

DRAFT: Internal Revenue Code (IRC) §6056¹: Summary of final regulations [Treasury Decision 9661] Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans

This document summarizes final regulations related to State of Washington Internal Revenue Code (IRC) §6056 reporting obligations as an “applicable large employer” (ALE) of “full-time” public employees.

IRC §6056 requires applicable large employers to (1) annually file Internal Revenue Service (IRS) information returns describing coverage offered to “full-time” employees, and (2) annually provide statements to each “full-time” employee. Individuals and the IRS will use the information reported under IRC §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 for specific months of Exchange coverage. Information returns to the IRS demonstrate an employer’s compliance with Play or Pay requirements.

Statements will allow employees to verify which months they received an offer of affordable, employer-sponsored coverage that provides minimum value. Information returns to the IRS (including copies of employee statements) will allow the IRS to validate health plan enrollment for individual mandate and Exchange premium subsidy eligibility purposes.

1. The following phrases have the same meaning as their definitions in Play or Pay regulations: applicable large employer (ALE), applicable large employer member, dependent, eligible employer-sponsored plan, full-time employee, governmental unit, minimum essential coverage (MEC), minimum value, and person.
(pp 65-67, 11-13)
2. Regulations do not define the term “agency or instrumentality of a governmental unit.” Until future guidance is issued that defines the term for purposes of IRC §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, specifically IRC §414 (b), (c), (m), and (o).² (p 66, 12)
3. IRS Information Return – General Method (pp 67, 69)

IRC §6056 regulations provide direction that “if a full-time employee performs services for two ALE Members within an ALE during a calendar month, the employee is treated as the employee of (only) the ALE Member for which the employee was credited the majority of the hours of service for that month” (emphasis added). When a full-time employee provides hours of service to multiple ALE Members, hours of service for all ALE Members for each month of the reporting period must be considered to determine (using majority rules) which ALE Member must report for the full-time employee for each calendar month.

- a. An ALE Member must file an IRS information return. (p13)
- b. IRS information return format:
 - i. A single Form 1094-C Transmittal, *and* a separate Form 1095-C Employee Statement (See #4 below) for each full-time employee (*final form and instructions not yet available*).
 - ii. A different form may be designated by the IRS (*a different form has not been designated*).

¹ 26 CFR 61.6056 – Certain employers required to report on health insurance coverage.

² 26 CFR 1.414 – Definitions and special rules.

- iii. A substitute form may be used that includes all information required on Form 1094-C and 1095-C and must comply with applicable revenue procedures or other published guidance relating to substitute statements. (p 69)
- c. IRS information return detail (Form 1094-C Transmittal): (pp 68-69; 19-23)
 - i. The name, address, and employer identification number (EIN) of the ALE member.
 - ii. The name and telephone number of the ALE's contact person.
 - iii. The calendar year for the information return.
 - iv. A certification as to whether the ALE member offered to its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan, by calendar month.
 - v. For each full-time employee, the months during the calendar year for which MEC 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, by calendar month.
 - viii. The name, address, and taxpayer identification number (TIN) 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.

Assumption: Graduate Students on Assistantships (about 1,400) at WSU are offered a medical plan (through WSU) that may meet MEC, MV, and affordability standards. If Graduate Students on Assistantships are determined FT through report testing (after removing any work study hours), we will evaluate reporting the offer of coverage for the WSU plan. We will also query other Payrolls to determine if there are other similar scenarios at other institutions.
 - ix. Any other information specified in forms, instructions, or published guidance.
- d. Additional information required for the IRS information return (Form 1094-C Transmittal), through use of indicator codes for some information: (pp 24-26):
 - i. Whether coverage offered to full-time employees and their dependents meets minimum value, and whether the employee's spouse could enroll.
 - ii. The total number of employees by calendar month.
 - iii. Whether an employee's effective date of coverage was affected by a permissible waiting period, by calendar month.
 - iv. Whether the ALE member had no employees or otherwise credited zero hours of service during a particular month, by calendar month.
 - v. If an ALE member of an aggregated group, the name and EIN of each ALE member of the group on any day of the calendar year for reporting.
 - vi. The name, address, and identification number of the designated person, if reporting is done by designation for a government group.
 - vii. A "multiemployer plan" exemption indicator.
 - viii. The name, address, and identification number of the third party, if a third party is reporting.

- e. IRS information return (Form 1094-C Transmittal) filing deadline: For ALE Members filing 250 or more IRS information returns during the calendar year, the filing deadline is **March 31st** of the following calendar year. (p 69, 29, 32)

Assumption: For consistency, all ALE Member IRS information returns will be filed electronically, even if the state agency has less than 250 full-time employees for a calendar year. IRS information returns not filed electronically (when allowed) are due February 28th of the following calendar year.

- f. IRS information return (Form 1094-C Transmittal) penalties: (pp 71-72, 61) and (IRC §6721 and IRC §6724)
- i. Regulations provide relief from penalties in 2016 (for reports of 2015 coverage), but only for incorrect or incomplete information reported on the return. No relief is provided to ALE Members that do not make a good faith effort to comply, or that fail to file an information return. (p 61)
 - ii. The following penalties apply for failure to timely file a correct information return, when failure is due to reasonable cause (including failures due to retroactive changes in coverage). Reductions and waivers may be available under certain conditions. Penalties are adjusted for inflation every fifth year after 2012. (IRC §6721, IRC §6724; pp 71-72)
 - \$100 for each failure, up to a maximum of \$1.5M per ALE Member.
 - If corrected on or before 30 days (April 30): \$30 each/\$250K max.
 - If corrected between May 1 – August 1: \$60 each/\$500K max.
 - Lower maximums apply to the above penalty limits if gross receipts of the ALE Member *average* more than \$5M for the most recent three taxable years prior to the reporting calendar year (e.g. average 2012-2014 for the 2015 reporting year).
 - Waiver of penalties for “de minimis” failures due to reasonable cause, and not willful neglect, are allowed as described in IRC §6724. Waiver is limited to the greater of 10 or one-half of 1 percent of the total number of informational returns required for the calendar year for the ALE Member.
 - iii. Higher penalties apply when an employer’s failure to timely or accurately file is due to intentional disregard: (IRC §6721)
 - \$250 for each failure, with no maximum per ALE Member. For example, if the State of Washington did not report, this penalty would apply to each full-time employee, and each non-full-time employee enrolled in Uniform Medical Plan.

4. Employee Statements (pp 69-70; 28-29)

- a. An ALE Member must provide each of its full-time employees a written statement.
 - i. Statements may be mailed to the full-time employee’s last known permanent address, or last known temporary address if the permanent address is not known. First-class mailing satisfies the ALE Member’s requirement to furnish an employee statement. (p 71)
 - ii. Statements may be furnished electronically if *extensive* notice, consent, and hardware or software requirements are met (summarized in detail on pages 76-82, 32-35).
- b. Employee statement format:
 - i. Form 1095-C Employee Statement (*final form and instructions not yet available*).
 - ii. A different form may be designated by the IRS (*a different form has not been designated*).

- iii. A substitute statement, that includes all information required to be shown on the IRS information return and complies with applicable revenue procedures or other published guidance relating to substitute statements.

Note: The employee statement may use an IRS truncated TIN in lieu of the full TIN required on the Form 1095-C Employee Statement included with the IRS information return.

- c. Employee statement detail: (pp 69-70)
 - i. The name, address and EIN of the ALE Member, and
 - ii. Information relating to the specific full-time employees included on the IRS information return described in #3 above.
- d. Additional required information, through use of indicator codes for some information. The reporting format will accommodate multiple codes as needed. (pp 27-28)
 - i. Who was offered minimum essential coverage meeting minimum value (“a” EE only, “b” EE and EE’s dependents only, “c” EE and EE’s spouse only, or “d” EE, EE’s spouse and EE’s dependents).
 - ii. Coverage was not offered to the employee, and... (“a” EE was in a non-assessment period, “b” EE was not a “full-time” employee, “c” EE was not employed by the ALE member during that month, or “d” no other code or exception applies).
 - iii. Coverage was offered to the employee for the month although the employee was not a “full-time” employee during that month.
 - iv. The employee was covered under the plan.
 - v. The ALE member met an affordability safe harbor for the employee
- e. Employee statement filing deadline: (pp 70-71)
 - i. The employee statement filing deadline is **January 31st** of the following calendar year. (p 70)
 - ii. The IRS may grant up to a 30 day extension to the employee statement filing deadline. To apply for an extension, the ALE Member must send a letter containing the reasons for requesting the extension by the employee statement filing deadline. (pp 70-71, 30)
 - iii. The IRS may automatically extend the time to furnish employee statements. (p 71)
- f. Employee statement penalties: (pp 71-72, 61) and (IRC §6722 and IRC §6724)
 - i. Regulations provide relief from penalties in 2016 (for employee statements of 2015 coverage), but only for incorrect or incomplete information reported on the employee statement. No relief is provided to ALE Members that do not make a good faith effort to comply, or that fail to file an employee statement. (p 61)
 - ii. The following penalties apply for failure to timely file a correct employee statement, when failure is due to reasonable cause (including failures due to retroactive changes in coverage). Reductions and waivers may be available under certain conditions. Penalties are adjusted for inflation every fifth year after 2012. (IRC §6722, IRC §6724; pp 71-72)
 - \$100 for each failure, up to a maximum of \$1.5M per ALE Member.
 - If corrected on or before 30 days (March 2 or 3): \$30 each/\$250K max.
 - If corrected between March 2 or 3 – August 1: \$60 each/\$500K max.

- Lower maximums apply to the above penalty limits if gross receipts of the ALE Member *average* more than \$5M for the most recent three taxable years prior to the reporting calendar year (e.g. average 2012-2014 for the 2015 reporting year).
 - Waiver of penalties for “de minimis” failures due to reasonable cause, and not willful neglect, are allowed as described in IRC §6724. Waiver is limited to the greater of 10 or one-half of 1 percent of the total number of employee statements required for the calendar year for the ALE Member.
- iii. Higher penalties apply when an employer’s failure to timely or accurately file is due to intentional disregard: (IRC §6722)
- \$250 for each failure, with no maximum per ALE Member. For example, if the State of Washington did not provide employee statements, this penalty would apply to each full-time employee, and each non-full-time employee enrolled in Uniform Medical Plan.

5. Combined IRC §6055 and IRC §6056 Reporting for Self Insured Employers

IRC §6055 requires health coverage issuers to submit a Form 1095-B for each policy holder and covered individuals on the policy. However, ALEs that provide MEC on a self-insured basis (e.g. Uniform Medical Plan) must satisfy both IRC §6055 and IRC §6056 requirements through combined reporting. To enable combined reporting, “covered individual” information has been added to Form 1095-C, and must be included in reports submitted by the ALE Member.

- a. Submission of an IRS information return (Form 1094-C Transmittal, *and* a separate Form 1095-C Employee Statement) under IRC §6056 satisfies the IRC §6055 reporting requirement for employees for whom the ALE Member provided self-insured coverage.
- b. IRC §6056 information reporting (see #3 above) must also include the following information for employees enrolled in self-insured coverage (e.g. Uniform Medical Plan): (pp 37-38)

- i. The name and taxpayer identification number (TIN) of each covered individual during the calendar year and the months during which the individual was enrolled in covered.

If a TIN is not available, regulations allow the date of birth to be reported in lieu of the TIN, but only if the ALE Member has made reasonable efforts to obtain the TIN. Reasonable efforts are described as requesting the TIN when the individual is initially enrolled in coverage, and at least two additional requests no later than December 31 of the first two years the individual is enrolled in coverage (January 31 of the following year if the relationship begins in December). An ALE Member may be liable for penalties for submitting an incomplete return if it does not make reasonable efforts to gather the TIN.

Assumption: PEBB will request the TIN for employees and covered individuals during open enrollment for 2015.

The ALE Member may identify the employee using an IRS truncated TIN (TTIN) rather than the social security number or other identifying number of the employee. The TTIN only includes the last four digits of the TIN, displayed as XXX-XX-1234 or ***-**-1234, as described in Treasury Regulation [REG-148873-09].

- ii. Whether the coverage is a qualified health plan enrolled in through the Small Business Health Options Program (SHOP), and if so, the SHOP’s unique identifier.
- c. Fully insured issuers (e.g. Group Health Cooperative and Kaiser Permanente) must report on health coverage provided to covered individuals according to IRC §6055.

Assumption: Group Health Cooperative and Kaiser Permanente are responsible for preparing and submitting reports and employee statements to satisfy IRC §6055, and will be responsible for penalties for any related failures. (pp 41-42, 27-28; IRC §6055) Except, as required by IRC §6056, ALE Members (or a designee) are responsible for IRC §6055 reporting (combined with IRC §6056 reporting) for all Uniform Medical Plan enrollees.

6. IRS Information Return – Alternative Methods (pp 72-74, 35-53)

This summary does not describe alternative methods in final regulations that are not applicable to the State of Washington controlled group (including “Reporting for Applicable Large Employers with Fewer Than 100 Full-time Employees...,” and “Mandatory Self-Insured No-Cost Minimum Value Coverage”).

a. Certification of Qualifying Offer (pp 37-40)

This method simplifies portions of Form 1094-C Transmittal Form reporting for employees to whom a qualifying offer of MEC is made for all 12 months of the applicable calendar year. This method is only available for employees who were also not in a limited non-assessment period for penalties, and when coverage provides minimum value, and is affordable according to the federal poverty line method. Form 1095-C Employee Statements are still required for employees as described in the general method (see #3 above), but a simplified statement could be used for those offered coverage for all 12 months.

For all other employees who do not meet this criteria, the employer must use the general method (see #3 above).

Assumption: Every State of Washington ALE Member will have employees who do and do not meet this criteria. For all employees who do not meet the criteria, the ALE Member must report using the general method. Use of this method would double the reporting criteria for all ALE Members. In the interest of reporting efficiency and consistency, this method will not be pursued.

b. Certification of Qualifying Offer (AVAILABLE FOR 2015 ONLY) (pp 40-42)

An ALE Member who can certify that it made a qualifying offer to at least 95% of its full-time employees and to their spouses and dependents can, in lieu of providing a 1095-C Employee Statement, provide a simplified statement in a form to be prescribed by the IRS. The statement will note whether the employee received a qualifying offer for all, some, or none of the months of the calendar year, as well as provide related information about the employee’s eligibility for premium tax credits.

Assumption: Preliminary look-back measurement method FT/NFT determinations are expected by September 30, 2014. The State of Washington should consider this alternate reporting method for ALE Members for whom look-back measurement method FT determinations meet the 95% threshold. Draft business requirements will be developed for this alternate method.

c. Option to Report without Separate Identification of Full-Time Employees if Certain Conditions Related to Offers of Coverage are Satisfied (98 Percent Offers) (pp 42-45)

This method is available only to ALE Members who provide offers of MEC to at least 98 percent of all employees.

Assumption: The majority of ALE Members in the State of Washington controlled group would fail to qualify for the “98 Percent Offers” method. In the interest of reporting efficiency and consistency, this method will not be pursued.

d. Combination of Alternative Reporting Methods (p 46)

An ALE Member is permitted to use different reporting methods (general and alternative), as specified in forms and instructions (*final form and instructions not yet available*).

7. Designated Reporting Allowed for Governmental Units: (pp 74-76, 53-56)

- a. An ALE Member that is a governmental unit may designate another entity to report on its behalf. The designated entity must be part of or related to the same governmental unit as the ALE Member.

Assumption: State of Washington ALE Members, will designate reporting, and OFM or HCA will be the designated entity.

- b. Designation must be in writing, include specific provision described in regulations, and be signed by the ALE Member and the designee. Designation is not submitted to the IRS, but must be made or revoked before the earlier of the deadline for filing information returns or furnishing employee statements. The IRS information return transmittal (Form 1094-C) requires disclosure of the designated entity.

- c. The designee becomes liable for penalties for failure to comply with reporting requirements.

8. Third-Party Reporting Allowed: (p 67, 14, 59-60)

- a. Third-party reporting is allowed under the same principles that apply to ALE Members.
- b. There must be only one Form 1094-C Transmittal Form sent to the IRS, which reports aggregate employer-level data for all full-time employees of the ALE Member as described in forms and instructions (*final forms and instructions not yet available*).
- c. There must be only one Form 1095-C Employee Statement sent to each full-time employee of the ALE Member, so that all required information for the employee of the ALE Member is on that form.
- d. The ALE Member remains responsible for penalties for failure to comply with reporting requirements.