



# Health Care Reform

## LEGISLATIVE BRIEF

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## Provider Reporting of Health Coverage—Code Section 6055

The Affordable Care Act (ACA) created new reporting requirements in Internal Revenue Code (Code) Section 6055. Under these new reporting rules, all entities that provide minimum essential coverage (MEC) must provide information to the Internal Revenue Service (IRS) about the health plan coverage they provide. Related statements must also be provided to individuals. **Reporting is first required in early 2016 for calendar year 2015.**

This additional reporting is intended to promote transparency with respect to health plan coverage and costs. It will also provide the government with information to administer the individual mandate (that is, the requirement that individuals obtain acceptable health insurance coverage for themselves and their family members or pay a penalty), which became effective in 2014.

On March 5, 2014, the IRS released [final regulations](#) on the Section 6055 reporting requirements. In addition, the IRS issued [Q&As](#) on Section 6055 reporting on Aug. 29, 2014, and a [brochure](#) to aid compliance on April 15, 2015. The IRS also released final 2014 versions of [Form 1094-B](#) and [Form 1095-B](#), along with related [instructions](#), which will be used to report under Section 6055 for 2014. **These forms are not required to be filed for 2014.** However, the IRS is encouraging voluntary compliance for 2014.

On Sept. 17, 2015, the IRS **released final 2015 versions of Forms 1094-B and 1095-B**, along with related [instructions](#). The 2015 final forms remained unchanged from the 2015 draft versions. The 2015 final instructions were also largely unchanged from the 2015 draft versions, but provide clarifications on some questions. The final instructions also contain the following key provisions:

- **Extensions of time to file returns with the IRS and furnish statements to individuals** (finalized from draft versions);
- **A process to obtain waivers from the electronic filing requirement** (finalized from draft versions); and
- **Relief from separate Section 6055 reporting for many health reimbursement arrangements (HRAs)** (clarified from prior guidance and draft versions).

On the same day, the IRS issued [Notice 2015-68](#) to provide additional guidance on Section 6055 reporting.

Also, on June 29, 2015, President Obama signed the [Trade Preferences Extension Act of 2015](#) into law, which **increased the penalties** for failure to file correct information returns or provide individual statements under Section 6056. **These changes are effective for information returns and individual statements required to be filed or provided after Dec. 31, 2015.**

### OVERVIEW

The Section 6055 reporting requirements apply to all providers of MEC. Generally, the following entities will be responsible for filing Forms 1094-B and 1095-B with the IRS to satisfy the Section 6055 reporting requirements:

- **Health insurance issuers**, for insured coverage;
- **Plan sponsors** of self-insured coverage (however, a self-insured plan sponsor that is also an applicable large employer (ALE) will generally use Forms 1094-C and 1095-C, instead of Forms 1094-B and 1095-B); and



# Provider Reporting of Health Coverage—Code Section 6055

- **Governmental units** that provide coverage under a government-sponsored program.

These reporting entities are required to report information about **each individual who was covered** under the MEC they provided during the year.

## DEADLINES FOR INFORMATION REPORTING

The required forms must be filed with the IRS annually, no later than **Feb. 28 (March 31, if filed electronically)** of the year following the calendar year to which the return relates. The first returns required to be filed under Section 6055 are for the 2015 calendar year, and must be filed no later than **Feb. 29, 2016** (Feb. 28, 2016, being a Sunday), or **March 31, 2016**, if filed electronically.

Each reporting entity will also be required to furnish statements annually to individuals who are provided MEC on or before **Jan. 31** of the year immediately following the calendar year to which the statements relate. Thus, the first statements (the statements for 2015) must be furnished no later than **Feb. 1, 2016** (Jan. 31, 2016, being a Sunday).

Extensions may be available in certain circumstances. However, an alternate deadline is generally not allowed for employers with non-calendar year plans. Although employers may collect information on a plan year basis, employees will need to receive their individual statements early in the year in order to have the requisite information to correctly and completely file their income tax returns for that year.

## Filing and Furnishing Extensions

Employers may receive an **automatic 30-day extension of time to file** with the IRS by completing and filing [Form 8809, Application for Extension of Time To File Information Returns](#), by the due date of the returns. The form may be submitted on paper, or through the FIRE System either as a fill-in form or an electronic file. No signature or explanation is required for the extension. Under certain hardship conditions, employers may also apply for an additional 30-day extension. See the instructions for Form 8809 for more information.

Employers may also request an extension of time to furnish the statements to recipients by sending a letter to Internal Revenue Service, Information Returns Branch, Attn: Extension of Time Coordinator, 240 Murall Drive, Mail Stop 4360, Kearneysville, WV 25430. The letter must include:

- The filer's name, TIN and address;
- The type of return;
- A statement that extension request is for providing statements to recipients;
- A reason for delay; and
- The signature of the filer or authorized agent.

A request must be postmarked **by the date on which statements are due to recipients**. If the request for an extension is approved, employers will generally be granted a maximum of 30 extra days to furnish the statements.

## FILING REQUIREMENTS—REQUIRED FORMS

Under Section 6055, each reporting entity will generally be required to file all of the following with the IRS:

- A single **transmittal form** (Form 1094-B, Transmittal of Health Coverage Information Returns) for all of the returns filed for a given calendar year; and
- A separate **individual statement** (Form 1095-B, Health Coverage) for each individual who is provided MEC.

Substitute statements that comply with applicable requirements may be used, as long as the required information is included. Entities using substitute forms instead of the official IRS versions may develop substitute forms themselves

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8/15; BK 9/15

# Provider Reporting of Health Coverage—Code Section 6055

or buy them from a private printer. [Publication 5223](#), *General Rules & Specifications for Substitute ACA Forms 1094-B, 1095-B, 1094-C, and 1095-C and Certain Other Information*, explains the requirements for the format and content of substitute statements to recipients. **Only forms that conform to the official form and the specifications in Publication 5223 are acceptable for filing with the IRS.** Reporting entities may not request special consideration.

The IRS released **final 2014 versions** of [Form 1094-B](#) and [Form 1095-B](#), along with related [instructions](#). These are **2014 versions only** and are not required to be filed for 2014. However, reporting entities may voluntarily file them in 2015 with respect to 2014 coverage.

On Sept. 17, 2015, the IRS released **final 2015 versions of Forms 1094-B and 1095-B**, along with related [instructions](#). The 2015 final forms remained unchanged from the 2015 draft versions. The 2015 final instructions were also largely unchanged from the 2015 draft versions, but provide clarifications on some questions. The 2015 draft and final Form 1095-B also include a "Continuation Sheet" that filers will use if they need to report coverage information for more than six individuals.

## **Forms Used for Combined Reporting**

Entities that are reporting under both Sections 6055 and 6056 (ALEs that sponsor self-insured plans) will file using a combined reporting method on [Form 1094-C](#) and [Form 1095-C](#), along with related [instructions](#). As part of this combined reporting method, Form 1095-C will be used by ALEs to satisfy the Section 6055 and Section 6056 reporting requirements, as applicable.

The IRS also released **final versions** of Forms [1094-C](#) and [1095-C](#), along with related [instructions](#). These are **2014 versions only** and are not required to be filed for 2014. However, reporting entities may voluntarily file them in 2015 for 2014 coverage. On Sept. 17, 2015, the IRS released **final 2015 versions of Forms 1094-C and 1095-C**, along with related [instructions](#).

## **ENTITIES SUBJECT TO SECTION 6055 REPORTING**

Under Section 6055, every person that provides MEC to an individual during a calendar year must report on the health coverage provided. To ensure complete and accurate reporting, Section 6055 reporting is required for **all covered individuals**. Reporting entities include the following:

Health insurance issuers	Self-insured plan sponsors
Government-sponsored programs	Other entities that provide MEC

## **Designating Third Parties to File and Furnish on Behalf of a Reporting Entity**

Reporting arrangements between health care providers and other parties are not prohibited. Therefore, reporting entities may use third parties to facilitate filing returns and furnishing statements to comply with Section 6055 reporting requirements.

However, entering into a reporting arrangement does not transfer the potential liability of the provider for failure to report information and furnish statements under Section 6055. Also, 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.

In addition, unless prohibited by other law, a government employer that maintains a self-insured group health plan or arrangement may generally designate (in writing) another related governmental unit, agency or instrumentality as the person responsible for Section 6055 reporting, called a designated government entity (DGE).

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8/15; BK 9/15

# Provider Reporting of Health Coverage—Code Section 6055

## Health Insurance Issuers

Health insurance issuers are responsible for Section 6055 reporting for all insured coverage except:

- Coverage under certain government-sponsored programs (such as some Medicaid, Children’s Health Insurance Program [CHIP] and Medicare programs) that provide coverage through a health insurance issuer; and
- Coverage under qualified health plans (QHPs) through the individual market Exchange.

To avoid collecting duplicate or unnecessary information, issuers are not required to submit Section 6055 information returns for QHP coverage through an individual Exchange. The Exchange will provide the necessary information to the IRS and the individual. However, issuers must report on QHPs in the small group market enrolled in through the Small Business Health Options Program (SHOP), because Exchanges will not be reporting information on these plans.

The IRS also issued [Notice 2015-68](#) on Sept. 17, 2015, to indicate that it plans to issue proposed regulations related to Section 6055 reporting. These proposed regulations are expected to require health insurance issuers to report coverage in **catastrophic health insurance plans that were enrolled in through an Exchange**. Thus, beginning with coverage in 2016 (filing in 2017), health insurance issuers and carriers will report coverage in catastrophic health plans enrolled in through the Marketplace. For coverage in 2015 (filing in 2016), health insurance issuers and carriers are encouraged to report on coverage in catastrophic health plans.

## Self-insured Plan Sponsors

The plan sponsor is responsible for Section 6055 reporting for a self-insured group health plan with respect to all individuals covered under the plan. This is the case regardless of whether the individuals are employees. In general, the plan sponsor is the entity that establishes or maintains the plan.

The following table provides examples of entities that are considered the plan sponsor for different types of coverage.

TYPE OF COVERAGE	PLAN SPONSOR
A self-insured group health plan maintained by a single employer	The employer
A plan maintained by more than one employer that is not a multiemployer plan under ERISA	Each participating employer
A multiemployer plan under ERISA	The association, committee, joint board of trustees or other group of representatives of the parties who establish or maintain the plan
A plan maintained solely by an employee organization	The employee organization
Any plan for which a plan sponsor is not identified above	The person designated by plan terms or, if no person is designated, each entity that maintains the plan

For purposes of identifying the employer, **the Code Section 414 employer aggregation rules do not apply**. Thus, a self-insured group health plan or arrangement covering employees of related companies is treated as sponsored by more than one employer, and each employer is required to report for its employees. However, one member of the group may assist the other members by filing returns and furnishing statements on behalf of all members.

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8/15; BK 9/15

# Provider Reporting of Health Coverage—Code Section 6055

Most employers that sponsor self-insured group health plans are applicable large employers (ALEs) subject to the ACA's employer shared responsibility rules. Thus, these employers are required to report under both Code Section 6055 and Section 6056. ALEs apply the Section 6056 rules for identifying reporting entities in a controlled group. Employers in controlled groups that are not ALEs, 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.

## **Government-sponsored Programs**

Governmental units that provide coverage under a government-sponsored program must also report under Section 6055. For a government-sponsored program, the entity responsible for reporting under Section 6055 is as follows:

TYPE OF COVERAGE	WHO MUST REPORT
Medicaid and CHIP coverage	The state agency that administers the program
Medicare, TRICARE, benefits administered by the Department of Veterans Affairs and benefits for Peace Corps volunteers	The executive department or agency of the governmental unit that provides the coverage
Health insurance coverage under a government-sponsored program (such as Medicaid, CHIP or Medicare) obtained through an issuer	The executive department or agency of the governmental unit that provides the coverage (and not the issuer)
The Nonappropriated Fund Health Benefits Program	The Secretary of Defense may designate the Department of Defense components that must report

## **MINIMUM ESSENTIAL COVERAGE**

Under the Section 6055 reporting requirements, every person that provides MEC to an individual during a calendar year must report on the health coverage provided. MEC 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 an Exchange);
- 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;
- Coverage provided to Peace Corps volunteers;
- Coverage under the Nonappropriated Fund Health Benefit Program;
- Refugee Medical Assistance supported by the Administration for Children and Families;
- Self-funded health coverage offered to students by universities for plan or policy years that begin on or before Dec. 31, 2014 (for later years, sponsors of these programs may apply to HHS to be recognized as MEC);

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8/15; BK 9/15

# Provider Reporting of Health Coverage—Code Section 6055

- State high-risk pools for plan or policy years that begin on or before Dec. 31, 2014 (for later years, sponsors of these program may apply to HHS to be recognized as MEC); and
- Other coverage recognized by HHS as MEC.

## **Coverage Not Subject to Reporting**

Section 6055 reporting is not required for coverage that is not MEC, including coverage that qualifies as “excepted benefits,” such as stand-alone vision care or dental care, workers’ compensation, and accident or disability policies.

Thus, no reporting is required for:

- Health savings accounts (HSAs);
- Coverage at on-site medical clinics;
- Medicare Part B (however, Medicare Part A qualifies as MEC and is subject to reporting); or
- Health flexible spending accounts (health FSAs) that satisfy certain requirements to qualify as excepted benefits (note that, beginning in 2014, health FSAs that do not qualify as excepted benefits will generally be prohibited under the ACA).

In addition, Section 6055 reporting is not required for arrangements that provide benefits in addition or as a supplement to MEC. MEC is considered “supplemental coverage” not subject to reporting if it supplements a primary plan of the same plan sponsor or government-sponsored coverage (such as Medicare). Thus, providers are not required to report the following MEC that is supplemental to other MEC:

- Coverage that supplements a government-sponsored program, such as Medicare or TRICARE supplemental coverage; or
- Coverage of an individual in more than one plan or program provided by the same plan sponsor (the plan sponsor is required to report only one type of minimum essential coverage).

According to regulations, examples of supplemental coverage to which this rule may apply (and therefore do not require separate Section 6055 reporting) include health reimbursement arrangements (HRAs) and wellness programs that are an element of other MEC (such as wellness programs offering reduced premiums or cost-sharing under a group health plan).

Although the 2015 draft instructions indicated that separate Section 6055 reporting may be required for some HRAs, the 2015 final instructions include important clarifications on this issue, resolving the question in favor of employers in many cases:

- An employer with a **self-insured major medical plan** and an HRA is required to report coverage under only one of the arrangements.
- An employer with an **insured major medical plan** and an HRA is not required to report HRA coverage if the individual is eligible for the HRA because he or she enrolled in the insured major medical plan.

However, an employer with an HRA must report the HRA coverage for any individual who is not enrolled in the employer’s major medical plan (for example, if the individual is enrolled in a group health plan of another employer, such as spousal coverage).

## **INFORMATION THAT MUST BE FILED WITH THE IRS**

Section 6055 requires the reporting of several data elements that are not required by taxpayers for preparing their tax returns or by the IRS for tax administration.

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8/15; BK 9/15



# Provider Reporting of Health Coverage—Code Section 6055

For example, the return must include the following information:

- The name, address and employer identification number (EIN) of the reporting entity;
- The name, address and Social Security number (SSN) or other Taxpayer Identification number (TIN) of the primary insured (the “responsible individual”) and of each other individual covered under the policy or plan;
- For each covered individual, the months for which the individual was enrolled in coverage and entitled to receive benefits for at least one day; and
- Any other information required by the IRS.

The “responsible individual” generally is the person who enrolls one or more individuals, which may include him- or herself, in MEC. This may be the primary insured, employee, former employee, uniformed services sponsor, parent or other related person named on the coverage application. If the responsible individual is not enrolled in the coverage, reporting entities may, but are not required to, report the responsible individual’s SSN or TIN.

In addition, if coverage is through an employer’s group health plan, the return must contain the name, address and EIN of the employer sponsoring the plan, along with any other information the IRS may require. Beginning in 2015, the return must also specify whether the coverage is a QHP enrolled in through the SHOP, and, if so, the SHOP’s unique identifier.

## **Requirement to Report the SSN or TIN**

Under Section 6055, reporting entities are required to report the SSN or other TIN for each covered individual. According to the IRS, reporting of TINs for all covered individuals is necessary to verify an individual’s coverage without the need to contact the individual.

However, if reporting entities are unable to obtain an SSN or TIN after making a reasonable effort to do so, the covered individual’s date of birth may be reported in lieu of an SSN or TIN. In this case, a reporting entity will not be subject to a penalty if it demonstrates that it properly solicits the SSN or 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 SSN or TIN and uses that SSN or TIN for all relationships with the payee.
- If the reporting entity does not receive the SSN or TIN, the first **annual solicitation** is generally required by Dec. 31 of the year in which the relationship with the payee begins (Jan. 31 of the following year, if the relationship begins in December).
- Generally, if the SSN or TIN is still not provided, a **second solicitation** is required by Dec. 31 of the following year.

If an SSN or TIN is still not provided, the reporting entity need not continue to solicit it. In addition, if the responsible individual is not enrolled in the coverage, reporting entities may, but are not required to, report the responsible individual’s SSN or TIN.

Reporting entities may truncate the covered individual’s SSN or TIN on any statements furnished to individuals, by showing only the last four digits of the SSN or TIN, and replacing the first five digits with asterisks (\*) or X’s. However, truncation is not allowed on any forms filed with the IRS or provided to individuals.

## **INFORMATION THAT MUST BE PROVIDED TO INDIVIDUALS**

Written statements must also be provided to each responsible individual identified on the IRS return. A “responsible individual” includes a primary insured, employee, former employee, uniformed services sponsor, parent or other

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8/15; BK 9/15

## Provider Reporting of Health Coverage—Code Section 6055

related person named on an application who enrolls one or more individuals (including him- or herself) in MEC. Statements are not required to be provided to any other individual who is not the responsible individual.

The individual statement must show:

- The phone number for the reporting entity's designated contact person and policy number, if any; and
- The information required to be shown on the Section 6055 return for the responsible individual and each covered individual listed on the return.

Individual statements may be made by furnishing to the responsible individual a copy of the IRS return (Form 1095-B or Form 1095-C, as applicable) for that responsible individual, or a substitute statement that includes the required information.

Note that the final regulations **do not provide an exception** to the requirement to provide an individual statement in cases where a covered individual dies during the year. This is to ensure that MEC is properly reflected on a decedent's final income tax return and the estate is not held liable for an individual mandate penalty.

### MANNER OF FILING RETURNS WITH THE IRS

**Any reporting entity that is required to file at least 250 individual statements with the IRS under Section 6055 must file electronically.** This 250-or-more return requirement applies separately to each type of return required to be filed (Form 1095-B or 1095-C, as applicable), and only Forms 1095-B or 1095-C are counted in applying the 250-return threshold. The transmittal (Form 1094-B or 1094-C, as applicable) is not treated as a separate return, but must also be filed electronically when the individual statement is filed electronically.

Entities filing fewer than 250 individual statements with the IRS during the calendar year may choose to file in paper form, but they are permitted (and encouraged) to file electronically.

Electronic filing will be done using the ACA Information Returns (AIR) Program. [Pub. 5165](#), *Guide for Electronically Filing ACA Information Returns for Software Developers and Transmitters (Processing Year 2015)* provides very detailed technical information regarding standards for software developers and transmitters that plan to facilitate this electronic reporting for calendar year 2015 through the AIR System. To develop software for use with the AIR system, software developers, transmitters and issuers (providers filing their own Forms 1094-B and 1095-B) should use the guidelines provided in [Pub. 5165](#) along with the Extensible Markup Language (XML) Schemas published on [IRS.gov](#).

More information on the AIR Program is available on the [IRS website](#). The AIR System is expected to be available for production in the fall of 2015.

### **Waiver of the Electronic Reporting Requirement**

Employers may receive a **waiver from the requirement to file returns electronically** by submitting [Form 8508](#), *Request for Waiver From Filing Information Returns Electronically*, at least 45 days before the due date of the returns. Employers cannot apply for a waiver for more than one tax year at a time, and must reapply at the appropriate time for each year in which a waiver is required. Any approved waivers should be kept for the employer's records only. A copy of an approved waiver should not be sent to the service center where paper returns are filed.

If a waiver for **original returns** is approved, any corrections for the same types of returns will be covered under the waiver. However, if original returns are submitted electronically, but the employer wants to submit corrections on paper, a waiver must be approved for the corrections if the employer must file 250 or more corrections.

Without an approved waiver, an employer that is required to file electronically but fails to do so may be subject to a penalty of up to \$250 per return, unless it can establish reasonable cause. However, employers can file up to 250 returns on paper; those returns will not be subject to a penalty for failure to file electronically.

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8/15; BK 9/15



# Provider Reporting of Health Coverage—Code Section 6055

## MANNER OF FURNISHING STATEMENTS TO INDIVIDUALS

In general, individual statements must be mailed to the responsible individual's last known permanent address or, if no permanent address is known, to the individual's temporary address. Reporting entities may furnish the Form 1095-B or 1095-C with the Form W-2 in the same mailing.

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, 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).

### *Providing Statements Electronically*

Individual statements may also be furnished electronically if the individual affirmatively consents. Consent to receive an electronic statement 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. The final regulations explicitly allow individuals to provide consent, and to access Section 6055 statements, in response to a notice on a website. The consent may also be made on paper, if it is confirmed electronically.

A reporting entity may simultaneously request consent to receive an electronic Section 6055 statement and consent regarding other statements (for example, simultaneously requesting consent to provide electronic statements for Forms W-2 and 1095). However, 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 electronic Section 6055 statement, and it does not serve as consent to receive the Section 6055 statement electronically.

It is not sufficient for an entity to simply post the information on a website accessible to the individual (similar to the current process for furnishing SBCs), or to provide the information only upon request.

## COMBINED REPORTING

Applicable large employers (ALEs) subject to the ACA's employer shared responsibility rules that sponsor self-insured plans are required to report under both Section 6055 and Section 6056. In an effort to minimize burden and streamline the reporting process, while minimizing the need for employers and the IRS to build multiple systems to accommodate multiple forms, **the final regulations allow all ALEs to use a single combined form for reporting the information required under both Section 6055 and Section 6056.**

Under this combined reporting method, Form 1095-C will be used by ALEs to satisfy the Section 6055 and 6056 reporting requirements, as applicable.

- An ALE that sponsors a self-insured plan will complete all parts (Part I, II and III) of Form 1095-C to report the information required under both Sections 6055 and 6056. Therefore, these ALEs will be able to use a single form to report information regarding whether an employee was covered.
- An ALE that provides insured coverage will also report on Form 1095-C, but it will complete only the parts related to Section 6056 (Part I and II).

Section 6055 reporting entities that are not ALEs or are not reporting in their capacity as employers (such as health insurance issuers, self-insured multiemployer plans and providers of government-sponsored coverage) will report under Section 6055 on Form 1095-B.

ALEs will also be providing only a single employee statement (with the Section 6056 information and, with respect to employers with a self-insured group health plan, Section 6055 information). Employers may mail one or more of the required information returns to an employee in the same mailing, such as the combined Section 6055 and Section 6056 employee statement and the Form W-2.

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8/15; BK 9/15

# Provider Reporting of Health Coverage—Code Section 6055

The following table provides an overview of the forms that will be used by each type of entity.

ALEs that sponsor self-insured plans	ALEs that sponsor insured plans	Non-ALEs that sponsor self-insured plans	Non-ALEs that sponsor insured plans
Complete: <b>Form 1094-C</b> + <b>Both sections of Form 1095-C</b>	Complete: <b>Form 1094-C</b> + <b>The section of Form 1095-C addressing the information under Section 6056</b>	File: <b>Form 1094-B</b> + <b>Form 1095-B</b>	These employers are not required to report under either Section 6055 or Section 6056.
To report: (1) Information under Section 6055 about health coverage provided; and (2) Information under Section 6056 about offers of health coverage.	To satisfy the Section 6056 reporting requirements. These employers are not required to report under Section 6055.	To satisfy the Section 6055 reporting requirements. These employers are not required to report under Section 6056.	

## Reporting for Nonemployees Enrolled in Self-insured Coverage

The 2014 [instructions](#) for Forms 1094-C and 1095-C include a new option for ALEs that are reporting information for nonemployees (such as nonemployee directors, retirees or nonemployee COBRA beneficiaries), which allows ALEs to report employer-sponsored self-insured health coverage for nonemployees (and their family members) using either:

- Forms 1094-B and 1095-B; or
- Form 1095-C, Part III (note, though, that the Form 1095-C may only be used if the individual identified on Line 1 has a SSN).

This option applies only for ALEs offering self-insured health coverage for any individual who enrolled in the coverage for one or more calendar months of the year, but who was not an employee for any calendar month of the year, such as a nonemployee director, a retired employee who retired in a previous year, a terminated employee receiving COBRA coverage who terminated employment during a previous year, and a nonemployee COBRA beneficiary. A nonemployee does *not* include an individual who obtained coverage through the employee’s enrollment, such as a spouse or dependent obtaining coverage when an employee elects family coverage.

**Under this new option, ALEs may report enrollment for these individuals using either:**

**Forms 1094-B and 1095-B**

**OR**

**Form 1095-C, Part III**

If Form 1095-C is used with respect to an individual who was not an employee for any month of the calendar year, Part II must also be completed by using Code 1G on Line 14 in the “All 12 Months” box (or the box for each month of the calendar year). In the case of a nonemployee who enrolls in the coverage under a self-insured health plan, all family members who are covered individuals due to the individual’s enrollment must be included on the same Form 1095-B or Form 1095-C as the individual who is offered, and enrolls in, the coverage.

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8/15; BK 9/15

# Provider Reporting of Health Coverage—Code Section 6055

## PENALTIES

A reporting entity that fails to comply with the Section 6055 reporting requirements may be subject to the general reporting penalties in the tax code for failure to file correct information returns (under Code Section 6721), and failure to furnish correct payee statements (under Code Section 6722). However, penalties may be waived if the failure is due to reasonable cause and not to willful neglect. Penalties may be reduced if the reporting entity corrects the failure within a certain period of time. Also, lower annual maximums apply for reporting entities that have average annual gross receipts of up to \$5 million for the three most recent taxable years.

On June 29, 2015, President Obama signed the [Trade Preferences Extension Act of 2015](#) into law, which **increased the penalties** for failure to file correct information returns or provide individual statements under either Section 6055 or Section 6056. **These changes are effective for information returns and individual statements required to be filed or provided after Dec. 31, 2015.**

The increased penalty amounts are as follows:

Penalty Type	Per Violation		Annual Maximum		Annual Maximum for Employers with ≤\$5 Million in Gross Receipts	
	Old Amount	New Amount	Old Amount	New Amount	Old Amount	New Amount
General	\$100	<b>\$250</b>	\$1.5 million	<b>\$3 million</b>	\$500,000	<b>\$1 million</b>
Corrected within 30 days	\$30	<b>\$50</b>	\$250,000	<b>\$500,000</b>	\$75,000	<b>\$175,000</b>
Corrected after 30 days, but before Aug. 1	\$60	<b>\$100</b>	\$500,000	<b>\$1.5 million</b>	\$200,000	<b>\$500,000</b>
Intentional disregard	\$250*	<b>\$500*</b>	None		N/A	

\*For failures due to intentional disregard of the filing requirement, the penalty will be equal to the greater of either the listed penalty amount or 10 percent of the aggregate amount of the items required to be reported correctly.

### Short-term Relief from Penalties

The final regulations also include short term relief from penalties to allow additional time to develop appropriate procedures for data collection and compliance with these new reporting requirements. **For returns and statements filed and furnished in 2016 to report coverage in 2015, the IRS will not impose penalties on reporting entities that can show they made good faith efforts to comply with the reporting requirements.**

This relief is provided only for incorrect or incomplete information reported on the return or statement, including SSNs, TINs or dates of birth. No relief is provided for reporting entities that do not make good faith efforts to comply with the regulations or that fail to timely file an information return or statement.

### NOTICE 2015-68

The IRS also issued [Notice 2015-68](#) on Sept. 17, 2015, to indicate that it plans to issue proposed regulations related to Section 6055 reporting. These proposed regulations are expected to:

- Require health insurance issuers to report coverage in catastrophic health insurance plans that were enrolled in through an Exchange;

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8/15; BK 9/15

## Provider Reporting of Health Coverage—Code Section 6055

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- Allow electronic delivery of statements reporting coverage under expatriate health plans, unless the recipient explicitly refuses consent or requests a paper statement;
- Allow filers reporting on insured group health plans to use a truncated TIN (TTIN) to identify the employer on the statement furnished to a taxpayer; and
- Specify when a provider of MEC is not required to report coverage of an individual who has other MEC.

Notice 2015-68 also:

- Invites comments on issues relating to the solicitation of covered individuals' TINs;
- Clarifies that the governments of U.S. possessions or territories (namely American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands) are not required to report coverage under Medicaid and the Children's Health Insurance Program (CHIP); and
- Provides that the state government agency sponsoring coverage under the Basic Health Program (BHP) is required to report that coverage.

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8/15; BK 9/15