

Supporting Statement

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This collection effort contains documents 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 employers to furnish related statements to their employees. These statements to employees may be used to determine whether, for each month of the calendar year, the employee 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.

IRC §6055 states beginning in January 2015, Health Insurance Marketplaces will be required to provide end of year information reporting in the form of information returns. IRC §6056 states all insurance providers issuing Minimal Essential Coverage and Applicable Large Employers will have the option to begin voluntarily transmitting information returns to meet ACA information reporting requirements in 2015; however, these requirements will become mandatory in January 2016, for the 2015 Tax Year. Section 6011(e)(2)(A) of the Internal Revenue Code provides that any person, including a corporation, partnership, individual, estate, or trust, who is required to file 250 or more information returns, must file such returns electronically.

2. USE OF DATA

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.

Form 4423 is for use when a company is a foreign filer that does not have an Employer Identification Number (EIN) and cannot use the electronic application process to apply for an Affordable Care Act Transmitter Control Code.

Applicable Large Employer Members (ALE Members) use Forms 1094-C and 1095-C to report the information required under sections 6055 and 6056 regarding offers of health coverage and enrollment in health coverage for

their full-time employees.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

These regulations apply for calendar years beginning after December 31, 2014. Plans to provide electronic filing will be considered and developed as the appropriate forms are completed.

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.

Each section 6056 return for a fulltime 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.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

It has been determined that these final regulations are 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.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

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(TD 9661).

In response to the Federal Notice dated March 10, 2014, we received one request for a copy of the form during the comment period regarding Form 4423.

In response to the Federal Register Notice dated September 2, 2014 (79 F. R. 52117), we received comments from eleven organizations that raised issues and concerns with the proposed Form 1094-C (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns) and Form 1095-C (Employer-Provided Health Insurance Offer and Coverage) and the related

instructions.

The IRS developed Forms 1094-C and 1095-C under the authority of Internal Revenue Code section 6056, added by P.L. 111-148, Patient Protection and Affordable Care Act (ACA), section 1514(a), as amended by section 10108(j). Section 6056 requires large employers, within the meaning of IRC section 4980H(c)(2), to file with the IRS returns reporting certain information about the health care coverage the employer offered with respect to each full-time employee, and to furnish to each full-time employee a related statement. Form 1094-C serves as a transmittal for Form 1095-C, Employer-Provided Health Insurance Offer and Coverage.

We have reviewed all the comments that were submitted. Many of the comments requested clarifications on certain items or line numbers or additional examples. Most of these requests will be adopted and will be addressed in the final release of the instructions for Forms 1094-C and 1095-C.

Several commenters requested that the forms and instructions be clarified so that filers are aware they can report Taxpayer Identification Numbers (TINs) in addition to Social Security Numbers. In general, IRS forms and instructions refer to SSNs rather than TINs. The early release of the Forms 1094-C and 1095-C followed this protocol. Notwithstanding, in response to the comments received, we have clarified the instructions to put filers on notice that they may report TINs rather than SSNs for individuals other than employees (employers are required to have SSNs for their employees).

Several commenters asked that the expected hours to complete these forms be included. These numbers will be included on the final instructions.

Several commenters requested that the instructions clarify which taxpayers are required to file Forms 1094-C and 1095-C. We have revised the instructions to clarify, with examples, which employers are required to file Forms 1094-C and 1095-C and for which individuals.

Most of the comments that were not adopted were targeted at the actual regulations that are being implemented by Forms 1094-C and 1095-C. For example, several commenters requested a delay of the reporting requirement for an additional year or to postpone deadlines for providing statements to employees. Another commenter requested that the regulations should not require aggregated groups to report the names and employer identification numbers of each employer member of the aggregated group, or that one member be permitted to file one report for the entire group. Another commenter requested that the number of data elements that employers must report be reduced, for example, to not require employers to report the total number of employees. One commenter requested transition relief for use of one of the

alternative reporting methods. Specifically, a request to lower the threshold for the 98% Offers Method to 80% for 2015 was made. We do not believe that the requirements of the regulations can be reduced or modified by the forms or instructions in the manner requested.

Similarly, other comments that were not adopted were outside the scope of Forms 1094-C and 1095-C. For example, one commenter requested that the IRS permit tax filers to access IRS Forms 1095-B and 1095-C where coverage household differs from the tax household. It is our understanding that the IRS does not have the legal authority to do so given that this would be a disclosure violation. Another commenter requested that the IRS develop a streamlined system for the increasing number of persons who file their federal income taxes electronically.

Several commenters requested that employers should not be required to report offers of coverage to employees for whom the employer contributed to a multiemployer plan, or that they not be required to report the lowest cost of the employee premium for self-only coverage. The commenters reasoned interim relief from the employer shared responsibility requirements was provided in the preamble of the final section 4980H regulations under which employers would be treated as offering coverage to employees for whom contributions are made to a multiemployer plan. However, the purpose of Part II of the 1095-C is not solely for determining whether the employer is subject to a payment under section 4980H. That part is important for determining whether the employee has an offer of employer-sponsored coverage that will make the employee ineligible for the premium tax credit. Neither the employee nor the IRS will know whether the employee is eligible for the premium tax credit unless eligibility is reported on Part II of the Form 1095-C.

One commentator asked that specifications of substitute forms and statements be issued as soon as possible. As noted in legal guidance of 2014, a return may be made on Form 1095-C or on a substitute form, but any substitute form must comply with existing revenue procedures or other published guidance. Because reporting in 2015 is voluntary, the IRS has not yet produced additional guidance on substitute forms for Form 1095-C but will endeavor to do so in future.

One commentator asked that we clarify that the forms can be completed by third parties. Our final regulations noted that reporting entities are permitted to use third parties to facilitate filing returns and furnishing statements to comply with reporting requirements. This information is also posted on our website. In addition, Publication 5165, Affordable Care Act (ACA) Information Returns (AIR) Guide for Software Developers and Transmitters, currently under development, will outline procedures for submission by a third party. Accordingly, including this information is not warranted.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Affordable Care Act (ACA)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under; IRS 24.030- Individual Master File, IRS 24.046-Customer Account Data Engine Business Master File, and IRS 34.037- Audit Trail and Security Records System. The PIA can be found at <http://www.irs.gov/pub/irs-pia/aca-pia.pdf>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden for the collection of information contained in these final regulations will be reflected in the burden on Form 4423, Form 1095-C or another form(s) that the IRS designates, which will request the information contained in 26 CFR 301.6056-1 and 301.6056-2 of these final regulations.

Form	Number of Responses	Time per Response	Total Hours
4423	6	20 min.	2
1094-C	15,000	4 hrs.	60,000
1095-C	3,850,000	12 min.	<u>750,000</u>
Total			<u>810,002</u>

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by the OMB, our Federal Register notice dated September 2, 2014, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide

information. However, we did not receive and response from taxpayers on this subject. As a result, estimates of cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

We are adding Forms 4423, 1094-C, and 1095-C to this collection.

We are making this submission to update the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. 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.