

# Government-Mandated Reporting Under ACA: A New Definition of “Simple”


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**benefits**  
MAGAZINE

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PU148020



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Now that the final regulations for what and how employers must report under ACA have been released, large employers should ensure they can gather, accumulate and maintain the necessary data.

**T**he highly anticipated final regulations for employer reporting under the Affordable Care Act (ACA) were released on March 6, 2014. It is no secret that most employers, plan administrators, insurance brokers and consultants were eager to see how Treasury and the Internal Revenue Service (IRS) finalized the details of the regulations.

According to Mark J. Mazur, assistant secretary for tax policy, “[The] announcement is part of the Administration’s effort to provide certainty and early guidance about major health policies so employers, small business owners and other individuals can plan for 2015. Treasury’s final rules significantly streamline and simplify information reporting while making it easier for employers and insurers of all sizes to provide the quality, affordable health coverage that every American deserves.”

However, these reporting mandates are far from simple, and the employer impact and risks are substantial. This article is a review of the major components and employer responsibilities under the recently released final and “simplified” reporting requirements.

by | **Allison Manno**

## takeaways >>

- For 2015, large employers in 2016 must both report to IRS about health care coverage they offer to full-time employees and furnish statements so that employees can determine whether they may claim a premium tax credit.
- Employers that provide minimum essential coverage also must report information relating to individual shared responsibility section provisions.
- Employers that self-insure can use a single, consolidated form to report to IRS and employees. A template for the combined report is not yet available.
- A simplified reporting option may be available for employers that offer coverage to any full-time employees.
- Employers need to develop processes and systems to ensure correct and timely reporting.

### The “What” of Required Reporting: IRC §6056 and §6055

Internal Revenue Code (IRC) §6056 requires employers to report to IRS about health care coverage they offered to full-time employees to assure that the employer shared responsibility provisions of IRC §4980H are being implemented. Section 6056 also requires employers to furnish statements to employees that the employees can use to determine whether they may claim a premium tax credit under §36B (premium tax credit) on their individual tax returns.

Section 6055 requires all employers that provide minimum essential coverage to an individual during a calendar year to report information relating to the individual shared responsibility section provisions. As under §6056, individual employee statements must also be reported to IRS. These IRS transmissions are due no later than February 28 each year (March 31, if filed electronically), and employee statements must be furnished on or before January 31 of the year immediately following the calendar year to which the employee statements relate (i.e., the same day as Form W-2).

### The “Why and How” of Final Reporting: Key Provisions

The final rules include the following key provisions and provide the basic structure of employer data to be collected and accumulated (and, in the employer interest, maintained for potential future audit), with reporting beginning in 2016 for the 2015 calendar year.

#### **Single, Combined Form for Information Reporting**

Employers that self-insure are allowed to report in a single, consolidated form that can be used to report to IRS and employees under both §6056 and §6055, thereby simplifying the process and avoiding duplicate information submissions. The combined report (a yet-to-be-released template) will include two sections. Section one will be for information required for §6056 reporting, and section two will include the information required for §6055, with these key provisions:

- Employers with fewer than 50 full-time employees are exempt from the employer shared responsibility provisions and are not required to report.
- Employers that are considered

applicable large employers (ALEs)<sup>1</sup> are subject to the final reporting requirements. Those that self-insure will complete both sections of the combined form.

- ALEs that do not self-insure will complete only the section pertaining to §6056 information requirements.
- Insurers and other providers of health coverage will report only information pertaining to §6055, via a separate form specific to this purpose.

#### **Simplified Option for Employer Reporting**

The “simplified” option is provided for employers that extend a qualifying offer of coverage to any of their full-time employees. This is an alternative to the monthly, employee-specific information that the general rules require, with these key provisions:

- A qualifying offer of coverage is one that provides minimum-value coverage where employee-only coverage is at a cost to the employee that is no more than 9.5% of the federal poverty level (approximately \$1,100 in 2015) and is combined with an offer of coverage for the employee’s family.
- For employees who receive a qualifying offer for all 12 months of the calendar year, employers will need to report only the names, addresses and taxpayer identification numbers (TINs) of those employees and an indicator that the employee received a full-year qualifying offer. Employees will receive a copy of this simplified report or a standard state-

ment from the employer for use when filing their individual tax return.

- For employees who receive a qualifying offer for less than a full 12 months of the year, employers will be able to simplify reporting to IRS and to employees for each of those months (with the use of an indicator code) that the offer was made within that month.
- Employers certifying that they have made a qualifying offer to at least 95% of their full-time employees (including an offer to cover their families) will be able to use an even more simple alternative for reporting in 2015. In keeping with the phase-in approach to the regulations, these employers will be able to use this simplified reporting method for their entire workforce, including any employees to whom a qualifying offer for the full year has not been made. These employers will provide employees with standard statements relating to their potential eligibility for premium tax credits.
- The final regulations also give employers the opportunity to avoid identifying those employees who are full-time and include in the report only those employees who may be full-time. In order to take advantage of this option, the employer must certify that it offered affordable, minimum-value coverage to *at least 98%* of the employees for whom it is reporting.

Under §6056, each ALE with full-time employees will be responsible for filing and furnishing statements with respect to its full-time employees. This means that the controlled group standards for determining ALE status are treated exactly the same as the assessment of penalties for noncompliance under the employer shared responsibility provisions of §4980H. The responsibility for penalty payment and reporting lies with the ALE. A third-party administrator may be used to create and send the reports, but the ultimate responsibility and liability (including penalty risk) remains at the employer level under the law.

As stated previously, a general method also exists for reporting to IRS and supplying employee statements set forth in the regulations. The general method is available for all employers with respect to reporting for all full-time employees. The regulations do provide for simplified alternative reporting methods, but these may be available only for certain groups or groups of employees. In cases where an alternative method cannot be used, the general method stands. The alternatives are optional so any employer may choose to re-

port for any or all of its full-time employees using the general method, even if an alternative method is available.

### ***So, It's Just That Simple?***

The final regulations do attempt to simplify and streamline the reporting requirements, at least as far as a general method for all employers. The regulations provide that the §6056 return may be made by filing Form 1094-C (a transmittal) and Form 1095-C (an employee statement) or “other forms the IRS may designate.” Alternatively, the §6056 return may be made by filing a substitute form that must include all of the information required to be reported on both Forms 1094-C and 1095-C (or, again, “any other forms the IRS designates”). As with any substitute returns, these must comply with applicable revenue procedures or other published guidance. The §6055 information will be submitted on Form 1095-B and, as stated, will be submitted with the §6056 information by self-insured employers or by the insurers of fully insured plans.

### **§6056: What Is Required**

The final regulations require the following information for reporting the §6056 return by March 31, 2016 for the 2015 calendar year (if electronically filed; if paper filed, the due date is February 29, 2016):

- Name, address and employer identification number (EIN) of the ALE and the calendar year for which the information is reported
- Name and telephone number of the ALE's contact person
- A certification as to whether the ALE offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, *by calendar month*
- The number of full-time employees *for each calendar month* during the calendar year
- For each full-time employee, the months during the calendar year for which minimum essential coverage under the plan was available
- For each full-time employee, the employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, *by calendar month*
- The name, address and TIN of each full-time employee and each individual covered under the policy during

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**The New Health Care Reform Law: What Employers Need to Know—A Q&A Guide, Fourth Edition**

Paul M. Hamburger and James R. Napoli. Thompson Information Services. 2013.

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the calendar year and the months, if any, during which the employee was covered under an eligible employer-sponsored plan. The employer must make at least two attempts to ensure the TIN of covered dependents is acquired. Any report that is filed without the TIN will result in IRS correspondence to the individual for verification. There are no penalties assessed on the employer for not having the TIN of covered dependents.

**§6056: What Will *Not* Be Required**

The final regulations *do not* require reporting on the following data (however, note the areas where it is likely that an indicator code will be requested due to the applicability to the administration of the code):

- Reporting of the length of any permissible waiting periods under §4980H. Although the length of a waiting period is not relevant for administration of the premium tax credit or for an individual to prepare his or her tax return, Treasury and IRS anticipate that information will be requested, using an indicator code, regarding whether coverage was not offered to an employee during certain months because of a permissible waiting period, since it is relevant to the administration of §4980H.
- Reporting of the employer's share of the total allowed costs of benefits provided under the plan, because this is not relevant to the administration of the premium tax credit and §4980H. However, since minimum value is relevant, Treasury and IRS anticipate that information will be requested using an indicator code.
- Reporting of the monthly premium for the lowest cost

option in each of the enrollment categories under the plan (i.e., employee-only, family, etc.)

- Reporting of the months, if any, during which any of the employee's dependents were covered under the plan.

**§6056: But Wait . . . There's More!**

To assist in administering §4980H and the premium tax credit, IRS requires certain information not specifically set forth under §6056 but which is authorized under §6056(b)(2)(F). Under the general method for reporting, the following information will be reported through the use of indicator codes for some information (as part of the return and the employee statements):

- Information as to whether coverage offered to full-time employees and their dependents provides minimum value and whether the employee had the opportunity to enroll his or her spouse in the coverage
- The total number of employees by calendar month
- Whether an employee's effective date of coverage was impacted by a permissible waiting period, by calendar month
- Whether the ALE had no employees or otherwise credited any hours of service during any particular month, by calendar month
- Whether the ALE is an entity that is a member of an aggregated group and, if applicable, the name and EIN of each employer member of the aggregated group constituting the applicable large employer on any day of the calendar year for which information is reported
- If an appropriately designated person is reporting on behalf of an ALE that is a governmental unit or any agency, the name, address and identification number of the designated person
- If an ALE is a contributing employer to a multiemployer plan, whether, with respect to a full-time employee, the employer is not subject to an assessable payment under §4980H due to the employer's contributions to the multiemployer plan
- If a third party is reporting for an ALE with respect to the ALE's full-time employees, the name, address and identification number of the third party—in addition to the name, address and EIN of the ALE already required under the final regulations.

It is also contemplated that the following information

will be reported with respect to *each full-time employee for each calendar month* using a code:

- Minimum essential coverage meeting minimum value was offered to:
  - The employee only
  - The employee and the employee's dependents only
  - The employee and the employee's spouse only
  - The employee, the employee's spouse and dependents.
- Coverage was not offered to the employee and:
  - Any failure to offer coverage will not result in a payment under §4980H
  - The employee was not a full-time employee
  - The employee was not employed by the ALE during that month, or
  - No other code exception applies.
- Coverage was offered to the employee for the month although the employee was not a full-time employee for that month.
- The employee was covered under the plan.
- The ALE met one of the affordability safe harbors with respect to the employee.

As with other government statements/returns, a large employer may furnish the §6056 employee statement in an electronic format in lieu of a paper format, provided that the format meets the requirements of the regulations. The recipient must have affirmatively consented to receive the statement in electronic format. The consent may be withdrawn as long as it is withdrawn before the statement is furnished. A paper statement must then be provided until further notice. A notice to the recipient is required when there is a material risk that a hardware or software change may prevent recipient access to the statement. The furnisher must issue the notice prior to changing the hardware or software and provide the recipient with notice of the change.


### What Should Employers Do Now?

Employers now have the data requirements. Large employers should begin the task of ensuring all the necessary data can be gathered, accumulated and maintained as they wait for the form templates and instructions regarding form submission to be released.

Given that much of the data required will be reported with new indicator codes, employers will need to develop processes and systems to ensure correct and timely report-

ing is ready for the 2015 calendar year. And, as many employers began to breathe a sigh of relief upon seeing “simplified” in the reporting description, it is now becoming clearer that most employers will not be able to utilize any of the streamlined reporting mechanisms. Further, and if it is possible, regulations for compliance must also be assessed annually, potentially requiring updates to systems and reporting decisions. Therefore, planning for the general method may be the most efficient and cost-effective employer plan.

Many are looking to third parties to manage and report the data given much of the required information resides in multiple, disparate (and often inaccurate) data sources within the human resources system environment.

While the reporting is not due until 2016, time is of the essence when preparing the data. Incorrect data submission carries substantial penalties that can be avoided with thorough planning and preparation. 

### Endnote

1. An *applicable large employer* with respect to a calendar year is defined in §4980H(c)(2) as an employer that employed on average at least 50 full-time employees on business days during the preceding calendar year.

#### << bio

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