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Information Reporting Requirements Under The Affordable Care Act

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The Affordable Care Act imposes two new tax information reporting requirements on large self-insured employers (i.e., employers with a combination of 50 or more full-time employees and full-time equivalents). As of this date, the Internal Revenue Service (IRS) has not yet issued proposed regulations explaining the details of the requirements. To help employers anticipate the systems changes they will need to put in place while they wait for further guidance, this piece provides a list of the data elements required by the statute for each type of report, along with some commentary about what it would be reasonable to expect the IRS to do given its systems and approach to data matching. However, until the IRS issues proposed regulations and drafts of the forms to be used for reporting, employers cannot be certain what data elements will be required or what the details of the approach to reporting will be.

Reporting on Coverage Provided Through the Self-Insured Plan (or Plans)

New Section 6055 of the Internal Revenue Code requires annual reporting on each individual to whom "minimum essential coverage" has been provided during the year. It goes into effect on January 1, 2014. The requirement applies not only to sponsors of self-insured plans but also to private issuers that provide minimum essential coverage and to government entities that administer programs that provide minimum essential coverage. The focus for this summary is on the application of the requirements to sponsors of self-insured plans. The first year for which reporting is due is 2014, and the first reports must be submitted in early 2015. The IRS has not yet specified the due date for the returns, but copies of them must be provided to the covered individual by January 31, 2015.

Which coverage is subject to the reporting requirement? Reporting is required for "minimum essential coverage." The coverage provided to current employees through a self-insured major medical plan is minimum essential coverage. Vision, dental, and other

similar coverage that constitutes “excepted benefits” is not minimum essential coverage. Current guidance implies that minimum essential coverage includes true coverage provided through a retiree-only plan and also retiree-only health reimbursement arrangements (HRAs) (though it would seem the more sensible answer from a policy perspective would be that retiree-only HRAs are not minimum essential coverage). Current guidance is unclear with respect to whether reporting would be required for integrated HRAs offered to current employees who are also offered coverage (though it would seem the sensible answer from a policy perspective would be that reporting would not be required for integrated HRAs because they, by themselves, should not be minimum essential coverage). COBRA coverage is minimum essential coverage.

What data does the statute require to be reported? Section 6055(b) describes the contents of the return:

- The name, address, and taxpayer identification number (TIN) of the primary insured and the name and TIN of each other individual obtaining coverage under the policy.
    - For citizens and virtually all legal residents, a TIN is the Social Security Number. The statutory language implies that there will be one return for each family unit (rather than a separate return for each individual who is covered).
- The dates during which such individual was covered under minimal essential coverage during the calendar year.
    - The requirement to have minimum essential coverage applies month by month, and the penalty for lacking coverage can apply month by month. The Service will ultimately need to know whether an individual was covered for each month. If there are multiple family members on a return, the Service would need to know about coverage for each separately, month by month, unless they provide a simplified option where all family members have identical information for all 12 months. Proposed regulations on the individual mandate have established that if an individual is covered for even one day during a month, that individual is treated as covered for the month. What will not be clear until there are regulations or a form on this reporting requirement is whether there will be a simplified way of reporting if the information is the same for all 12 months or whether there must be separate entries for each month, even if they are all identical.
- The statute also requires certain data elements where the coverage consists of health insurance (rather than a self-insured plan). These data elements would be relevant where an insurer is reporting on the individuals it covers, rather than the employer reporting on a self-insured plan.
- Finally, the statute requires reporting of “such other information as the Secretary may require.”

- In general, the IRS only wants data that is useful to tax administration. Presumably, it will want the party that provides the coverage and is responsible for the reporting to be identified by name and employer identification number (EIN). There may be some question about which name and EIN to use where there are employees of multiple members of a controlled group covered through the same plan. There may be additional data elements that the IRS would want to help it administer the full constellation of 2014 Affordable Care Act tax provisions (i.e., the premium credit, the individual coverage requirement, and the employer mandate penalty).

The statute requires the employer sponsoring the self-insured plan to provide a copy of the return to the individuals whose information is reported on it. As the statutory expectation seems to be one return per household, it is reasonable to expect that there would be one copy sent to that household. For employee relations purposes, note that where a divorced parent is covering a child under the employer's plan, and the ex-spouse who is not the employer's employee claims the child as a dependent for tax purposes, the ex-spouse is going to want a copy of the return showing that the child has coverage. The tax law does not oblige the employer to provide a copy to the ex-spouse. Presumably, the two former spouses will have to work it out between them.

Reporting on Full-Time Employees

This requirement also goes into effect on January 1, 2014. Thus, the first year for which reporting is due is 2014, and the first reports must be submitted in early 2015. The IRS has not yet specified the due date for the return, but copies of the returns must be provided to the full-time employees by January 31, 2015.

Which entity is subject to the reporting requirement? New Section 6056(a) requires annual reporting from every "applicable large employer" (employers with 50+ full-time employees or equivalents) to the IRS. The statute defines the aggregated controlled group as a single applicable large employer. However, the IRS identifies corporate entities separately by EIN and does not have identifiers for controlled groups. This reporting is required in order to help the IRS determine which employers owe the pay-or-play penalty, and if so, how much they owe. The proposed regulations on the pay-or-play penalty analyze each member of the controlled group separately for purposes of whether it owes a penalty, and if so, how much it owes. The IRS has said that the information reporting will track the approach to the penalty, with each separate entity in the controlled group required to report separately on its employees. The IRS has not said how to report where an employee works enough total hours for a controlled group to be a full-time employee but divides time between different members of the controlled group.

What is the scope of each information return? Reporting is required for each full-time employee. Because the statute requires the employer to provide a copy of the

information return to each full-time employee whose information is reported, and as each employee should get his own information and not that of any other employee, it also seems reasonable to expect that there will be a separate return for each full-time employee rather than a single master return with all the full-time employees listed. The set of information returns could then be submitted with a transmittal reflecting the total bundle, much like the Form W-3 that goes with the bundle of Forms W-2 when submitted.

Who is a full-time employee? The standard for who is a full-time employee is the same as for the pay-or-play penalty: a common-law employee working an average of 30 hours per week or 130 hours per month. As the standard measures for weeks or months, and as the employer penalty applies on a monthly basis, it is reasonable to expect the IRS to require the employer to report for any employee who was full-time for any month in the year.

Section 6056(b) describes the contents of the return.

- The name, date, and EIN of the employer.
- A certification of whether the employer offers the full-time employee (and his or her dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan.
- And if it does so,
    - The length of any waiting period with respect to such coverage.
    - The months during the calendar year for which coverage was available.
    - The monthly premium for the lowest cost option in each of the enrollment categories under the plan.
    - Given that the test for affordability applies only to the employee contribution for the self-only premium, there should be no need to require reporting of premiums in any other “enrollment category” whatever that might be. If different categories of employees (e.g., hourly vs. salaried) are in different “enrollment categories” meaning they have different required contributions, that would be reflected in the data on the individual’s return. That individual would not need data on categories to which he or she does not belong.
    - The employer share of the total allowed costs of benefits provided under the plan.
    - Whether the plan offered by the employer met the minimum value standard. The IRS will use this item and other information reported on these returns to police whether any of employees claim a tax credit to which they are not entitled.

- The number of full-time employees for each month during the calendar year.

- As this is data that applies at the employer level and is not relevant for each individual employee, it might go on a transmittal for the bundle and not on each individual employee's return.

- The name, address, and TIN of each full-time employee during the calendar year and the months during which such employee (and dependents) were covered under the eligible employer-sponsored plan.

    - It is not clear why the employer would need to report on dependents. If the dependents are actually covered, that would be reflected in the reporting under Section 6055.

- Such other information as the Secretary may require.

Employers will note that the statute mixes together data at the aggregate employer level and data specific to the employee. If, as seems most likely, there is a separate return for each employee, then one would expect month by month reporting of each data element for the employee. For each month, was the employee (a) covered by the employer's plan; (b) offered coverage but declined or terminated; (c) in a waiting period for coverage to start; (d) full-time but not offered coverage; or (e) not full-time for that month (whether determined by actual hours or lookback/stability)? If coverage was offered, what was the employee contribution for the lowest cost self-only option? If coverage was offered, did it provide minimum value? There may be a transmittal for the full set of employee returns (similar to the transmittal that goes with a full set of W-2s or 1099s) that provides some of the aggregate information.

Again, nothing is fixed in place until the IRS proposes regulations and publishes a draft form. With the clock running, and the need to adjust systems to produce the reports, the information set forth above, drawn from the statute, is what is available for the time being.

The statute says that the IRS may combine the reporting required for applicable large employers with W-2 reporting or the reporting on coverage. It is hard to see how reporting could be combined in that fashion. The W-2 aggregates data on an annual basis and does not provide any reporting that differentiates by month. The reporting on who is covered will apply to an overlapping but not identical population as the reporting on who was offered coverage. Moreover, the amount of data needed for each report may make it hard to combine the reports.

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