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The ACA aims to expand health coverage through a series of provisions that generally go into effect on January 1, 2014:

- **Individual mandate**: Mandates all Americans, with some exceptions, to maintain a minimum level of health coverage or face a tax.

- **Insurance Exchanges**: Creates health insurance Exchanges and provides premium tax credits to assist eligible individuals with the purchase of coverage.

- **Medicaid expansion**: Allows states to expand Medicaid up to 138% of federal poverty level.

- **Employer mandate**: Mandates employers with 50 or more full-time equivalents to offer coverage to full-time employees and their dependents or pay taxes if an employee obtains Exchange coverage and a premium tax credit.
October 1 opening of insurance Exchanges

► Initial open enrollment runs through March 31, 2014
► Coverage will be effective January 1 if enrolled by December 15
► Exchange communication with employers will vary:
  ► Verification of employee eligibility for premium tax credits
  ► Content of notices to employers
  ► Appeals processes
  ► Time to respond
Decisions on operation of Exchanges

*HHS will operate a federally-facilitated individual Exchange in Utah, and the state will operate a SHOP Exchange.

**Idaho and New Mexico have received conditional approval to run state-based Exchanges, but will work with the federal government to run aspects of the Exchanges that time constraints left them unprepared to administer.

***HHS has approved Kansas, Maine, Montana, Nebraska, Ohio, South Dakota and Virginia to conduct plan management activities to support certification of qualified health plans in federally-facilitated Exchanges.
Medicaid expansion in 2014

State decisions on Medicaid expansion not finalized
State currently not pursuing Medicaid expansion in 2014
State will expand Medicaid in 2014

Source: Kaiser Family Foundation
The Administration on July 2, 2013, announced transition relief that delays for one year the penalties under the employer mandate and information reporting requirements. The IRS on July 9 issued Notice 2013-45 providing official notice of the transition period.

In Notice 2013-45, the IRS recognized that transition relief on reporting requirements will make it impractical to determine which employers owe penalties under IRC § 4980H for 2014. As a result, tax penalties under the employer mandate were delayed.
Transition period for employer tax penalties

► As part of the transition period, large employers will not face tax penalties under the ACA’s employer mandate for 2014.
► Employer tax penalties will apply beginning January 2015.
► The Administration encouraged employers to “maintain or expand health coverage” in 2014.
► Treasury plans to address in future guidance on §4980H how the delay in enforcement affects transition rules that were previously provided in proposed regulations under §4980H, e.g. transition relief for non-calendar year plans.
One-year transition period for employer information reporting requirements

Compliance with employer information reporting requirements under §§6055 and 6056 will be mandatory for 2015, rather than for 2014.

§6055: Reporting of covered lives by insurers and self-insured employers in 2015 will be due to IRS by January 31, 2016.

§6056: Reporting of coverage offered by large employers in 2015 will be due to IRS by January 31, 2016.

The Administration on September 5 issued a notice of proposed rulemaking on the information reporting requirements. Despite concerns from employers and insurers about duplicative reporting requirements under §§6055 and 6056, the proposed regulations generally do not permit combined reporting.

Of particular importance to large employers, the proposed regulations contemplate options for alternative simplified methods of reporting that would reduce the amount of information to be reported in certain circumstances and attempt to avoid duplication. The reporting alternatives may be helpful for some employers but offer little or no relief for others.
Key employer provisions remain in effect

In Notice 2013-45, the IRS stated that the transition relief for the reporting requirements and penalties under IRC 4980H “has no effect on the effective date or application” of other ACA provisions, such as:

- Individual mandate
- Availability of premium assistance tax credits in an Exchange to eligible individuals without access to employer-sponsored coverage that meets the law’s affordability and minimum value standards
- Medicaid expansion
- Insurance market rules such as the prohibition on lifetime and annual limits on essential health benefits, and the coverage of preventive care at no cost
- Prohibition on waiting periods exceeding 90 days
- Fair Labor Standards Act notice to employees
- Exchange notices to employers
- Transitional reinsurance fee & PCORI fee
Key effective dates for employers through 2016

- One-year transition period for employer penalties and information reporting requirements
- Individual mandate and premium tax credits
- Medicaid expansion
- Other insurance market reforms
- Temporary reinsurance fee begins

Regulations on employer information reporting requirements expected late summer 2013
- Open enrollment in Exchanges begins (10/1/2013)
- Employer coverage notices under Fair Labor Standards Act to employees by October 1
- Increase Medicare payroll tax by 0.9% on earned income
- Impose 3.8% tax on unearned income
- PCORI fee

Employer information reporting to IRS on employee coverage in 2015 due 1/31/2016
- Temporary reinsurance fee ends

Employers generally must be in compliance with coverage requirements (1/1/2015)
- Employers must begin collecting data for information reporting requirements to IRS

Coverage expansions take effect

2013 2014 2015 2016
KEY DEFINITIONS FOR EMPLOYERS
Basic employer coverage rules

► Large employers may be subject to an excise tax if at least one full-time employee whose household income is between 100% and 400% of the federal poverty level receives a premium tax credit for Exchange coverage and an employer either:

- Fails to offer coverage to full-time employees and their dependents
- Offers coverage to full-time employees that does not meet the law’s affordability or minimum value standards
Who is a large employer under the ACA?

- Any employer with 50+ full-time equivalents is considered a large employer.

- IRC §4980H applies to all common law employers, including governmental entities, churches, tax-exempt organizations with at least 50 full-time equivalent employees.

- Foreign companies with at least 50 full-time equivalent employees performing work in the US with US-source compensation also are subject to the law.
Determining large employer status for smaller employers

For each calendar month of the preceding calendar year, employers must:

1. Count the number of full-time employees (including seasonal employees) who work on average 30 hours per week per month.

2. Calculate the number of full-time equivalent employees by aggregating the number of hours worked by non-full-time employees (including seasonal employees) and dividing by 120.

3. Add the number of full-time employees and full-time equivalents calculated in steps (1) and (2) for each of the 12 months in the preceding calendar year.

4. Add the monthly totals and divide by 12. If the average exceeds 50 full-time equivalents, determine whether the seasonal employee exception applies.
Seasonal employee exception

► IRC §4980H does not apply to employers whose workforce exceeds 50 full-time employees for no more than 120 days or four calendar months during a calendar year if the employees in excess of 50 who were employed during that period were seasonal employees. The 120 days or four calendar months are not required to be consecutive.

► For purposes of determining large employer status until further guidance is issued, employers may apply a reasonable, good-faith interpretation of the statutory definition of seasonal worker, including a reasonable, good-faith interpretation of the standard set forth under the DOL regulations at 29 CFR 500.20(s)(1).
Determining large employer status based on controlled group rules

► **Definition:** The determination of large employer status is made based on the Internal Revenue Code’s controlled group rules under IRC §§414(b), (c), (m) or (o).

► Example: A large employer composed of a parent corporation and 10 wholly owned subsidiary corporations that, on a controlled group basis, have 50 or more full-time equivalent employees and, therefore, each corporation, regardless of the number of its employees, is treated as a large employer.

► **Penalty:** For purposes of assessing liability, the IRC §4980H tax penalties are applied separately to each member of the controlled group. Each member of the controlled group is liable for its own tax penalties under IRC §4980H and is not liable for the IRC §4980H tax penalties of any member of the controlled group that makes up the large employer. In calculating penalties, only one 30-employee reduction is allowed per controlled group and must be distributed proportionally across the control group.
Who is a full-time employee under the ACA?

- **Full-time employee**: Defined as an employee who works on average 30 hours per week, per month or 130 hours of service per calendar month.

- **Hour of service**: Each hour for which an employee is paid or entitled to payment for the performance of duties, vacation, leave, holiday, illness, incapacity, layoff, jury duty, military duty or other leave of absence.

- **Calculation for hourly and non-hourly employees**:
  - Hourly employees: Count actual hours served
  - Non-hourly employees: Select one of three methodologies that does not understate hours:
    - Count actual hours
    - Days worked equivalence: Count 8 hours for each day credited with at least one hour of service
    - Weeks worked equivalence: Count 40 hours of service for each week credited with at least one hour of service

- **General rule**: Employees who are classified or determined to be full time are eligible for the employer’s health plan after the applicable wait period not to exceed 90 days.

- **Safe harbors**: Available for part-time, seasonal, and variable hour employees to determine when they are treated as full-time employees.
Definition of full-time employee: safe harbors

The Department of Treasury provides a “measurement/stability period” safe harbor to allow for a measuring period for employees where it cannot be determined if the employee is reasonably expected to work on average at least 30 hours per week. Employers can select a measurement period of three to 12 months.

- If the employee is determined to be full time during the measurement period, then the employee is treated as full time during a subsequent stability period in which coverage must be offered. A measurement period must be at least six months long.
- Specific safe harbor methods are provided for ongoing employees, and newly hired variable hour and seasonal employees.
- Employers can use an optional administrative period not to exceed 90 days between the standard measurement period and the associated stability period to determine which employees are eligible for coverage, and notify and enroll them. For newly hired variable hour or seasonal employees, the combined length of the initial measurement period and administrative period is effectively limited to no more than 13 months.

Proposed Treasury regulations reserve the definition of “seasonal employee” and confirm that through 2014 large employers are permitted to use a reasonable, good-faith interpretation of the term for purposes of determining full-time status.

Proposed regulations also provide special rules for change in employee status, multiemployer plans, education organizations, and temporary staffing.
Employers with fewer than 50 full-time equivalent employees will not face tax penalties if they do not offer coverage to full-time employees.

Provisions of the ACA affecting small employers include:

- **SHOP Exchange**: Businesses with fewer than 50 or fewer than 100 employees (depending on state) can select and pay for coverage through special insurance market place. SHOP Exchange will manage administrative elements for employers.

- **Small Employer Tax Credit**: Credit is available to small employers with up to 25 full-time equivalents with average wages of no more than $50,000 if employer covers at least 50% of cost of health insurance coverage. The sliding scale credit will cover up to 35% of employer cost in 2013 and up to 50% of employer cost in 2014.

- **New Rating Rules**: Health insurers may no longer price coverage based on health of employee population. May vary based on age and smoking status.

- **Essential Health Benefits**: Plans offered in the small group and individual markets are required to cover the 10 categories of essential health benefits.
Part-time employees

- Large employers are not required to offer coverage to part-time employees (those who work less than 30 hours per week per month).
- For large employers who offer coverage to part-time employees:
  - The application of the limitation of 90-day waiting period prior to coverage applies.
  - Proposed rules jointly issued by IRS, HHS and the Department of Labor state that other conditions for eligibility under the plan are permissible as long as the conditions do not avoid compliance with the 90-day waiting period. Example: A cumulative hours of service requirement of no more than 1,200 hours for part-time employees may be utilized before the 90-day waiting period applies.
  - Certain insurance market reforms apply, such as preventive care without cost sharing, and no annual and lifetime limits on Essential Health Benefits.
TAX PENALTIES AND OTHER FEES
Employer tax penalties linked to employees receiving tax credits

► Employers will face taxes under IRC §4980H if they do not offer minimum essential coverage or if the coverage they offer is unaffordable or not of minimum value to employees with household income between 100% and 400% of the federal poverty level and they receive a tax credit for Exchange coverage.

► If an employee is enrolled in an eligible employer-sponsored plan, regardless of the cost or value of the plan, such employee will be ineligible for a premium tax credit.

► Medicaid-eligible employees will not be eligible for tax credits and therefore, employers will not face tax penalties for those employees. States can expand Medicaid eligibility effectively to 138% of federal poverty level.

► The Administration has provided a transition period for employer tax penalties for 2014. Employer penalties will not apply until 2015.
Calculation of non-deductible excise taxes under IRC §4980H

**Tax for no coverage - IRC §4980H(a)**

- If a large employer does not offer minimum essential coverage to full-time employees and their dependents, an employer may face a tax of:
  - $2,000 x the total number of full-time employees (FTE) if at least one FTE is receiving a premium assistance tax credit

Large employers who do not offer coverage may subtract the first 30 workers when calculating their liability for taxes under IRC §4980H(a).
The proposed regulations state that in general, a large employer that is a single entity or a large employer member will not be subject to the penalty under IRC §4980H(a) so long as the employer offers minimum essential coverage under an eligible employer-sponsored plan to its full-time employees and their dependents.

Such minimum essential coverage must comply with the insurance market reforms but does not have to meet the law's affordability and minimum value standards to avoid penalties under IRC §4980H(a).

The proposed regulations also state that a large employer that is a single entity or large employer member cannot be liable for tax penalties under both IRC §§4980H(a) and (b) for the same month.
What Employer Plans Qualify as Minimum Essential Coverage under IRC §4980H(a)

MEC includes:

- Insurance policies sold in the small or large group market
- Employer-sponsored group health plans (a group health plan is a welfare arrangement under ERISA that provides medical care to employees or dependents through insurance, reimbursement or otherwise)

MEC does not include:

- Stand-alone HRAs that are not integrated with a group health plan
- HIPAA-excepted benefits such as: stand-alone vision or dental, employee assistance plans (EAPs), cancer-only policies, indemnity plans (hospital or disease), accident or disability plans, on-site medical clinics and other types of coverage listed in PHSA §2791(c)

Other considerations:

- Policies sold in the small or large group market and employer-sponsored group health plans must comply with market reforms under the ACA and certain other HIPAA/ERISA/COBRA benefit rules (including but not limited to): dependent child coverage to age 26, prohibition on preexisting condition exclusions, preventive services with no cost sharing, prohibition on annual/lifetime dollar limits on any EHBs offered, waiting period limitations, cost-sharing limits, group health plan reporting and disclosure, clinical trials coverage, mental health parity, etc., as well as state insurance market reforms and mandates
- Employees enrolled in MEC offered by an employer meet the individual mandate requirement
Tax for no coverage under IRC §4980H(a)

- **Dependents:** Defined as an employee’s child under age 26 (see IRC §152(f)(1)). Employers will not face tax penalties for not offering coverage to spouses.

- **De minimis rule:** A large employer that is a single entity or a large employer member will be treated as offering coverage to full-time employees if they offer coverage to all but the greater of 5 or 5% of their full-time employees (and their dependents).

- **Offer of coverage:** Proposed regulations do not propose any new specific rules for demonstrating that an offer of coverage was made. The normal rules for substantiation and recordkeeping requirements apply.

- **Nonpayment of premiums:** A large employer will not be treated as failing to offer coverage if the coverage is terminated solely due to the employee’s failure to pay the employee’s share of premium on a timely basis.
Penalty assessment for controlled groups:

- For purposes of assessing liability, the IRC §4980H tax penalties are applied separately to each member of the controlled group.

- Each member of the controlled group is liable for its own tax penalties under IRC §4980H and is not liable for the IRC §4980H tax penalties of any member of the controlled group that makes up the large employer.

- For purposes of calculating penalties under IRC §4980H, only one 30-employee reduction is allowed per controlled group. The reduction is allocated among the members that make up the controlled group on the basis of the number of employees employed by each.
Calculation of non-deductible excise taxes under IRC §4980H

**Tax for unaffordable coverage - IRC §4980H(b)**

If a large employer offers minimum essential coverage to full-time employees and their dependents but the coverage is unaffordable to certain employees or does not provide minimum value, an employer may face a tax of:

The lesser of $3,000 x the number of FTEs receiving a premium assistance tax credit or $2,000 x the total number of FTEs

Taxes under §4980H(b) are capped not to exceed an employer’s potential tax under §4980H(a).
Tax for coverage that is unaffordable, does not provide minimum value under IRC §4980H(b)

► **Affordability general rule.** Employee’s share of the self-only premium for the employer’s lowest-cost plan that provides minimum value cannot exceed 9.5% of household income or the employee may be eligible for a premium tax credit to purchase Exchange coverage.

► **Safe harbors.** Employers can demonstrate they offer coverage meeting the affordability standard by showing the employee premium share for self-only coverage under their lowest-cost plan that meets the minimum value standard utilizing the following safe harbors:

  ► **Form W-2 safe harbor.** Employee premium share does not exceed 9.5% of the amount required to be reported in Box 1 of Form W-2. The proposed regulations provide guidance for using the W-2 safe harbor for an employee who was not a full-time employee for the entire calendar year. Application of this safe harbor is determined after the end of the calendar year and on an employee-by-employee basis, taking into account the employee’s Form W-2 wages from the employer and the employee contribution.

  ► **Rate of pay safe harbor.** Employee premium share does not exceed 9.5% of the product of multiplying the hourly rate of pay (either each employee’s individual rate of pay or the lowest rate of pay paid by a large employer that is a single entity or a large employer member) by 130 hours per month (the benchmark for full-time status for a month under IRC §4980H).

  ► **Federal poverty line safe harbor.** Employee premium share does not exceed 9.5% of the Federal poverty line for one person. The calculation could be done using the most recently published federal poverty guidelines as of the first day of the plan year for the plan offered by a large employer that is a single entity or a large employer member.
## Estimates for Affordability Safe Harbors

### Estimates for individual eligibility for Medicaid or tax credits and affordability safe harbor

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Percent of FPL</th>
<th>Annual income</th>
<th>Hourly wage</th>
<th>Estimated employee monthly premium share for self-only coverage for affordability test safe harbor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In states that expand Medicaid under the ACA:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum wage worker eligible for Medicaid</td>
<td>98%</td>
<td>$11,310</td>
<td>$7.25</td>
<td>Medicaid-eligible employees not eligible for tax credits; employers will not face excise taxes for these employees</td>
</tr>
<tr>
<td>Effective upper limit for Medicaid eligibility</td>
<td>138%</td>
<td>$15,856</td>
<td>$10.16</td>
<td>$125</td>
</tr>
<tr>
<td>Upper limit for eligibility for tax credits</td>
<td>400%</td>
<td>$45,960</td>
<td>$29.46</td>
<td>$364</td>
</tr>
<tr>
<td><strong>In states that do not expand Medicaid under the ACA:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum wage worker may not be eligible for Medicaid or Exchange credits</td>
<td>98%</td>
<td>$11,310</td>
<td>$7.25</td>
<td>Exchange credits not available for individuals with household income below 100% of FPL; employers may not face excise taxes for these employees, but wage analysis insufficient to determine household income</td>
</tr>
<tr>
<td>Federal poverty line safe harbor</td>
<td>100%</td>
<td>$11,490</td>
<td>$7.37</td>
<td>$91</td>
</tr>
<tr>
<td>Upper limit for eligibility for tax credits</td>
<td>400%</td>
<td>$45,960</td>
<td>$29.46</td>
<td>$364</td>
</tr>
</tbody>
</table>

1. This is based on the 2013 HHS Federal Poverty Guidelines for the 48 contiguous states and the District of Columbia for a single person ($11,490). All numbers are estimates and have been rounded to the nearest dollar.
2. Federal minimum wage ($7.25 per hour). Note: As of January 1, 2013, minimum wage rates are higher than the federal minimum wage in the District of Columbia and 19 states (Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Massachusetts, Maine, Michigan, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Vermont and Washington).
3. ACA §2001 sets Medicaid eligibility at 133% of FPL. However, ACA §2002 requires states to apply an “income disregard” of 5% of the FPL in meeting the income test, resulting in an effective income threshold of 138% of FPL for Medicaid eligibility.
4. Exchanges credits are available only for individuals with household income between 100% and 400% of the federal poverty level.
5. This is based on the ACA threshold for classification as a full-time employee (average 30 hours per week) multiplied by 52 weeks.
6. This is 9.5% of current wages divided by 12 months.
Tax for coverage that is unaffordable, does not provide minimum value under IRC §4980H(b)

**Minimum value**: A plan fails to provide minimum value (MV) if “the plan’s share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs.”

- Generally understood to be a 60% actuarial value test (percentage of medical expenses -- deductibles, co-insurance, co-payments, etc. -- paid for by the plan for a standard population and set of allowed charges)
Tax for coverage that is unaffordable, does not provide minimum value under IRC §4980H(b)

- Employers may measure minimum value using one of the four following methods:
  - **Minimum value calculator**: The MV calculator allows an employer to input in-network cost-sharing features of their health plan for different categories of benefits into an online calculator on the HHS website. Employers must use the MV calculator unless one of the following safe harbors applies.
  - **Treasury safe harbor**: Treasury lists several design safe harbors that qualify as MV based on the calculator, such as a plan with a $3,500 integrated medical and drug deductible, 80% plan cost sharing, and a $6,000 maximum out-of-pocket limit for employee cost-sharing.
  - **Actuarial certification**: Only plans with non-standard features that cannot determine MV using the calculator or a safe harbor may obtain an actuarial certification from a member of the American Academy of Actuaries.
  - **Small group market**: Any plan in the small group market that provides the bronze, silver, gold or platinum level of coverage will be considered to satisfy the MV requirement.
Treatment of employer contributions to HSAs, HRAs for minimum value and affordability

► Minimum value
  ► Certain health reimbursement arrangement (HRA) or health-savings account (HSA) dollars may be counted toward plan’s share of costs for minimum value purposes in specified circumstances
  ► **HSA dollars may be counted if:**
    ► Employer contributions made in the current plan year
  ► **HRA dollars may be counted if:**
    ► Newly made available for current plan year;
    ► HRA is integrated with an eligible employer-sponsored plan; and
    ► May only be used for cost-sharing and may not be used to pay insurance premiums.

► Affordability
  ► HRA dollars may be deducted from employee’s share of premium for affordability purposes if HRA amounts either:
    ► May be used only for premiums or
    ► May be used for either premiums or cost-sharing
Treatment of employer contributions to wellness programs under IRC §4980H(b)

- Only nondiscriminatory tobacco cessation initiatives may be taken into account in determining affordability and minimum value.
Additional taxes and fees under the ACA

► **PCORI:** Plan years ending after September 30, 2012, per capita fee that funds the Patient-Centered Research Outcome Institute (PCORI)
  ► $1 per covered life during fiscal year 2013 and $2 thereafter through 2019 applies to both insured and employer self-insured plans

► **Transitional reinsurance:** HHS estimates a per capita contribution rate of $5.25 per month in benefit year 2014 ($63 per capita for all of 2014). The program will be in place in 2014, 2015 and 2016, and collect $25 billion over that time frame. The amount will decrease each year when HHS recalculates the contribution rate.

► **High-cost plans:** Beginning in 2018, 40% excise tax on the value of health plan coverage that exceeds certain dollar thresholds under IRC § 4980I
COMMUNICATION WITH EMPLOYEES, EXCHANGES AND IRS
Employer communications with employees, Exchanges and the IRS for 2014

**Step 1**
- Employer under FLSA provides employees with information about coverage and availability of Exchanges by 10/1/2013

**Step 2**
- Employee provides Exchange with information to determine eligibility for the premium tax credit
- Individual application includes optional employer coverage form

**Step 3**
- Exchange makes preliminary eligibility determination regarding the premium tax credit
- Exchanges may contact some employers in 2014 as part of sample review verification process

**Step 4**
- Exchange notifies employer that employee may receive a premium tax credit
- Employer may appeal Exchange’s determination of employee’s eligibility within 90 days

**Step 5**
- Employer has option of filing information with IRS and employee for 2014 (mandatory for 2015)
- Employee files personal return

**Step 6**
- Employee’s receipt of premium tax credit subject to reconciliation
- Delayed one-year under transition period:
  - Assessment of employer tax penalties, employer appeals process to IRS
Employer communications with employees, Exchanges and the IRS

- **Fair Labor Standards Act.** The Department of Labor has issued guidance for a new requirement that employers provide a notice to employees of coverage options available through Exchanges. DOL also released model notices for employers who offer coverage (including details about coverage offered and contact information for who should be contacted about health coverage at this job) and a model notice for employers who do not offer coverage (including employer contact information).

- Employers must provide the notices to current employees by October 1 and to new employees upon hire beginning October 1.

- **Employer coverage form.** HHS has issued final applications to be submitted to Exchanges by families, single adults whose employers do not offer health coverage and who are seeking premium assistance tax credits or coverage through Medicaid/CHIP, and individuals applying for Exchange coverage without financial assistance.

- Notably, the application for families includes an appendix focused on “Health Coverage from Jobs” to help Exchanges determine whether the employee has access to employer coverage, determine eligibility for tax credits, and notify an employer if a full-time employee is determined to be eligible for a tax credit.
Individual eligibility for tax credits in 2014

► In guidance issued on August 5, CMS stated that Exchanges will use data from tax filings and Social Security to verify household income information provided on Exchange applications.

► If data included in the application cannot be verified using tax and Social Security data, the information is compared with wage information from employers provided by Equifax.

► Exchanges will request additional information from individuals if the information they provided on applications cannot be verified by tax, Social Security or Equifax data.
## Information reporting requirements for employers and insurers

### Select information reporting requirements under the ACA

<table>
<thead>
<tr>
<th></th>
<th>§6051(a)(14)</th>
<th>§6055</th>
<th>§6056</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information to be reported</td>
<td>Aggregate cost of employer-sponsored coverage</td>
<td>Information on enrollment in minimum essential coverage</td>
<td>Information on offer of employer-sponsored coverage</td>
</tr>
<tr>
<td>Entity required to report</td>
<td>All employers issuing 250 or more Forms W-2 in the prior year</td>
<td>Self-insured employers, health insurers</td>
<td>• Large employers (50 or more full-time equivalent employees)</td>
</tr>
<tr>
<td>Who receives the report/statement</td>
<td>IRS, employees</td>
<td>IRS, enrolled individuals</td>
<td>IRS, all full-time employees, other employees offered employer-sponsored coverage</td>
</tr>
<tr>
<td>Due date to furnish statement to employees/covered individuals</td>
<td>January 31</td>
<td>January 31 (electronic returns to individuals permitted only with individual consent)</td>
<td>January 31 (electronic returns to individuals permitted only with individual consent)</td>
</tr>
<tr>
<td>Due date to file information return with the IRS</td>
<td>March 31 if filed electronically</td>
<td>March 31 if filed electronically (required for employers filing more than 250 returns annually)</td>
<td>March 31 if filed electronically (required for employers filing more than 250 returns annually)</td>
</tr>
</tbody>
</table>
Summary of proposed data elements under §6056 information reporting

► Large employers under §4980H (i.e., employers with at least 50 full-time equivalent employees) are subject to the information reporting requirements under §6056.

► The default, general method of reporting under §6056 continues to require employers to report detailed information about the employer-provided health care plans and the number of employees who are employed and offered coverage on a month-by-month basis to the IRS and their employees.

► In response to comments from employers, the proposed regulations propose options for alternative simplified methods of reporting that would reduce the amount of information to be reported in certain circumstances and attempt to avoid duplication. The simplified reporting alternatives may be helpful for some employers but offer little or no relief for others.
Information required to be reported under §6056

1. The name, address, and employer identification number (EIN) of the large employer, the name and telephone number of the large employer’s contact person, and the calendar year for which the information is reported.

2. A certification as to whether the large employer offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage, by calendar month.

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

4. For each full-time employee, the months during the calendar year for which coverage under the plan was available.

5. For each full-time employee, the employee’s share of the lowest-cost monthly premium for self-only coverage providing minimum value that the large employer offered to that full-time employee, by calendar month.

6. 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.
Additional information expected to be required to be reported under §6056

1. Whether the coverage offered to employees and their dependents under the employer-sponsored plan meets minimum value
2. Whether the employee had the opportunity to enroll his or her spouse in the coverage
3. The total number of employees, by calendar month
4. Whether an employee’s effective date of coverage was affected by a waiting period
5. If the large employer was not conducting business during any particular month, by month
6. If the large employer expects that it will not be large employer the following year
7. Whether the large employer is a member of a controlled group, and, if applicable, the name and EIN of each employer member of the controlled group constituting the applicable large employer on any day of the calendar year for which the information is reported
8. The name, address, and identification number of the appropriately designated person reporting on behalf of a large employer that is a governmental unit or any agency or instrumentality;
9. If an ALE member is a contributing employer to a multiemployer plan, whether a full-time employee is treated as eligible to participate in a multiemployer plan due to the employer’s contributions to the multiemployer plan;
10. If the administrator of a multiemployer plan is reporting on behalf of the large employer, the name, address, and identification number of the administrator of the multiemployer plan (in addition to the name, address, and EIN of the large employer already required under the proposed regulations).

Note: Some data elements may be required to be reported using indicator codes.
**Alternative §6056 reporting methods under consideration by Treasury**

- **Minimum value coverage offered to all or potentially all full-time employees.** Treasury and IRS are considering an option of permitting an employer to certify that all of its employees to whom an offer coverage was not made during the calendar year were not full-time employees (or were otherwise ineligible for coverage, for example because they were in the initial permitted waiting period following the date of hire).

  - This method would permit large employers to forgo identifying the full-time status of its employees prior to filing a §6056 return. Under this option employers would be permitted to make a §6056 filing with the IRS that would not be required to:
    - Identify the number of full-time employees, or
    - Specify whether a particular employee offered coverage is a full-time employee.

- **Large employers still would be required to provide employees offered minimum value coverage with a §6056 employee statement by the end of January following the reporting calendar year.** If one of the employer’s employees claimed a premium tax credit, the IRS could ask the large employer at a later date to confirm whether that employee was a full-time employee during that calendar year.
Alternative §6056 reporting methods under consideration by Treasury (cont’d)

► **Form W-2 reporting for certain groups of employees.** Treasury and the IRS are considering allowing large employers to report offers of minimum value coverage on an employee’s Form W-2 instead of reporting the offers on a §6056 employee statement filed with the IRS and furnished to the employee. This approach could only be used for an employee who was employed by the employer for the entire calendar year when the offer is made and for whom the employee contribution for the lowest-cost, self-only option remained the same for all twelve months of the year.

► **Self-insured employers offering employees, their spouses and dependents mandatory no-cost minimum value coverage.** In limited circumstances, large employers provide mandatory coverage that meets the ACA’s minimum value standard under a self-insured group health plan to an employee and an employee’s spouse and dependents with no employee contribution. For these large employers, the Administration is considering whether the large employer could file and furnish only:
  ► The §6055 return
  ► A code on the Form W-2
  ► Summary information provided in the §6056 transmittal form
Additional considerations under §6056 reporting

- **Reporting by members of a controlled group.** The proposed regulations provide that the §6056 IRS filing and employee statement requirements are applied separately to each employer in the large employer controlled group.

- **Filing Date.** Employers with non-calendar year plans had requested an alternative filing date because they may collect information on the basis of a plan year, rather than on a calendar year. The IRS retained the calendar year filing date to accommodate employees who must receive their §6056 statements to complete their income tax return and properly reflect any available premium tax credit.

- **Multiemployer plans.** The Administration anticipates providing a bifurcated approach to §6056 reporting for full-time employees eligible to participate in a multiemployer plans. Under this bifurcated approach, one §6056 return would pertain to the full-time employees eligible to participate in a multiemployer plan, and another §6056 return would pertain to the remaining full-time employees (i.e., those who are not eligible to participate in a multiemployer plan).
§6056 statements to individuals

► Every employer required to file a §6056 return with the IRS must also furnish a §6056 statement to each of its full-time employees.
► This statement would include the name, address, and EIN of the employer and the information required to be shown on the return with respect to the full-time employee.
► The §6056 statement to employees would be made on a form published by the IRS. Alternatively, the proposed regulations contemplate that employers would comply with this §6056 requirement by providing employees a substitute statement, provided the substitute statement includes all required information.
Reporting under §6055 is intended to facilitate administration of the individual mandate (§5000A).

Employers who sponsor self-insured group health plans, insurers, and other providers of minimum essential coverage are subject to the information reporting requirements under §6055.

The proposed rules state the insurers of qualified health plans on an Exchange are not required to submit §6055 returns, although insurers are still required to report on qualified health plans enrolled in through a SHOP Exchange.

Information to be reported under §6055:

- The name and tax payer identification number (TIN) of each individual enrolled in minimum essential coverage
- The name and address of the primary insured or other related person (e.g., a parent or spouse) who submits the application for coverage (referred to in the proposed regulations as the responsible individual)
- Months during which the individual is treated as having minimum essential coverage (in place of dates of coverage)
- The proposed regulations permit electronic delivery of the statement to individuals who consent to electronic delivery. In addition, the proposed regulations permit furnishing only one statement per address.
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Heather Meade, Senior manager
Sarah Egge, Senior manager
Daniel Esquibel, Senior manager
APPENDIX
Links to guidance

- Employer requirements:

- 2014 transition period for employer penalties, information reporting
  - [http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx](http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx)

- Information reporting under §6056 (offer of employer-sponsored coverage)

- Information reporting under §6055 (enrollment in minimum essential coverage)

- Minimum essential coverage

- Definition of full-time employee
Links to guidance (cont’d.)

► Affordability

► Minimum value

► 90-day waiting period limitation

► Exchange application - individuals
  ► Individual short form: [http://cciio.cms.gov/resources/other/Files/AttachmentB_042913.pdf](http://cciio.cms.gov/resources/other/Files/AttachmentB_042913.pdf)
  ► Family: [http://cciio.cms.gov/resources/other/Files/AttachmentC_042913.pdf](http://cciio.cms.gov/resources/other/Files/AttachmentC_042913.pdf)
  ► Individual without financial assistance: [http://cciio.cms.gov/resources/other/Files/AttachmentD_042913.pdf](http://cciio.cms.gov/resources/other/Files/AttachmentD_042913.pdf)

► Exchange eligibility, verification and appeals
Links to guidance (cont’d.)

- SHOP Exchange applications

- Fair Labor Standards Act employee communication

- W2 Guidance:

- Role of Agents, Brokers, and Web-brokers in Health Insurance Marketplaces

- Standards for navigators and non-navigator assistance personnel