

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-136630-12]

RIN 1545-BL26

Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance to employers that are subject to the information reporting requirements under section 6056 of the Internal Revenue Code (Code), enacted by the Affordable Care Act. Section 6056 requires those employers to report to the IRS information about their compliance with the employer shared responsibility provisions of section 4980H of the Code and about the health care coverage they have offered employees. Section 6056 also requires those employers to furnish related statements to employees so that employees may use the statements to help determine whether, for each month of the calendar year, they can claim on their tax returns a premium tax credit under section 36B of the Code (premium tax credit). In addition, that information will be used to administer and ensure compliance with the eligibility requirements for the employer shared responsibility provisions and the premium tax credit. The proposed regulations affect applicable large employers (generally meaning employers with 50 or more full-time

employees, including full-time equivalent employees, in the prior year), employees and other individuals.

This document also provides notice of a public hearing on these proposed rules.

DATES: Written or electronic comments must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 18, 2013, at 10 a.m., must be received by **[INSERT DATE 60 DAYS AFTER THE PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-136630-12), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-136630-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-136630-12). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ligeia Donis (202) 927-9639; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, please contact Oluwafunmilayo (Funmi) Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in proposed regulation §§301.6011-9, 301.6056-1, and 301.6056-2. This information will be used by the IRS to verify compliance with the return and employee statement requirements

under section 6056 for purposes of section 4980H, and with the eligibility requirements for the premium tax credit. This information will be used to determine whether the information has been reported and calculated correctly for purposes of section 4980H and section 6056, and whether claims for the premium tax credit are correct. The likely respondents are employers that are applicable large employers, as defined under section 4980H(c)(2).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## **Background**

Sections I through V of the preamble (“Background”) describe the statutory provisions governing the information reporting requirements, as well as related statutory provisions. Sections VI through XIII of the preamble (“Explanation of Provisions and Summary of Comments”) describe and explain how these regulations propose to implement the statutory provisions of section 6056 and include a discussion of a variety of potential simplified reporting methods that are under consideration. As is typical with regulations on information reporting, these proposed regulations refer generally to additional information that may be required under the applicable forms and instructions. Sections IX.B and C of this preamble set forth the specific data elements that Treasury

and the IRS anticipate will be included with the reporting, including the data elements that Treasury and the IRS anticipate will be provided through the use of an indicator code.

Section 6056<sup>1</sup> requires applicable large employers, as defined in section 4980H(c)(2), to file returns at the time prescribed by the Secretary with respect to each full-time employee and furnish a statement to each full-time employee by January 31 of the calendar year following the calendar year for which the return must be filed. Section 6056 specifies certain information that must be reported on the section 6056 return and related statement, and authorizes the Secretary to require additional information and determine the form of the return. Section 6056 is effective for periods beginning after December 31, 2013; however, Notice 2013-45 (2013-31 IRB 116) provides transition relief for 2014 from the section 6056 information reporting requirements (as well as the section 6055 information reporting requirements relating to the section 5000A individual shared responsibility provisions and the section 4980H employer shared responsibility provisions).

#### I. Shared Responsibility for Employers (Section 4980H)

One of the purposes of section 6056 reporting is to assist with the administration of the employer shared responsibility provisions added by the Affordable Care Act as section 4980H of the Code. Section 4980H imposes an assessable payment on applicable large employers if certain requirements relating to the provision of health

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<sup>1</sup> Section 6056 was enacted by section 1514(a) of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)), and further amended by the Department of Defense and Full-Year Continuing Appropriations Act of 2011, Public Law 112-10 (125 Stat. 38 (2011)) (collectively, the Affordable Care Act).

care coverage to full-time employees are not met and one or more full-time employees claim a premium tax credit. On December 28, 2012, Treasury and the IRS released proposed regulations under section 4980H. The proposed regulations under section 4980H were published in the **Federal Register** on January 2, 2013 (REG-138006-12 [78 FR 218]). Section 4980H is effective for months after December 31, 2013; however, Notice 2013-45, issued on July 9, 2013, provides transition relief for 2014 from the section 4980H employer shared responsibility provisions.

The reporting requirements under section 6056 apply only to employers that are subject to section 4980H (which the statute refers to as “applicable large employers”). Section 4980H(c)(2) defines the term “applicable large employer” as, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. Generally, for purposes of determining applicable large employer status, a full-time employee includes any employee who was employed on average at least 30 hours of service per week and any full-time equivalents determined pursuant to section 4980H(c)(2)(E). All employers treated as a single employer under section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining applicable large employer status. Section 4980H contains rules for determining whether an employer qualifies as an applicable large employer, including special rules addressing an employer’s first year of existence and predecessor and successor employers. See section 4980H(c)(2)(C) and proposed §54.4980H-2. Proposed regulations under section 4980H provide guidance on determining applicable large employer status and determining full-time employee status, including defining and providing rules for calculating hours of service. See proposed

§§54.4980H-1(a)(21) (definition of hours of service), 54.4980H-2 (determination of applicable large employer status), and 54.4980H-3 (determination of full-time employee status).

## II. Premium Tax Credit (Section 36B)

Section 6056 reporting will also be used for the administration of the premium tax credit, which was added by the Affordable Care Act as section 36B of the Code. Section 36B allows an advanceable and refundable premium tax credit to help individuals and families afford health insurance coverage purchased through an Affordable Insurance Exchange (Exchange). An employee is not eligible for a premium tax credit to subsidize the cost of Exchange coverage if the employee is offered affordable coverage under an employer-sponsored plan that provides minimum value, or if the employee enrolls in an employer-sponsored plan. For this purpose, an employer-sponsored plan is affordable if the employee's required contribution for the lowest-cost self-only minimum value coverage offered does not exceed 9.5% of the employee's household income. Thus, an employee (and in the case of an employer-sponsored plan that offers coverage to an employee's spouse or dependents, the employee's spouse and dependents) who does not accept an offer of affordable minimum value coverage under an employer-sponsored plan and who purchase coverage on an Exchange may not be eligible for a premium tax credit. Individuals and the IRS will use the information on the cost of the lowest-cost employer-sponsored self-

only coverage that provides minimum value to verify the individual's eligibility for the premium tax credit.<sup>2</sup>

### III. Individual Shared Responsibility (Section 5000A)

In addition, the Affordable Care Act added section 5000A to the Code. Section 5000A provides nonexempt individuals with a choice: maintain minimum essential coverage for themselves and any nonexempt family members, or include an additional payment with their Federal income tax return. Section 5000A(f)(1)(B) provides that minimum essential coverage includes coverage under an eligible employer-sponsored plan. Under section 5000A(f)(2), an eligible employer-sponsored plan is, with respect to an employee, a group health plan or group health insurance coverage offered by an employer to the employee that is (1) a governmental plan, within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C. 300gg-91(d)(8)), or (2) any other plan or coverage offered in the small or large group market within a State. An eligible employer-sponsored plan also includes a grandfathered health plan, as defined in section 5000A(f)(1)(D), offered in a group market. Group health plans within the meaning of section 1301(b)(3) of the Affordable Care Act (42 U.S.C. 18021(b)(3)) include both insured health plans and self-insured health plans. Accordingly, a self-insured group health plan is an eligible employer-sponsored plan. See the Questions and Answers on the Individual Shared Responsibility Provision available on the IRS website at [www.irs.gov](http://www.irs.gov).

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<sup>2</sup> In connection with providing advance payment of the premium tax credit, the Exchanges will employ a verification process. Because the information concerning household income and other relevant factors that are known to the individual and the Exchanges at that time may differ from the information used to file the tax return after the close of the coverage year, an individual who receives an advance payment of the premium tax credit will also need to calculate the appropriate amount of the credit when filing his or her tax return, and the credit may be more or less than the advance payment.

#### IV. Information Reporting By Providers of Coverage (Issuers, Self-Insuring Employers, and Sponsors of Certain Government-Sponsored Programs) (Section 6055)

The Affordable Care Act also added section 6055 to the Code, providing for information reporting for the administration of section 5000A. The section 6055 reporting requirements are effective for years beginning after December 31, 2013; however, Notice 2013-45 provides transition relief for 2014 from the section 6055 reporting requirements. Section 6055 requires information reporting by any person that provides minimum essential coverage to an individual during a calendar year, including coverage provided under an eligible employer-sponsored plan, and the furnishing to taxpayers of a related statement covering each individual listed on the section 6055 return. The information reported under section 6055 can be used by individuals and the IRS to verify the months (if any) in which they were covered by minimum essential coverage. Treasury and the IRS are issuing proposed regulations under section 6055 (REG-132455-11) concurrently with these proposed regulations.

#### V. Reporting Requirements for Applicable Large Employers (Section 6056)

Section 6056 directs an applicable large employer (within the meaning of section 4980H(c)(2)) to file a return with the IRS that reports for each employee who was a full-time employee for one or more months during the calendar year certain information described in section 6056(b) about the health care coverage the employer offered to that employee (or, if applicable, that the employer did not offer health care coverage to that employee). Section 6056 also requires such employers to furnish by January 31 of the calendar year following the calendar year for which the return must be

filed a related statement described in section 6056(c) to each full-time employee for whom information is required to be included on the return.

Section 6056(b) describes the return required to be filed with the IRS under section 6056. It states that a return meets the requirements of section 6056 if the return is in such form as the Secretary may prescribe and contains (1) the name, date, and employer's employer identification number (EIN), (2) a certification as to whether the employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), (3) the number of full-time employees for each month during the calendar year, and (4) the name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which that employee (and any dependents) were covered under any such health benefits plans.

If the applicable large employer certifies that it offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), section 6056 specifies that the return must also include (1) the length of any waiting period (as defined in section 2701(b)(4) of the Public Health Service Act (42 USC 300gg(b)(4)) with respect to that coverage,<sup>3</sup> (2) the months during the calendar year for which

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<sup>3</sup> While section 6056(b)(2)(C)(i) refers to the term "waiting period" as defined in section 2701(b)(4) of the PHS Act, amendments made by section 1201 of the Affordable Care Act moved this definition from section 2701(b)(4) of the PHS Act to section 2704(b)(4). Separately, section 2708 of the PHS Act prohibits a group health plan and a health insurance issuer offering group health insurance coverage from applying any waiting period that exceeds 90 days. The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Code to incorporate the provisions of part A of title XXVII of the PHS Act (specifically, PHS Act sections 2701 through 2728) into

coverage under the plan was available, (3) the monthly premium for the lowest cost option in each of the enrollment categories under the plan, and (4) the employer's share of the total allowed costs of benefits provided under the plan. Section 6056(b)(2)(F) provides that the return must include such other information as the Secretary may require. See section IX of this preamble for a discussion of the information proposed to be included in these proposed regulations as part of the reporting requirements, as well as additional information that may be required under the applicable forms and instructions, as is typical with regulations on information reporting.

Section 6056(c) requires that every person required to make a return under section 6056(a) furnish to each full-time employee whose name is required to be set forth in the return a written statement showing (1) the name and address of the person required to make that return and the phone number of the information contact for that person, and (2) the information required to be shown on the return with respect to that individual. The written statement must be furnished on or before January 31 of the year following the calendar year for which the return under section 6056(a) was required to be made.

As discussed in section IX.B of this preamble, the approach contemplated by these proposed regulations would give effect to these statutory provisions by limiting the information elements listed and other information that would be provided annually to those that are needed by individual taxpayers to accurately complete their tax returns or by the IRS to effectively administer other provisions of the Affordable Care Act.

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ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans.

Treasury and the IRS seek comments on ways to achieve these goals efficiently and effectively.

Section 6056(d) provides that to the maximum extent feasible, the Secretary may permit combined reporting under section 6056, section 6051 (employers filing and furnishing Forms W-2, Wage and Tax Statement, with respect to employees) or section 6055, and in the case of an applicable large employer offering health insurance coverage of a health insurance issuer, the employer may enter into an agreement with the issuer to include information required under section 6056 with the return and statement required to be provided by the issuer under section 6055.

Section 6056(e) generally permits governmental units, or any agency or instrumentality thereof, to designate a person to comply with the section 6056 requirements on behalf of the governmental unit, agency or instrumentality.

Under section 6724(d), as amended by the Affordable Care Act, an applicable large employer that fails to comply with the filing and statement furnishing requirements of section 6056 may be subject to penalties for failure to file a correct information return (section 6721) and failure to furnish correct payee statements (section 6722). However, these penalties may be waived if the failure is due to reasonable cause and not to willful neglect (section 6724).

Notice 2012-32 (2012-20 IRB 910) requested public comments on issues to be addressed in regulations under section 6055. Notice 2012-33 (2012-20 IRB 912) requested public comments on issues to be addressed in regulations under section 6056. In developing these proposed regulations and the proposed regulations under section 6055, including the potential further simplified reporting methods described in

section XI of this preamble, Treasury and the IRS have considered the written comments submitted in response to these notices and other written comments received.

In addition, consistent with Notice 2013-45, Treasury and the IRS have engaged in further dialogue with stakeholders in an effort to simplify section 6056 and section 6055 reporting consistent with effective implementation of the law. This process has included discussions with stakeholders representing a wide range of interests to assist in the consideration of effective information reporting rules that will be as streamlined, simple, and workable as possible. The effort to develop these proposed information reporting rules has reflected a considered balancing of the importance of (1) providing individuals the information to complete their tax returns accurately, including with respect to the individual responsibility provisions and eligibility for the premium tax credit, (2) minimizing cost and administrative tasks for the reporting entities and individuals, and (3) providing the IRS with information to use for effective and efficient tax administration. As noted elsewhere in this preamble, the proposed regulations will be the subject of public comments, including comments that are specifically invited regarding particular issues identified in the preamble.

## **Explanation of Provisions and Summary of Comments**

### **VI. Introduction**

The Explanation of Provisions that follows (Sections VII through XIII of the preamble) describes the regulatory provisions proposed to implement the statutory reporting provisions described in the Background portion of the preamble. Specifically, this section includes the following:

Section VII.....Key Terms

Section VIII.....ALE Member Subject to Section 6056 Requirements With Respect to Full-Time Employees

Section IX.....General Method - Content, Manner, and Timing of Information Required to be Reported to the IRS and Furnished to Full-Time Employees

Section X.....Combined Reporting Under Section 6056 and Section 6051 or 6055

Section XI.....Potential Simplified Methods for Section 6056 Information Reporting

Section XII.....Person Responsible for Section 6056 Reporting

Section XIII.....Applicability of Information Return Requirements

## VII. Key Terms

These proposed regulations under section 6056 use a number of terms that are defined in other Code provisions or regulations. For example, section 6056(f) provides that any term used in section 6056 that is also used in section 4980H shall have the same meaning given to the term by section 4980H. Relevant terms include the following:

### A. Applicable Large Employer

The proposed regulations provide that the term applicable large employer has the same meaning as in section 4980H(c)(2) and any applicable guidance. See proposed §54.4980H-1(a)(4).

### B. ALE Member

All persons treated as a single employer under section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining applicable large employer status.<sup>4</sup> Under the proposed regulations, the section 6056 filing and furnishing requirements are applied separately to each person comprising the applicable large employer consistent with the approach taken in the section 4980H proposed regulations (REG-138006-12 [78 FR 218]) with respect to the determination of any assessable payment under section 4980H. The person or persons that comprise the applicable large employer are referred to as ALE members. The proposed regulations define the term ALE member as a person that, together with one or more other persons, is treated as a single employer that is an applicable large employer. For this purpose, if a person, together with one or more other persons, is treated as a single employer that is an applicable large employer on any day of a calendar month, that person is an ALE member for that calendar month. This definition is the same as the definition provided in the proposed regulations under section 4980H. See §54.4980H-1(a)(5).

#### C. Dependent

The proposed regulations provide that the term dependent has the same meaning as in section 4980H(a) and (b) and any applicable guidance. See proposed §54.4980H-1(a)(11).

#### D. Eligible Employer-Sponsored Plan

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<sup>4</sup> As explained in section 1.A.2 of the preamble to the proposed regulations under section 4980H (REG-138006-12 [78 FR 218]), until further guidance is issued, government entities, churches, and a convention or association of churches may apply a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer and whether a particular entity is an applicable large employer member. See proposed §54.4980H-1(a)(5).

The proposed regulations provide that the term eligible employer-sponsored plan has the same meaning as in section 5000A(f)(2) and any applicable guidance.

E. Full-time Employee

The proposed regulations provide that the term full-time employee has the same meaning as in section 4980H(c)(4) and any applicable guidance as applied to the determination and calculation of liability under section 4980H(a) and (b) with respect to any individual employee. See proposed §54.4980H-1(a)(18).

F. Governmental Unit and Agency or Instrumentality of a Governmental Unit

The proposed regulations define the term governmental unit as the government of the United States, any State or political subdivision thereof, or any Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)). The proposed regulations do not define the term agency or instrumentality of a governmental unit, but rather reserve on the issue.

G. Minimum Essential Coverage

The proposed regulations provide that the term minimum essential coverage has the same meaning as in section 5000A(f)(1) and any applicable guidance.

H. Minimum Value

The proposed regulations provide that the term minimum value has the same meaning as in section 36B and any applicable guidance. See proposed §1.36B-6.

I. Person

The proposed regulations provide that the term person has the same meaning as provided in section 7701(a)(1) and the regulations thereunder.

## VIII. ALE Member Subject to Section 6056 Requirements with Respect to Full-Time Employees

As discussed earlier in section VII.B of this preamble, an ALE member is any person that is an applicable large employer or a member of an aggregated group (determined under section 414(b), 414(c), 414(m) or 414(o)) that is determined to be an applicable large employer. Under the proposed regulations, the section 6056 filing and statement furnishing requirements apply on a member-by-member basis to each ALE member, even though the determination of whether an entity is an applicable large employer is made at the aggregated group level. For example, if an applicable large employer is comprised of a parent corporation and 10 wholly-owned subsidiary corporations, there are 11 ALE members (the parent corporation and each of the 10 subsidiary corporations). Under the proposed regulations, each ALE member with full-time employees, rather than the group of entities that comprise the applicable large employer, is the entity responsible for filing and furnishing statements with respect to its full-time employees under section 6056. This is consistent with the manner in which any potential assessable payments under section 4980H will be calculated and administered.

Treasury and the IRS understand that ALE members may benefit from the assistance of a third party in preparing these returns, for example a third-party plan administrator or a related ALE member tasked with preparing the returns for all the members of that applicable large employer. For a discussion of how these third parties may help an ALE member fulfill its reporting obligations, see section XII.C of this preamble.

Whether an employee is a full-time employee is determined under section 4980H(c)(4) and any applicable guidance. See proposed §§54.4980H-1(a)(18) and 54.4980H-3. This includes any full-time employees who may perform services for multiple ALE members within the applicable large employer.<sup>5</sup> Under the proposed regulations, only ALE members with full-time employees are subject to the filing and statement furnishing requirements of section 6056 (and only with respect to their full-time employees).

Generally, the ALE member providing the section 6056 reporting is the common law employer. Disregarded entities are treated for section 4980H purposes, and therefore for section 6056 purposes, similarly to the way they are treated for employment tax purposes, so that the reporting requirements under section 6056 are imposed on a disregarded entity that is an applicable large employer, and not on its owner.<sup>6</sup>

#### IX. General Method - Content, Manner, and Timing of Information Required to be Reported to the IRS and Furnished to Full-Time Employees

This section describes the general method for reporting to the IRS and furnishing statements to employees pursuant to section 6056 that is set forth in the proposed regulations. This general method would be available for all employers and with respect

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<sup>5</sup> For example, if an employee performs services for two applicable large employer members within an applicable large employer and the combined hours of service for the two applicable large employer members are sufficient to trigger a reporting obligation under section 6056, each applicable large employer member is required to file and furnish a section 6056 return with respect to services performed by the employee for that applicable large employer member. See proposed §54.4980H-5(d).

<sup>6</sup> Specifically, the proposed regulations under section 7701 (REG-138006-12 [78 FR 218]) treat the disregarded entity (as defined in §301.7701-2) as a corporation with respect to the reporting requirements under section 6056. See proposed §301.7701-2(c)(2)(v)(A)(5). These rules would also apply to a qualified subchapter S subsidiary. See proposed §1.1361-4(a)(8)(i)(E).

to reporting for all employees. Treasury and the IRS are also considering certain simplified reporting methods, such as using codes on Form W-2 to report whether full-time employees, spouses, and their dependents have been offered coverage, which in some cases may be available only with respect to certain groups of employees. In those cases, with respect to those employees for whom the simplified reporting method was not available, the employer would use the general method. In any case, however, the simplified reporting methods under consideration would be optional so that an employer could choose to report for all of its full-time employees using the general method described in these proposed regulations even if a simplified reporting method is available. For a further description of the simplified reporting methods under consideration, see section XI of this preamble.

#### A. Information Reporting to the IRS

In accordance with section 6056, the proposed regulations provide for every ALE member to file a section 6056 return with respect to its full-time employees. Similar to the separate Form W-2, Wage and Tax Statement, filed by an employer for each employee and the Form W-3, Transmittal of Wage and Tax Statements, filed as a transmittal form for the Forms W-2, the proposed regulations provide that a separate return is required for each full-time employee, accompanied by a single transmittal form for all of the returns filed for a given calendar year.

As a general method, the proposed regulations further provide that the section 6056 return may be made by filing Form 1094-C (a transmittal) and Form 1095-C (an employee statement), or other forms the IRS designates. Alternatively, the section 6056 return may be made by filing other form(s) designated by the IRS or a substitute

form. Under the proposed regulations, a substitute form must include all of the information required to be reported on Forms 1094-C and 1095-C or other forms the IRS designates and comply with applicable revenue procedures or other published guidance relating to substitute returns. See §601.601(d)(2). In accordance with usual procedures, these forms will be made available in draft form at a later date.

**B. Information Required to Be Reported and Furnished**

The proposed regulations provide that every ALE member will report on the section 6056 information return the following information: (1) the name, address, and employer identification number of the ALE member, the name and telephone number of the applicable large employer's contact person, and the calendar year for which the information is reported; (2) a certification as to whether the ALE member offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), by calendar month; (3) the number of full-time employees for each month during the calendar year; (4) for each full-time employee, the months during the calendar year for which coverage under the plan was available; (5) for each full-time employee, the employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month; and (6) the name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under an eligible employer-sponsored plan. In addition, the proposed regulations provide, as with other information

reporting, that the section 6056 information return may request such other information as the Secretary may prescribe or as may be required by the form or instructions.

As part of the effort to minimize the cost and administrative steps associated with the reporting requirements, Treasury and the IRS have sought to identify any information that would not be relevant to individual taxpayers or the IRS for purposes of administering the premium tax credit and employer shared responsibility provisions or that is already provided at the same time through other means. Specifically, the proposed regulations do not require the reporting of the following four data elements (a more detailed description of the data elements that Treasury and the IRS anticipate will be included is provided later in this section of the preamble).

First, the proposed regulations do not require the reporting of the length of any waiting period, because the length of the waiting period is not relevant for administration of the premium tax credit or employer shared responsibility provisions or for an individual in preparing his or her tax return. However, Treasury and the IRS anticipate that information will be requested, using an indicator code, regarding whether an employee's coverage was not effective during certain months because of a waiting period since this information is relevant to the administration of the employer shared responsibility provisions.

Second, the proposed regulations do not require reporting of the employer's share of the total allowed costs of benefits provided under the plan because this information also is not relevant to the administration of the premium tax credit and the employer shared responsibility provisions. In contrast, whether the employer-sponsored

plan provides minimum value coverage is relevant information; accordingly, Treasury and the IRS anticipate that information will be requested, also using an indicator code.

Third, the proposed regulations do not require the reporting of the monthly premium for the lowest-cost option in each of the enrollment categories (such as self-only coverage or family coverage) under the plan. Rather, because only the lowest-cost option of self-only coverage offered under any of the enrollment categories for which the employee is eligible is relevant to the determination of whether coverage is affordable (and thus to the administration of the premium tax credit and employer shared responsibility provisions), that is the only cost information proposed to be requested.

Fourth, the proposed regulations do not require the reporting of the months, if any, during which any of the employee's dependents were covered under the plan. Instead, the proposed regulations require reporting only regarding whether the employee was covered under a plan. This is because information relating to the months during which any of the employee's dependents were covered under the plan will be reported on the section 6055 information return associated with that employee's coverage.

Under the proposed regulations, each ALE member must file and furnish the section 6056 return and employee statement using its EIN. Any ALE member that does not have an EIN may easily apply for one online, by telephone, fax, or mail. See Publication 1635, Employer Identification Number, for further information at [www.irs.gov](http://www.irs.gov).

Having considered the information required by section 6056 and the information needed to verify employer-sponsored coverage and to administer the employer shared

responsibility provisions under section 4980H and the premium tax credit, Treasury and the IRS anticipate that as part of the general method for section 6056 reporting, the IRS will need certain information not specifically set forth under section 6056 but authorized under section 6056(b)(2)(F). Accordingly, the proposed regulations provide, in a manner similar to other information reporting guidance, that additional information may be prescribed by guidance, forms, or instructions. Treasury and the IRS are also considering potential simplified reporting methods that in certain situations may permit an employer to provide less information than all data elements required under the general method for reporting. See section XI of this preamble.

Under the general method of section 6056 reporting, the following information is expected to be requested, through the use of indicator codes for some information, as part of the section 6056 return (as well as an indication of how many individual employee statements are being submitted):

(1) information as to whether the coverage offered to employees and their dependents under an employer-sponsored plan meets minimum value and whether the employee had the opportunity to enroll his or her spouse in the coverage;

(2) the total number of employees, by calendar month;

(3) whether an employee's effective date of coverage was affected by a waiting period;

(4) if the ALE member was not conducting business during any particular month, by month;

(5) if the ALE member expects that it will not be an ALE member the following year;

(6) information regarding whether the ALE member is a person that is a member of an aggregated group, determined under section 414(b), 414(c), 414(m), or 414(o), 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 the information is reported;

(7) if an appropriately designated entity is reporting on behalf of an ALE member that is a governmental unit or any agency or instrumentality thereof for purposes of section 6056, the name, address, and identification number of the appropriately designated person;

(8) if an ALE member is a contributing employer to a multiemployer plan, whether a full-time employee is treated as eligible to participate in a multiemployer plan due to the employer's contributions to the multiemployer plan; and

(9) if the administrator of a multiemployer plan is reporting on behalf of the ALE member with respect to the ALE member's full-time employees who are eligible for coverage under the multiemployer plan, the name, address, and identification number of the administrator of the multiemployer plan (in addition to the name, address, and EIN of the ALE member already required under the proposed regulations).

#### C. Use of Indicator Codes to Provide Information With Respect to a Particular Full-Time Employee

In an effort to simplify and streamline the section 6056 reporting process even under the general section 6056 reporting rules, Treasury and the IRS anticipate that certain of the information described above as applied to a particular full-time employee will be reported to the IRS, and furnished to the full-time employee, through the use of a

code rather than by providing specific or detailed information. Specifically, it is contemplated that the following information will be reported with respect to each full-time employee for each calendar month using a code:<sup>7</sup>

(1) minimum essential coverage meeting minimum value was offered to:

- a. the employee only;
- b. the employee and the employee's dependents only;
- c. the employee and the employee's spouse only; or
- d. the employee, the employee's spouse and dependents;

(2) coverage was not offered to the employee and:

- a. the employee was in a waiting period that complies with the requirements of PHS Act section 2708 and its implementing regulations;
- b. the employee was not a full-time employee;
- c. the employee was not employed by the ALE member during that month;

or

- d. no other code or exception applies;

(3) coverage was offered to the employee for the month although the employee was not a full-time employee during that month; and

(4) the ALE member met one of the affordability safe harbors under proposed §54.4980H-5(e)(2) with respect to the employee.

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<sup>7</sup> Treasury and the IRS have received comments regarding whether transition relief previously provided in the section 4980H proposed regulations (REG-138006-12 [78 FR 218]) with respect to the transition from 2013 to 2014 will be extended to the transition from 2014 to 2015. The issue is currently under consideration and will be addressed in future guidance under section 4980H. If further transition relief is provided under section 4980H, it is expected that additional indicator codes will be available on the section 6056 return to indicate that an employer is using the transition relief.

It is anticipated that if multiple codes apply with respect to a full-time employee for a particular calendar month, the reporting format will accommodate the necessary codes.

D. Section 6056 Statements to Full-time Employees

Under the general section 6056 reporting rules set forth in the proposed regulations, every ALE member required to file a section 6056 return must furnish a section 6056 employee statement to each of its full-time employees that includes the name, address and EIN of the ALE member and the information required to be shown on the section 6056 return with respect to the full-time employee. The section 6056 employee statement is not required to include a copy of the transmittal form that accompanies the returns. As part of the potential simplified reporting methods Treasury and the IRS are also considering whether, in certain circumstances, other methods of furnishing information to an employee may be sufficient (for example, through the use of a code on the Form W-2). For a detailed description of these potential simplified reporting methods, see section XI of this preamble.

Some employers may wish to have the flexibility to use a substitute type of statement to provide the necessary information to full-time employees. The proposed regulations provide that the section 6056 employee statement may be made by furnishing a copy of the section 6056 return on Form 1095-C (or another form the IRS designates) or a substitute employee statement for that full-time employee. Under the proposed regulations, a substitute statement must include the information required to be shown on the section 6056 return filed with the IRS with respect to that employee and must comply with applicable revenue procedures or other published guidance relating to

substitute statements. See §601.601(d)(2). These proposed regulations provide that section 6056 employee statements filed using Form 1095-C or another form the IRS designates will be included in the proposed IRS truncated TIN program. Under this proposed program, an IRS truncated taxpayer identifying number may be used as the identifying number for an individual in lieu of the identifying number appearing on the corresponding information return filed with the IRS. See the proposed regulations on IRS Truncated Taxpayer Identification Numbers (REG-148873-09 [78 FR 913]).

#### E. Time for Filing Section 6056 Returns and Furnishing Employee Statements

The proposed regulations provide that section 6056 returns must be filed with the IRS annually, no later than February 28 (March 31 if filed electronically) of the year immediately following the calendar year to which the return relates. This is the same filing schedule applicable to other information returns with which employers are familiar such as Forms W-2 and 1099. Because Notice 2013-45 provided transition relief for section 6056 reporting for 2014, the first section 6056 returns required to be filed are for the 2015 calendar year and must be filed no later than March 1, 2016 (February 28, 2016, being a Sunday), or March 31, 2016, if filed electronically. In addition, the regulations propose that the section 6056 employee statements be furnished annually to full-time employees on or before January 31 of the year immediately following the calendar year to which the employee statements relate. This means that the first section 6056 employee statements (meaning the statements for 2015) must be furnished no later than February 1, 2016 (January 31, 2016, being a Sunday).

In preparation for the application of the section 4980H provisions beginning in 2015, employers are encouraged to voluntarily comply for 2014 (that is, for section 6056

returns and statements filed and furnished in 2015) with the information reporting provisions (once the information reporting rules have been issued) and to maintain or expand health coverage in 2014. Real-world testing of reporting systems and plan designs through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015.

Some commenters asked for use of an alternate filing date for employers whose health plan is not a calendar year plan. While Treasury and the IRS understand that employers may collect information on a plan year basis, employees generally will need to receive their section 6056 employee statements early in the calendar year in order to have the requisite information to correctly and completely file their income tax returns reflecting any available premium tax credit. For this reason, the proposed regulations do not adopt this suggestion. However, Treasury and the IRS are considering a simplified reporting method, described in section XI of this preamble, that in certain circumstances could permit the employer to report the required information on the Form W-2 which is already being furnished to an employee on the same schedule.

These proposed regulations do not include rules regarding extensions of the time to file section 6056 returns but this topic is addressed elsewhere. Specifically, the notice of proposed rulemaking under section 6055 (REG-132455-11) includes proposed amendments to the regulations under section 6081 relating to general rules on extensions of time to file to include returns under both sections 6055 and 6056. The final section 6056 regulations are expected to cross-reference the amendments to the regulations under section 6081. These proposed regulations reserve a paragraph for this cross-reference.

F. Manner of Filing of Section 6056 Information Returns and Furnishing of Section 6056 Employee Statements.

Treasury and the IRS understand that electronic filing is often easier and more efficient for taxpayers, and several commenters requested that employers be permitted to file section 6056 returns electronically. The proposed regulations require electronic filing of section 6056 information returns except for an ALE member filing fewer than 250 returns during the calendar year. Each section 6056 return for a full-time employee is a separate return. Although an ALE member filing fewer than 250 returns during the calendar year may always choose to make the section 6056 returns on the prescribed paper form, that member is permitted (and encouraged) to file section 6056 returns electronically. This proposed requirement for electronic filing is the same as the current requirements for other information returns.

The proposed regulations provide that all returns are aggregated for the purpose of applying the 250-return threshold so that, for example, an ALE member required to file 150 section 6056 returns and 200 Forms W-2 will be required to electronically file section 6056 returns. A reporting entity must submit the prescribed form(s) to request authorization and obtain a Transmitter Control Code from the IRS to be able to file an information return electronically.

In addition to electronic filing, Treasury and the IRS understand that electronic methods are often a simpler and more efficient method to supply employees with the required information, and several commenters requested that employers be permitted to electronically furnish section 6056 employee statements to full-time employees. In response, the proposed regulations permit electronic furnishing of section 6056

employee statements if certain notice, consent, and hardware or software requirements are met. To provide rules for electronic furnishing with which employers are already familiar, the proposed regulations adopt by analogy the process currently in place for the electronic furnishing of employee statements (that is, Forms W-2) pursuant to section 6051 and applicable regulations.

X. Combined Reporting Under Section 6056 and Section 6051 or 6055

In addition to the reporting under section 6056, two other reporting provisions provide for annual reporting with respect to certain individuals and the furnishing of statements to those individuals. Specifically, section 6051 requires employers to provide Forms W-2 reporting wages paid and taxes withheld. Section 6055 requires information reporting by any person that provides minimum essential coverage to an individual. ALE members that provide minimum essential coverage on a self-insured basis are subject to the reporting requirements of all three sections (6051, 6055 and 6056). Notices 2012-32 and 2012-33 requested comments on how to minimize duplication in reporting under these provisions.

Several commenters recommended that the regulations allow combined information reporting under sections 6055 and 6056 for applicable large employers that sponsor self-insured plans and must report under both sections. Other commenters recommended that employers be permitted to use a single information return to report under sections 6051 (Form W-2) and 6055. Some commenters suggested adding section 6055 or section 6056 reporting to Form W-2.

Because not all employers are subject to each of these three reporting requirements, independent reporting methods under each section need to be available;

otherwise, employers subject to only one reporting requirement may have to expend additional effort to use a combined reporting method. Optional combined reporting therefore would require development of multiple forms for each reporting requirement (some forms for combined reporting, other forms for separate reporting), which could create administrative complexity and create confusion for employees.

In addition, any consideration of combined reporting must take into account that sections 6051, 6055 and 6056 apply to different types of entities (subject to the various reporting requirements, which differ among the Code provisions), and require reporting of different types of information. Section 6051 requires reporting of certain wage and wage-related information on an annual basis by all employers for all employees (and only employees). Section 6055 requires reporting of certain health coverage information by various entities (issuers, employers sponsoring self-insured group health plans, and governmental units) only for individuals who are actually covered (and not for individuals who are offered coverage but do not enroll), and multiple covered individuals may be included on one return. Section 6056 requires reporting of information by applicable large employers on offers of coverage that have or have not been made only to full-time employees (whether or not the offer has been accepted). Further, unlike Form W-2 reporting under section 6051, which provides annual information, both sections 6055 and 6056 require reporting some information on a monthly basis. Accordingly, the general section 6056 reporting method under the proposed regulations does not assume overall combined reporting under sections 6051, 6055, and 6056.

However, as described more fully below in section XI of this preamble, Treasury and the IRS are considering whether it may be possible to permit a type of combined

reporting under sections 6051 and 6056 by providing an option to use a code on the Form W-2 in certain circumstances to provide information needed by both the employee and the IRS rather than through the use of the section 6056 employee statement (with employer-level information being provided separately). In addition, in other limited circumstances involving no-cost or very low-cost coverage provided under a self-insured group health plan, Treasury and the IRS are considering whether the employee and the IRS could rely solely on the information provided by the employer on a section 6055 return and the Form W-2 without any further information reporting under section 6056. For further discussion of these potential approaches, see section XI of this preamble.

In response to comments, Treasury and the IRS also have considered suggestions to use, for section 6055 and 6056 reporting purposes, information that employers communicate to employees about employer-sponsored coverage prior to employees' potential enrollment in Exchange coverage. These comments have observed that, under the Affordable Care Act, employers are required to provide pre-enrollment information to employees by various means, including information in the Notice of Coverage Options provided to employees pursuant to the requirements under section 18B of the Fair Labor Standards Act<sup>8</sup> in the Exchanges and potentially via the Employer Coverage Tool developed by the Department of Health and Human Services

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<sup>8</sup> On May 8, 2013, the Department of Labor issued Technical Release 2013-02 providing temporary guidance under Fair Labor Standards Act section 18B, as well as model notices. See Technical Release 2013-02, model notice for employers who offer a health plan to some or all employees, and model notice for employers who do not offer a health plan, available at <http://www.dol.gov/ebsa/healthreform/>. Guidance on the Notice to Employees of Coverage

(HHS) that supports the application for enrollment in a qualified health plan and insurance affordability programs.<sup>9</sup>

Treasury and the IRS have considered and coordinated with the Departments of HHS and Labor regarding the various reporting provisions with a view to identifying ways to make the entire process as effective and efficient as possible for all parties. That said, the various reports are designed for different purposes, and pre-enrollment reporting regarding anticipated employer coverage in an upcoming coverage year is unlikely to be helpful to individual taxpayers in accurately completing their tax returns more than a year later, after the coverage year. Among other issues, the pre-enrollment information may not be readily available to individuals at the time they are filing their tax returns, could be confused with the more recently received pre-enrollment information that applies to the subsequent year (not the year for which the tax return is being filed), and is in a format that does not facilitate easy transfer to the appropriate location on the Federal income tax return. Notwithstanding these challenges, Treasury and the IRS continue to work with the other Departments and stakeholders to consider approaches that might help minimize cost and administrative complexity and realize efficiencies in the reporting process.

Both sections 6055 and 6056 require employers to furnish to employees information about health care coverage. Solely for the purpose of furnishing information to employees (as opposed to filing with the IRS), Treasury and the IRS are considering whether employers sponsoring self-insured group health plans could fulfill their obligation to furnish an employee statement under both sections 6055 and 6056 through

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<sup>9</sup> Available at [https://www.healthcare.gov/downloads/ECT\\_Application\\_508\\_130615.pdf](https://www.healthcare.gov/downloads/ECT_Application_508_130615.pdf)

the use of a single substitute statement, within the parameters of the rules provided in revenue procedures or other published guidance relating to substitute returns. See §601.601(d)(2) of this chapter.

#### XI. Potential Simplified Methods for Section 6056 Information Reporting

In developing these regulations, Treasury and the IRS have sought to develop simplified reporting methods that will minimize the cost and administrative tasks for employers, consistent with the statutory requirements to file an information return and furnish an employee statement to each full-time employee. Comments have suggested that, at least for some employers, the collection, assembling and processing of the necessary data into an appropriate format for filing may not be necessary if the employer offers sufficient coverage to make it unlikely that the employer will be subject to an assessable payment under section 4980H because the employee will be ineligible for a premium tax credit. Treasury and the IRS have considered these comments in formulating the potential simplified reporting methods described in this section. If Treasury and the IRS adopt one or more of these simplified reporting methods, they would be optional alternatives to the general reporting method set forth in the proposed regulations, which could substantially reduce the data elements reported using the general method. It is anticipated that, if an employer uses one or more of the simplified reporting methods, the employer would indicate on its section 6056 transmittal which simplified reporting method(s) was used and the number of employees for which the particular method was used. Comments are invited on these potential simplified reporting methods and on other possible simplified approaches that would benefit employers while providing sufficient and timely information to individual taxpayers and

the IRS.

The information provided to the IRS and the employee pursuant to section 6056 is important for administering the section 4980H shared employer responsibility provisions and the premium tax credit. However, in looking at the potential flow of information, Treasury and the IRS have determined that in some circumstances only some of the information required under the general method is necessary. Treasury and the IRS have attempted to identify the specific groups of employees for whom simplified reporting would provide sufficient information, and simplified reporting approaches for these groups are outlined below. In many situations, not every full-time employee of an employer would fit into the groups of employees for which simplified reporting would be available. In that case, the employer would continue to use the general reporting method in the proposed regulations for those full-time employees for whom the employers could not use a simplified method. However, it is anticipated that a significant number of employers will have a sufficient number of employees that fit into one or more of the categories described below to make use of the simplified reporting method preferable to the general reporting method.

Subsections A through F of this section XI of the preamble describe, and comments are invited on, possible simplified methods of reporting under section 6056. Each of these possible methods would be optional for the reporting employer, and, except where specifically noted, would not affect any reporting obligations under section 6055.

Subsection A.....Eliminating Section 6056 Employee Statements in Favor of Form W-2 Reporting for Certain Groups of Employees Offered Coverage

Subsection B..... No Need to Determine Full-Time Employees If Minimum Value Coverage Is Offered to All Potentially Full-Time Employees

Subsection C.....Self-Insured Employers Offering Employees, Their Spouses and Dependents Mandatory No-Cost Minimum Value Coverage

Subsection D.....Voluntarily Reporting Section 6056 Elements During or Prior to the Year of Coverage

Subsection E.....Reporting for Employees Potentially Ineligible for the Premium Tax Credit

Subsection F.....Combinations of Simplified Reporting Methods

A. Eliminating Section 6056 Employee Statements in Favor of Form W-2 Reporting for Certain Groups of Employees Offered Coverage

In response to stakeholder comments, Treasury and the IRS are considering allowing employers in certain circumstances to report offers of minimum value coverage on an employee's Form W-2, instead of reporting the offers to the IRS on a section 6056 employee statement or furnishing a section 6056 employee statement to the employee. The reporting is envisioned as using an existing box on the Form W-2 to provide the monthly dollar amount of the required employee contribution for the lowest cost minimum value self-only coverage offered to the employee and using a letter code to describe the offer of coverage. Specifically, Treasury and the IRS anticipate that this approach could be used for any employee employed by the employer for the entire calendar year when the offer, the individuals to whom the offer is made, and the employee contribution for the lowest-cost option for self-only coverage all remained the same for all twelve months of the calendar year. The letter code could be used to indicate that minimum value coverage was offered to: (1) the employee, the employee's spouse and the employee's dependents, (2) the employee and the employee's

dependents but not the employee's spouse; (3) the employee and the employee's spouse but not the employee's dependents; (4) the employee, but not the employee's spouse or the employee's dependents; or that the employee was (5) only offered coverage that was not minimum value coverage; or (6) not offered coverage. For this purpose, an employer is treated as offering coverage to the employee's spouse or dependents even if the employee does not have a spouse or dependent, if the employee could elect such coverage if the employee did have a spouse or dependent. If an employee was not offered coverage, it is anticipated that the dollar amount of the employee share of the lowest-cost employee-only coverage option would be shown as zero.

Example: Employer has 100 full-time employees, all of whom are employed for the entire year. Employer offers all of its full-time employees, spouses and dependents the opportunity to enroll in health care coverage that provides minimum value. Under the potential simplified reporting method, it is contemplated that, for all employees, Employer would be permitted to avoid filing or furnishing section 6056 employee statements if it used a letter code on the Form W-2 to report that an offer of coverage had been made to the employee, the employee's spouse (if any), and the employee's dependents (if any), and a dollar amount indicating the required monthly employee contribution to purchase the lowest cost option offered to the employee for self-only coverage.

Treasury and the IRS are also considering whether this or a similar simplified reporting method could be extended to cases in which the required monthly employee contribution is below a specified threshold. For example, if the annual employee cost of

self-only coverage is \$800 or less, the employer would be permitted to report zero as the employee cost. The \$800 amount is less than 9.5 percent of the federal poverty line for a single individual. Thus, regardless of the size of the employee's household or the level of other income or loss of any member of the employee's household, either the employer's coverage will be affordable for purposes of section 36B(c)(2)(C)(i) or the employee's household income will be less than 100 percent of the federal poverty line and the employee will not be an applicable taxpayer under section 36B(c)(2) who is eligible for the credit. In addition, even if other income increases the employee's household income, the employee would not be entitled to the affordability exemption to the shared responsibility payment under section 5000A(e)(1) because the \$800 amount would not exceed 8 percent of the employee's household income. Alternatively, if other losses reduce the employee's household income below the income tax filing threshold, the employee will qualify for the exemption under section 5000A(e)(2), and the information otherwise reported under section 6056 would not be required to determine whether the employee satisfied section 5000A. Comments are also requested on the extent to which this approach could reasonably be combined with the other simplified reporting methods described in this section XI of the preamble.

An employer that decides to use this simplified reporting method would not be required to file or furnish a section 6056 employee statement with respect to the employees for whom this method was used. Instead, the employer would simply indicate on a section 6056 transmittal that it had chosen to use this method. If the Form W-2 for an employee used an EIN other than the employer's EIN (for example, a third-party payor treated as an employer under section 3401(d)(1) of the Code filed the Form

W-2), the employer (that is, the ALE member) may be required as part of the 6056 transmittal to identify those employees for whom a third party reported on Form W-2 without the employer's EIN and to list the employees' social security numbers.

Stakeholders have inquired whether a similar optional Form W-2 reporting method could be used for employees offered coverage under their employer's plan for less than a full calendar year (for example for a new employee hired during the year), but offered no coverage for the remainder of the year. Treasury and the IRS note that this type of reporting would leave gaps in information that would otherwise be used for tax administration purposes. For example, the reporting would not provide any information regarding the particular calendar months during which coverage was offered (or not offered). Even if the employer represented that the coverage was offered during all periods of employment, the reporting would not be able to be reconciled, for example, with another Form W-2 received by the employee from another employer using the same reporting method. That is because while both employers would report the number of months coverage was offered, that information would not be sufficient to determine whether offers of coverage were overlapping (because the employee was employed simultaneously at both employers).

Additionally, for months for which coverage was not offered, information as to whether the employee was employed and also the reason coverage was not offered during certain months of the calendar year would not be captured (for example, the employee was in a waiting period or employed but not as a full-time employee). The specific reason coverage was not offered is relevant to the administration of the employer shared responsibility provisions since the failure to offer coverage for certain

reasons does not result in an assessable payment under the employer shared responsibility provisions for a calendar month, even if the full-time employee receives a premium tax credit for that month. Comments are requested on whether this approach to reporting would be useful for employers and, if so, on possible ways to address issues concerning the information gaps that would exist in reporting on employees offered coverage for less than a full calendar year.

B. No Need to Determine Full-Time Employees If Minimum Value Coverage Is Offered to All Potentially Full-Time Employees

Treasury and the IRS understand that some employers offer coverage to all or nearly all of their employees, and are able to accurately represent that the only employees not offered coverage are not full-time employees. In that case, the employer will have determined that it would not owe an assessable payment under section 4980H(a) because it would have made an offer of coverage to all of its full-time employees. However, the employer might not have determined whether every employee to whom coverage is offered is or is not a full-time employee. Treasury and the IRS are considering whether these employers may provide section 6056 reporting that does not identify the number of full-time employees and that does not specify whether a particular employee offered coverage is a full-time employee, provided that the employer certifies that all of its employees to whom it did not offer coverage during the calendar year were not full-time employees (or were otherwise ineligible for coverage, for example because they were in the initial permitted waiting period following the date of hire). This method would permit the employer to forgo identifying the full-time status of its employees prior to filing a section 6056 return. However, if an

employee who was offered coverage claimed a premium tax credit, the employer could be asked to confirm at a later date (after the filing of the section 6056 return and the relevant Form 1040 return) whether that employee was a full-time employee during that calendar year (in the same manner that an employer reporting only on behalf of full-time employees might later be asked about the status of an employee claiming the premium tax credit if the employee was not listed on that employer's section 6056 return).

Treasury and the IRS recognize that this method often would result in over-reporting of certain elements in the sense that reporting would occur with respect to one or more employees who may not be full-time employees during the calendar year. But some employers have indicated that they anticipate relatively few of their employees will claim the premium tax credit, and that determining those few employees' status as full-time employees later would be administratively easier than determining the full-time employee status of all employees at the time of the initial filing.

Example: Employer has 100 employees. Employer makes an offer of minimum value coverage to 90 of the employees. Employer has determined that the ten employees to whom coverage is not offered are not full-time employees for any calendar month during the year. Employer has not determined which of the remaining 90 employees were full-time employees for one or more calendar months during the year. Employer certifies as part of its section 6056 transmittal return that the only employees to whom it did not offer coverage were not full-time employees or were otherwise not required to be offered coverage for all months of employment (for example, a full-time employee was hired in November and, under the terms of the plan, which comply with the Affordable Care Act,

would not be initially offered coverage until the following calendar year).

Employer would file a section 6056 return and furnish an employee statement for each of the 90 employees, but would not be required to report either the total number of full-time employees for the year or whether any particular employee was a full-time employee for any calendar month during the year. If one of the employees included as part of the return declined the offer of coverage and properly claimed a premium tax credit with respect to coverage provided through an Exchange, and the employer were contacted by the IRS to determine whether the employer did or did not owe an assessable payment under section 4980H(b), the employer could determine at that point whether the employee was a full-time employee for one or more months during that calendar year and supply that information to the IRS.

### C. Self-Insured Employers Offering Employees, Their Spouses, and Dependents

#### Mandatory No-Cost Minimum Value Coverage

Some employers may provide mandatory minimum value coverage under a self-insured group health plan to an employee, an employee's spouse, and an employee's dependents, with no employee contribution. In that case, none of those individuals would be eligible for a premium tax credit for any month during which the coverage was provided, and the employer would indicate on the return required under section 6055 for the employee all months for which that coverage was provided with respect to each individual in the employee's family. Because the section 6055 return would provide the individual taxpayers the necessary information to accurately file the taxpayers' income tax returns, and would provide the IRS the information concerning those employees to

administer the premium tax credit and employer shared responsibility provisions, Treasury and the IRS are considering whether for those employees the employer could file and furnish only the return required under section 6055, a code on the Form W-2, the summary information provided in the section 6056 transmittal form, and no further information reporting under section 6056.

D. Voluntarily Reporting Section 6056 Elements During or Prior to the Year of Coverage

Some employers have expressed an interest in voluntarily reporting information about the coverage they offer their employees prior to the end of a coverage year, for example at their open enrollment or before the open enrollment at the Exchanges, on the theory that earlier section 6056 reporting to the IRS could lead to greater efficiency in the employer verification system employed by Exchanges to determine eligibility for premium tax credits. Under such an arrangement, they believe that if some employers chose to provide part of their section 6056 reporting to the IRS earlier in the process, the IRS, in turn, would be able to transmit any pertinent data to the Exchanges.

A proposal of this kind would need to address a number of issues. First, the regulations under section 6103 do not authorize the IRS to share taxpayer information in this manner. Even if this information sharing were permitted, information reporting plays a role in enabling individuals to file complete and accurate tax returns. Under the proposal, individuals would not receive the information for their tax return preparation proximate to when they are completing their tax returns. Employees may bear less burden and prepare more accurate tax returns when their employer furnishes a statement at the start of the relevant tax season reflecting all the information the employee needs to file a correct tax return for the prior year. Gaps in complete and

timely information increase the need for additional follow-up communication among employers, employees, and the IRS.

Also, offering two sets of reporting alternatives with filing occurring at different time periods would present challenges. Because the reporting options would be voluntary, different reporting protocols and regimes would need to be established and would need to accommodate employer choices to change the method of reporting from year to year. The multiple forms, procedures, and protocols could create complexity and be difficult to administer.

In addition, the information about the offer of coverage made before the year starts may change during the calendar year. For example, during the year, an employee may be hired or may terminate employment, a part-time employee may become full-time and be eligible for different coverage options, or an employee may change positions during the year and no longer be offered coverage. Accordingly, disclosure before the coverage year does not adequately substitute for disclosure to employees and reporting to the IRS after the coverage year.

Employers, employees, and the IRS share the goal of aligning eligibility for advance payments of premium tax credits as closely as possible with eligibility for the premium tax credit on the employee's annual tax return filed after the coverage year. This would reduce confusion and minimize the risk of employees owing advance payments back as liabilities on their tax returns. Regardless of the final rules on section 6056 information reporting, employers are encouraged to make their pre-enrollment disclosures to employees and Exchanges as effective and helpful to individuals as possible.

Comments are invited on whether there could be a way to design such a voluntary partial early reporting arrangement that would reduce complexity and avoid confusion for employers and employees, be administrable for the IRS, and provide timely information to individuals so that they can meet their income tax filing obligation without undue burden or undue risk of inaccuracy.

#### E. Reporting for Employees Potentially Ineligible for the Premium Tax Credit

Some employers have indicated that, because many of their employees are relatively highly paid, they are unlikely to be eligible for a premium tax credit. The assumption is that the employee's household income is likely to exceed 400 percent of the Federal poverty line, and therefore the employee would not benefit from receiving the information otherwise included with a section 6056 employee statement. Further, because the employee is unlikely to qualify for a premium tax credit, employers have stated that the information will not be useful to the IRS in administering the employer shared responsibility provisions because the precondition of a section 4980H(b) assessable payment--that the employee receive a premium tax credit--is unlikely to be satisfied.

Treasury and the IRS have considered this request and welcome comments both on its potential usefulness to employers and its administrability. Employers would still need to report to the IRS the months during which the employee was a full-time employee, at least to the extent the employee being was included in a full-time employee count. Additionally, employers will not be in a position to know the correlation between an employee's Form W-2 wages and household income with sufficient accuracy to determine whether an employee may be eligible for the premium tax credit.

The only pertinent information the employer retains is the employee's annual wages, yet the poverty level from which the premium tax credit income threshold is determined varies considerably based on family size (which employers will not necessarily know). In addition, employees for whom an employer may use an affordability safe harbor based on wages for purposes of compliance with the employer shared responsibility provisions under section 4980H might still be eligible for a premium tax credit based on their household income. Employers generally do not know employees' household income, and will not have information as to whether the employee (or another member of the employee's household) has incurred losses or expenses (such as alimony, casualty losses, Schedule C business deductions, and the like) that reduce the employee's household modified adjusted gross income below 400 percent of the Federal poverty line. Accordingly, it is unclear whether Form W-2 wages alone would provide sufficient information to determine eligibility for the premium tax credit because the employee's household income may be well below the employee's Form W-2 wages. Comments are requested as to whether there is a level of Form W-2 wages at which such a determination might be made with sufficient confidence, and whether that level of wages is so high as not to be of practical use to employers.

#### F. Combinations of Simplified Reporting Methods

The potential simplified reporting methods described above would apply to particular groups of employees that in many cases would not overlap. In such cases, two different potential simplified reporting methods could not be applied to the same employee. Treasury and the IRS anticipate that, to the extent any of these potential reporting methods are adopted in final regulations or other administrative guidance,

including forms and instructions, an employer would be permitted to use different simplified methods for different employees at the employer's election.

## XII. Person Responsible For Section 6056 Reporting

Under the proposed regulations, in general, each ALE member must file a section 6056 return with respect to its full-time employees for a calendar year.

### A. Special Rules for Governmental Units: Designation

In accordance with section 6056(e), the proposed regulations provide that in the case of any ALE member that is a governmental unit or any agency or instrumentality thereof (together referred to in this preamble as a governmental unit), that governmental unit may report under section 6056 on its own behalf or may appropriately designate another person or persons to report on its behalf.<sup>10</sup> For purposes of designation, another person is appropriately designated for purposes of the filing and furnishing requirements of section 6056 if that other person is part of or related to the same governmental unit as the ALE member. For example, a political subdivision of a state may designate the state, another political subdivision of the state, or an agency or instrumentality of the foregoing as the designated person for purposes of section 6056 reporting. The person designated might be the governmental unit that operates the relevant health plan or the governmental unit that does other information reporting on behalf of the designating governmental unit. Further, the governmental unit may designate more than one governmental unit to file and furnish under section 6056 on its behalf, such as, for example, if different categories of employees are offered coverage

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<sup>10</sup> Until further guidance is issued, government entities, churches, and a convention or association of churches may apply a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer.

under different health plans operated by different governmental units. In addition, a governmental unit may designate another person to file and furnish with respect to all or some of its full-time employees. If the designation is accepted by the designee and is made before the filing deadline, the designated governmental unit is the designated entity responsible for section 6056 reporting.

The person (or persons) appropriately designated for this purpose would report under section 6056 on behalf of the ALE member. Accordingly, the person (or persons) appropriately designated is (are) the person(s) responsible for section 6056 reporting on behalf of the ALE member and subject to the penalties for failure to comply with information return requirements under sections 6721 and 6722. However, the ALE member remains subject to the requirements of section 4980H.

Under the proposed regulations, a separate section 6056 return and transmittal must be filed for each ALE member for which the appropriately designated person is reporting. The designated entity must report its name, address, and EIN on the section 6056 return to indicate it is the appropriately designated person.

The proposed regulations further provide that the designation under section 6056(e) must be in writing and must contain certain language. Specifically, under the proposed regulations, the designation must be signed by both the ALE member and the designated person, and must be effective under all applicable laws. The proposed regulations also require that the designation set forth the name and EIN of the designated person, and appoint that person as the person responsible for reporting under section 6056 on behalf of the ALE member. The designation must contain information identifying the category of full-time employees (which may be full-time

employees eligible for a specified health plan, or in a particular job category, provided that the specific employees covered by the designation can be identified) for which the designated person is responsible for reporting under section 6056 on behalf of the ALE member. If the designated person is responsible for reporting under section 6056 for all full-time employees of an ALE member, the designation should so indicate.

The designation must also contain language that the designated person agrees that it is the appropriately designated person under section 6056(e), and an acknowledgement that the designated person is responsible for reporting under section 6056 on behalf of the ALE member and subject to the requirements of section 6056, and the information reporting penalty provisions of sections 6721 and 6722. The designation must also set forth the name and EIN of the ALE member, identifying the ALE member as the person subject to the requirements of section 4980H. The proposed regulations provide that an equivalent applicable statutory or regulatory designation containing similar language will be treated as a written designation for purposes of section 6056(e).

#### **B. ALE Members Participating in Multiemployer Plans**

Several commenters suggested that administrators of multiemployer plans may be willing to file section 6056 returns reporting information for coverage offered to full-time employees under the multiemployer plan and recommended in such cases that an ALE member not be required to report coverage information for those employees.

Treasury and the IRS understand that the plan administrator of a multiemployer plan may have better access than a participating employer to certain information on participating employees required to be included as part of section 6056 reporting. For

this reason, Treasury and the IRS anticipate that the section 6056 reporting with respect to full-time employees eligible to participate in a multiemployer plan will be permitted to be provided in a bifurcated manner. Under the bifurcated approach, one return would pertain to the full-time employees eligible to participate in the multiemployer plan (or, if the employer participates in more than one multiemployer plan, one return for each relevant multiemployer plan in which full-time employees are eligible to participate), and another return would pertain to the remaining full-time employees (those who are not eligible to participate in a multiemployer plan). As in the case of other third parties, as discussed in section XII.C of this preamble, the administrator (or administrators, in the case of an employer contributing to two or more multiemployer plans) of a multiemployer plan is permitted to report on behalf of an ALE member that is a contributing employer, and is permitted to report with respect to the ALE member's full-time employees who are eligible for coverage under the multiemployer plan (but not with respect to any other full-time employees of the ALE member). The administrator of the multiemployer plan would file a separate section 6056 return for any ALE member that is a contributing employer on behalf of whom it files using the ALE member's EIN. The administrator of the multiemployer plan would also provide its own name, address, and identification number (in addition to the name, address, and EIN of the ALE member already required). The ALE member would remain the responsible person under section 6056 with respect to all of its full-time employees and accordingly would be required to sign the section 6056 return filed on its behalf and be subject to any potential liability for failure to properly file returns or furnish statements. To the extent the plan administrator that prepares returns or statements required under section 6056

is a tax return preparer, it will be subject to the requirements generally applicable to return preparers.

### C. Section 6056 Reporting Facilitated by Third Parties

Treasury and the IRS understand that third party administrators or other third party service providers are integral to the operation of many employers' health plans, including with respect to compliance with any reporting requirements. As requested by several commenters, ALE members are permitted to contract with and use third parties to facilitate filing returns and furnishing employee statements to comply with section 6056. The proposed regulations make clear, however, that ALE members are responsible for reporting under section 6056, with the exception of certain governmental unit applicable large employers that properly designate under section 6056(e). While the proposed regulations do not provide guidance on contractual or other reporting arrangements between private ALE members and other parties, they do not prohibit these arrangements. Such contractual arrangements would not transfer the potential liability of the ALE member for failure to report and furnish under section 6056 and the regulations, or the ALE member's potential liability under section 4980H.

As one example, an applicable large employer that is a member of an aggregated group of related entities (determined under section 414(b), 414(c), 414(m) or 414(o)), may file returns and furnish employee statements on behalf of one or more of the other ALE members of the aggregated group. Each other ALE member of the group, for example, could have the ALE member that operates the employer-sponsored plan file section 6056 returns and furnish section 6056 employee statements on its behalf. However, a separate section 6056 return must be filed for each ALE member,

providing that ALE member's EIN. Each ALE member in the aggregated group would continue to be the responsible person under section 6056, would be required to sign the return filed on its behalf, and would be subject to any potential liability for failure to properly file returns or furnish statements. To the extent the other party that prepares returns or statements required under section 6056 is a tax return preparer, it will be subject to the requirements generally applicable to return preparers.

### XIII. Applicability of Information Return Requirements

The proposed regulations provide that an ALE member that fails to comply with the section 6056 information return and employee statement requirements may be subject to the general reporting penalty provisions under sections 6721 (failure to file correct information returns), and 6722 (failure to furnish correct payee statement). The proposed regulations also provide, however, that the waiver of penalty and special rules under section 6724 and the applicable regulations, including abatement of information return penalties for reasonable cause, apply. The proposed regulations under section 6055 (REG-132455-11) include proposed amendments to the regulations under sections 6721 and 6722 to include returns under both sections 6055 and 6056 in the definitions of information return and payee statement. Treasury and the IRS anticipate that the final regulations under section 6056 will cross-reference those amendments to the regulations under sections 6721 and 6722.

#### **Proposed Effective/Applicability Dates**

These regulations are proposed to be effective the date the final regulations are published in the **Federal Register**. These regulations are proposed to apply for calendar years beginning after December 31, 2014. Consistent with Notice 2013-45,

reporting entities will not be subject to penalties for failure to comply with the section 6056 information reporting provisions for 2014 (including the furnishing of employee statements in 2015). Accordingly, a reporting entity will not be subject to penalties if its first reports beginning in 2016 for 2015 (including the furnishing of employee statements). Taxpayers are encouraged, however, to voluntarily comply with section 6056 information reporting for 2014 by using the general reporting method set forth in these regulations once finalized.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations are consistent with the requirements imposed by section 6056. Consistent with the statute, the regulations require applicable large employers, as defined in section 4980H(c)(2), to file a return with the IRS, using either the prescribed form or a substitute form, for each full-time employee reporting certain information regarding the health care coverage offered and provided to the employee for the year. Consistent with the statute, the proposed regulations further require applicable large employers to furnish to each full-time employee a copy of the return, or a substitute statement, required to be filed by the applicable large employer with respect to the

employee. Accordingly, these regulations merely prescribe the method of filing and furnishing returns and employee statements as required under section 6056. Moreover, the proposed regulations attempt to minimize the burden associated with this collection of information by requiring that applicable large employers file and furnish only information that the IRS will utilize to administer the shared employer responsibility provisions under section 4980H and administer the premium tax credit under section 36B, and information employees will need in order to complete their tax returns.

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. Treasury and the IRS specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing has been scheduled for November 18, 2013, in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]** and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### **Drafting Information**

The principal author of these proposed regulations is Ligeia M. Donis of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

### **List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

## **PART 301—PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.6011-9 is added to read as follows:

### §301.6011-9 Electronic filing of section 6056 returns.

(a) Returns required under section 6056. An applicable large employer member, as defined in §301.6056-1(b)(2), is required to file electronically an information return under section 6056 and §301.6056-1, except as otherwise provided in paragraph (b) of this section.

(b) Exceptions--(1) Low-volume filers/250-return threshold—(i) In general. An applicable large employer member will not be required to file electronically the section 6056 information return described in paragraph (a) of this section unless it is required to file 250 or more returns during the calendar year. Each section 6056 information return for a full-time employee is a separate return. For purposes of this section, an applicable large employer member is required to file at least 250 returns if, during the calendar year, the applicable large employer member is required to file at least 250 returns of any type, including information returns (for example, Forms W-2, Forms 1099), income tax returns, employment tax returns, and excise tax returns. An applicable large employer member filing fewer than 250 returns during the calendar year may make the returns on the prescribed paper form.

(ii) Examples. The following examples illustrate the provisions of paragraph (b)(1) of this section:

Example 1. Company X is an applicable large employer member. For the calendar year ending December 31, 2015, Company X is required to file 275 section 6056 returns. Company X is required to file section 6056 returns electronically for that calendar year because 275 section 6056 information returns exceed the 250-return threshold.

Example 2. Company Y is an applicable large employer member. For the calendar year ending December 31, 2015, Company Y is required to file 200 returns on Form W-2 and 150 section 6056 returns. Company Y is required to file the section 6056 returns electronically for that calendar year because it is required to file more than 250 returns (that is, the 200 Forms W-2 plus the 150 section 6056 returns).

(2) Waiver--(i) In general. The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (b)(2)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the section 6056 returns in accordance with this section exceeds the costs of filing the returns on other media. A request for waiver must be made in accordance with applicable revenue procedures or publications (see §601.601(d)(2)(ii)(b) of this chapter). Pursuant to these procedures, a request for waiver should be filed at least 45 days before the due date of the section 6056 return in order for the IRS to have adequate time to respond to the request for waiver. The waiver will specify the type of information return (that is, section 6056 information return) and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

(ii) Supplemental rules. The Commissioner may prescribe rules that supplement the provisions of paragraph (b)(2)(i) of this section.

(c) Effective/applicability date. The rules of this section are effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. This section applies to returns on “Form 1095-C” or another

form the IRS designates required to be filed after December 31, 2014. However, reporting entities will not be subject to penalties under sections 6721 or 6722 with respect to the reporting requirements for 2014 (for information returns filed and for statements furnished to employees in 2015).

Par. 3. Section 301.6056-1 is added to read as follows:

§301.6056-1 Rules relating to reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans.

(a) In general. Section 6056 requires an applicable large employer subject to the requirements of section 4980H to report certain health insurance coverage information to the Internal Revenue Service, and to furnish certain related employee statements to its full-time employees. Paragraph (b) of this section contains definitions for purposes of this section. Paragraph (c) of this section prescribes general rules for filing the required information with the IRS and furnishing the required employee statements to employees. Paragraphs (d) and (e) of this section describe the information required to be reported on a section 6056 information return and the time and place for filing. Paragraph (f) of this section sets forth the mandatory electronic filing requirements for applicable large employer members. Paragraph (g) of this section provides information about the statement required to be furnished to a full-time employee. Paragraph (h) of this section prescribes the time and manner of furnishing the statement, including extensions of time to furnish. Paragraph (i) of this section prescribes the method for correcting information included in a statement required by section 6056(d) that has been furnished to an employee. Paragraph (j) of this section describes the information return requirements applicable to section 6056 returns. Paragraph (k) of this section describes special rules for certain applicable large employers.

(b) Definitions—(1) Applicable large employer. The term applicable large employer has the same meaning as in section 4980H(c)(2) and any applicable regulations.

(2) Applicable large employer member. The term applicable large employer member means a person that, together with one or more other persons, is treated as a single employer that is an applicable large employer. For this purpose, if a person, together with one or more other persons, is treated as a single employer that is an applicable large employer on any day of a calendar month, that person is an applicable large employer member for that calendar month. If the applicable large employer comprises one person, that one person is the applicable large employer member. An applicable large employer member does not include a person that is not an employer or only an employer of employees with no hours of service for the calendar year.

(3) Dependent. The term dependent has the same meaning as in section 4980H(a) and (b) and any applicable regulations.

(4) Eligible employer-sponsored plan. The term eligible employer-sponsored plan has the same meaning as in section 5000A(f)(2) and any applicable regulations.

(5) Full-time employee. The term full-time employee has the same meaning as in section 4980H and any applicable regulations, as applied to the determination and calculation of liability under section 4980H(a) and (b) with respect to any individual employee, and not as applied to the determination of status as an applicable large employer, if different.

(6) Governmental unit. The term governmental unit refers to the government of the United States, any State or political subdivision thereof, or any Indian tribal

government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)).

(7) Agency or instrumentality of a governmental unit. [Reserved]

(8) Minimum essential coverage. The term minimum essential coverage has the same meaning as in section 5000A(f)(1) and any applicable regulations.

(9) Minimum value. The term minimum value has the same meaning as in section 36B and any applicable regulations.

(10) Person. The term person has the same meaning as in section 7701(a)(1) and applicable regulations.

(c) Content and timing of reporting by applicable large employers. Each applicable large employer member required to make a return and furnish a related statement to its full-time employees under section 6056 for a calendar year must make a return and furnish the related statement using such form(s) as may be prescribed by the Internal Revenue Service. An applicable large employer member will satisfy its reporting requirements under section 6056 if it files with the Internal Revenue Service a return for each full-time employee using Form 1095-C or another form the IRS designates, and a transmittal form using Form 1094-C or another form the IRS designates, as prescribed in this section and in the instructions to the forms.

(d) Information required to be reported to the Internal Revenue Service—(1) In general. Every applicable large employer member must make a section 6056 information return with respect to each full-time employee. Each section 6056 information return must show--

(i) The name, address, and employer identification number of the applicable large employer member,

(ii) The name and telephone number of the applicable large employer's contact person,

(iii) The calendar year for which the information is reported,

(iv) A certification as to whether the applicable large employer member offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), by calendar month,

(v) The months during the calendar year for which coverage under the plan was available,

(vi) Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month;

(vii) The number of full-time employees for each month during the calendar year,

(viii) The name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan, and

(ix) Such other information as the Secretary may prescribe or as may be required by the form or instructions.

(2) Form of the return. A return required under this paragraph (d) may be made on Forms 1094-C and 1095-C or other form(s) designated by the Internal Revenue Service, or a substitute form. A substitute form must include the information required to

be reported on Forms 1094-C and 1095-C and must comply with applicable revenue procedures or other published guidance relating to substitute statements. See §601.601(d)(2) of this chapter.

(e) Time and place for filing return--(1) In general. An applicable large employer member must file each return and transmittal form required under paragraph (d)(2) of this section on or before February 28 (March 31 if filed electronically) of the year succeeding the calendar year to which it relates in accordance with any applicable guidance and the instructions to the form. An applicable large employer member must file the return and transmittal form at the address specified on the return form or its instructions.

(2) Extensions of time for filing. [Reserved]

(f) Electronic filing of returns. The section 6056 return is required to be filed electronically, except as otherwise provided in §301.6011-9.

(g) Statements required to be furnished to full-time employees—(1) In general. Every applicable large employer member required to file a return under section 6056 must furnish to each of its full-time employees identified on the return a written statement showing—

(i) The name, address and employer identification number of the applicable large employer member, and

(ii) The information required to be shown on the section 6056 return with respect to the full-time employee.

(2) Form of the statement. A statement required under this paragraph (g) may be made either by furnishing to the full-time employee a copy of Form 1095-C or another

form the IRS designates as prescribed in this section and in the instructions to such forms, or a substitute statement. A substitute statement must include the information required to be shown on Form 1095-C or another form the IRS designates and must comply with applicable revenue procedures or other published guidance relating to substitute statements. See §601.601(d)(2). An Internal Revenue Service truncated taxpayer identification number may be used as the identifying number for an individual in lieu of the identifying number appearing on the corresponding information return filed with the Internal Revenue Service.

(h) Time and manner for furnishing statements--(1) Each statement required by this section for a calendar year must be furnished to a full-time employee on or before January 31 of the year succeeding that calendar year in accordance with applicable Internal Revenue Service procedures and instructions or as provided in §301.6056-2.

(2) Extensions of time--(i) In general. For good cause upon written application of the person required to furnish statements under this section, the Internal Revenue Service may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must be addressed to the Internal Revenue Service, and must contain a full recital of the reasons for requesting the extension to aid the Internal Revenue Service in determining the period of the extension, if any, that will be granted. Such a request in the form of a letter to the Internal Revenue Service, signed by the applicant, will suffice as an application. The application must be filed on or before the date prescribed in paragraph (h)(1) of this section.

(ii) Automatic extension of time. The Commissioner may, in appropriate cases, prescribe additional guidance or procedures, published in the Internal Revenue Bulletin

(see § 601.601(d)(2)(ii)(b)), for automatic extensions of time to furnish to one or more full-time employees the statement required under section 6056.

(i) Correction of information return. If the information reported on a return required pursuant to section 6056 for a full-time employee for a prior year was incomplete or incorrect, a corrected return accompanied by a transmittal form must be filed with the Internal Revenue Service as soon as possible after the correction is made. The return must be identified as corrected. A copy of the corrected return for the prior year reflecting the correct data must be furnished to the employee as soon as possible after the correction is made.

(j) Information reporting penalties. Section 6724(d)(1)(B)(xxv) and (d)(2)(HH) provides that for purposes of Subtitle F, Chapter 68, Subchapter B, Part II (sections 6721 et seq.), the terms information return and payee statement include the return required under section 6056 and the statement required to be furnished under section 6056(c). An applicable large employer member who fails to comply with the filing and statement requirements under section 6056 is subject to the penalties under sections 6721 (failure to file correct information returns) and 6722 (failure to furnish correct payee statement), and the waiver and special rules provisions under section 6724, and the applicable regulations.

(k) Special rules for governmental units—(1) Person appropriately designated. In the case of any applicable large employer member that is a governmental unit or any agency or instrumentality thereof, the person or persons appropriately designated under section 6056(e) for purposes of the filing and furnishing requirements of section 6056 must be part of or related to the same governmental unit as the applicable large

employer member. The applicable large employer member must make (or revoke) the designation before the earlier of the deadline for filing the returns or furnishing the statements required by this section. A person that has been appropriately designated under section 6056(e) must file a separate section 6056 return and transmittal for each applicable large employer member for which the person is reporting. The person appropriately designated under section 6056(e) assumes responsibility for the section 6056 requirements on behalf of the applicable large employer member for which the person is designated.

(2) Written designation. The designation under section 6056(e) must be made in writing, must be signed by both the applicable large employer member and the designated person, and must be effective under all applicable laws. The designation must set forth the name and employer identification number of the designated person, and appoint such person as the person responsible for reporting under section 6056 on behalf of the applicable large employer member. The designation must contain information identifying the category of full-time employees (which may be full-time employees eligible for a specified health plan, or in a particular job category, as long as the specific employees covered by the designation can be identified) for which the designated person is responsible for reporting under section 6056 on behalf of the applicable large employer member. If the designated person is responsible for reporting under section 6056 for all full-time employees of an applicable large employer member, the designation must so indicate. The designation must contain language that the designated person agrees and certifies that it is the appropriately designated person under section 6056(e), and an acknowledgement that the designated person is

responsible for reporting under section 6056 on behalf of the applicable large employer member and subject to the requirements of section 6056, including for purposes of information reporting requirements under sections 6721, 6722, and 6724. The designation must also set forth the name and employer identification number of the applicable large employer member, identifying the applicable large employer member as the person subject to the requirements of section 4980H. An equivalent applicable statutory or regulatory designation containing the language described in this paragraph (k)(2) will be treated as a written designation for purposes of section 6056(e) and this section.

(l) Additional guidance. The Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)) to provide additional rules under section 6056, including rules permitting use of alternate optional methods to meet reporting requirements.

(m) Effective/applicability date. The rules of this section are effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under sections 6721 or 6722 with respect to the reporting requirements for 2014 (for information returns filed and for statements furnished to employees in 2015).

Par 4. Section 301.6056-2 is added to read as follows:

§301.6056-2 Electronic furnishing of statements

(a) Electronic furnishing of statements--(1) In general. An applicable large

employer member required by §301.6056-1 to furnish a statement (furnisher) to a full-time employee (a recipient) may furnish the statement in an electronic format in lieu of a paper format, provided that the employer meets the requirements of paragraphs (a)(2) through (a)(6) of this section. An applicable large employer member who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the statement in a timely manner.

(2) Consent--(i) In general. The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) Withdrawal of consent. The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) Change in hardware or software requirements. If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a

new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) Examples. The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive section 6056 statements electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive section 6056 statements electronically by accessing the Web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished section 6056 statements. R reads the instructions and submits the consent to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive section 6056 statements electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive section 6056 statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished section 6056 statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive section 6056 statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its Web site stating that Recipient R may receive section 6056 statements electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive section 6056 statements electronically in the manner described in paragraph (a)(2)(i).

(3) Required disclosures--(i) In general. Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) Paper statement. The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) Scope and duration of consent. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to each statement required to be furnished after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the first statement required to be furnished following the date on which the consent is given.

(iv) Post-consent request for a paper statement. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) Withdrawal of consent. The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement,

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper), and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) Notice of termination. The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with furnisher-employer).

(vii) Updating information. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) Hardware and software requirements. The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site. The recipient must be informed that the statement may be required to be printed and attached to a Federal, State, or local income tax return.

(4) Format. The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) Notice--(i) In general. If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic

address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected statement. If the furnisher has corrected a recipient's statement as directed in §301.6056-1(k) and the statement was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a Web site posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable, and

(B) The recipient has not provided a new e-mail address.

(6) Access period. Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) Paper statements after withdrawal of consent. If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (a)(7) will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(b) Effective/applicability date. The rules of this section are effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under sections 6721 or 6722 with respect to the reporting requirements for 2014 (for information returns filed and for statements furnished to employees in 2015).

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Acting Deputy Commissioner for Services and Enforcement.

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