American Payroll Association

Government Relations • Washington, DC

CC:PA:LPD:PR (REG-136630-12)
Room 5205
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

November 8, 2013

Re: REG-136630-12, Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans

Ladies and Gentlemen:

The American Payroll Association (APA) would like to thank the Service and Treasury for issuing proposed regulations providing guidance to employers that are subject to the information reporting requirements under section 6056 of the Internal Revenue Code, enacted by the Affordable Care Act, and further appreciate the opportunity to comment on REG-136630-12. As the nation's leading private-sector advocate for payroll and information reporting information issues, we applaud the Service and Treasury for providing much needed clarification to applicable large employers (ALEs) and proposing optional, simplified reporting methods for ALEs.

I. General Method of Section 6056 Reporting

Under the general method of section 6056 reporting (Section IX.B. of the preamble to the proposed regulations), certain information is "expected" to be requested, through the use of indicator codes, as part of the section 6056 return. We have listed that information in italics and provided comments directly below.

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

There seems to be a redundant reporting requirement regarding "minimum value" at the employer and employee level. Please clarify whether it would be necessary for employers to report at both the company and employee level that coverage meets minimum value requirements.

(2) *If the ALE member was not conducting business during any particular month, by month.*

There may be some confusion among employers as to what constitutes "conducting business." What precisely qualifies as conducting business versus not conducting business? Seasonal employers often have small, skeleton staffs in the off-season and may or may not consider themselves to be conducting business. A more definitive explanation of conducting business for private employers, government employers, and nonprofits should be given. It may be better to omit this reporting element at the employer level and instead rely on employee-level coding to identify employees who were either not employed or not full-time during a particular month.

(3) *If the ALE member expects that it will not be an ALE member the following year.*

Requiring an employer to predict whether or not it will be classified as an ALE in the following year will be difficult. An employer that is on the borderline of being classified as an ALE may have difficulty predicting its employment levels for the upcoming year and may even face unexpected situations where employment levels fluctuate. This information field should be omitted.

The proposed regulations [section 301.6056-1(d)(1)(i), (v)] provide that every ALE member will report on the section 6056 information return certain information.

(1) 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.

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. Treasury and the IRS issued proposed regulations under 6055 [REG-123455-11] concurrently with these proposed regulations. Those proposed regulations also require reporting on the months during which the employee was covered under an eligible employer-sponsored plan. This appears to be a redundant reporting requirement that should be eliminated.

We are also concerned that no safe-harbor exists for an employer that incorrectly obtains a name and taxpayer identification number for dependents on self-insured plans. Employers currently can look to the Form W-4 as a safe-harbor, but if they are obtaining the dependent's name and taxpayer identification numbers, they will not have a safe harbor to rely on to claim reasonable cause if they are penalized. We also recommend allowing the employers to use TIN Matching to check the dependents name and taxpayer identification numbers.

It is also contemplated (section IX.C. of the preamble to the proposed regulations) that certain information as it applies to full-time employees will be reported to the IRS and furnished to full-time employees through the use of a code rather than specific information.

(1) Coverage was offered to the employee for the month although the employee was not a full-time employee during that calendar month.

We request clarification on why this information is being requested. Employers will already be reporting the months where coverage was offered to fulltime employees, so it is unnecessary to report this information. Further, does this request imply that employers should report non-full-time employees?

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

We interpret this to mean the affordability safe harbor element will be reported monthly. However, the test for safe harbor is usually a full-year test and affordability safe harbor results may differ from month to month. Please clarify if the intent is to capture premium level changes midyear for an employer with a fiscal year plan.

We have a few requests for clarification.

- Can an employer assert any safe harbor test for any employee?
- Does the type of safe harbor test need to be the same for all similarly situated employees (e.g., W-2 Box 1 wages, rate of pay or FPL test)?
- Must the same test be used for each month for an employee?

II. Simplified Methods Proposed

The proposed regulations (section XI of the preamble) develop and outline simplified reporting methods sought to minimize the cost and administrative tasks for employers for section 6056 information reporting. However, these simplified methods may be available only to certain employers and certain employees of an employer. Therefore, section 6056 data might need to be funneled to different reporting and employee statement streams. This may cause confusion for employers and employees, who may not know what to expect from employee to employee and from year to year.

Potential Simplified Methods – Specific Examples

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

The Form W-2, *Wage and Tax Statement*, is one of the most frequently used forms by our members. The addition of new indicator codes and expanded instructions on the back of the Form could quickly increase the Form from one page to two pages, thus increasing administrative burden and expense on employers related to filling, printing, and distributing the forms and the time required for employees to understand the new changes.

Secondly, the regulations offer this option in certain circumstances to employers. If an employer chooses the general method of reporting for one calendar year and provides an employee with a Form 1095-C, but then has the option to report on the Form W-2 and uses this method in the

second year, this may be confusing for employers and employees, who must now deal with multiple forms.

Additionally, another concern is that adding the indicator codes to the W-2 may only apply on a very limited basis (i.e., almost no large employer would be able to use the W-2 approach exclusively, because of new hires, terminations and coverage changes during the year.)

The Service will probably be asked to consider expanding this W-2 reporting option so that an employer would be able to use it for their entire workforce. However, this would require the addition of many more elements to the W-2, such as date ranges or specific months during which coverage was offered. Adding new, non-wage reporting elements to the W-2 will increase administrative burden and expense for employers, and may jeopardize the timely availability of Forms W-2 for U.S. taxpayers, as health coverage information is not naturally resident in the payroll systems that produce Forms W-2, and employers will need to carefully obtain and perfect such data prior to producing the forms. Errors and omissions could also drive up the volume of necessary corrections (Forms W-2c). Thus, while simplification of Section 6056 reporting is a laudable goal, it may create substantial problems for the U.S. Income tax system..

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

We represent employers who offer coverage to all or nearly all of their employees and are able to accurately represent that only part-time employees are not offered coverage, so this proposed method offers simplicity. However, can you please clarify exactly what information the employer would still be required to produce and give to full-time employees, as well as file with the IRS. It is our view that an employer will still need to track all of its full-time employees in the event they are asked for it in the future.

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

As noted in the proposed regulations, we believe this method could be expanded to "low cost" plans, permitting employers to report employee contributions of $0 if annual premiums were roughly $800 or less.

Section IX.E. of the preamble to the proposed regulations states that:

> *Because Notice 2013-45 provided transition relief for section 6056 reporting for 2014, the first section 6056 returns required to be filed are for the 2015 calendar year and must be filed no later than March 1, 2016 (February 28, 2016 being a Sunday), or March 31, 2016, if filed electronically.*

Because 2016 is a leap year, section 6056 returns filed on paper for the 2015 calendar year must be filed no later than February 29, 2016 (February 28, 2016 being a Sunday).

Again, we thank you for the opportunity to comment. Please feel free to contact us should you have any additional questions or wish to discuss these comments further.

Sincerely,

Becky Harshberger, CPP
Karen Salemi, FLMI, CPP
Co-Chairs, APA IRS Issues Subcommittee of the
Government Affairs Task Force

Brian O'Laughlin, Esq.
Senior Manager of Government Relations and
Multinational Certification
American Payroll Association