

JONES DAY

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March 20, 2014

Office of the Clerk
U.S. Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

Re: *Jacqueline Halbig et al. v. Kathleen Sebelius et al.* (No. 14-5018)

Dear Clerk of the Court:

On March 10, 2014, the IRS issued final regulations relevant to an issue presented on this appeal. *See* 79 Fed. Reg. 13220 (Mar. 10, 2014) (attached).

The District Court held that the ACA's reporting requirement (26 U.S.C. § 36B(f)(3)) supports the IRS Rule, because requiring HHS-established Exchanges to report under that provision would supposedly serve no purpose unless subsidies were available through those Exchanges. (A355) Appellants explained in their opening brief, however, that this reporting rule is not superfluous as to HHS-established Exchanges, because the reportable information is useful for various other purposes, including so that the IRS can enforce the Act's individual mandate. (App.Br.30-31.) The Government responded by claiming that a separate ACA provision (26 U.S.C. § 6055) already requires *insurers* to report information that would enable the IRS to do so, and thus that the § 36B(f)(3) reporting requirement serves no purpose other than to track subsidy payments. (Govt.Br.28.)

The IRS's new rules, however, "do not require health insurance issuers to report under section 6055 for coverage under individual market qualified health plans purchased through an Exchange because Exchanges must report on this coverage under section 36B(f)(3)." 79 Fed. Reg. at 13221; *see also* 26 C.F.R. § 1.6055-1(d)(1) ("A health insurance issuer is not required to file a return or furnish a report under this section for coverage in a qualified health plan in the individual market enrolled in through an Exchange."). In other words, *Exchanges'* § 36B(f)(3) reporting eliminates the need for *insurers'* § 6055 reporting.

These new regulations thus confirm that the Government's argument is wrong: Reporting by HHS-established Exchanges *will* serve an important purpose wholly apart from subsidies, because insurers will *not* report any information about enrollment through Exchanges. The § 36B(f)(3) reporting requirement therefore offers no support for the IRS Rule.

Sincerely,

/s/ Michael A. Carvin
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Counsel for Appellants

cc: All counsel of record, whom the above-signing attorney certifies were served with this letter on March 20, 2014, via ECF at their respective email addresses.

Attachment

the plug expands to fill the biopsy void and remains in place until resorbed.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The design characteristics of the device must ensure that the geometry and material composition are consistent with the intended use.

(2) Performance testing must demonstrate deployment as indicated in the accompanying labeling, including the indicated introducer needles, and demonstrate expansion and resorption characteristics in a clinically relevant environment.

(3) In vivo evaluation must demonstrate performance characteristics of the device, including the ability of the plug to not prematurely resorb or migrate and the rate of pneumothorax.

(4) Sterility testing must demonstrate the sterility of the device and the effects of the sterilization process on the physical characteristics of the plug.

(5) Shelf-life testing must demonstrate the shelf-life of the device including the physical characteristics of the plug.

(6) The device must be demonstrated to be biocompatible.

(7) Labeling must include a detailed summary of the device-related and procedure-related complications pertinent to the use of the device and appropriate warnings. Labeling must include identification of compatible introducer needles.

Dated: February 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014-05061 Filed 3-7-14; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9660]

RIN 1545-BL31

Information Reporting of Minimum Essential Coverage

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance to providers of minimum essential health coverage that are subject to the information reporting requirements of section 6055 of the Internal Revenue Code (Code), enacted by the Patient Protection and Affordable Care Act.

Health insurance issuers, certain employers, and others that provide minimum essential coverage to individuals must report to the IRS information about the type and period of coverage and furnish the information in statements to covered individuals. These final regulations affect health insurance issuers and carriers, employers, governments, and other persons that provide minimum essential coverage to individuals.

DATES: Effective Date: These regulations are effective on March 10, 2014.

Applicability Dates: For dates of applicability, see §§ 1.6055-1(j) and 1.6055-2(b).

FOR FURTHER INFORMATION CONTACT: Andrew Braden, (202) 317-4718 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2252.

The collection of information in these final regulations is in §§ 1.6055-1 and 1.6055-2. The collection of information will be used to determine whether an individual has minimum essential coverage under section 1501(b) of the Patient Protection and Affordable Care Act (26 U.S.C. 5000A(f)). The collection of information is required to comply with the provisions of sections 5000A and 6055 of the Code. The likely respondents are health insurance issuers and carriers, self-insured employers or other sponsors of self-insured group health plans, and governments that provide minimum essential coverage.

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.

The burden for the collection of information contained in these final regulations will be reflected in the burden on Form 1095-B or another form that the IRS designates, which will request the information in the final regulations.

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 return information are confidential, as required by section 6103.

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) under sections 6055 and 6081 and the Procedure and Administration Regulations (26 CFR part 301) under sections 6011, 6721, and 6722, relating to the requirement for providers of minimum essential coverage (as defined in section 5000A(f)) to report to the IRS certain information about individuals covered by minimum essential coverage and to provide a statement to the individuals. Section 6055 was enacted by section 1502 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), which together with the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)), is referred to as the Affordable Care Act.

On September 9, 2013, a notice of proposed rulemaking (REG-132455-11) was published in the **Federal Register** (78 FR 54986). Written comments responding to the proposed regulations were received. A public hearing was held on November 19, 2013. The comments are available for public inspection at www.regulations.gov or on request. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. These final regulations also include certain nonsubstantive revisions to increase consistency with final regulations issued under section 6056 (TD 9661) contemporaneously with these regulations.

Explanation of Provisions and Summary of Comments

1. Coverage Subject To Reporting

a. Minimum Essential Coverage

The proposed regulations provided that every person that provides minimum essential coverage to an individual during a calendar year must file an information return and a transmittal on forms prescribed by the IRS. Minimum essential coverage is defined in section 5000A(f) and regulations issued under that section.

Commenters suggested that section 6055 reporting should not be required for an individual who may be exempt from the individual shared responsibility payment under section 5000A.

Providers of minimum essential coverage, including employers providing coverage under a self-insured group health plan, may not have the information necessary to determine an individual's exempt status under

section 5000A. To ensure complete and accurate reporting, the final regulations provide for section 6055 reporting for all covered individuals.

b. Supplemental Coverage Arrangements

The proposed regulations provided that reporting is not required for arrangements that provide benefits in addition or as a supplement to a health plan or arrangement that constitutes minimum essential coverage. The preamble to the proposed regulations identified health reimbursement arrangements as supplemental coverage to which this rule may apply. In addition, reporting is not required for coverage that is not minimum essential coverage. The preamble to the proposed regulations noted that no reporting is required for health savings accounts, which are not minimum essential coverage.

A commenter asked whether on-site medical clinics are supplemental benefits for which no reporting is required under this rule. Another commenter asked whether reporting is required for an individual who is covered by Medicare Part B but not Medicare Part A.

Under section 9832(c)(1)(G), coverage at on-site medical clinics are excepted benefits. Section 5000A(f)(3) provides that excepted benefits are not minimum essential coverage. Under section 5000A(f)(1)(A)(i), Medicare Part A but not Medicare Part B is minimum essential coverage. Accordingly, section 6055 reporting is not required for coverage at on-site medical clinics or for Medicare Part B.

Commenters asked whether the supplemental coverage rule applies to wellness programs or to self-insured employer-provided retiree coverage that supplements Medicare benefits. Wellness programs that are an element of other minimum essential coverage (such as wellness programs offering reduced premiums or cost-sharing under a group health plan) do not require separate section 6055 reporting. The final regulations clarify that minimum essential coverage that supplements a primary plan of the same plan sponsor or that supplements government-sponsored coverage (such as Medicare) are supplemental coverage not subject to reporting.

2. Persons Required To Report

a. Self-Insured Group Health Plans

i. Controlled Groups

The proposed regulations provided that the plan sponsor is responsible for reporting under section 6055 for a self-

insured group health plan and identified the sponsor and reporting entity for various types of self-insured arrangements. In general, the plan sponsor is the entity that establishes or maintains the plan. The proposed regulations provided that the employer is the plan sponsor for self-insured group health plans established or maintained by a single employer and that each participating employer is the plan sponsor for a plan established or maintained by more than one employer other than a multiple employer welfare arrangement. The proposed regulations also provided that, for purposes of identifying the employer, the section 414 employer aggregation rules do not apply. Thus, under the proposed regulations, a self-insured group health plan or arrangement covering employees of employers in a controlled group was treated as sponsored by more than one employer and each employer was required to report for its employees.

Commenters requested that the final regulations allow, but not require, one entity in a controlled group to report under section 6055 for all members of the group. A commenter noted that only one entity within the group may maintain the plan. Other commenters noted that in some controlled groups each entity may keep its own records but other groups may not track the entity to which an employee belongs.

Most employers that sponsor self-insured group health plans are applicable large employer members required to report under both section 6056 and section 6055. As discussed later in this preamble, the final regulations provide that applicable large employer members that are plan sponsors of self-insured group health plans will file a single information return that combines reporting under sections 6055 and 6056. These entities apply the rules under section 6056 for identifying the reporting entities in a controlled group. As stated in the preamble to the proposed regulations, one member of a controlled group may assist the other members by filing returns and furnishing statements on behalf of all members, thus providing administrative flexibility. However, each employer is treated as a plan sponsor separately liable for timely and correct reporting. Employers in controlled groups that are not applicable large employer members (determined after applying the aggregation rules under § 54.4980H-1(a)(16)), and reporting entities (such as issuers) that are not reporting as employers, may report under section 6055 as separate entities, or one entity may report for the group.

ii. Statutory Employees

A commenter asked that the final regulations clarify that a company may report self-insured group health plan coverage provided to statutory employees, that is, individuals who are not common law employees but are treated as employees under the Code for some purposes. The commenter noted that the employer shared responsibility payment under section 4980H and related information reporting under section 6056 apply to common law and not statutory employees.

Under section 6055, the provider of minimum essential coverage must report for covered individuals. In many cases, the provider is not the employer of the covered individuals. The proposed and final regulations provide that the plan sponsor of a self-insured group health plan reports under section 6055. Accordingly, the plan sponsor reports under section 6055 for individuals covered by the plan, whether or not the individuals are employees.

b. Small Business Health Options Program (SHOP)

In order to reduce the compliance burden on health insurance issuers, the proposed regulations provided that issuers are not required to report under section 6055 on qualified health plans enrolled in through Affordable Insurance Exchanges (Exchanges), also called Marketplaces. Commenters requested that Exchanges also be responsible for section 6055 reporting for coverage obtained through the SHOP.

The final regulations do not require health insurance issuers to report under section 6055 for coverage under individual market qualified health plans purchased through an Exchange because Exchanges must report on this coverage under section 36B(f)(3). Exchanges are not required, however, to report on coverage obtained through the SHOP, therefore issuer reporting of SHOP coverage under section 6055 is necessary.

c. Government Employers

Pursuant to section 6055(d), the proposed regulations provided that, in general, a government employer that maintains a self-insured group health plan or arrangement may enter into a written agreement with another governmental unit, or an agency or instrumentality of a governmental unit, designating the other governmental unit, agency, or instrumentality as the person responsible for section 6055 reporting. The proposed regulations reserved the definition of *agency or instrumentality*.

Under the proposed regulations, a government employer included an Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)). A commenter asked whether a wholly-owned tribal entity formed under tribal and federal law is an agency or instrumentality of a governmental unit. The commenter suggested that it is administratively burdensome for an Indian tribal government (ITG) to determine whether a particular entity qualifies as an agency or instrumentality of an ITG under existing authorities, such as Revenue Ruling 57-128 (1957-1 CB 311), see § 601.601(d), relating to employment taxes.

The final regulations continue to reserve on the definition of *agency or instrumentality* for purposes of section 6055. Until future guidance is issued that defines that term for purposes of section 6055, in determining whether an entity is an agency or instrumentality of a governmental unit, the entity may make that determination based on a reasonable and good faith interpretation of existing rules relating to agency or instrumentality determinations for other federal tax purposes.

d. Government-Sponsored Programs

The proposed regulations provided that, in general, a health insurance issuer must report under section 6055 for all insured coverage. However, under the proposed regulations the responsible government department or agency and not the issuer was the reporting entity for coverage under a government-sponsored program provided through a health insurance issuer (such as some Medicaid, Children's Health Insurance Program (CHIP), and Medicare programs). A commenter requested that the final regulations specify that this rule applies to the Medicare Advantage program. The final regulations clarify that issuers do not report coverage under the Medicare Advantage program.

3. Information Required To Be Reported

a. Information Not Required To Be Reported

Section 6055 calls for the reporting of several data elements that are not required by taxpayers for preparing their tax returns or by the IRS for tax administration. As part of the effort to minimize the cost and simplify the administrative implementation of reporting under section 6055, the proposed regulations did not require reporting these unnecessary items. For example, the proposed regulations did

not require reporting the amount of advance payments of the premium tax credit and cost-sharing reductions or the amount of the premium for employer coverage paid by an employer. Several commenters expressed support for these simplifications, and the final regulations retain them.

b. Taxpayer Identification Numbers (TINs)

i. Requirement To Request TINs

The proposed regulations implemented the statutory requirement that the section 6055 information return include the name and TIN for the primary insured or other related person (such as a parent or spouse) who submits the application for coverage, which the proposed regulations called the responsible individual, and for each covered individual. However, the proposed regulations permitted reporting entities to report a date of birth if a TIN is not available for an individual.

Some commenters advised that they do not currently obtain TINs for individuals enrolled in coverage, particularly for dependents, and asserted that the requirement to obtain TINs is burdensome and unnecessary. Commenters suggested that individuals will be reluctant to provide TINs and that no enforcement mechanism such as backup withholding is available. Some commenters expressed concerns about the risk of misuse of TINs and violations of privacy. Commenters requested, in general, that the final regulations allow reporting entities to report only a date of birth in lieu of a TIN for all individuals, or alternatively to provide a TIN only for an employee or other responsible individual and dates of birth for other covered individuals. Other commenters suggested that TIN reporting should be limited to the reporting under section 111 of the Medicaid, Medicare, and SCHIP Extension Act of 2007 (PL 110-173, 121 Stat. 2492), which requires TIN reporting only for individuals age 45 to 64 with coverage based on employment status.

After consideration of the comments, the final regulations retain the rule in the proposed regulations directing reporting entities to provide TINs for all covered individuals and to provide a date of birth only if a TIN is not available after the reporting entity makes reasonable efforts to obtain it. The purpose of information reporting under section 6055 is for individuals to establish, and the IRS to confirm, that the individuals have minimum essential coverage and are not subject to the

section 5000A individual responsibility payment. The information on Form 1040 identifying dependents that can be matched with section 6055 reporting is name and TIN. Because many individuals have the same name, the name and TIN combination enable the IRS to identify that a particular individual has minimum essential coverage.

Individuals have a strong incentive to provide a TIN to the reporting entity if one is available to establish that they have coverage qualifying under section 5000A. Without a TIN to enable the IRS to match coverage reported on the Form 1040 with coverage reported on a section 6055 return, individuals will receive correspondence from the IRS asking them to verify coverage. Accordingly, the final regulations allow section 6055 reporting of dates of birth in lieu of TINs only if the reporting entity is informed that an individual has no TIN or the reporting entity is unable to obtain a TIN after making reasonable efforts, as discussed in more detail later in this preamble. Nothing in these final regulations authorizes a reporting entity to terminate coverage if a TIN is not provided. Reporting a date of birth in one year does not eliminate the need to make reasonable efforts to obtain a TIN.

A commenter suggested that requiring TIN reporting for responsible individuals not enrolled in the coverage reported is unnecessary and inconsistent with the statute, which requires reporting a TIN for the "primary insured" and each other covered individual. Under section 6055(b)(1)(B)(iv), the Secretary may direct the reporting of other information. Reporting of TINs for responsible individuals not enrolled in the coverage is helpful for tax administration because it facilitates matching the coverage of individuals reported under section 6055 with individuals for whom the responsible individual claims a personal exemption deduction. However, in response to the comment, the final regulations provide that reporting TINs for responsible individuals not enrolled in the coverage is optional.

Commenters requested that the final regulations include rules on confidentiality and restricting the use of private information by issuers and employers. A commenter suggested that the final regulations include rules similar to 45 CFR 155.260 and 45 CFR 155.715, which restrict the use of confidential information by Exchanges. The cited regulations under 45 CFR are issued under the authority of the Department of Health and Human Services (HHS) to oversee and regulate

the operation of Exchanges. Because the IRS and Treasury Department lack similar regulatory authority over section 6055 reporting entities, the final regulations do not include rules on confidentiality. However, existing privacy rules, such as those issued by HHS, apply and protect consumers' information.

To help protect against theft of social security numbers and other TINs, IRS rules permit reporting entities required to furnish certain statements to partially mask the TIN of statement recipients and others reported on an information statement by using a truncated TIN. It is expected that section 6055 reporting entities will be able to truncate the TINs of the responsible individual and covered individuals under these rules. The final regulations clarify that reporting entities are permitted to use truncated TINs on section 6055 statements.

ii. Reasonable Efforts To Obtain TINs

Under section 6724(d), as amended by the Affordable Care Act, a reporting entity that fails to comply with the filing and statement furnishing requirements of section 6055 may be subject to penalties for failure to file a correct information return (section 6721) or failure to furnish a correct payee statement (section 6722). These penalties may be waived if the failure was due to reasonable cause and not willful neglect (section 6724(a)). The preamble to the proposed regulations noted that the section 6721 and 6722 penalties may apply to a section 6055 reporting entity but the penalties may be waived under section 6724 and the related regulations for certain failures due to reasonable cause. The preamble explained that penalties are waived if a reporting entity demonstrates that it acted in a responsible manner and that the failure is due to significant mitigating factors or events beyond the reporting entity's control. See § 301.6724-1(a)(1).

Some commenters were uncertain about what solicitations are required to satisfy the requirement to act in a responsible manner. In general, under § 301.6724(e) (regarding missing TINs), a person will be treated as acting in a responsible manner if the person properly solicits the TIN but does not receive it. Under these rules, the reporting entity makes 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 has acted in a responsible manner and need not continue to solicit a TIN.

For example, a reporting entity that makes an unsuccessful initial solicitation for a TIN in December 2014 must make a second solicitation by December 31, 2015. Assuming that request is also unsuccessful, the reporting entity would not be penalized if its section 6055 reporting submitted in early 2016 reported a date of birth in place of TIN for the individual in question. One additional solicitation must be made by December 31, 2016, to have acted in a responsible manner.

Commenters pointed out that the rules for solicitation in the existing regulations may not adequately address the circumstances surrounding the relationship between a reporting entity and a responsible individual and the covered individuals. Commenters requested that the final regulations provide rules on soliciting TINs specific to section 6055 reporting. For instance, a commenter suggested that a reporting entity should be allowed to certify that it has made reasonable efforts to obtain TINs and that the certification should be reviewed only upon examination, so that reporting entities do not have to respond to IRS notices requesting missing TINs. Commenters also suggested that the final regulations require reporting entities to request information only once or at most twice. Other commenters asked whether certain procedures that are not addressed in the current section 6724 regulations would satisfy the solicitation requirement, including: (1) Is a reporting entity required to restart the solicitation process if a new individual is added to a policy; (2) does soliciting information from the responsible individual serve as soliciting information from each covered individual on the section 6055 statement; (3) must reporting entities solicit information on a Form W-9, Request for Taxpayer Identification Number and Certification, or may a request for information on, for example, an application for insurance coverage serve as the first solicitation; (4) may a reporting entity obtain information from other documents in its possession; and (5) may reporting entities solicit information by email or phone call.

In enacting the Affordable Care Act, Congress added section 6055 reporting to the list of reporting provisions to which the section 6721, 6722, and 6724 penalty provisions apply, indicating that Congress intended that section 6055 reporting should be subject to the same rules in this regard as other information reporting. Regulations and other authorities under those sections already provide detailed rules for compliance, including the rules described above for waiving any penalties for reasonable cause that address some of the commenters questions. For instance, consistent with the rules in § 301.6724-1(e)(1)(i), the reporting entity may make an initial solicitation orally (by phone or in person), in writing (including using an application), or by electronic means such as email. The rules for the manner of making an annual solicitation should apply in the case of section 6055 as well. See, for example, § 301.6724-1(e)(2).

Under § 301.6724-1(e)(1)(i), an initial solicitation is not required if the reporting entity already has the payee's TIN and uses that TIN for all relationships of the payee with the reporting entity. In the case of section 6055 reporting, a reporting entity would likewise not be required to make an initial solicitation if the reporting entity has the TIN or other documents in its possession that it uses for other aspects of its relationship with the covered individual and/or responsible individual. For example, if the reporting entity is also the responsible individual's employer, the reporting entity does not have to make an initial solicitation for the employee's TIN for purposes of section 6055 reporting and may use the TIN that is used for employment purposes.

The solicitation rules under section 6724 also address situations in which the reporting entity does not have TIN information for account holders. Accounts commonly are maintained jointly. In these situations, the solicitation rules do not require solicitation of the accountholder merely because another person is added to the account. Similarly, although the addition of a new individual to a policy would trigger an obligation to obtain a TIN for the newly added individual, it would not trigger an obligation to solicit a TIN from existing covered individuals (or the responsible person).

Treasury and the IRS recognize that the existing solicitation rules under section 6724 may not address certain circumstances that may arise with respect to reporting under section 6055. Although the final regulations do not revise the regulations under section

6724 to specifically address these circumstances, Treasury and the IRS will continue to study the issue and may provide additional clarification if appropriate through guidance or forms and instructions.

c. Employer Identification Numbers (EINs)

The proposed regulations required reporting entities to report the name, address, and EIN of the plan sponsor. A health insurance issuer also must report the EIN of an employer maintaining a plan and whether coverage was enrolled in through the SHOP.

The proposed regulations provided that, for a multiemployer group health plan, 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. A commenter asked that the final regulations clarify that the plan sponsor of a multiemployer plan is not required to report the EIN of the participating employers. The proposed and final regulations do not require sponsors of multiemployer plans to report the EINs of the participating employers. The regulations require only health insurance issuers to report the EIN of the employer sponsoring an insured group health plan.

d. Coverage Dates

The proposed regulations provided that section 6055 information returns must provide the months for which an individual is enrolled in and entitled for at least one day to receive benefits under the coverage. Several commenters supported the requirement to report only the months of coverage, while others requested that reporting entities be allowed to report coverage dates instead of months. Section 6055 reporting of coverage on a monthly basis simplifies compliance for individual taxpayers because section 5000A requires that they demonstrate coverage under minimum essential coverage for each month of a taxable year. Accordingly, the final regulations retain the rule in the proposed regulations.

4. Time and Manner of Filing

a. Electronic Filing

The proposed regulations provided that any person who is required to file under section 6055 must file electronically if the person is required to file at least 250 returns of any type. The proposed regulations aggregated all returns, including information returns (for example, Forms W-2 and 1099), income tax returns, employment tax

returns, and excise tax returns, filed for the calendar year to determine if the 250-return threshold is met. A commenter requested that the final regulations require electronic reporting only if a reporting entity files at least 250 Forms W-2.

A “no aggregation” method of determining whether the 250 return threshold is met is consistent with the application of the rule to other information returns, such as Forms 1099 and W-2, that apply the 250 return threshold separately to each type of return required to be filed. See § 301.6011-2(c)(1). The final regulations adopt this rule. As a result, Forms 1095-B and 1095-C will be required to be electronically filed only if the reporting entity is required to file at least 250 of the specific form. Like transmittals of other information returns, the transmittal (Form 1094-B or 1094-C) is not treated as a separate return but must be electronically filed in the form and manner required by the IRS when the Form 1095 is electronically filed. The final regulations amend § 301.6011-2 to add Forms in the 1094 and 1095 series. Proposed § 301.6011-8 will be removed in a separate document.

b. Corrected Returns

The proposed regulations provided that the section 6721 and section 6722 penalties for failing to timely report correct information apply to reporting entities under section 6055. Penalties under section 6721 and section 6722 are reduced if a reporting entity files a corrected return within 30 days after the required filing date. Penalties also are reduced, but by a lesser amount, if a reporting entity makes a correction by August 1 following the reporting date. Penalties may be waived under section 6724 if the failure to timely and accurately report is due to reasonable cause and not willful neglect.

A commenter stated that reporting entities should not be required to submit corrected returns if the information included on the return is accurate at the time it is filed. The commenter recommended alternatively that the requirement to file corrected returns should apply for no more than 31 days after the end of the calendar year. Other commenters suggested a cut-off of the corrected return requirement of 30 days past the return filing due date.

Taxpayers require correct information to properly complete and file their income tax returns. The IRS must be able to accurately match information reporting with returns. Individuals are subject to the section 5000A requirement to maintain minimum

essential coverage on a month-to-month basis. In the case of section 6055 reporting, a return or statement may be incomplete or incorrect as a result of a change in circumstances occurring after the coverage year has ended. For example, a child born during a month may be enrolled in coverage retroactive to the date of birth, or coverage may be retroactively cancelled due to a failure to pay premiums. Accordingly, consistent with other information reporting rules, the final regulations clarify that reporting entities that fail to timely file corrected returns and furnish corrected statements when information changes as a result of a change in circumstances have filed returns that are incomplete or incorrect within the meaning of sections 6721 and 6722.

5. Combined Reporting

Applicable large employer members that provide minimum essential coverage on a self-insured basis are subject to the reporting requirements of both section 6055 and section 6056, as well as the requirement under section 6051 to file Form W-2, Wage and Tax Statement, reporting wages paid to employees and taxes withheld. The proposed regulations did not permit combining section 6055 reporting with reporting for section 6056 or 6051. The proposed regulations allowed the use of substitute forms for the statement to individuals, which might have permitted reporting entities to combine section 6055 and section 6056 reporting for this purpose. The preamble to proposed regulations under section 6056 (78 FR 54986) described a number of proposals to simplify reporting under that section.

Commenters supported allowing combined section 6055 and section 6056 reporting for applicable large employer members sponsoring self-insured plans, suggesting that there is significant duplication in the information reported. Some commenters requested that combined reporting be optional and that employers be permitted to combine reporting for some employees but not others.

In response to these comments, the final regulations provide that applicable large employer members will file a combined return and statement for all reporting under sections 6055 and 6056. An applicable large employer member that sponsors a self-insured plan will report on Form 1095-C, completing both sections to report the information required under sections 6055 and 6056. An applicable large employer member that provides insured coverage also will report on Form 1095-C, but will complete only the section of Form

1095-C that reports the information required under section 6056. Section 6055 reporting entities that are not applicable large employer members or are not reporting as employers, such as health insurance issuers, sponsors of multiemployer plans, and providers of government-sponsored coverage, will report under section 6055 on Form 1095-B. In accordance with usual procedures, these forms will be made available in draft form in the near future.

6. Statements Furnished to Individuals

a. Deceased Recipients

The proposed regulations provided that a reporting entity must furnish a statement to each responsible individual reporting the policy number and the name, address, and a contact number for the reporting entity, and the information required to be reported to the IRS. A responsible individual is a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage.

Commenters requested that the final regulations provide that a statement is not required to be furnished to a covered individual who dies during the year. The commenters suggested alternatively that a statement should not be required for an individual who dies during the first three months of a year who would be exempt from the shared responsibility payment under section 5000A because of a short coverage gap.

Under § 1.5000A-1(a), the minimum essential coverage requirement applies only to full months that an individual is alive. However, section 5000A does not provide a general exemption from coverage for the year of death and the coverage gap exception may not apply if the gap began in the previous calendar year. Accordingly, to ensure that minimum essential coverage is properly reflected on a decedent's final income tax return and the estate is not held liable for a section 5000A payment, the final regulations do not provide an exception for a covered individual who dies during the year.

b. Time for Furnishing Statements

Section 6055 and the proposed regulations required a reporting entity to furnish the statement on or before January 31 of the year following the calendar year in which minimum essential coverage is provided. Commenters requested that the final regulations permit reporting entities to furnish statements within the last

quarter of the calendar year of coverage with other material required to be sent at that time. The final regulations do not address furnishing a statement during the coverage year. However, the section 5000A requirement applies to each month during a calendar year, therefore a statement provided early in the last calendar quarter would not report coverage for those months. As a result, furnishing a statement before the end of the year increases the risk of reporting information that changes after the end of the year, potentially subjecting the reporting entity to penalties.

A commenter requested that the final regulations provide procedures for extending the time to furnish the section 6055 statement. Accordingly, in response to this comment, like other information reporting rules, the final regulations include rules allowing reporting entities showing good cause the flexibility to apply for an extension of time not exceeding 30 days to furnish statements.

A commenter requested that reporting entities be allowed to furnish statements reporting employer-sponsored coverage with the employees' Form W-2. Neither the final regulations nor regulations governing the furnishing of Forms W-2 under § 1.6051-1 prohibit mailing a 6055 statement with Form W-2. Accordingly, reporting entities may furnish the Form 1095-B or 1095-C with the Form W-2 in the same mailing.

c. Mailing Address

The proposed regulations provided that, if mailed, the statement required under section 6055 must be sent to the individual's last known permanent address or, if no permanent address is known, to the individual's temporary address.

Commenters asked that reporting entities be allowed to send statements to an alternate address, such as an employer's address, for individuals residing outside of the United States for whom the entity does not have an address. Other commenters requested clarification that the requirement to furnish a statement would be satisfied if a mailing is returned to the sender.

The final regulations adopt the rule in the proposed regulations requiring reporting entities to send statements to an individual's last known address. The final regulations add a rule, however, that a reporting entity's first class mailing to the recipient's last known permanent address, or if no permanent address is known, the temporary address, discharges the requirement to furnish the statement, even if the statement is returned. A reporting entity that has no address for an individual

should send the statement to the address where the individual is most likely to receive it, for example to the address the reporting entity uses for requesting or providing information about the coverage.

d. Electronic Furnishing of Statements

The proposed regulations permitted electronic furnishing of statements to individuals if the recipient affirmatively consents. Commenters requested that reporting entities be permitted to furnish statements electronically unless the recipient requests paper statements, arguing that most recipients have access to a computer. Other commenters suggested that affirmative consent by the recipient should not be required. A commenter suggested that the final regulations provide rules for the electronic furnishing of statements to individuals that are similar to the rules under section 2715 of the Public Health Service Act for providing a summary of benefits and coverage, which allows furnishing in paper or electronic form.

Statutory and regulatory tax information reporting rules uniformly require a recipient's affirmative consent to receiving statements electronically. See, for example, section 401 of the Jobs Creation and Workers Assistance Act of 2002 (116 Stat. 21 (2002)); § 1.401(a)-21(b)(2); § 31.6051-1(j)(2)(i); 2014 General Instructions for Certain Information Returns (Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G), page 12. These rules protect individuals who do not have access to or are not comfortable using a computer. Therefore, consistent with general information reporting rules, the final regulations do not permit reporting entities to furnish statements electronically unless an individual affirmatively consents to electronic furnishing.

The proposed regulations provided that consent to receive statements electronically may be provided in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished. Commenters suggested that consent to electronic furnishing for other documents should be treated as consent to electronic furnishing of the section 6055 statement. Other commenters requested that employers be allowed to post a notice on the company's Web site advising employees that statements are available and provide paper statements only on request.

Consent to receive a statement in electronic format must be in a manner that reasonably demonstrates that the recipient is able to access the statement

in the electronic format in which it will be furnished. See for example § 31.6051-1(j)(2)(i). The proposed and final regulations explicitly allow statement recipients to provide consent and to access section 6055 statements in response to a notice on a Web site. A reporting entity may simultaneously request consent to receive an electronic section 6055 statement and consent regarding other statements. For instance, a reporting entity may simultaneously request consent to provide electronic statements for Forms W-2 and 1095, but each form must be specifically referenced in the request. A general consent to receive statements electronically does not reasonably demonstrate that the recipient is able to access the section 6055 statement in an electronic format and does not serve as consent to receive the section 6055 statement electronically.

e. Form of Statement

i. Information on the Statement

The proposed regulations provided that the statement furnished to the responsible individual must include a contact phone number for the person required to file the return. A commenter asked whether a reporting entity may provide an automated response to inquiries if a person ultimately is available. The final regulations do not prohibit initial automated responses if a caller is able to reach a person during the call.

A commenter requested that a reporting entity be permitted to designate a third party to be the contact person. The final regulations clarify that the statement only must include a phone number for a person designated as the reporting entity's contact person. The final regulations do not specify that the contact person must be a reporting entity's employee or prohibit designating a third party as the contact person.

ii. Substitute Statements

The proposed regulations permitted substitute statements if they include the information required to be shown on the return filed with the IRS and comply with applicable requirements in published guidance relating to substitute statements, for example, Rev. Proc. 2012-38 (2012-48 IRB 575), see § 601.601(d)(2) of this chapter.

Commenters expressed an interest in creating substitute statements combining information reporting under sections 6055 and 6056 and requested publication of a revenue procedure providing the specifications. Other commenters asked that reporting

entities be allowed flexibility in customizing section 6055 statements in a style recognizable to their recipients.

The final regulations permit the use of substitute statements under section 6055 that conform to requirements provided in published guidance. The IRS plans to provide these requirements in published guidance or instructions. Employers submitting Forms 1095-C combining reporting under sections 6055 and 6056 to the IRS also will report the information required by those sections to the individuals in a single statement.

Commenters requested that the final regulations allow reporting entities to provide general rather than personalized information in the section 6055 statement, for example "You were covered by minimum essential coverage for each month you were covered by the plan for at least one day." While the final regulations do not adopt this comment, it is anticipated that reporting entities will be able to check a box on the information return to report that an individual was covered for all 12 months of the calendar year.

e. TIN Matching Program

Commenters requested that the IRS TIN matching program, see Rev. Proc. 2003-09 (2003-1 CB 516) and § 601.601(d), include section 6055 reporting. The TIN matching program may be used only for reportable payments subject to backup withholding under section 3406. Therefore, TIN matching is not permitted for purposes of section 6055 reporting and the final regulations do not include section 6055 reporting in the TIN matching program.

7. Penalties

The proposed regulations applied to calendar years beginning after December 31, 2014. Under Notice 2013-45 (2013-31 IRB 116), the IRS will not apply penalties for failure to comply with section 6055 for 2014 (for coverage in 2014 and information returns filed and statements furnished to covered individuals in 2015).

A commenter requested that the effective date of the section 6055 reporting requirements be extended an additional year if final regulations are not released by January 1, 2014, thus requiring no reporting in 2016 for coverage in 2015. Other commenters requested that the IRS waive penalties for reporting in 2016 on 2015 coverage if a reporting entity makes a good faith effort to comply. One commenter requested that penalties be waived for the two years following the release of final regulations.

In implementing new information reporting requirements, short-term relief from penalties frequently is provided. This relief generally allows additional time to develop appropriate procedures for collection of data and compliance with these new reporting requirements. After considering the comments received, the IRS will not impose penalties under sections 6721 and 6722 on reporting entities that can show that they have made good faith efforts to comply with the information reporting requirements. Specifically, relief is provided from penalties under sections 6721 and 6722 for returns and statements filed and furnished in 2016 to report coverage in 2015, but only for incorrect or incomplete information reported on the return or statement, including TINs or dates of birth. No relief is provided in the case of reporting entities that do not make a good faith effort to comply with these regulations or that fail to timely file an information return or furnish a statement. However, consistent with the existing information reporting rules, reporting entities that fail to timely meet the requirements of these regulations may be eligible for penalty relief if the IRS determines that the standards for reasonable cause under section 6724 are satisfied.

Effective/Applicability Date

These regulations 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 6055 reporting requirements for coverage in 2014 (including the provisions requiring the furnishing of statements to covered individuals in 2015 with respect to 2014). Accordingly, a reporting entity will not be subject to penalties if it first reports beginning in 2016 for 2015 (including the furnishing of statements to covered individuals).

Taxpayers are encouraged, however, to voluntarily comply with section 6055 information reporting for minimum essential coverage provided in 2014. Given significant changes in the information reporting provisions in response to commenters' feedback on the proposed regulations, including requiring applicable large employer members to file a return that combines section 6055 and section 6056 reporting, reporting entities that wish to voluntarily comply with the section 6055 information reporting provisions for 2014 should build their systems and report in accordance with these final regulations. Real-world testing of reporting systems and plan designs, built in accordance with the terms of

these final regulations, through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015.

Special Analyses

It has been determined that these final regulations are 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.

Sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) generally require agencies to prepare a regulatory flexibility analysis addressing the impact of proposed and final regulations, respectively, on small entities. Section 605(b) of the RFA, however, provides that sections 603 and 604 do not apply if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities.

Section 6055 requires a person that provides minimum essential coverage to an individual to file a return with the IRS reporting information specified by the statute and to furnish a statement containing this information to an individual. These final regulations implement the underlying statute and the economic impact is principally a result of the underlying statute. Specifically, these final regulations primarily provide the time and manner for filing and furnishing the returns and statements that section 6055 requires.

Notice 2013-45 announced transition relief providing that information reporting under section 6055 will be optional for 2014. The notice advised that this relief would allow additional time for dialogue with prospective reporting entities in an effort to simplify the reporting requirements. Between publication of Notice 2013-45 and publication of the proposed regulations under section 6055, the IRS and the Treasury Department engaged in a series of discussions with employers, health insurance issuers, and other reporting entities. The proposed and final regulations address certain concerns expressed in those discussions.

These final regulations minimize the burden associated with the collection of information imposed by section 6055 in a number of ways. The regulations limit

reporting to only the information that the IRS will use to verify minimum essential coverage and administer the premium tax credit, all of which is specified in the statute. For example, the regulations do not require reporting the amount of advance payments of the premium tax credit and cost-sharing reductions or the amount of the premium for employer coverage paid by an employer. Similarly, the only information the regulations require for administration of the small employer health insurance credit under section 45R is whether a qualified health plan was enrolled in through an Exchange. The final regulations reduce burden for applicable large employer members by allowing combined reporting under sections 6055 and 6056. The final regulations allow for substitute statements, furnishing of statements with Forms W-2, and electronic delivery consistent with other information reporting rules. Finally, the final regulations relieve health insurance issuers from reporting for individual market qualified health plans enrolled in through an Affordable Insurance Exchange because Exchanges will report on these enrollments under section 36B(f)(3).

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Andrew Braden of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Sections 1.6055-1 and 1.6055-2 also issued under 26 U.S.C. 6055.

■ **Par. 2.** Sections 1.6055-1 and 1.6055-2 are added to read as follows:

§ 1.6055-1 Information reporting for minimum essential coverage.

(a) *Information reporting requirement.* Every person that provides minimum essential coverage to an individual during a calendar year must file an information return and transmittal and furnish statements to responsible individuals on forms prescribed by the Internal Revenue Service.

(b) *Definitions—(1) In general.* The definitions in this paragraph (b) apply for purposes of this section.

(2) *Affordable Care Act.* The term *Affordable Care Act* refers to the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)), and amendments to those acts.

(3) *ERISA.* The term *ERISA* means the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001 et seq.).

(4) *Exchange.* *Exchange* has the same meaning as in 45 CFR 155.20.

(5) *Government employer.* The term *government employer* means an employer that is a governmental unit or an agency or instrumentality of a governmental unit.

(6) *Governmental unit.* The term *governmental unit* refers to the government of the United States, any State or political subdivision of a State, 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.* *Minimum essential coverage* is defined in section 5000A(f) and regulations issued under that section.

(9) *Qualified health plan.* The term *qualified health plan* has the same meaning as in section 1301(a) of the Affordable Care Act (42 U.S.C. 18021(a)).

(10) *Reporting entity.* A reporting entity is any person that must report, under section 6055 and this section, minimum essential coverage provided to an individual.

(11) *Responsible individual.* The term responsible individual includes a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage.

(12) *Taxpayer identification number.* The term taxpayer identification number (TIN) has the same meaning as in section 7701(a)(41).

(c) *Persons required to report*—(1) *In general.* The following persons must file the information return and transmittal form required under paragraph (a) of this section to report minimum essential coverage—

(i) Health insurance issuers, or carriers (as used in 5 U.S.C. 8901), for all insured coverage, except as provided in paragraph (c)(3)(ii) of this section;

(ii) Plan sponsors of self-insured group health plan coverage;

(iii) The executive department or agency of a governmental unit that provides coverage under a government-sponsored program (within the meaning of section 5000A(f)(1)(A)); and

(iv) Any other person that provides minimum essential coverage to an individual.

(2) *Plan sponsors of self-insured group health plan coverage*—(i) *In general.* For purposes of this section, a plan sponsor of self-insured group health plan coverage is—

(A) The employer for a self-insured group health plan or arrangement established or maintained by a single employer (determined without application of section 414(b), (c), (m) or (o) in the case of an employer described in paragraph (f)(4)(i) of this section), including each participating employer with respect to a self-insured group health plan or arrangement established or maintained by more than one employer (and not including a multiemployer plan as defined in section 3(37) of ERISA or a Multiple Employer Welfare Arrangement as defined in section 3(40) of ERISA);

(B) The association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan for a self-insured group health plan or arrangement that is a multiemployer plan (as defined in section 3(37) of ERISA).

(C) The employee organization for a self-insured group health plan or

arrangement maintained solely by an employee organization;

(D) Each participating employer for a self-insured group health plan or arrangement maintained by a Multiple Employer Welfare Arrangement (as defined in section 3(40) of ERISA) with respect to the participating employer's own employees; and

(E) For a self-insured group health plan or arrangement for which a plan sponsor is not otherwise identified in paragraphs (c)(2)(i)(A) through (c)(2)(i)(D) of this section, the person designated by plan terms as the plan sponsor or plan administrator or, if no person is designated as the administrator and a plan sponsor cannot be identified, each entity that maintains the plan or arrangement.

(ii) *Government employers.* Unless otherwise provided by statute or regulation, a government employer that maintains a self-insured group health plan or arrangement may enter into a written agreement with another governmental unit, or an agency or instrumentality of a governmental unit, that designates the other governmental unit, agency, or instrumentality as the person required to file the returns and to furnish the statements required by this section for some or all of the individuals receiving minimum essential coverage under that plan or arrangement. The designated governmental unit, agency, or instrumentality must be part of or related to the same governmental unit as the government employer (for example, a political subdivision of a State may designate the State or another political subdivision of the state) and agree to the designation. The government employer must make or revoke the designation before the earlier of the deadline for filing the returns or furnishing the statements required by this section and must retain a copy of the designation in its books and records. If the requirements of this paragraph (c)(2)(ii) are met, the designated governmental unit, agency, or instrumentality is the sponsor under paragraph (c)(2)(i) of this section. If no entity is designated, the government employer that maintains the self-insured group health plan or arrangement is the sponsor under paragraph (c)(2)(i) of this section.

(3) *Special rules for government-sponsored programs*—(i) *Medicaid and Children's Health Insurance Program (CHIP) coverage.* The State agency that administers the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 and following sections) or the CHIP program under title XXI of the Social Security Act (42 U.S.C. 1396 and following sections)

must file the returns and furnish the statements required by this section for those programs.

(ii) *Government-sponsored coverage provided through health insurance issuers.* An executive department or agency of a governmental unit that provides coverage under a government-sponsored program through a health insurance issuer (such as Medicaid, CHIP, or Medicare, including Medicare Advantage) must file the returns and furnish the statements required by this section.

(iii) *Nonappropriated Fund Health Benefits Program.* The Secretary of Defense may designate the Department of Defense components (as used in DoD Directive 5100.01, Functions of the Department of Defense and Its Major Components (December 21, 2010)) that must file the returns and furnish the statements required by this section for the Nonappropriated Fund Health Benefits Program.

(4) *Other arrangements recognized as minimum essential coverage.* The Commissioner may designate in published guidance, see § 601.601(d) of this chapter, the reporting entity for arrangements the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, recognizes under section 5000A(f)(1)(E) as minimum essential coverage.

(d) *Reporting not required*—(1) *Qualified health plans.* A health insurance issuer is not required to file a return or furnish a report under this section for coverage in a qualified health plan in the individual market enrolled in through an Exchange.

(2) *Additional health benefits.* No reporting is required under paragraph (a) of this section for minimum essential coverage that provides benefits in addition or as a supplement to a health plan or arrangement that constitutes minimum essential coverage if—

(i) The primary and supplemental coverages have the same plan sponsor; or

(ii) The coverage supplements government-sponsored coverage (as defined in section 5000A(f)(1)(A) and the regulations under that section) such as Medicare.

(3) *Individuals not enrolled in coverage.* No reporting is required under this section for coverage offered to individuals who do not enroll.

(e) *Information required to be reported to the Internal Revenue Service*—(1) *In general.* All information returns required by this section must report the following information for the calendar year of coverage—

(i) The name, address, and employer identification number (EIN) of the

reporting entity required to file the return;

(ii) The name, address, and TIN, or date of birth if a TIN is not available, of the responsible individual, except that reporting entities may but are not required to report the TIN of a responsible individual not enrolled in the coverage;

(iii) The name and TIN, or date of birth if a TIN is not available, of each individual who is covered under the policy or program;

(iv) For each covered individual, the months for which, for at least one day, the individual was enrolled in coverage and entitled to receive benefits; and

(v) Any other information specified in forms, instructions, or published guidance, see §§ 601.601(d) and 601.602 of this chapter.

(2) *Information relating to employer-provided coverage.* In addition to the information described in paragraph (e)(1) of this section, information returns reporting minimum essential coverage provided to an individual that is coverage provided by a health insurance issuer through a group health plan must report—

(i) The name, address, and EIN of the employer sponsoring the plan;

(ii) Whether the coverage is a qualified health plan enrolled in through the Small Business Health Options Program (SHOP) and the SHOP's unique identifier; and

(iii) Other information specified in forms, instructions, or published guidance, see §§ 601.601(d) and 601.602 of this chapter.

(f) *Time and manner for filing return—(1) In general.* A reporting entity must file the return and transmittal form required under paragraph (a) of this section on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which it provided minimum essential coverage to an individual. A reporting entity must file the return and transmittal form as specified in forms or instructions. For extensions of time for filing returns under this section see §§ 1.6081-1 and 1.6081-8. See § 301.6011-2 of this chapter for rules relating to electronic filing.

(2) *Form of return—(i) Applicable large employer members.* A reporting entity that is reporting under section 6055 as an applicable large employer member (as defined in § 54.4980H-1(a)(5) of this chapter) makes the return required under this paragraph (f) on Form 1094-C and Form 1095-C or other form designated by the Internal Revenue Service.

(ii) *Reporting entities not reporting as applicable large employer members.* Entities reporting as health insurance issuers or carriers, sponsors of self-insured group health plans that are not reporting as applicable large employer members, sponsors of multiemployer plans, and providers of government-sponsored coverage, will report under section 6055 on Form 1094-B and Form 1095-B or other form designated by the Internal Revenue Service.

(iii) *Substitute forms.* Reporting entities may make the return required under this paragraph (f) on a substitute form. A substitute form must comply with revenue procedures or other published guidance (see § 601.601(d)(2) of this chapter) that apply to substitute forms.

(g) *Statements to be furnished to responsible individuals—(1) In general.* Every person required to file a return under this section must furnish to the responsible individual identified on the return a written statement. For purposes of the penalty under section 6722, furnishing a statement to the responsible individual is treated as furnishing a statement to the payee. The statement must show—

(i) The phone number for a person designated as the reporting entity's contact person and policy number, if any; and

(ii) Information described in paragraph (e) of this section required to be shown on the section 6055 return for the responsible individual and each covered individual listed on the return.

(2) *Statements for individuals other than the responsible individual.* A reporting entity is not required to provide a statement described in paragraph (g)(1) of this section to an individual who is not the responsible individual.

(3) *Form of the statement.* A statement required under this paragraph (g) may be made either by furnishing to the responsible individual a copy of the return filed with the Internal Revenue Service or on a substitute statement. A substitute statement must include the information required to be shown on the return filed with the Internal Revenue Service and must comply with requirements in published guidance (see § 601.601(d)(2) of this chapter) relating to substitute statements. An Internal Revenue Service truncated taxpayer identification number may be used as the identification number for an individual in lieu of the identification number appearing on the corresponding information return filed with the Internal Revenue Service.

(4) *Time and manner for furnishing statements—(i) Time for furnishing—(A)*

In general. A reporting entity must furnish the statements required under this paragraph (g) on or before January 31 of the year following the calendar year in which minimum essential coverage is provided.

(B) *Extensions of time—(1) 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 these 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. A request in the form of a letter to the Internal Revenue Service, signed by the applicant, suffices as an application. The application must be filed on or before the date prescribed in paragraph (g)(4)(i)(A) of this section.

(2) *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) of this chapter), for automatic extensions of time to furnish to one or more individuals the statement required under section 6055.

(ii) *Manner of furnishing.* If mailed, the statement must be sent to the responsible individual's last known permanent address or, if no permanent address is known, to the individual's temporary address. For purposes of this paragraph (g)(4), 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 requirement to furnish the statement. A reporting entity may furnish the statement electronically if the requirements of § 1.6055-2 are satisfied.

(h) *Penalties—(1) In general.* For provisions relating to the penalty for failure to file timely a correct information return required under section 6055, see section 6721 and the regulations under that section. For provisions relating to the penalty for failure to furnish timely a correct statement to responsible individuals required under section 6055, see section 6722 and the regulations under that section. See section 6724 and the regulations under that section for rules relating to the waiver of penalties if a failure to file timely or accurately is due to reasonable cause and is not due to willful neglect.

(2) *Application of section 6721 and 6722 penalties to section 6055 reporting.*

For purposes of section 6055 reporting, if the information reported on a return (including a transmittal) or a statement required by this section is incomplete or incorrect as a result of a change in circumstances (such as a retroactive change in coverage), a failure to timely file or furnish a corrected document is a failure to file or furnish a correct return or statement under sections 6721 and 6722.

(i) [Reserved.]

(j) *Effective/applicability date.* This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under section 6721 or 6722 for failure to comply with the section 6055 reporting requirements for coverage in 2014 (for information returns filed and statements furnished in 2015).

§ 1.6055-2 Electronic furnishing of statements

(a) *Electronic furnishing of statements—(1) In general.* A person required by section 6055 to furnish a statement (furnisher) to a responsible individual (a recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (a)(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. Alternatively, the consent may be made in a paper document that 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 the furnisher receives it or on another date no more than 60 days later. The furnisher also may provide that a recipient's request for a paper statement will be treated as a withdrawal of the recipient's 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 a statement, a furnisher must, prior to changing the hardware or software, notify the recipient. 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 or software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(ii) 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 the statement required under section 6055 electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statement electronically by accessing the Web site, downloading and completing the consent document, and emailing 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 statement. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 6055 electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an email stating that R may consent to receive the statement required under section 6055 electronically instead of in a paper format. The email contains an attachment instructing R how to consent to receive the statement electronically. The email attachment uses the same electronic format that F will use for the electronically furnished statement. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 6055 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 the statement required under section 6055 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 statement electronically. The consent via the secure Web page uses the same electronic format that F will use for electronically furnishing the statement. R accesses the secure Web page and follows the instructions for giving consent. R has consented to receive the statement required under section 6055 electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures—(i) In general.* Prior to, or at the time of, a recipient's consent, a furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in this paragraph (a)(3).

(ii) *Paper statement.* The furnisher must inform the recipient 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 furnisher must inform the recipient 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 or only to the first statement required to be furnished following the date of the consent.

(iv) *Post-consent request for a paper statement.* The furnisher must inform the recipient 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 furnisher must inform the recipient 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 email 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 furnisher must inform the recipient of the conditions under which the furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with a furnisher who is the recipient's employer).

(vii) *Updating information.* The furnisher must inform the recipient of the procedures for updating the information needed 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 furnisher must provide the recipient 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 furnisher must advise the recipient 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 published guidance (see § 601.601(d) of this chapter) relating to substitute statements to recipients.

(5) *Notice—(i) In general.* If a statement is furnished on a Web site, the furnisher must notify the recipient. 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 and include the following statement in capital letters, “IMPORTANT TAX RETURN DOCUMENT AVAILABLE.” If the notice is provided by electronic mail, this 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 furnisher cannot obtain the correct electronic address from the furnisher’s records or from the recipient, 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 and the original statement was furnished electronically, the furnisher must furnish a corrected statement to the recipient electronically. If the original statement was furnished through a Web site posting, the furnisher must notify the recipient that it has posted the corrected statement on the Web site in the manner described in paragraph (a)(5)(i) of this section within 30 days of the posting. 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 email 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.* A furnisher must furnish a paper statement if a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished. A paper statement furnished after the statement due date under this paragraph (a)(7) is timely if furnished within 30 days after the date the furnisher receives the withdrawal of consent.

(b) *Effective/applicability date.* This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under section 6722 with respect to the reporting requirements for 2014 (for statements furnished in 2015).

■ **Par. 3.** Section 1.6081–8 is amended in paragraph (a) by adding the language “1095 series,” between the words “1042–S,” and “1098”.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 4.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 5.** Section 301.6011–2 is amended in the first sentence of paragraph (b)(1) by adding “1094 series, 1095 series,” after “1042–S”.

■ **Par. 6.** Section 301.6721–1 is amended by removing the word “or” at the end of paragraph (g)(3)(xxii), removing the period and adding a semi-colon in its place at the end of paragraph (g)(3)(xxiii), and adding paragraphs (g)(3)(xxiv) and (g)(3)(xxv) to read as follows:

§ 301.6721–1 Failure to file correct information returns.

* * * * *
 (g) * * *
 (3) * * *

(xxiv) Section 6055 (relating to information returns reporting minimum essential coverage); or

(xxv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members).
 * * * * *

■ **Par. 7.** Section 301.6722–1 is amended by removing the word “or” at the end of paragraph (d)(2)(xxxi), removing the period and adding a semi-colon in its place at the end of paragraph (d)(2)(xxxii), and adding paragraphs (d)(2)(xxxiii) and (d)(2)(xxxiv) to read as follows:

§ 301.6722–1 Failure to furnish correct payee statements.

* * * * *

(d) * * *
 (2) * * *
 (xxxiii) Section 6055 (relating to information returns reporting minimum essential coverage); or

(xxxiv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members).
 * * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

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

■ **Par. 9.** In § 602.101, paragraph (b) is amended by adding two entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *
 (b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.6055–1	1545–2252
1.6055–2	1545–2252
* * * * *	* * * * *

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John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: March 2, 2014.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–05051 Filed 3–5–14; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 9661]

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: Final regulations.

SUMMARY: This document contains final regulations providing guidance to