

Information Reporting Under Sections 6055 & 6056 (Forms 1094 & 1095)

Large Employer Information Reporting (Section 6056)

Section 6056 of the Internal Revenue Code requires large employers to report information about their compliance with the employer shared responsibility (“pay or play”) provisions and to furnish related statements to their employees to help employees determine whether, for each month of the calendar year, they can claim a premium tax credit on their tax returns. Final regulations provide guidance on, and simplify, the information reporting requirements under section 6056.

Who is Required to Report

Only large employers that are subject to “pay or play” are required to report under section 6056. A large employer is an employer that employed an average of **at least 50 full-time employees** (including full-time equivalents or “FTEs”) on business days during the preceding calendar year. Thus, employers that employed **fewer than 50 full-time employees** (including FTEs) during the prior year are not subject to the reporting requirements. (However, any employer that sponsors a self-insured health plan is required to report under section 6055, even if the employer has fewer than 50 full-time employees.)

Companies that have a common owner or are otherwise related generally are combined and treated as a single employer, and so would be combined for purposes of determining whether or not they collectively employ at least 50 full-time employees (including FTEs). If two or more related companies together constitute a large employer under “pay or play,” **each** employer member must file an information return with the IRS and furnish a statement to its full-time employees, using its own EIN.

Visit our Pay or Play section for additional information on calculating large employer status.

General Method of Reporting

Under the general method of reporting, a large employer must file:

- » A separate Form 1095-C (or other form the IRS designates, or a substitute form) for each of its full-time employees; and
- » A transmittal on Form 1094-C (or any other form the IRS designates, or a substitute form) for all of the returns filed for a given calendar year.

In an effort to simplify the section 6056 reporting process, certain information required to be reported to the IRS and furnished to full-time employees may be reported through the use of indicator codes rather than by providing more detailed information. The IRS has advised employers to refer to the forms and instructions for further details on the reporting process.

New IRS Q&As

The IRS has released new Q&As to provide additional information for large employers that are required to file Forms 1094-C and 1095-C under Internal Revenue Code section 6056. In addition to basic information regarding employer reporting, the new IRS Q&As also include specific information on reporting offers of coverage and other enrollment information. Specifically, the Q&As address how large employers should:

- » Report whether an offer of coverage was made to an employee for a calendar month, including months in which employees are hired or terminated;
- » Enter applicable safe harbor codes (if applicable);
- » Report enrollment information for self-insured coverage provided to non-employees; and
- » Complete Form 1094-C and 1095-C if they are eligible to use the qualifying offer method, qualifying offer method transition relief, or the 98% offer method.

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Content of Information Returns

Under the general method of reporting, every large employer must make a section 6056 information return with respect to each full-time employee. Each section 6056 information return generally must include:

1. The name, address, and EIN of the large employer;
2. The name and telephone number of the large employer’s contact person (this can be any person, whether an employee of the large employer or an agent of the employer acting on the employer’s behalf for purposes of reporting);
3. The calendar year for which the information is reported;
4. A certification as to whether the large employer offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, by calendar month;
5. The months during the calendar year for which minimum essential coverage under the plan was available;
6. 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;
7. The number of full-time employees for each month during the calendar year;
8. 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
9. Any other information specified in forms, instructions, or published guidance.

Content of Full-Time Employee Statements

Under the general method, a large employer generally must furnish to each full-time employee a written statement showing:

- » The name, address, and EIN of the large employer; and
- » The information required to be shown on the section 6056 return with respect to the full-time employee (and his or her spouse and dependents).

Form of the Statement

A written statement may be made either by furnishing to the full-time employee a copy of the Form 1095-C, or another form the IRS designates or a substitute form meeting the requirements of the law. Employers are not required to include with the employee statement a copy of the transmittal form (Form 1094-C) that is filed with the IRS.

Alternative Methods of Reporting

Large employers can either use the **general method** of reporting and furnishing employee statements described above, or they can utilize **alternative reporting methods**. The alternative reporting methods identify specific groups of employees for whom simplified alternative reporting would provide sufficient information. If a large employer cannot use the alternative reporting methods for certain employees, the employer **must** use the general method for those employees. In any case, the alternative reporting methods are **optional** so that an employer may choose to report for all of its full-time employees using the general method even if an alternative reporting method is available. The two alternative reporting methods are:

1. Reporting Based on Certification of “Qualifying Offers”
2. Option to Report Without Separate Identification of Full-Time Employees if Certain Conditions Related to Offers of Coverage Are Satisfied (98% Offers”)

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Certification of “Qualifying Offers”

For employers that provide a “qualifying offer” to any of their full-time employees, a simplified alternative to reporting monthly, employee-specific information on those employees is available. A large employer is generally treated as meeting its reporting obligation under section 6056 if the employer:

- » Certifies on the Form 1094-C that it made a “qualifying offer”
 - **A qualifying offer** is generally an offer of minimum essential coverage providing minimum value to one or more full-time employees, for all calendar months during the calendar year for which the employee was a full-time employee for whom a pay or play penalty could apply, at an employee cost for self-only coverage not exceeding 9.5 percent of the mainland single federal poverty line, and which includes an offer of minimum essential coverage to the employees’ spouses and dependents;
- » Provides on the Form 1095-C (or other form as designated by the IRS) the information with respect to each full-time employee to whom a “qualifying offer” is made for all twelve months of the applicable calendar year;
- » Provides a statement to each full-time employee to whom a “qualifying offer” was made for all twelve months of the applicable calendar year, in such form and manner as prescribed by the Secretary, or a copy of the Form 1095-C filed with the IRS with respect to that full-time employee; and
- » Files section 6056 returns and furnishes section 6056 employee statements with respect to all other full-time employees under the general reporting method.

98 Percent Offers

If an employer certifies that it offered minimum essential coverage providing minimum value that was affordable to **at least 98 percent of the employees** (and their dependents) with respect to whom it reports, and otherwise meets its reporting obligation under section 6056, the employer is **not required to identify** on its section 6056 return:

- » Whether a particular employee is a full-time employee for one or more calendar months of the reporting year; or
- » Report the total number of its full-time employees for the reporting year.

When to Report & Furnish Statements Filing Returns

The first section 6056 returns required to be filed are for the 2015 calendar year, and must be filed **no later than February 29, 2016** (or March 31, 2016, if filed electronically). Internal Revenue Code section 6081 addresses extensions of time to file information returns.

Special Update: The IRS has released a draft form of Publication 5165, which outlines the communication procedures, transmission formats, business rules, and validation procedures for returns transmitted electronically through the ACA Information Returns (AIR) system. The procedures in the draft publication should generally be used by software developers, transmitters, and issuers in conjunction with other agency guidance listed in the guide.

Furnishing Statements to Employees

Large employers generally must furnish the statement to each full-time employee on or before January 31st of the year immediately following the calendar year to which the information relates. This means that the first section 6056 employee statements (the statements for 2015) must be furnished to employees no later than February 1, 2016 (January 31, 2016, being a Sunday).

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Combined Reporting

Employers that are subject to both reporting provisions (generally large employers that sponsor self-insured group health plans) are permitted to satisfy their reporting obligations on Form 1095-C, which will have separate sections for reporting under sections 6055 and 6056. For example, such employers will complete the transmittal Form 1094-C and both sections of Form 1095-C to report information about health coverage provided (section 6055) and about offers of health coverage (section 6056). A large employer that provides fully insured coverage will complete only the section of Form 1095-C that reports the information required under section 6056, while self-insured group health plans that are not large employers will report under section 6055 on Form 1094-B and Form 1095-B.

Third-Party Reporting

Large employers are permitted to use third parties to facilitate filing returns and furnishing employee statements to comply with reporting requirements. However, this does not transfer the large employer’s potential “pay or play” liability, nor does it transfer the potential liability for the failure to report and furnish statements.

In addition, if a person who prepares returns or statements under section 6056 is a tax return preparer, that person will be subject to the requirements generally applicable to tax return preparers.

If more than one third party is facilitating reporting for employers under common ownership or that are otherwise related, there must be only one section 6056 authoritative transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the large employer. Additionally, there must be only one section 6056 employee statement (Form 1095-C) for each full-time employee with respect to employment with that large employer.

Penalties

The general reporting penalty provisions under Internal Revenue Code (IRC) sections 6721 and 6722 may apply to a large employer that:

- » Fails to file timely information returns or timely furnish statements;
- » Fails to include all the required information in the return or the statement; or
- » Includes incorrect information on the return or the statement.

However, the IRS will generally not impose penalties under sections 6721 and 6722 for returns and statements filed and furnished in 2016 (to report offers of coverage in 2015) on large employers that can show that they have made good faith efforts to comply with the information reporting requirements. While no relief is provided in the case of large employers that fail to timely file an information return or furnish a statement, such employers still may be eligible for penalty relief if the IRS determines that the standards for reasonable cause under IRC section 6724 are satisfied (generally providing for the waiver of penalties if a failure was due to reasonable cause and not to willful neglect).

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Minimum Essential Coverage Reporting (Section 6055)

The Internal Revenue Service (IRS) has issued final regulations on minimum essential coverage reporting by insurers and certain self-insuring employers under section 6055. Questions and answers on section 6055 reporting are also available from the IRS.

Who is Required to Report

Any entity that provides minimum essential coverage to an individual must report to the IRS and furnish statements to individuals, including plan sponsors of self-insured group health plan coverage, and health insurance issuers for insured coverage (with certain limited exceptions).

Among other types of coverage, minimum essential coverage includes the following:

- » **Eligible employer-sponsored coverage**, including self-insured plans, COBRA coverage and retiree coverage;
- » Coverage purchased in the individual market, including a qualified health plan offered by the Health Insurance Marketplace;
- » Medicare Part A coverage and Medicare Advantage plans;
- » Most Medicaid coverage;
- » Children’s Health Insurance Program (CHIP) coverage;
- » Certain types of veterans health coverage administered by the Veterans Administration;
- » Most types of TRICARE coverage; and
- » Self-funded health coverage offered to students by universities for plan or policy years that begin on or before Dec. 31, 2014 (for later plan or policy years, sponsors of these programs may apply

to HHS to be recognized as minimum essential coverage).

Are employers sponsoring insured health plans required to report under section 6055?

No. An employer that sponsors an insured health plan (a health plan that provides coverage by purchasing insurance from a health insurance issuer) will not report as a provider of health coverage under section 6055. The health insurance issuer or carrier is responsible for reporting that health coverage. However, if the employer is subject to the employer shared responsibility (“pay or play”) provisions under Health Care Reform, it is responsible for reporting information under section 6056 about the coverage it offers to its full-time employees.

For self-insured group health plan coverage, who is the plan sponsor that must report under section 6055?

For a self-insured group health plan maintained by a single employer, the plan sponsor is the employer.

For a plan maintained by more than one employer that is not a multiemployer plan (as defined in ERISA), the plan sponsor is each participating employer. For purposes of identifying the employer, the section 414 employer aggregation rules do not apply. For a multiemployer plan (as defined in ERISA), the plan sponsor is the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

For any plan for which a plan sponsor is not identified above, the plan sponsor is the person designated by plan terms or, if no person is designated, each entity that maintains the plan.

How do the reporting requirements under section 6055 apply to reporting entities that are part of a controlled group?

Plan sponsors in a controlled group that is not a large employer for purposes of pay or play, and providers (such as issuers) that are not reporting as employers, may

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report under section 6055 as separate entities, or may have one entity report for the controlled group.

Content of Reports

The information that a reporting entity must report to the IRS generally includes the following:

- » The name, address, and employer identification number (EIN) of the reporting entity;
- » The responsible individual’s name, address, and TIN, or date of birth if a TIN is not available. If the responsible individual is not enrolled in the coverage, reporting entities may, but are not required to, report the TIN of the responsible individual (see ‘How to Furnish Individual Statements’ below for more information on who is a responsible individual);
- » The name and TIN, or date of birth if a TIN is not available, of each individual covered under the policy or program and the months for which the individual was enrolled in coverage and entitled to receive benefits; and
- » For coverage provided by a health insurance issuer through a group health plan, the name, address, and EIN of the employer sponsoring the plan and whether the coverage is a qualified health plan enrolled in through the SHOP and (except for 2014 coverage reported in 2015) the SHOP’s identifier.

Will a reporting entity collect TINs from individuals, including dependents, covered under its plan or policy?

Yes. Reporting of TINs for all covered individuals is necessary for the IRS to verify an individual’s coverage without the need to contact the individual.

If section 6055 reporting entities are unable to obtain a TIN after making a reasonable effort to do so, the covered individual’s date of birth may be reported in lieu of a TIN.

If a reporting entity does not furnish a TIN, will it be subject to penalties?

A reporting entity will not be subject to a penalty if it demonstrates that it properly solicits the TIN but does not receive it. Under these rules, the reporting entity must make an initial solicitation at the time the relationship with the payee is established. (However, the reporting entity is not required to make this initial solicitation if it already has the payee’s TIN and uses that TIN for all relationships with the payee.) If the reporting entity does not receive the TIN, the first annual solicitation is generally required by December 31 of the year in which the relationship with the payee begins (January 31 of the following year if the relationship begins in December). Generally, if the TIN is still not provided, a second solicitation is required by December 31 of the following year. If a TIN is still not provided, the reporting entity need not continue to solicit a TIN.

How to Report

Generally, a reporting entity must file Form 1094-B and Form 1095-B (or other form that the IRS designates, or a substitute form). However, if the reporting entity is also a large employer and provides coverage to its employees through a self-insured group health plan, the entity must file Form 1094-C and Form 1095-C (or other form that the IRS designates, or a substitute form), instead of Forms 1094-B and 1095-B, to report information with respect to its employees.

Electronic Filing Required for Certain Reporting Entities

Reporting entities that are required to file **250 or more** Forms 1095-B or Forms 1095-C during the calendar year **must file the returns electronically**. The 250 return threshold applies separately to each type of return required to be filed.

Only Forms 1095-B or 1095-C are counted in applying the 250 return threshold for section 6055 reporting. However, if the 250 return threshold applies, Forms 1094-B and 1094-C also must be filed electronically. A reporting entity

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that is required to file fewer than 250 Forms 1095-B or Forms 1095-C may file on paper or electronically.

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How to Furnish Individual Statements

In addition to the information it reported to the IRS for each covered individual listed on the information return, a reporting entity must include a phone number for the reporting entity’s designated contact person (if any) that the recipient of the statement can contact with questions about information on the statement.

To whom must a reporting entity furnish the statement?

A reporting entity must furnish the statement to a responsible individual. The responsible individual generally is the person who enrolls one or more individuals, which may include him or herself, in minimum essential coverage. The responsible individual may be the primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on the coverage application.

A reporting entity is not required to provide a statement to any individual who is not the responsible individual.

How must a reporting entity furnish the statement to the responsible individual?

A reporting entity generally must mail the statement to the responsible individual’s last known permanent address or, if no permanent address is known, to the individual’s temporary address. A reporting entity’s first class mailing to the last known permanent address, or if no permanent address is known, the temporary address,

discharges the reporting entity’s requirement to furnish the statement. A reporting entity also may furnish the statement **electronically** to the responsible individual if the responsible individual affirmatively consents to it.

When to Report & Furnish Statements Filing Returns

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Furnishing Statements to Individuals

Reporting entities must furnish statements to responsible individuals on or before January 31, 2016. If the reporting entity applies to the IRS in writing and shows good cause, the IRS may grant an extension of time of up to 30 days for the reporting entity to furnish the statement.

Combined Reporting

Employers that are subject to both reporting provisions (generally large employers that sponsor self-insured group health plans) are permitted to satisfy their reporting obligations on Form 1095-C, which will have separate sections for reporting under sections 6055 and 6056.

A large employer that provides fully insured coverage will complete only the section of Form 1095-C that reports the information required under section 6056, while self-insured group health plans that are not large employers will report under sections 6055 on Form 1094-B and Form 1095-B.

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Third-Party Reporting

Reporting entities are permitted to use third parties to facilitate filing returns and furnishing statements to comply with reporting requirements. However, this does not transfer the potential liability of a reporting entity for the failure to report and furnish statements. In addition, if a person who prepares returns or statements under section 6055 is a tax return preparer, that person will be subject to the requirements generally applicable to tax return preparers.

Penalties

The general reporting penalty provisions under Internal Revenue Code (IRC) sections 6721 and 6722 may apply to a reporting entity that:

- » Fails to file timely information returns or timely furnish statements;
- » Fails to include all the required information in the return or the statement; or
- » Includes incorrect information on the return or the statement.

However, the IRS will generally not impose penalties under sections 6721 and 6722 for 2015 returns and statements filed and furnished in 2016 on reporting entities that can show that they have made good faith efforts to comply with the information reporting requirements. While no relief is provided in the case of reporting entities that fail to timely file an information return or furnish a statement, such entities still may be eligible for penalty relief if the IRS determines that the standards for reasonable cause under IRC section 6724 are satisfied (generally providing for the waiver of penalties if a failure was due to reasonable cause and not to willful neglect).