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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 employers that are subject to the information reporting requirements under section 6056 of the Internal Revenue Code (Code), enacted by the Affordable Care Act (generally employers with at least 50 full-time employees, including full-time equivalent employees). Section 6056 requires those employers to report to the IRS information about the health care coverage, if any, they offered to full-time employees, in order to administer the employer shared responsibility provisions of section 4980H of the Code. Section 6056 also requires those employers to furnish related statements to employees that employees may use to determine whether, for each month of the calendar year, they may claim on their individual tax returns a premium tax credit under section 36B (premium tax credit). The regulations provide for a general reporting method and alternative reporting methods designed to simplify and reduce the cost of reporting for employers subject to the information reporting requirements under section 6056. The regulations affect those employers, employees and other individuals.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §§301.6056-1(m) and 301.6056-2(b).

FOR FURTHER INFORMATION CONTACT: Ligeia Donis at (202) 317-6846 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collection of information contained in these final 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 1545-2251.

The collection of information in these regulations is in §§301.6056-1, and 301.6056-2. This information is collected in accordance with the return and employee statement requirements under section 6056 and is used to administer section 4980H and the premium tax credit. The likely respondents are employers that are applicable large employers, as defined under section 4980H(c)(2).

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

The burden for the collection of information contained in these final regulations will be reflected in the burden on Form 1095-C 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 tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Sections I through V of the preamble (“Background”) describe the statutory provisions governing the information reporting requirements, as well as related statutory provisions. Sections VI through XIII of the preamble (“Explanation of Provisions and Summary of Comments”) describe and explain how these regulations implement the statutory provisions of section 6056 and include a discussion of alternative reporting methods and simplifications that are adopted in these final regulations. As is typical of regulations on information reporting, these regulations refer generally to additional information that may be required under applicable forms and instructions. Sections IX.B and C of the preamble set forth the specific data elements that will be included with the reporting, including the data elements that will be provided through the use of an indicator code.

I. Reporting Requirements for Applicable Large Employers (Section 6056)

Section 6056¹ requires applicable large employers, as defined in section 4980H(c)(2), to file returns at the time prescribed by the Secretary with respect to each full-time employee and to furnish a statement to each full-time employee by January 31

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

of the calendar year following the calendar year for which the return must be filed. Section 6056 specifies certain information that must be reported on the return and related statement and authorizes the Secretary to require additional information and determine the form of the return. Section 6055 requires information reporting by any person that provides minimum essential coverage to an individual during a calendar year, which information relates to the section 5000A individual shared responsibility provisions. Sections 6055 and 6056 are effective for periods beginning after December 31, 2013; however, Notice 2013-45 (2013-31 IRB 116) provides transition relief from the section 6056 information reporting requirements (and section 4980H), as well as the section 6055 information reporting requirements, so that reporting is not required with respect to 2014.

Proposed regulations under section 6056 were published in the **Federal Register** on September 9, 2013 (REG-136630-12 [78 FR 54996]). The proposed regulations provide guidance on the reporting method proposed to implement the statutory provisions of section 6056 (referred to as the general method), and discuss a variety of potential simplified reporting methods, on which public comments were requested. Comments responding to the proposed regulations and potential simplified reporting methods were submitted and are available for public inspection at www.regulations.gov or upon request. A public hearing was conducted on November 18, 2013.

Treasury and the IRS have sought to develop final information reporting rules that will be as streamlined, simple, and workable as possible, consistent with effective implementation of the law. This has reflected a considered balancing of the importance

of (1) minimizing cost and administrative tasks for reporting by entities and individuals, (2) providing individuals the information to complete their tax returns accurately, including with respect to the individual shared responsibility provisions and potential eligibility for the premium tax credit, and (3) providing the IRS with information needed for effective and efficient tax administration. After consideration of all of the comments and testimony, as well as the comments previously submitted in response to Notice 2012-33 (2012-20 IRB 912), the proposed regulations are adopted as amended by this Treasury Decision. The amendments are discussed in the Summary of Comments and Explanation of Provisions section of this preamble.

II. Shared Responsibility for Employers (Section 4980H)

Section 6056 reporting is needed for the administration of section 4980H. Generally, a payment will be assessed under section 4980H if the employer either does not offer minimum essential coverage to its full-time employees (and their dependents) or the coverage offered is not affordable or does not provide minimum value, and one or more of the full-time employees receive a premium tax credit for purchase of coverage on an Affordable Insurance Exchange (Exchange)². Section 4980H(c)(2) defines the term “applicable large employer” as, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. Generally, for purposes of determining applicable large employer status, a full-time employee includes any employee who was employed on average at least 30 hours of service per week and any full-time equivalents determined pursuant to section 4980H(c)(2)(E). As provided in section 4980H(c)(2)(C)(i), all

² An Exchange is also referred to in other published guidance as a Marketplace.

employers treated as a single employer under section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining applicable large employer status. Section 4980H contains rules for determining whether an employer qualifies as an applicable large employer, including special rules addressing an employer's first year of existence. See section 4980H(c)(2)(C).

Section 4980H is effective for months after December 31, 2013; however, Notice 2013-45 provides transition relief for 2014 for section 6056 reporting requirements which, given their role in administering section 4980H, means that no payments will be assessed under section 4980H for 2014. On February 12, 2014, Treasury and the IRS released final regulations under section 4980H (TD 9655 [79 FR 8544]).

The final regulations under section 4980H provide guidance on determining applicable large employer status and determining full-time employee status, including defining and providing rules for calculating hours of service. See §§54.4980H-1(a)(24) (definition of hours of service), 54.4980H-2 (determination of applicable large employer status), and 54.4980H-3 (determination of full-time employee status).

III. Premium Tax Credit (Section 36B)

Section 6056 reporting is also essential to the administration of the premium tax credit under section 36B, which was added by the Affordable Care Act. The advanceable and refundable section 36B premium tax credit helps individuals and families afford health insurance coverage purchased through an Exchange. An employee is not eligible for the premium tax credit to subsidize the cost of Exchange coverage if the employee is offered affordable minimum essential coverage under an employer-sponsored plan that provides minimum value, or if the employee enrolls in an

employer-sponsored plan that provides minimum essential coverage. For purposes of the premium tax credit, an employer-sponsored plan is affordable if the employee's required contribution for the lowest-cost self-only minimum value coverage offered does not exceed 9.5 percent of the employee's household income. Since an employer ordinarily will not know an employee's household income, the final section 4980H regulations provide various safe harbors for determining affordability for purposes of section 4980H based on information available to the employer. Those safe harbors do not affect affordability for purposes of the premium tax credit, so that an employer will be treated as having offered affordable health care coverage for purposes of section 4980H if it meets one of the safe harbors under the section 4980H regulations even if the coverage is not treated as affordable to the individual employee for purposes of the premium tax credit. An employee who is offered affordable minimum essential coverage providing minimum value under an employer-sponsored plan but instead purchases coverage on an Exchange will not be eligible for a premium tax credit (and if such an employee's spouse or dependents are also offered coverage under the employer-sponsored plan but instead purchase coverage on an Exchange, they also will not be eligible for a premium tax credit on the Exchange). Individuals and the IRS will use the information reported under section 6056 on the cost of the lowest-cost employer-sponsored self-only minimum essential coverage that provides minimum value for purposes of verifying an individual's eligibility for the premium tax credit.

Individuals, including employees, may be eligible for advance payments of the premium tax credit (APTC), which are administered by HHS and paid to issuers on behalf of individuals who enrolled in Exchange coverage. Individuals who do not

request APTC also may be eligible to claim the premium tax credit on their Federal income tax returns if they purchased coverage on an Exchange and were not offered employer-sponsored minimum essential coverage that was affordable and provided minimum value. The IRS and employees will use the information provided on the section 6056 return and employee statement to determine whether an employee is eligible for the premium tax credit. Note that in connection with providing APTC, the Exchanges will employ a verification process.

IV. Individual Shared Responsibility (Section 5000A)

The Affordable Care Act also added section 5000A to the Code. Section 5000A provides that every individual must have minimum essential coverage, qualify for an exemption, or include an additional payment with their Federal income tax return. Taxpayers who can claim a child or another individual as a dependent for federal income tax purposes are responsible for making the payment if the dependent does not have minimum essential coverage or an exemption.

Section 5000A(f)(1)(B) provides that minimum essential coverage includes coverage under an eligible employer-sponsored plan. Under section 5000A(f)(2) and §1.5000A-2(c)(1), an eligible employer-sponsored plan is, with respect to an employee, (1) group health insurance coverage offered by, or on behalf of, an employer to an employee that is either (a) a governmental plan within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C. 300gg-91(d)(8)), (b) any other plan or coverage in the small or large group market within a State, or (c) a grandfathered health plan, as defined in section 5000A(f)(1)(D), offered in a group market, or (2) a self-insured group health plan under which coverage is offered by, or on

behalf of, an employer to an employee. Section 5000A(f)(3) and regulations under that section provide that minimum essential coverage does not include coverage consisting solely of excepted benefits described in section 2791(c)(1), (c)(2), (c)(3), or (c)(4) of the Public Health Service Act or regulations issued under these provisions. See §1.5000A-2(g).

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

The Affordable Care Act also added section 6055 to the Code, providing for information reporting for the administration of section 5000A. The section 6055 reporting requirements are effective for years beginning after December 31, 2013; however, as noted above in section I of this preamble, Notice 2013-45 provides transition relief for 2014 from the section 6055 reporting requirements so that the reporting is not required with respect to 2014. Section 6055 requires information reporting by any person that provides minimum essential coverage to an individual during a calendar year, including coverage provided under an eligible employer-sponsored plan, and the furnishing to taxpayers of a related statement covering each individual listed on the section 6055 return. The information reported under section 6055 may be used by individuals and the IRS to verify the months (if any) in which they were covered by minimum essential coverage. Treasury and the IRS are issuing final regulations under section 6055 (TD 9660) concurrently with these final regulations.

Summary of Comments and Explanation of Provisions

In general, in addition to the changes described elsewhere in this preamble, the final regulations adopt non-substantive changes that were made to certain sections of

the proposed regulations in order to increase consistency with the final regulations under section 6055 issued concurrently with these final regulations. In addition, the proposed regulations provided that reporting entities must file section 6056 information returns electronically if they file 250 returns of any type. The final regulations provide that reporting entities must file section 6056 returns electronically if they file 250 returns under section 6056. These changes are discussed later in this preamble.

VI. Introduction

This Explanation of Provisions (Sections VI through XIII of this preamble) addresses the comments that were received and describes the provisions of these final regulations implementing the section 6056 reporting provisions discussed in the Background portion of the preamble. Specifically, this section includes the following:

Section VII.....Key Terms

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

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

Section X.....Alternative Methods for Section 6056 Information Reporting for Eligible ALE Members

Section XI.....Other Possible Alternative Methods Not Adopted in the Final Regulations

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

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

Relief for 2015

VII. Key Terms

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

A. Applicable Large Employer has the same meaning as in section 4980H(c)(2) and §54.4980H-1(a)(4).

B. Applicable Large Employer Member has the same meaning as in §54.4980H-1(a)(5). All persons treated as a single employer under section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining applicable large employer status.³ Under these regulations, the section 6056 filing and furnishing requirements are applied separately to each person comprising the applicable large employer consistent with the approach taken in the section 4980H regulations with respect to the determination of any assessable payment under section 4980H. The person or persons that comprise the applicable large employer are referred to as applicable large employer members (and referred to elsewhere in this preamble as ALE members).

C. Dependent has the same meaning as in §54.4980H-1(a)(12).

³ Until further guidance is issued, government entities, churches, and a convention or association of churches may apply a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer and whether a particular entity is an applicable large employer member. See section V.D. of the preamble to the final section 4980H regulations (TD 9655).

D. Eligible Employer-Sponsored Plan has the same meaning as in section 5000A(f)(2) and §1.5000A-2(c)(1).

E. Full-time Employee has the same meaning as in section 4980H(c)(4) and §54.4980H-1(a)(21), but only as applied to the determination and calculation of liability under section 4980H(a) and (b) with respect to any individual employee (and therefore not including full-time equivalent employees as defined in §54.4980H-1(a)(22)). The final regulations under section 4980H define an employee for purposes of section 4980H as an individual who is an employee under the common law standard, and as not including a leased employee (as defined in section 414(n)(2)), a sole proprietor, a partner in a partnership, a 2-percent S corporation shareholder, or a worker described in section 3508.

F. Governmental Unit and Agency or Instrumentality of a Governmental Unit. The term governmental unit is defined as 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)). The regulations do not define the term agency or instrumentality of a governmental unit for purposes of section 6056, but reserve on the issue. Until future guidance is issued that defines the term for purposes of section 6056, an entity may determine whether it is an agency or instrumentality of a governmental unit based on a reasonable and good faith interpretation of existing rules relating to agency or instrumentality determinations for other federal tax purposes.

G. Minimum Essential Coverage has the same meaning as in section 5000A(f) and the regulations issued under that section.

H. Minimum Value has the same meaning as in section 36B and any applicable guidance. See proposed §1.36B-6.

I. Person has the same meaning as provided in section 7701(a)(1) and the related regulations.

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

As indicated earlier in section VII.B of this preamble, an ALE member is any person that is an applicable large employer or a member of an aggregated group (determined under section 414(b), 414(c), 414(m) or 414(o)) that is determined to be an applicable large employer. Under these regulations, the section 6056 filing and statement furnishing requirements apply on a member-by-member basis to each ALE member, even though the determination of whether an entity is an applicable large employer is made at the aggregated group level.⁴ For example, if an applicable large employer is comprised of a parent corporation and 10 wholly-owned subsidiary corporations, there are 11 ALE members (the parent corporation and each of the 10 subsidiary corporations). Under these regulations, each ALE member with full-time employees is the entity responsible for filing and furnishing statements with respect to its full-time employees under section 6056. This is consistent with the manner in which any potential assessable payments under section 4980H will be calculated and administered.

⁴ Government entities, churches, and a convention or association of churches should, for purposes of section 6056 reporting, use an interpretation of section 414(b), (c), (m), and (o) that is consistent with that used for purposes of section 4980H in determining whether a person or group of persons is an applicable large employer and whether a particular entity is an applicable large employer member. See §54.4980H-2(b)(4).

Some commenters requested that the applicable large employer be permitted to report and furnish statements on a consolidated basis, or that the sponsor of a health plan offering coverage to employees of more than one ALE member plan be permitted to report and furnish statements on behalf of all the employers of employees eligible to participate in the plan. While these regulations do not adopt these suggestions, Treasury and the IRS understand that ALE members may benefit from the assistance of a third party in preparing these returns, for example a third-party plan administrator or a related ALE member tasked with preparing the returns for all the members of that applicable large employer. For a discussion of how these third parties may help an ALE member fulfill its reporting obligations, see section XII.C of this preamble.

The section 6056 return will form the basis for the process leading to any assessment of the ALE member under section 4980H, which is determined separately with respect to each ALE member. Any assessable payment would be calculated based on the relevant information related to the number of full-time employees of each ALE member and the nature of the offer of coverage, if any, made to each of that ALE member's full-time employees for each calendar month. Accordingly, the ALE member is the appropriate taxpayer to file the return relating to its potential tax liability.

Whether an employee is a full-time employee is determined under section 4980H(c)(4) and any applicable guidance. See §§54.4980H-1(a)(21) and 54.4980H-3. This includes any full-time employees who may perform services for multiple ALE members within the applicable large employer.⁵ Under these regulations, only ALE

⁵ For example, if a full-time employee performs services for two ALE members within an applicable large employer during a calendar month, the employee is treated as the employee of the ALE member for which the employee was credited the majority of the hours of service for that month. See §54.4980H-

members with full-time employees are subject to the filing and statement furnishing requirements of section 6056 (and only with respect to their full-time employees). Accordingly, ALE members without any full-time employees are not subject to the section 6056 reporting requirements.

Generally, the ALE member providing the section 6056 reporting is the common law employer. An ALE member that is a qualified subchapter S subsidiary under section 1361(b)(3)(B) or an entity described in §301.7701-2(c)(2)(i) (collectively, a disregarded entity) is treated as an entity separate from its owner for purposes of section 4980H and section 6056 under §§1.1361-4(a)(8)(i)(E) and 301.7701-2(c)(2)(v)(A)(5) for periods after December 31, 2014. See TD 9655. Therefore, the reporting requirements under section 6056 apply to an ALE member that is a disregarded entity, and not to its owner.⁶

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

This section describes the general method for reporting to the IRS and furnishing statements to employees pursuant to section 6056 that is set forth in these regulations. This general method is available for all employers and with respect to reporting for all full-time employees. These regulations also provide alternative reporting methods, which in some cases may be available only with respect to a certain group or groups of

5(d). Because an ALE member must report for any employee that is its full-time employee for one or more months of the year, all ALE members that are an employer of an employee that is its full-time employee for one or more months of the calendar year must file and furnish a section 6056 return with respect to services performed by the employee reflecting the months in which the employee was a full-time employee of that ALE member.

⁶ Section 301.7701-2(c)(2)(v)(B) provides that an entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 is treated as a corporation with respect to the reporting requirements under section 6056.

employees. In those cases, with respect to those employees for whom an alternative reporting method is not available, the employer must use the general method. In any case, the alternative reporting methods are optional so that an employer may choose to report for any or all of its full-time employees using the general method even if an alternative reporting method is available. For a further description of the alternative reporting methods, see section X of this preamble.

A. Information Reporting to the IRS

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

Many commenters recommended that the regulations allow combined information reporting under sections 6055 and 6056 for applicable large employers that sponsor self-insured plans and must report under both sections. The proposed regulations did not provide for combined reporting. In an effort to minimize taxpayer burden and streamline the reporting process as authorized by section 6056(d), while minimizing the need for employers and the IRS to build multiple systems to accommodate multiple forms, these final regulations adopt this suggestion by providing for use by all ALE members of a single combined form for reporting the information required under both section 6055 and section 6056.

Accordingly, as a general method, these regulations provide that the section 6056 return may be made by filing Form 1094-C (a transmittal) and Form 1095-C (an employee statement), or other forms the IRS designates. Alternatively, the section 6056 return may be made by filing a substitute form. Under these regulations, a substitute form must include all of the information required to be reported on Forms 1094-C and 1095-C or other forms the IRS designates and comply with applicable revenue procedures or other published guidance relating to substitute returns. See §§301.6056-1(d)(2) and 601.601(d)(2). For a discussion of substitute statements for employees, see section IX.D of this preamble.

Form 1095-C will be used by ALE members to satisfy the section 6055 and 6056 reporting requirements, as applicable. An ALE member that sponsors a self-insured plan will report on Form 1095-C, completing both sections to report the information required under both sections 6055 and 6056. An ALE member that provides insured coverage will also 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 ALE members 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. In accordance with usual procedures, these forms will be made available in draft form in the near future.

In response to comments, Treasury and the IRS also considered suggestions to use, for section 6055 and 6056 reporting purposes, information that employers communicate to employees about employer-sponsored coverage prior to employees'

potential enrollment in Exchange coverage. These comments observed that, under the Affordable Care Act, employers provide pre-enrollment information to employees by various means, including information in the Notice of Coverage Options provided to employees pursuant to the requirements under section 18B of the Fair Labor Standards Act⁷ and the Employer Coverage Tool developed by the Department of Health and Human Services (HHS) that supports the application for enrollment in a qualified health plan and insurance affordability programs.⁸

Treasury and the IRS have considered and coordinated with the Departments of HHS and Labor regarding the various provisions with a view to identifying ways to make the entire process as effective and efficient as possible for all parties. That said, the various reports are designed for different purposes, and pre-enrollment reporting regarding anticipated employer coverage in an upcoming coverage year is unlikely to be helpful to individual taxpayers in accurately completing their tax returns more than a year later (and after the coverage year has already ended). Among other issues, the pre-enrollment information may not be readily available to individuals at the time they are filing their tax returns, could be confused with other information (such as the pre-enrollment information provided to the individual pertaining to the coverage year following the calendar year to which the tax return relates), may not include certain information, like premiums, necessary for tax administration, and is in a format that does

⁷ On May 8, 2013, the Department of Labor issued Technical Release 2013-02 providing temporary guidance under Fair Labor Standards Act section 18B, as well as model notices. See Technical Release 2013-02, model notice for employers who offer a health plan to some or all employees, and model notice for employers who do not offer a health plan, available at <http://www.dol.gov/ebsa/healthreform/regulations/coverageoptionsnotice.html>
Guidance on the Notice to Employees of Coverage

⁸ Available at https://www.healthcare.gov/downloads/ECT_Application_508_130615.pdf

not facilitate easy transfer to the appropriate location on the Federal income tax return. In addition, the pre-enrollment information is generally not specific to the particular employee's experience at the employer. For these reasons, these regulations do not adopt these suggestions.

B. Information Required to Be Reported and Furnished

Except as otherwise provided as part of an alternative reporting method, these final regulations provide that each ALE member reports on the section 6056 information return the same information set forth in the proposed regulations. Specifically, the final regulations require the following information: (1) the name, address, and employer identification number of the ALE member, and the calendar year for which the information is reported; (2) the name and telephone number of the ALE member's contact person; (3) a certification as to whether the ALE member offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, by calendar month; (4) the number of full-time employees for each calendar month during the calendar year, by calendar month; (5) for each full-time employee, the months during the calendar year for which minimum essential coverage under the plan was available; (6) for each full-time employee, the employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month; and (7) the name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under an eligible employer-sponsored plan. In addition, these regulations provide, as with other information

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

Some commenters requested that ALE members be permitted to provide the name and telephone number of a third party in the part of the section 6056 return requesting the name and telephone number of the ALE member's contact person. An ALE member may provide the name and telephone number of any contact person, whether an employee of the ALE member or an agent of the ALE member, acting on behalf of the ALE member for purposes of section 6056 reporting.

Some commenters requested that the final regulations not require the reporting of social security numbers for an employee's spouse or dependents. Neither the proposed regulations nor these final regulations require reporting of such information for purposes of section 6056.⁹ These final regulations require only that an ALE member report the social security number of the full-time employee.

Some commenters requested that the final regulations permit employers to report dates of coverage rather than months of coverage. Other commenters requested that ALE members be permitted to provide the information on a payroll period basis, rather than a monthly basis, to address situations in which coverage is provided based on payroll periods. Other commenters requested that the ALE member be permitted to report by multi-month periods, rather than on a monthly basis, such as stating that coverage was offered January through October of a particular year. As provided in the final regulations under section 4980H and adopted by cross-reference in these regulations, the individuals who are full-time employees of an ALE member for a

⁹ However, section 6055 requires reporting of taxpayer identification numbers for a responsible individual's spouse and/or dependents enrolled in minimum essential coverage.

particular calendar month generally may be identified on a weekly basis or a payroll period basis that approximates the calendar month. See §§54.4980H-3(c)(3) and 54.4980H-3(d)(1)(ii). However, both section 4980H and the premium tax credit are administered based on the calendar month, so that whether the individual identified as a full-time employee was offered coverage for the entire calendar month is relevant to the administration of both Code provisions. Accordingly, ALE members are required to report on the basis of the twelve calendar months with respect to the coverage offered (or not offered) to each full-time employee.

As part of the effort to minimize the cost and administrative steps associated with the reporting requirements, the final regulations omit information that is not relevant to individual taxpayers or the IRS for purposes of administering the premium tax credit and section 4980H or that is already provided at the same time through other means. Specifically, consistent with the proposed regulations, these final regulations do not require the reporting of the following four data elements (and a more detailed description of the data elements that will be included is provided later in this section of the preamble):

First, the final regulations do not require the reporting of the length of any permissible waiting periods under section 4980H¹⁰, because the length of a waiting period is not relevant for administration of the premium tax credit or section 4980H or for an individual in preparing his or her tax return. However, Treasury and the IRS anticipate that information will be requested, using an indicator code, regarding whether coverage was not offered to an employee during certain months because of a

¹⁰ References throughout this preamble to permissible waiting periods under section 4980H refer to any periods that are included in the term limited non-assessment period, as defined in §54.4980H-1(a)(26)

permissible waiting period under section 4980H, since this information is relevant to the administration of section 4980H.

Second, these regulations do not require reporting of the employer's share of the total allowed costs of benefits provided under the plan because this information also is not relevant to the administration of the premium tax credit and section 4980H. In contrast, whether the employer-sponsored plan provides minimum value coverage is relevant information; accordingly, Treasury and the IRS anticipate that information will be requested, using an indicator code. Some commenters requested that information on the employer contribution continue to be required because it would be informative to the employee. Given that this information is not relevant to tax administration, and generally may be discerned by the employee from the information reported at the same time on the Form W-2, Box 12 using Code DD pursuant to section 6051(a)(14) (reporting of the total value of employer-provided health benefits provided to the employee), these regulations do not adopt this suggestion.

Third, these regulations do not require the reporting of the monthly premium for the lowest-cost option in each of the enrollment categories (such as self-only coverage or family coverage) under the plan. Rather, because only the lowest-cost option of self-only coverage providing minimum value offered under any of the enrollment categories for which the employee is eligible is relevant to the determination of whether coverage is affordable (and thus to the administration of the premium tax credit and section 4980H), that is the only cost information requested.

Fourth, the regulations do not require the reporting of the months, if any, during which any of the employee's dependents were covered under the plan. Instead, the

regulations require reporting only regarding whether the employee was covered under a plan. Information relating to the months, if any, during which any of the employee's dependents were covered under the plan will be reported as part of the section 6055 information return associated with that employee's coverage, whether on the combined Form 1095-C return submitted by an ALE member with a self-insured plan or otherwise on the Form 1095-B return submitted by the insurance company or other person providing the minimum essential coverage.

Some commenters requested that information related to whether the employee was covered under a plan not be required to be reported as part of the section 6056 reporting because that information will be reported on the section 6055 return. Although this information is required to be reported under section 6055 and section 6056, this suggestion is not adopted in the final regulations because the employee's coverage under the eligible employer-sponsored plan means that the employee is not eligible for the premium tax credit. However, under the final regulations, ALE members with self-insured group health plans will now use a combined Form 1095-C to satisfy the section 6055 and section 6056 reporting requirements and will therefore only be required to report on a single form information regarding whether an employee was covered. ALE members that provide insured coverage will report information regarding whether an employee was covered once on the section 6056 section of the combined Form 1095-C and will leave the section of the form pertaining to section 6055 information blank.

Under the regulations, each ALE member must file and furnish the section 6056 return and employee statement using its EIN. Any ALE member that does not have an

EIN may easily apply for one online, or by telephone, fax, or mail. See Publication 1635, Employer Identification Number, for further information at www.irs.gov.

To assist in administering section 4980H and the premium tax credit, the IRS will need certain information not specifically set forth under section 6056 but authorized under section 6056(b)(2)(F).

Under the general method of section 6056 reporting, the following information will be reported through the use of indicator codes for some information, as part of the section 6056 return (as well as the number of individual employee statements being submitted):

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

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

(3) whether an employee's effective date of coverage was affected by a permissible waiting period under section 4980H, by calendar month;

(4) whether the ALE member had no employees or otherwise credited any hours of service during any particular month, by calendar month;

(5) whether the ALE member is a person that is a member of an aggregated group, determined under section 414(b), 414(c), 414(m), or 414(o), and, if applicable, the name and EIN of each employer member of the aggregated group constituting the applicable large employer on any day of the calendar year for which the information is reported;

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

(7) if an ALE member is a contributing employer to a multiemployer plan, whether, with respect to a full-time employee, the employer is not subject to an assessable payment under section 4980H due to the employer's contributions to the multiemployer plan; and

(8) if a third party is reporting for an ALE member with respect to the ALE member's full-time employees, the name, address, and identification number of the third party (in addition to the name, address, and EIN of the ALE member already required under the final regulations).

Some commenters requested that further explanation be provided regarding the meaning of the provision included in the proposed regulations asking whether an ALE member was conducting business. To clarify the intent, this provision is changed to require an ALE member, using an indicator code, to report any months during which no employees were providing services or otherwise being credited with hours of service for the ALE member.

Some commenters requested that employers not be required to report whether they expect to be an ALE member the following year. This comment is adopted in the final regulations.

Some commenters requested that employers be required to report information in addition to what was described in the proposed regulations. Commenters requested

that employers be required to report information relating to the look-back measurement method for determining full-time employee status set forth in §54.4980H-3(d).

Specifically, commenters requested that employers be required to report on each variable hour employee who may be subject to the look-back measurement method.

For variable hour employees, as defined in §54.4980H-1(a)(49), commenters requested that employers be required to report the administrative and stability period start and end dates and length, as well as the months in which coverage was offered. Commenters also requested that the cost of coverage available to spouses and dependents be reported. Although Treasury and the IRS agree that this information may be helpful to employees and their spouses and dependents in certain circumstances, reporting such information on the section 6056 return is not necessary for the administration of the premium tax credit or section 4980H and is not directly relevant to the employee in determining whether the employee is eligible for a premium tax credit and is accurately claiming the credit on the employee's individual tax return. Accordingly, this suggestion is not incorporated in the final regulations.

Other commenters requested that the section 6056 return provide a means to indicate whether an employee is a tribal member who is exempt from the individual shared responsibility provision under section 5000A(e). Because an individual's exempt status for purposes of section 5000A is not relevant to the administration of the premium tax credit or section 4980H, this suggestion is not incorporated in the final regulations.

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

In an effort to simplify and streamline the section 6056 reporting process under the general section 6056 reporting rules, Treasury and the IRS anticipate that certain information described above as applied to a particular full-time employee will be reported to the IRS, and furnished to the full-time employee, through the use of a code rather than by providing specific or detailed information. Specifically, it is contemplated that the following information will be reported with respect to each full-time employee for each calendar month using a code:¹¹

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

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

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

- a. any failure to offer coverage will not result in a payment under section 4980H(a) or (b), for example because the employee was in a limited non-assessment period for certain employees, as defined in §54.4980H-1(a)(26);
- b. the employee was not a full-time employee;
- c. the employee was not employed by the ALE member during that month;

or

- d. no other code or exception applies;

¹¹ Section XV of the preamble to the section 4980H final regulations provides certain transition relief for 2015. Treasury and the IRS anticipate that additional indicator codes will be available on the section 6056 return to indicate that an employer is using the transition relief.

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

(4) the employee was covered under the plan; and

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

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

D. Section 6056 Statements to Full-time Employees

Under the general section 6056 reporting rules set forth in these regulations, every ALE member required to file a section 6056 return must furnish a section 6056 employee statement to each of its full-time employees that includes the name, address and EIN of the ALE member and the information required to be shown on the section 6056 return with respect to the full-time employee. The section 6056 employee statement is not required to include a copy of the transmittal form that accompanies the return. As part of the alternative reporting methods, in certain circumstances, other methods of furnishing information to an employee may be sufficient. For a detailed description of these alternative reporting methods, see section X of this preamble.

Some employers may wish to have the flexibility to use a substitute type of statement to provide the necessary information to full-time employees. These regulations provide that the section 6056 employee statement may be made by furnishing a copy of the section 6056 return on Form 1095-C (or another form the IRS designates) or a substitute employee statement for that full-time employee. Under

these regulations, a substitute statement must include the information required to be shown on the section 6056 return filed with the IRS with respect to that employee and must comply with applicable revenue procedures or other published guidance relating to substitute statements. See §601.601(d)(2). These regulations provide that section 6056 employee statements on Form 1095-C or another form the IRS designates may identify the employee using an IRS truncated TIN rather than the social security number or other identifying number of the employee shown on the corresponding information return filed with the IRS. See the proposed regulations on IRS Truncated Taxpayer Identification Numbers (REG-148873-09 [78 FR 913]).

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

1. In general

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

2015) must be furnished no later than February 1, 2016 (January 31, 2016, being a Sunday). However, see section X.C of this preamble for a discussion of the 2015 section 6056 transition relief available for employers eligible for the transition relief set forth in section XV.D.6 of the preamble to the final regulations under section 4980H (2015 section 4980H transition relief for employers with at least 50 and less than 100 full-time employees (including full-time equivalent employees) that meet certain conditions).

Some commenters asked for use of an alternate filing date for employers whose health plan is not a calendar year plan. While Treasury and the IRS understand that employers may collect information on a plan year basis, employees will need to receive their section 6056 employee statements early in the calendar year in order to have the requisite information to correctly and completely file their income tax returns covering the calendar year and reflecting any available premium tax credit for that calendar year. For this reason, these regulations do not adopt this suggestion.

The final regulations do not include rules regarding extensions of the time to file section 6056 returns. This topic is addressed in the final regulations under section 6055, which include amendments to the regulations under section 6081 relating to general rules on extensions of time to file to include returns under both sections 6055 and 6056. The final section 6055 regulations cross-reference the amendments to the regulations under section 6081; these regulations also include this cross-reference.

2. Voluntary Reporting for Calendar Year 2014

Under Notice 2013-45 and the proposed regulations, in preparation for the application of the section 4980H provisions beginning in 2015, employers were

encouraged to voluntarily comply for 2014 (that is, by filing and furnishing section 6056 returns and statements in early 2015) with the information reporting provisions as described in the proposed regulations, and to maintain or expand health coverage in 2014. At the time the notice and proposed regulations were issued, Treasury and the IRS anticipated that at least as to the general method of reporting, the final regulations would not differ significantly from the proposed regulations. While the information required to be provided to the IRS and furnished to employees has remained largely unchanged under the general method of reporting, in response to comments on the proposed regulations the format in which that information is provided has changed significantly to streamline the process and reduce administrative burden. Specifically, under the final regulations, as suggested in comments, all ALE members will file a single combined return providing the relevant section 6056 information and, as applicable, also the relevant section 6055 information.

Given this change in the information reporting provisions in response to commenters' feedback on the proposed regulations, employers that wish to voluntarily comply with the information reporting provisions with respect to 2014 should do so in accordance with these final regulations (generally meaning providing both section 6056 and, if applicable, section 6055 information on a single form). Treasury and the IRS continue to anticipate that 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.

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

Treasury and the IRS understand that electronic filing is often easier and more efficient for taxpayers, and several commenters requested that employers be permitted to file section 6056 returns electronically. Some commenters requested that the proposed regulations be modified so that the section 6056 return would not be aggregated with other returns for purposes of determining whether the returns are required to be filed electronically. The final regulations adopt these suggestions. Consistent with other tax information reporting requirements, the final regulations require electronic filing of section 6056 information returns (Forms 1094-C and 1095-C) except for an ALE member filing fewer than 250 returns under section 6056 during the calendar year, and provide that only section 6056 returns are counted in applying the 250 return threshold for section 6056 reporting. The final regulations under section 6055, issued contemporaneously with these final regulations, amend §301.6011-2 to add forms in the 1094 and 1095 series. Proposed §301.6011-9 will be removed in a separate document.

Each section 6056 return for a full-time employee is counted as a separate return. ALE members filing fewer than 250 returns during the calendar year may choose to make the section 6056 returns on the prescribed paper form, but are permitted (and encouraged) to file section 6056 returns electronically. This requirement for electronic filing is the same as the current requirements for other information returns.

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

response, the regulations permit electronic furnishing of section 6056 employee statements if notice, consent, and hardware and software requirements modeled on existing rules are met. To provide rules for electronic furnishing with which employers are already familiar, these final regulations, consistent with the proposed regulations, adopt a process substantially similar to the process currently in place for the electronic furnishing of employee statements (that is, Forms W-2) pursuant to section 6051 and applicable regulations.

Some commenters requested that ALE members be permitted simply to post the information on a website accessible to the employee (similar to the current process available to plan administrators of group health plans for furnishing Summary of Benefits and Coverage (SBCs)),¹² or to provide the information to an employee only upon request. Other commenters requested that the ALE member not be required to obtain consent to furnish the information electronically. For many employees, the information provided in the section 6056 employee statement will be essential to the accurate preparation of their individual tax return with respect to a claim for the premium tax credit. Because the employee's eligibility for the premium tax credit will be based on household income for that taxable year, which the employer will not know, the employer

¹² The procedures for providing SBCs electronically via internet posting are found at 26 CFR 54.9815-2715(a)(4), 29 CFR 2590.715-2715(a)(4), and 45 CFR 147.200(a)(4). For participants and beneficiaries covered under the plan, the plan must meet the requirements of the Department of Labor's regulations at 29 CFR 2520-104b-1. Notably, the internet posting option is for SBCs provided by an issuer to a plan or by a plan to participants and beneficiaries who are eligible but not enrolled in coverage, and requires that the format of the posting be readily accessible, that the SBC is provided in paper form free of charge upon request, and that the issuer or plan provide timely notification by paper or email that the SBC is available on the internet and the internet address. See Q1 of FAQs about Affordable Care Act Implementation (Part IX), available at <http://www.dol.gov/ebsa/faqs/faq-aca9.html> and http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html, which allows SBCs to be provided electronically to participants and beneficiaries in connection with their online enrollment or online renewal of coverage under the plan, and allows SBCs to be provided electronically to participants and beneficiaries who request an SBC online.

will not be able to determine the identity of the employees for which the section 6056 information is relevant. Moreover, given the individualized nature of the information required to be furnished to a full-time employee on a section 6056 employee statement and its intended use in preparing the employee's individual tax return, permitting an employer to furnish such information electronically without first having obtained the employee's consent to such electronic furnishing would be inconsistent with the current procedures for other information returns. Unlike section 6056 employee statements that contain individualized information, SBCs are the same for a particular benefit package under the plan. For these reasons, the regulations require that with respect to each full-time employee to whom the information is required to be furnished, the ALE member must obtain consent from the employee before the section 6056 employee statement may be provided electronically.

With respect to the consent requirement, some ALE members requested that an employee's consent to receive the Form W-2 electronically be deemed a consent to also receive the employee statement under section 6056 electronically. Because an employee cannot provide an informed consent to receive a statement electronically about which he or she does not have information, and because the information furnished on the section 6056 employee statement will be relevant in determining the employee's eligibility for the premium tax credit, any consent given must specifically identify the section 6056 return. Additionally, the requirement for affirmative consent to receive section 6056 employee statements electronically is consistent with the requirements for other tax information returns (See §§ 1.6050S-2; 1.6050S-4; 31.6051-1(j); Rev. Proc. 2012-17, 2012-10 I.R.B. 453; 2014 General Instructions for Forms 1097,

1099, 1098, 3921, 3922, 5498, and W-2G, page 12). Accordingly, the final regulations are consistent with all other tax information reporting regulations and do not adopt this suggestion.

Some commenters also requested confirmation that the section 6056 employee statement and the section 6055 employee statement (if the section 6055 employee statement is provided by the ALE member) may be provided in the same mailing, and in the same mailing as the Form W-2, in cases in which two or more of those forms are provided by mailing to the same employee. Because the final regulations provide for ALE members to combine section 6055 and section 6056 reporting, ALE members will 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). Additionally, there is no requirement that employers mail information returns separately, and the regulations under sections 6051 do not prohibit furnishing in the same mailing as the Form W-2. Accordingly, employers are permitted to mail to an employee in the same mailing one or more of the required information returns such as the combined section 6055 and section 6056 employee statement and the Form W-2.

X. Alternative Methods for Section 6056 Information Reporting for Eligible ALE

Members

In developing these regulations, Treasury and the IRS have sought to develop alternative reporting methods that will minimize the cost and administrative tasks for employers, consistent with the statutory requirements to file an information return with the IRS and furnish an employee statement to each full-time employee. Comments suggested that, at least for some employers, the collection, assembling and processing

of the necessary data into an appropriate format for filing may not be necessary if the employer offers sufficient coverage to make it unlikely that the employer will be subject to an assessable payment under section 4980H because its employees will generally be ineligible for a premium tax credit. In response to these concerns and as part of the development of the proposed regulations, Treasury and the IRS formulated certain potential simplified reporting methods described in section XI of the preamble to the proposed regulations and requested comments on those methods and on other possible simplified approaches that would minimize compliance costs while providing sufficient and timely information to individual taxpayers and the IRS. After considering all of the comments, Treasury and the IRS have formulated the alternative reporting methods described in this section X of the preamble as optional alternatives to the general reporting method.

The information provided to the IRS and the employee pursuant to section 6056 is important for administering section 4980H and the premium tax credit. However, in some circumstances, only some of the information required under the general method is necessary. Treasury and the IRS have identified specific groups of employees for whom alternative reporting would provide sufficient information, and alternative reporting approaches for these groups are outlined below. In many situations, not every full-time employee of an employer fits into the groups of employees for which an alternative reporting method is available. In that case, the employer would continue to use the general reporting method in the regulations for those full-time employees for whom an alternative reporting method is not applicable. Commenters noted that many employers, especially larger employers, may choose not to use an alternative reporting

method because an insufficient number or an insufficient portion of their employees will be eligible for the alternative reporting method so that it is not advantageous to use. However, it is anticipated that many employers will find use of an alternative reporting method preferable to the general reporting method because a sufficient number of their employees will fit into one or more of the alternative method categories described below, and the more extensive reporting will be required only for a sufficiently limited number of their employees.

Subsections A through C of this section X of this preamble describe alternative methods of reporting under section 6056 that are permitted under these final regulations. Each of these methods is optional for the reporting employer, and, except as otherwise specified, does not affect any reporting obligations under section 6055.

Subsection A.....Reporting Based on Certification of Qualifying Offers

Subsection B.....Option to Report Without Separate Identification of Full-Time Employees If Certain Conditions Related to Offers of Coverage Are Satisfied (98 Percent Offers)

Subsection C.....Reporting for Applicable Large Employers with Fewer Than 100 Full-time Employees Eligible for Transition Relief Under Section 4980H.

Subsection D.....Combinations of Alternative Reporting Methods

A. Reporting Based on Certification of Qualifying Offers

1. In General

Under the final regulations, an ALE member that satisfies specific requirements is permitted to certify that it offered certain coverage (a qualifying offer, as defined in this section X.A.1) to one or more of its full-time employees and to report simplified section 6056 return information with respect to those employees. Under this alternative method, the ALE member also could provide a simplified employee statement in lieu of

a copy of the Form 1095-C to each full-time employee who received a qualifying offer for all 12 months of the calendar year. To be eligible to use this alternative method with respect to full-time employees, the ALE member must certify that for all months during the year in which the employee was a full-time employee with respect to whom a section 4980H assessable payment could apply¹³, the ALE member (1) offered minimum essential coverage providing minimum value at an employee cost for employee-only coverage not exceeding 9.5 percent of the mainland single federal poverty line to one or more of its full-time employees, and (2) offered minimum essential coverage to the employee's spouses and dependents (a qualifying offer). For this purpose, the applicable federal poverty line is the federal poverty line as defined in §54.4980H-1(a)(19), as calculated and applied to the 48 contiguous states and the District of Columbia. If the employee cost of the employee-only coverage does not exceed 9.5 percent of the mainland single federal poverty line, then, regardless of the size of the employee's household or other income or loss of any member of the employee's household, either the employer's coverage will be affordable for purposes of the premium tax credit or the employee's household income will be less than 100 percent of the federal poverty line so the employee will generally not be an applicable taxpayer for purposes of eligibility for the premium tax credit.

For this purpose, an ALE member is treated as offering coverage to an employee's spouse or dependents even if the employee does not have a spouse or dependent, provided that the employee would have been able to elect such coverage if

¹³ If the employee was not offered coverage by the employer, a section 4980H assessable payment might not apply, for example, for a month in which an employee was not a full-time employee or was in a permissible waiting period or initial measurement period under section 4980H and the associated regulations.

the employee did have a spouse or dependent. Note that an ALE member utilizing the transition relief provided in the final section 4980H regulations pertaining to the offer of coverage to dependents in 2015 will not be treated as offering coverage to an employee's dependents for purposes of this alternative reporting method. Treasury and the IRS anticipate that the certification of eligibility based on the qualifying offer will be made as part of the section 6056 transmittal submitted by the ALE member.

Treasury and the IRS anticipate that an ALE member eligible for and using this certification method will provide further information depending on the circumstances of the qualifying offer. With respect to employees for whom the qualifying offer was made for all 12 months of the calendar year, Treasury and the IRS anticipate that the ALE member will be treated as reporting the required section 6056 information if it completes Form 1095-C by providing particular information about the employee, specifically the employee's name, social security number, and address, and indicates, using an indicator code, that a qualifying offer was made for all 12 months of the calendar year. In addition, the ALE member will be treated as fulfilling the requirement under section 6056 to furnish information to those employees if it provides each of them, by January 31 of the year following the year to which the offer applies, either a copy of the Form 1095-C filed with the IRS, or a general statement in a format prescribed by the IRS informing the employee that the employee, the employee's spouse (if any), and the employee's dependents (if any) received a qualifying offer for all 12 months of the calendar year for which the ALE member is reporting, and therefore the employee and the employee's spouse (if any) and dependents (if any) are generally ineligible for a premium tax credit for all of those 12 months.

Some ALE members may provide a qualifying offer for all 12 months of a calendar year to employees who are employed during the entire year, but are not full-time employees for one or more months during the calendar year. These ALE members may elect to report for these employees using the certification method, and to furnish those employees with a copy of Form 1095-C filed with the IRS or the prescribed statement, or may use the general reporting method with respect to those employees.

For each employee who received a qualifying offer for fewer than 12 months of the calendar year, for example because the full-time employee was an employee for fewer than 12 months of the calendar year (for example, because the employee was hired or terminated employment during the calendar year or was in a permissible waiting period under section 4980H or look-back measurement period under section 4980H for one or more months), the ALE member will file and furnish section 6056 returns and statements under the general reporting method. The ALE member will report information under the general reporting method for those months for which a qualifying offer was not received, but may use an indicator code to report for months for which the qualifying offer was received, in accordance with forms and instructions. However, see section X.A.2 of this preamble for an alternative method applicable to 2015.

2. Alternative Method Based on Certification of Qualifying Offers for 2015

Solely for 2015, an ALE member may use an alternative method as described below. To utilize this method the ALE member must (1) certify that it has made a qualifying offer (as described in section X.A.1) to at least 95 percent of its full-time employees and to their spouses and dependents, and (2) in lieu of providing a Form

1095-C (or another form the IRS designates) to its employees, satisfy its section 6056 furnishing requirement with respect to all of its full-time employees by furnishing a statement to each of its full-time employees, by January 31 of the year following the year to which the statement relates. The statement will be in a format prescribed by the IRS and the form of the statement may vary depending on whether the employee received a qualifying offer from the employer for all, some, or none of the months of the calendar year. As with section X.A.1, if the qualifying offer applied to an employee to all 12 months of the calendar year, it is anticipated that the statement will inform the employee that the employee and the employee's spouse (if any) and dependents (if any) will not be eligible to claim a premium tax credit for any of the twelve calendar months. If the qualifying offer did not apply to an employee for all 12 months of the calendar year, it is anticipated the statement will inform the employee that the employee and the employee's spouse (if any) and dependents (if any) may be eligible to claim a premium tax credit for one or more of the 12 calendar months. The statement furnished to the employee must include a contact name and contact telephone number for the ALE member from whom further information may be obtained regarding the offer of coverage that may affect the eligibility of the employee (or any spouse or dependents of the employee) for the premium tax credit. The contact name and telephone number can be a name and telephone number at the ALE member or at another entity, such as a third party administrator, that is authorized to provide information on behalf of the ALE member.

If the ALE member meets the two conditions described above, then the employer will be treated as reporting the required section 6056 information to the IRS if it files with

the IRS Form 1095-C, providing the employee's name, social security number, and address, and indicates, using an indicator code, either that a qualifying offer was made for all 12 months or the specific months of the calendar year or it was not, and provides the statement to the employee. Further details will be provided in forms and instructions.

This alternative reporting method for 2015 is optional and an ALE member may use any other available reporting method.

B. Option to Report Without Separate Identification of Full-Time Employees If Certain Conditions Related to Offers of Coverage Are Satisfied (98 percent Offers)

In section XI.B of the preamble to the proposed regulations, Treasury and the IRS stated that they understand that some employers offer minimum essential coverage to all or nearly all of their employees, and are able to accurately represent that the only employees not offered coverage are also not full-time employees. An employer making an offer of minimum essential coverage to all of its full-time employees would not owe an assessable payment under section 4980H(a), which requires such an offer only to 95 percent of an employer's full-time employees. See §54.4980H-4(a). However, while the employer might know that it is offering such coverage to a group consisting of almost all of its full-time employees and some of its other employees, the employer might not have determined, in the case of each employee in the offeree group, whether that employee is, in fact, a full-time employee or not. This might arise, for example, if an employer offers such coverage to all of its employees whose hours of service average at least 20 hours per week. Section XI.B of the preamble to the proposed regulations suggested a possible approach under which employers offering coverage to 100

percent of their full-time employees would be permitted to provide section 6056 reporting without determining whether each employee offered coverage is a full-time employee and without specifying the number of the employer's full-time employees.

Some commenters requested that eligibility to use this simplified method be expanded to include an employer that can represent that it offered coverage to substantially all of its full-time employees, and requested that "substantially all" be defined for this purpose as at least 95 percent of the full-time employees. These commenters suggested that while some employers may be able to certify that they meet a 100 percent offer standard, other, especially larger, employers could not be certain that an offer had been extended to every full-time employee (including employees who were full-time employees for only certain months of the year).

In response to these concerns, the final regulations relax the condition on use of this simplified method, which allows the employer to report without identifying or specifying the number of full-time employees. To be eligible to use this method under the final regulations, an employer must certify on its transmittal form that it offered, to at least 98 percent of the employees on whom it reports in its section 6056 return. For this purpose, coverage is treated as affordable if the cost of employee-only coverage satisfies any applicable affordability safe harbor under the section 4980H final regulations. Setting the level at 98 percent will help ensure that the employer has offered coverage to at least 95 percent of its full-time employees and therefore is not subject to an assessable payment under section 4980H(a), without knowing which reported employees are full-time and which are part-time. While this alternative method allows reporting without identifying or specifying the number of full-time employees, it

does not exempt the employer from any penalties that might apply for failure to report with respect to any full-time employee. Thus, reporting is still required under the normal rules for all full-time employees, including those employees not offered coverage. Accordingly, to the extent the employer fails to report with respect to any full-time employee, the alternative method described here will not affect the application of any generally applicable penalties for failure to report (subject to any relief that might be provided for under these regulations or other applicable guidance), and the possible application of any such penalties will not preclude the employer from using this simplified alternative method if the employer satisfies the 98 percent condition.

As noted, the 98 percent offer is required to provide minimum value and be affordable for purposes of section 4980H to avoid overburdening employers and the IRS with the need to determine at a later date whether a substantial number of employees who received a premium tax credit were full-time employees. If an employer were permitted to report under section 6056 on a large number of employees who were offered coverage that either was not minimum value or not affordable, the reporting could include large numbers of employees who may well be eligible to claim a premium tax credit on the Exchange, without identifying the employee's status as a full-time employee. In such a case, both employers and the IRS would be overburdened with the process of determining at a later date whether any employees who received a premium tax credit were full-time employees with respect to whom the employer is liable for an assessable payment under section 4980H(b). The 98 percent standard helps avoid the need for excessive inquiries to employers as to whether particular employees claiming a premium tax credit were full-time employees.

Example: Employer has 1,000 employees who are expected to have at least 27 hours of service per week in a calendar year. Employer does not want to determine which of these employees are full-time employees for purposes of section 4980H. Before the start of the year, Employer makes an offer of minimum essential coverage providing minimum value that is affordable for section 4980H purposes to 990 of these 1,000 employees and reports under section 6056 for all 1,000 employees. Because Employer has satisfied the conditions set forth in this section X.B, Employer is not required to report either the total number of full-time employees for the year or whether any particular employee was a full-time employee for any calendar month during the year. If an employee included as part of the return declines the offer of coverage and properly claims a premium tax credit with respect to coverage provided through an Exchange for one or more months during the calendar year, and the employer is contacted by the IRS to determine whether the employer did or did not owe an assessable payment under section 4980H(b), the employer could determine at that point whether the employee was a full-time employee for those months and supply that information to the IRS.

C. Reporting for Applicable Large Employers with Fewer Than 100 Full-time Employees Eligible for Transition Relief Under Section 4980H.

To assist applicable large employers that are in the smaller size range, such as those with at least 50 full-time employees but fewer than 100 full-time employees (including full-time equivalent employees), in transitioning into compliance with section 4980H, the final regulations provide transition relief from section 4980H for 2015 (plus,

in the case of any non-calendar plan year that begins in 2015, the portion of the 2015 plan year that falls in 2016). See section XV.D.6 of the preamble to the final regulations under section 4980H for a description of eligibility conditions for transition relief. (Note section 4980H does not apply to employers with fewer than 50 full-time employees (including full-time equivalent employees)). Employers eligible for this section 4980H transition relief will still report under section 6056 for 2015 in accordance with these final regulations.

As part of this transition relief, the ALE member must certify on its section 6056 transmittal form for calendar year 2015 (that is, for the section 6056 transmittal form that will be filed in 2016), as prescribed by the form and instructions, that it meets the eligibility requirements set forth in section XV.D.6(a)(1) through (3) of the preamble to the final regulations under section 4980H. ALE members with non-calendar year plans will certify with regard to their 2015 plan year, including the months of their 2015 plan year that fall in calendar year 2015, on the section 6056 transmittal form for 2015 (that is for the section 6056 transmittal form that will be filed in 2016), and will certify with regard to the months of their 2015 plan year that fall in calendar year 2016 on the section 6056 transmittal form for 2016 (that is the section 6056 transmittal form that will be filed in 2017).

D. Combinations of Alternative Reporting Methods

The alternative reporting methods described above would apply to particular groups of employees that in many cases would not be identical. An employer is permitted to use different alternative reporting methods for different employees at the employer's election, as specified in forms and instructions. .

XI. Other Possible Alternative Methods Not Adopted in the Final Regulations

A. Mandatory Self-Insured No-Cost Minimum Value Coverage

In section IX.B of the preamble to the proposed regulations, Treasury and the IRS stated they were considering whether employers that provide mandatory minimum value coverage to an employee, an employee's spouse, and an employee's dependents, with no employee contribution, could file and furnish only the return required under section 6055, include a code on the employee's Form W-2, and complete only summary information on the section 6056 transmittal form.

This alternative method of reporting was not adopted because its use would leave gaps in information needed for tax administration of the premium tax credit, in particular because codes will not be used on the Form W-2 to report months of mandatory minimum essential coverage providing minimum value.

However, an ALE member that offers no-cost minimum essential coverage providing minimum value coverage to all of its employees will not be liable for a potential assessable payment under section 4980H for any month in which an employee received such an offer. Thus, ALE members will be treated as reporting the required section 6056 information if the employer files a Form 1095-C statement and provides particular information about the employee, specifically the employee's name, social security number, and address, and indicates using a code if the coverage was offered for all 12 calendar months or for some months of the year if, for example, the employee was not full-time in certain months or was no longer employed. The employer must also furnish each employee a copy of the Form 1095-C filed with the IRS. See also section X.A.1., Reporting Based on Certification of Qualifying Offers, of this preamble for a

description of alternative reporting available.

If a self-insured employer is an ALE member, the employer will report the coverage information on the part of the Form 1095-C that is required under section 6055. If the ALE member offers no cost mandatory minimum essential coverage providing minimum value to all its employees, it will use an indicator code on the Form 1094-C transmittal to indicate that it offered this type of coverage. Self-insured employers that are not ALE members will file the section 6055 information return under section 6055. Further details will be provided in forms and instructions.

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

The proposed regulations outlined a possible alternative reporting method under which employers would be permitted in certain circumstances to report offers of minimum value coverage on Form W-2, in accordance with the form and instructions, instead of reporting the offers to the IRS on a section 6056 return or furnishing a section 6056 employee statement to the employee. The proposed regulations specified that this possible alternative method, if permitted, could be used only for an employee employed by the employer for the entire calendar year in which the offer, the individuals to whom the offer is made, and the employee contribution for the lowest-cost option for self-only coverage providing minimum value, all remained the same for all twelve months of the calendar year.

Commenters indicated that such a proposed alternative reporting method, if permitted, would need to be expanded to be available for employees offered coverage under their employer's plan for less than a full calendar year or for whom the offer of

coverage changed during the calendar year in order to be useful. Specifically, commenters suggested that additional codes or other modifications to the Form W-2 should be made so that the alternative reporting method could be extended to employees who were not employed for the entire calendar year or not employed as full-time employees during the entire calendar year, were not offered coverage for the entire calendar year, or for whom the cost of coverage changed during the calendar year.

Expanding the alternative reporting method as requested would leave gaps in information that is needed for tax administration. For example, if used for employees who were not employed during the full calendar year, the reporting would not provide any information regarding the particular calendar months for which coverage was offered (or not offered). Even if the employer represented that the coverage was offered during all periods of employment, the reporting could not be reconciled, for example, with another Form W-2 received by the employee from another employer using the same reporting method. That is because while both employers would report the number of months coverage was offered, that information would not be sufficient to determine whether offers of coverage were overlapping (because the employee was employed simultaneously at both employers). Additionally, for months for which coverage was not offered, information as to whether the employee was employed and also the reason coverage was not offered during certain months of the calendar year would not be captured (for example, the employee was in a permissible waiting period under section 4980H or employed but not as a full-time employee).

The specific reason coverage was not offered is relevant to the administration of section 4980H because the failure to offer coverage for certain reasons does not result

in an assessable payment under section 4980H for a calendar month, even if the full-time employee receives a premium tax credit for that month. More codes and other data to be reported on the Form W-2 would be needed to administer section 4980H and the premium tax credit.

Commenters noted that, unless expanded, this proposed alternative reporting method would be of little use to most large employers.

Other commenters suggested that the increase in complexity and, in some cases, modifications to the Form W-2, should not be made because the Form W-2 is such an established and integral part of the payroll and tax system. These commenters noted that revising Form W-2 would result in additional administrative burden and substantial added cost to employers given the need to modify the payroll and online systems and could result in delayed furnishing of Forms W-2 to employees or require corrected Forms W-2 to account for new information related to offers of coverage. Commenters further noted that revised Forms W-2 could create confusion among employees, particularly since the addition of information related to offers of coverage would likely result in an increase in the number of pages of the Form W-2, requiring time for employees to understand the changes, and possibly resulting in disruptions in the preparation of individual tax returns. Treasury and the IRS agree with the commenters that the suggested expansions of this alternative reporting method are in some cases not feasible, and in other cases do not provide sufficient administrative simplification to warrant the proposed increase in the complexity of the data reported on the Form W-2. Given that it is not feasible to expand this proposed alternative method, that commenters indicated the method is not workable as proposed because it does not

reduce cost or burden for employers, and that other simplified reporting methods are available, including the combination of section 6055 and section 6056 reporting for employers, the final regulations do not adopt this alternative reporting method.

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

Some commenters have expressed an interest in voluntarily reporting information about the coverage they offer their employees prior to the end of a coverage year, for example at their open enrollment or before the open enrollment at the Exchanges, on the theory that earlier section 6056 reporting to the IRS could lead to greater efficiency in the employer verification system employed by Exchanges to determine eligibility for premium tax credits.

A proposal of this kind would need to address a number of issues. The regulations under section 6103 do not authorize the IRS to share taxpayer information in this manner. Even if this information sharing were permitted, individuals would not receive the information for their tax return preparation proximate to when they are completing their tax returns. In addition, the information about the offer of coverage before the year starts may change during the calendar year. Gaps in complete and timely information increase the need for additional follow-up communication among employers, employees, and the IRS.

Also, offering 2 sets of reporting alternatives with filing occurring at different time periods would present challenges. Because the reporting options would be voluntary, different reporting protocols and regimes would need to be established and would need to accommodate employer choices to change the method of reporting from year to year. The multiple forms, procedures, and protocols would create complexity and be difficult

to administer. Accordingly, the final regulations do not adopt this approach.

D. Reporting for Employees Potentially Ineligible for the Premium Tax Credit

Some commenters have requested an exemption from reporting for employers that have many employees who are relatively highly paid, on the theory that those employees are unlikely to be eligible for a premium tax credit. The assumption is that a relatively highly paid employee's household income is likely to exceed 400 percent of the federal poverty line and therefore the employee is unlikely to qualify for a premium tax credit. The precondition of a section 4980H(b) assessable payment--that the employee receive a premium tax credit--is unlikely to be satisfied.

Treasury and the IRS have considered this request and have concluded that such an exemption would not be useful for many employers or administrable. Employers would not be in a position to know the correlation between an employee's Form W-2 wages and household income with sufficient accuracy to determine whether an employee may be eligible for the premium tax credit. The only pertinent information the employer retains is the employee's annual wages, yet the poverty level from which the premium tax credit income ceiling is determined varies considerably based on family size (which employers may not know). In addition, employees for whom an employer may use an affordability safe harbor based on wages for purposes of compliance with section 4980H might still be eligible for a premium tax credit based on their household income.

The preamble to the proposed regulations requested comments as to whether there is a level of Form W-2 wages at which such a determination might be made with sufficient confidence, and whether that level of wages would be so high as not to be of

practical use to employers. Comments indicated that some employers would be interested in exploring options that would permit them to not file a section 6056 return for an employee if, for example, the employee's wages were \$150,000, except if the employer has actual knowledge that the coverage would be unaffordable to the employee's family. Other commenters indicated that if additional follow-up would be required it would create further economic and administrative burden, such that it would be doubtful that the method would be utilized. Additionally, the vast majority of employers would be required to report with respect to at least some full-time employees with lower income than this threshold. Accordingly, the final regulations do not adopt this suggestion.

XII. Person Responsible For Section 6056 Reporting

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

A. Special Rules for Governmental Units: Designation

In accordance with section 6056(e), these regulations provide that in the case of any ALE member that is a governmental unit or any agency or instrumentality thereof (together referred to in this preamble as a governmental unit), that governmental unit may report under section 6056 on its own behalf or may appropriately designate another person or persons to report on its behalf.¹⁴ For purposes of designation, another person is appropriately designated for purposes of the filing and furnishing requirements of section 6056 if that other person is part of or related to the same

¹⁴ Until further guidance is issued, government entities, churches, and a convention or association of churches may apply a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer.

governmental unit as the ALE member. For example, a political subdivision of a state may designate the state, another political subdivision of the state, or an agency or instrumentality of the foregoing as the designated person for purposes of section 6056 reporting. The person designated might be the governmental unit that operates the relevant health plan or the governmental unit that does other information reporting on behalf of the designating governmental unit. If the designation is accepted by the designee and is made before the filing deadline, the designated governmental unit is the designated entity responsible for section 6056 reporting.

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

Under these regulations, a separate section 6056 return must be filed for each ALE member for which the appropriately designated person is reporting. The designated entity would provide the name of both the designated entity and the ALE member for which it is reporting. Additionally, the regulations require that there be a single identified section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the ALE member (including full-time employees of the ALE member the reporting for which has been transferred to a designated person), and that there be only one section 6056 employee statement (Form 1095-C) for each full-time employee of the ALE member with respect to employment with that

ALE member. Further details will be provided in forms and instructions.

These regulations further provide that the designation under section 6056(e) must be in writing, must contain certain language, must be signed by both the ALE member and the designated person, and must be effective under all applicable laws. These regulations also require that the designation set forth the name and EIN of the designated person, and appoint that person as the person responsible for reporting under section 6056 on behalf of the ALE member. The designation must contain information identifying the category of full-time employees (which may be full-time employees eligible for a specified health plan, or in a particular job category, provided that the specific employees covered by the designation can be identified) for which the designated person is responsible for reporting under section 6056 on behalf of the ALE member. If the designated person is responsible for reporting under section 6056 for all full-time employees of an ALE member, the designation should so indicate.

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

purposes of section 6056(e). The designation will not be submitted to the IRS and should be maintained under the normal record-retention rules under section 6103.

B. ALE Members Participating in Multiemployer Plans

Several commenters noted that the unique structure of many multiemployer plans means that some of the information relevant to the section 6056 return, such as the employee contribution (if any) for the lowest-cost self-only coverage providing minimum value, is held by the multiemployer arrangement. On the other hand, some of the information relevant to the section 6056 return, such as whether a participant is a full-time employee for a particular month, is held by the ALE member. As noted by commenters, this may make the preparation, filing, and furnishing of the returns challenging.

In response to this operating structure and its impact on the administration of section 4980H, section XV.E of the preamble to the final regulations under section 4980H provides that until further guidance is issued, employers generally will be treated as having met their obligations under section 4980H with respect to a full-time employee if the employer is required by a collective bargaining agreement (or appropriate related participation agreement) to contribute on behalf of that employee to a multiemployer plan that provides coverage, to individuals who satisfy the plan's eligibility conditions, meeting the affordability and minimum value requirements and that offers coverage to those individuals' dependents. Commenters to the section 6056 proposed regulations noted that an employer could also provide this information with respect to its full-time employees and thereby provide the information to the IRS that is relevant to the administration of section 4980H. However, that reporting would not provide all the

relevant information needed to administer the premium tax credit because the employer's contribution to the multiemployer plan on behalf of an employee for a particular calendar month may not necessarily align with whether the plan offered coverage to that particular full-time employee, nor would it provide the amount of the required employee contribution for the lowest-cost self-only coverage providing minimum value.

Some commenters requested that the regulations apply the reporting requirement to the multiemployer plan; however, section 6056 applies the reporting and furnishing requirements only to the employer and not the relevant plan in which the employee participates. In the alternative, commenters requested that the regulations require the multiemployer plan to transfer any information to which it has access that is required to be reported under section 6056 to the contributing employer in a timely manner and form. However, there is no authority under section 6056 or elsewhere in the Code that would permit imposing such a requirement on a multiemployer plan. Furthermore, given that section 6056 does not apply to the multiemployer plan, and that the return relates to the employer's potential liability under section 6056, Treasury and the IRS do not have the statutory authority to transfer the reporting obligations from the relevant employer to the multiemployer plan.

Some commenters suggested that the multiemployer plan be permitted to submit the section 6056 return on behalf of the contributing employers. Treasury and the IRS understand that the plan administrator of a multiemployer plan may have better access than a participating employer to certain information on eligible employees required to be included as part of section 6056 reporting. For this reason, section 6056 reporting with

respect to full-time employees on behalf of whom an ALE member contributed to a multiemployer plan is permitted under an approach whereby the multiemployer plan administrator would prepare returns pertaining to the full-time employees covered by the collective bargaining agreement eligible to participate in the multiemployer plan and the ALE member would prepare returns pertaining to the remaining full-time employees (those who are not eligible to participate in a multiemployer plan). The administrator of the multiemployer plan would file a separate section 6056 return for each ALE member that is a contributing employer on behalf of whom it files, providing the name, address, and identification number for both the plan and the ALE member for whom it is reporting. In addition, the multiemployer plan may assist the employer in furnishing statements to the employees.

The regulations also require that there be a single identified section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the ALE member (including full-time employees of the ALE member the reporting for which was done by a multiemployer plan), and that there be only one section 6056 employee statement (Form 1095-C) for each full-time employee of the ALE member with respect to the employee's employment with the ALE member.

Further details will be provided in forms and instructions.

The ALE member would remain the responsible person under section 6056 with respect to all of its full-time employees and accordingly would be subject to any potential liability for failure to properly file returns or furnish statements. To the extent the plan administrator that prepares returns or statements required under section 6056

is a tax return preparer, it is subject to the requirements generally applicable to return preparers. See section XII.C for information about third party reporting.

C Section 6056 Reporting Facilitated by Third Parties

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

As one example, an ALE member that is a member of an aggregated group of related entities (determined under section 414(b), 414(c), 414(m) or 414(o)) may facilitate the filing of returns and the furnishing of employee statements on behalf of one or more of the other ALE members of the aggregated group. Each other ALE member of the group, for example, could have the ALE member that operates the employer-

sponsored plan facilitate the filing of section 6056 returns and furnish section 6056 employee statements on its behalf.

In general, a separate section 6056 return must be filed for each ALE member, providing that ALE member's EIN. If more than one third party is facilitating reporting for an ALE member, for example, because the ALE member has contracted with two or more third parties each of which will facilitate reporting with respect to certain groups of the ALE member's employees, or if the ALE member reports with respect to some of its employees and has a third party report with respect to other employees, there must be one authoritative section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the ALE member. Additionally, there must be only one section 6056 employee statement (Form 1095-C) for each full-time employee with respect to each employee's employment with the ALE member, so that all required information for a particular full-time employee of the applicable large employer member is reflected on a single Form 1095-C. Further details will be provided in forms and instructions to accommodate third parties in facilitating section 6056 reporting for ALE members (including for third party service providers and multiemployer plan administrators).

XIII. Applicability of Information Return Penalties and Penalty Relief for 2015

These regulations provide that an ALE member that fails to comply with the section 6056 information return and employee statement requirements may be subject to the general reporting penalty provisions under sections 6721 (failure to file correct information returns), and 6722 (failure to furnish correct payee statement). These regulations also provide, however, that the waiver of penalty and special rules under

section 6724 and the applicable regulations, including abatement of information return penalties for reasonable cause, apply. The final regulations under section 6055 include amendments to the regulations under sections 6721 and 6722 to include returns under both sections 6055 and 6056 in the definitions of information return and payee statement. The final regulations under section 6056 cross-reference those amendments to the regulations under sections 6721 and 6722.

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 ALE members that can show they make good faith efforts to comply with the information reporting requirements. Specifically, relief from penalties is provided under sections 6721 and 6722 for returns and statements filed and furnished in 2016 to report offers of coverage in 2015, but only for incorrect or incomplete information reported on the return or statement, including social security numbers. No relief is provided in the case of ALE members that do not make a good faith effort to comply with these regulations or that fail to timely file an information return or statement. However, ALE members 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 Dates

These regulations are effective **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. 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 6056 information reporting provisions for 2014 (including the provisions requiring the furnishing of employee statements 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 employee statements). Taxpayers are encouraged, however, to voluntarily comply with section 6056 information reporting for 2014 by using any of the available reporting methods set forth in these final regulations.

Special Analyses

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

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 shall 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. For the reasons set forth in the following paragraphs, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities.

The regulations under sections 6011 and 6056 affect employers that are applicable large employers, as defined in section 4980H(c)(2). Some small entities fall into this category. Therefore, it has been determined that these regulations will affect a substantial number of small entities. It has also been determined, however, that the economic impact on entities affected by these regulations will not be significant.

The regulations implement the underlying statute and the economic impact is principally a result of the underlying statute, rather than the regulations. The regulations direct employers that are applicable large employers to file information returns with the IRS and to furnish statements to employees providing information as required by section 6056. Specifically, the regulations require applicable large employers, as defined in section 4980H(c)(2), to file a return with the IRS for each full-time employee reporting certain information regarding the health care coverage offered and provided to the employee for the year. The regulations further require applicable large employers to furnish to each full-time employee a copy of the return, or a substitute statement, required to be filed by the applicable large employer with respect to the employee. As discussed in the Summary of Comments and Explanation of Provisions section of the preamble to this Treasury Decision, Treasury and the IRS engaged in dialogue with stakeholders. The final regulations address certain concerns that were expressed by those stakeholders and minimize the cost and administrative steps associated with the reporting requirements. Specifically, the regulations limit the reporting requirements on applicable large employers by only requiring them to file and furnish information that is necessary for the IRS to administer section 4980H and the premium tax credit, and information employees will need in order to complete their tax returns. Additionally, the

regulations limit the reporting requirements by providing for alternative optional reporting methods for certain employers that will permit in certain situations an employer to provide more limited information on its return and employer statement, thus lowering that employer's burden.

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

Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were 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 regulations is Ligeia M. Donis of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects

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 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.6056-1 is added to read as follows:

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

(a) In general. Section 6056 requires an applicable large employer subject to the requirements of section 4980H to report certain health insurance coverage information to the Internal Revenue Service, and to furnish certain related employee statements to its full-time employees. Paragraph (b) of this section contains definitions for purposes of this section. Paragraph (c) of this section prescribes general rules for filing the required information with the IRS and furnishing the required employee statements to employees. Paragraphs (d) and (e) of this section describe the information required to be reported on a section 6056 information return and the time and manner for filing. Paragraph (f) of this section provides information about the statement required to be furnished to a full-time employee. Paragraph (g) of this section prescribes the time and manner of furnishing the statement, including extensions of time to furnish, to a full-time employee. Paragraph (h) addresses corrections of returns. Paragraph (i) of this section describes the information return penalties applicable to section 6056 returns. Paragraph (j) of this section describes alternative reporting methods available to certain applicable large employers with certain employees. Paragraph (k) of this section describes certain special rules applicable to applicable large employers that are governmental units.

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

(2) Applicable large employer. The term applicable large employer has the same meaning as in section 4980H(c)(2) and §54.4980H-1(a)(4) of this chapter.

(3) Applicable large employer member. The term applicable large employer member has the same meaning as in §54.4980H-1(a)(5) of this chapter.

(4) Dependent. The term dependent has the same meaning as in §54.4980H-1(a)(11) of this chapter.

(5) Eligible employer-sponsored plan. The term eligible employer-sponsored plan has the same meaning as in section 5000A(f)(2) and §1.5000A-2(c)(1) of this chapter.

(6) Full-time employee. The term full-time employee has the same meaning as in section 4980H and §54.5980H-1(a)(21) of this chapter, as applied to the determination and calculation of liability under section 4980H(a) and (b) with respect to any individual employee, and not as applied to the determination of status as an applicable large employer, if different.

(7) Governmental unit. The term governmental unit refers to the government of the United States, any State or political subdivision thereof, or any Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)).

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

(9) Minimum essential coverage. The term minimum essential coverage has the same meaning as in section 5000A(f) and the regulations issued under that section.

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

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

(c) Content and timing of reporting by applicable large employer members.--(1) In general. Each applicable large employer member required to make a return and furnish a related statement to its full-time employees under section 6056 for a calendar year must make a return and furnish the related statement using such form(s) as may be prescribed by the Internal Revenue Service. An applicable large employer member will satisfy its reporting requirements under section 6056 if it files with the Internal Revenue Service a return for each full-time employee using Form 1095-C or another form the IRS designates, and a transmittal form using Form 1094-C or another form the IRS designates, as prescribed in this section and in the instructions to the forms. Each Form 1095-C and the transmittal Form 1094-C will together constitute an information return to be filed with the Internal Revenue Service.

(2) Reporting facilitated by third parties. A separate section 6056 information return must be filed for each applicable large employer member. If more than one section 6056 information return is being filed for an applicable large employer member, there must be one authoritative section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the applicable large employer member, in accordance with forms and instructions. Additionally, there must be only one section 6056 employee statement (Form 1095-C) for each full-time employee with respect to that full-time employee's employment with the applicable large employer member, so that all required information for a particular full-time employee of the applicable large employer member is reflected on a single Form 1095-C.

(d) Information required to be reported to the Internal Revenue Service—(1) In general. Except as provided in paragraph (j) of this section (relating to alternative reporting methods for eligible applicable large employer members), every applicable large employer member must make a section 6056 information return with respect to each full-time employee. Each section 6056 information return must show--

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

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

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

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

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

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

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

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

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

(2) Form of the return. A return required under this paragraph (d) may be made on Forms 1094-C and 1095-C or other form(s) designated by the Internal Revenue Service, or a substitute form. A substitute form must include the information required to be reported on Forms 1094-C and 1095-C and must comply with applicable revenue procedures or other published guidance relating to substitute statements. See §601.601(d)(2) of this chapter.

(e) Time and manner for filing return. An applicable large employer member must file the return and transmittal form required under paragraph (d)(2) of this section on or before February 28 (March 31 if filed electronically) of the year succeeding the calendar year to which it relates in accordance with any applicable guidance and the instructions to the form. An applicable large employer member must file the return and transmittal form at the address specified on the return form or its instructions. For extensions of time for filing returns under this section, see §§1.6081-1 and 1.6081-8 of this chapter. See §301.6011-2 for rules relating to electronic filing.

(f) Statements required to be furnished to full-time employees—(1) In general. Except as provided in paragraph (j) of this section, every applicable large employer member required to file a return under section 6056 must furnish to each of its full-time employees identified on the return a written statement showing—

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

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

(2) Form of the statement. A statement required under this paragraph (f) may be made either by furnishing to the full-time employee a copy of Form 1095-C or another form the IRS designates as prescribed in this section and in the instructions to such forms, or a substitute statement. A substitute statement must include the information required to be shown on the return filed with the IRS and must comply with requirements in published guidance (see §601.601(d)(2) of this chapter) relating to substitute statements. An IRS truncated taxpayer identification number may be used as the identifying number for an individual in lieu of the identifying number appearing on the corresponding information return filed with the IRS.

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

(ii) Extensions of time--(A) In general. For good cause upon written application of the person required to furnish statements under this section, the Internal Revenue Service may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must be addressed to the Internal Revenue Service, and must contain a full recital of the reasons for requesting the extension to aid the Internal Revenue Service in determining the period of the extension, if any, that will be granted. 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)(1) of this section.

(B) 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 full-time employees the statement required under section 6056.

(2) Manner of furnishing. If mailed, the statement must be sent to the full-time employee's last known permanent address or, if no permanent address is known, to the employee's temporary address. For purposes of this paragraph (g), an applicable large employer member'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. An applicable large employer member may furnish the statement electronically in accordance with §301.6056-2.

(h) Correction of returns. See §301.6056-1(i)(2).

(i) Penalties.—(1) In general. For provisions relating to the penalty for failure to file timely a correct information return required under section 6056, see section 6721 and the regulations under that section. For provisions relating to the penalty for failure to furnish timely a correct statement to full-time employees required under section 6056, 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 6056 reporting. For purposes of section 6056 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.

(j) Alternative reporting methods for eligible applicable large employer members.

In lieu of the general reporting method described in paragraph (d) of this section, eligible applicable large employer members may use the following alternative reporting methods described in this paragraph (j).

(1) Certification of qualifying offer. An applicable large employer member is an eligible applicable large employer member and is treated as meeting its reporting obligation under section 6056 if:

(i) The applicable large employer member certifies on the section 6056 transmittal form, in accordance with the form and the instructions to the form, that it made a qualifying offer. A qualifying offer is an offer to one or more of its full-time employees for all months during the year for which the employee was a full-time employee and which are not within a limited nonassessment period (as defined in §54.4980H-1(a)(26) of this chapter), of minimum essential coverage providing minimum value at an employee cost for employee-only coverage not exceeding 9.5 percent of the mainland single federal poverty line, and that includes an offer of minimum essential coverage to the employees' spouses and dependents. For this purpose, the applicable federal poverty line is the federal poverty line as defined in §54.4980H-1(a)(19) of this chapter, as calculated and applied to the 48 contiguous states and the District of Columbia;

(ii) The applicable large employer member provides on the Form 1095-C or other form as designated by the IRS, in accordance with the form and the instructions to the form, the information with respect to each full-time employee to whom a qualifying offer, as defined in paragraph (j)(1)(i) of this section, is made for all twelve months of the applicable calendar year;

(iii) The applicable large employer member provides a statement to each full-time employee to whom a qualifying offer (as defined in paragraph (j)(1)(i) of this section) was made for all twelve months of the applicable calendar year, in such form and manner as prescribed by the Secretary, or a copy of the Form 1095-C filed with the IRS with respect to that full-time employee; and

(D) The applicable large employer member files section 6056 returns and furnishes section 6056 employee statements with respect to all other full-time employees under the general reporting method described in paragraph (d) of this section, in accordance with forms and instructions.

(2) Option to report without separate identification of full-time employees if certain conditions related to offers of coverage are satisfied (98 percent offers). An applicable large employer member that otherwise meets its reporting obligation under section 6056 is not required to identify on its section 6056 return whether a particular employee is a full-time employee for one or more calendar months of the reporting year or report the total number of its full-time employees for the reporting year, if it certifies that it offered minimum essential coverage providing minimum value that was affordable under section 4980H to at least 98 percent of the employees (and their dependents) with respect to whom it reports for purposes of section 6056 in accordance with paragraph

(d) of this section (regardless of whether the employee is a full-time employee for purposes of section 4980H for a calendar month during the year).

(k) Special rules for governmental units—(1) Person appropriately designated. In the case of any applicable large employer member that is a governmental unit or any agency or instrumentality thereof, the person or persons appropriately designated under section 6056(e) for purposes of the filing and furnishing requirements of section 6056 must be part of or related to the same governmental unit as the applicable large employer member. The applicable large employer member must make (or revoke) the designation before the earlier of the deadline for filing the returns or furnishing the statements required by this section. A person that has been appropriately designated under section 6056(e) must file a separate section 6056 return and transmittal for each applicable large employer member for which the person is reporting. The person appropriately designated under section 6056(e) assumes responsibility for the section 6056 requirements on behalf of the applicable large employer member for which the person is designated. Notwithstanding the designation, a separate section 6056 information return must be filed for each applicable large employer member that is a governmental unit. If more than one section 6056 information return is being filed for an applicable large employer member, there must be one authoritative section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the applicable large employer member, in accordance with forms and instructions. In addition, notwithstanding the designation, there must be only one section 6056 employee statement (Form 1095-C) for each full-time employee with respect to that full-time employee's employment with the applicable large employer member, so

that all required information for a particular full-time employee of the applicable large employer member is reflected on a single Form 1095-C.

(2) Written designation. The designation under section 6056(e) must be made in writing, must be signed by both the applicable large employer member and the designated person, and must be effective under all applicable laws. The designation must set forth the name, address, and employer identification number of the designated person, and appoint such person as the person responsible for reporting under section 6056 on behalf of the applicable large employer member. The designation must contain information identifying the category of full-time employees (which may be full-time employees eligible for a specified health plan, or in a particular job category, as long as the specific employees covered by the designation can be identified) for which the designated person is responsible for reporting under section 6056 on behalf of the applicable large employer member. If the designated person is responsible for reporting under section 6056 for all full-time employees of an applicable large employer member, the designation must so indicate. The designation must contain language that the designated person agrees and certifies that it is the appropriately designated person under section 6056(e), and an acknowledgement that the designated person is responsible for reporting under section 6056 on behalf of the applicable large employer member and subject to the requirements of section 6056, including for purposes of information reporting requirements under sections 6721, 6722, and 6724. The designation must also set forth the name and employer identification number of the applicable large employer member, identifying the applicable large employer member as the person subject to the requirements of section 4980H. An equivalent applicable

statutory or regulatory designation containing the language described in this paragraph (k)(2) will be treated as a written designation for purposes of section 6056(e) and this section. The designation will not be submitted to the IRS and should be maintained under the normal record-retention rules under section 6103.

(3) Application to alternative reporting methods. A person designated under this paragraph (k) may use the alternative reporting method identified in paragraph (j)(1) of this section for the full-time employees for which it is reporting with respect to a particular governmental unit if that particular governmental unit meets the eligibility requirements with respect to those employees, but may use the alternative reporting method identified in paragraph (j)(2) of this section only if the governmental unit on whose behalf it is reporting would itself be eligible to use that alternative reporting method.

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

(m) Effective/applicability date. This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under sections 6721 or 6722 for failure to comply with the section 6056 reporting requirements for 2014 (for information returns filed and for statements furnished to employees in 2015).

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

§301.6056-2 Electronic furnishing of statements

(a) Electronic furnishing of statements--(1) In general. An applicable large employer member required by §301.6056-1 to furnish a statement (furnisher) to a full-time employee (a recipient) as required by section 6056 may furnish the section 6056 employee statement (the statement) in an electronic format in lieu of a paper format, provided that the furnisher meets the requirements of paragraphs (a)(2) through (a)(6) of this section. An applicable large employer member who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the statement in a timely manner.

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

(ii) Withdrawal of consent. The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a 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 the statement, the furnisher must, prior to changing the hardware

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

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

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive the statement required under section 6056 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 the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the web site uses the same electronic format that F will use for the electronically furnished statement. R reads the instructions and accesses the web site, downloads and completes the consent document, and emails the completed consent back to F. R has consented to receive the statement required under section 6056 electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive the statement required under section 6056 electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statement electronically. The e-mail 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 6056 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 6056 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 the electronically furnished statement. R accesses the web site and follows the instructions for giving consent. R has consented to receive section 6056 statements 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 paragraphs (a)(3)(ii) through (viii) of this section.

(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 in the manner described in paragraph (a)(3)(v)(A) of this section or only to the first statement required to be furnished following the date 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 e-mail address is provided in the disclosure statement,

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

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

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

(vii) Updating information. The 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 revenue procedures relating to substitute statements to recipients.

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

is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

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

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

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

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

calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) Paper statements after withdrawal of consent. 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).

PART 602 -- OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

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

Par. 6. 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.

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(b) * * *

CFR part or section where
identified and described

Current OMB
Control No.

* * * * *

301.6056-11545-2251
301.6056-21545-2251

* * * * *

John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: March 2, 2014

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014-05050 Filed 03/05/2014 at 4:15 pm; Publication Date: 03/10/2014]