electronically.

Many of the same rules as Section 6055 also apply with respect to providing statements to employees. In most cases, a copy of the 1095-C will be sent to the full-time employee. However substitute statements that meet IRS requirements (to be determined) may be sent. In either case, the IRS allows providing the statement together in the same mailing as the W-2. The statements may also be sent electronically so long as the employee has provided specific affirmative consent to receive the particular form via electronic means. Employers will need to keep track of consents and revocations on an ongoing basis. Along with the information applicable to the particular employee, the statement must contain the name, address and Employer Identification Number of the ALE member. Employers may also use a truncated Tax Identification Number (TTIN) for increased security.

Additionally, The IRS has provided for simplified reporting methods for employers who meet certain specific requirements; please contact Tango and we will be happy to provide the additional information.

5. Why does the IRS need this information?

The purpose of Section 6056 reporting is to allow the IRS to administer and assess the Section 4980H penalties applicable to large employers. As a reminder, there are two penalties under Section 4980H(a) and (b).

Under subsection 4980H (a), if a large employer does *not* offer employer-sponsored Qualified Health Plan[8] to 95% (70% for 2015) or more of its full time employees (including their dependents), and any full-time employee is certified to the employer as having received a tax credit or cost-sharing reduction via any state or federal health care marketplace (Exchange), the employer is subject to an assessment equal to the total number of full-time employees of the employer, minus 30 (80 in 2015), times 1/12 of $2000, calculated per calendar month, for every month of the calendar year for which the employee received the tax credit or cost-sharing. Employers will likely want to establish audit trails for this information in the case a response to an IRS inquiry is needed.

If a large employer does offer a qualified health plan to 95% or more of its full time employees (and their dependents), under subsection 4980H(b), the employer is assessed a penalty of $3000 times the number of employees who actually receive a tax credit or cost-sharing subsidy through the state or federal health care marketplaces (Exchanges).

8 The Employer is responsible for at least 60% of the employee's health care costs, and is "affordable" – the employee cost has to be less than 9.5% of the employee's household income. Because employers, as a rule, do not know employee's household income, there are affordability "safe harbors" in the ACA that help employers determine if the coverage offered is affordable.

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Failure to file or provide statements to employees

The applicable penalties for failure to file or provide statements to employees are the same as for failing to file or transmit W-2s and 1095s. Failure to file is $100 per individual return not to exceed $1.5 million annually, and the same for failure to provide statements. Intentional disregard of these obligations can subject employers to additional penalties.[9]

However, the IRS may waive or abate penalties if reasonable cause is shown. For example, IRS will not impose either penalty for ALE members who can show they made good faith efforts to comply with the reporting requirements for the 2015 year (reportable in 2016), but only for incorrect or incomplete information reported in the returns or statements, including SSNs. There is no relief for failure to file in a timely manner or provide statements, unless the IRS standards for reasonable cause are met.

Conclusion

Provided that large companies, and especially self-insured companies, have the right systems and subject-matter expertise available, ACA reporting can be a manageable and routine task. However, informal surveys of large employers indicate that very few companies are confident that they currently have the proper resources in place to meet ACA reporting requirements. While there is still time to implement solutions, there is a sense that many companies are waiting with the hope that these requirements will go away. As the deadlines approach, it will be more difficult, and likely more expensive, to implement effective solutions. Employers should already be considering their ACA compliance needs, and evaluating current systems and procedures. It is very likely that the systems that are currently in place will have significant gaps for the purposes of ACA measurement and reporting. Employers, especially self-insured employers, should consider purpose-built solutions and outside expertise in order to minimize risks of non-compliance and exposure to penalties under the ACA.

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9 Internal Revenue Code - Section 6721, Section 6722, and Section 6724.

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