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Proposed Treasury Regulations  
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Proposed Rules  
[Final Regulations 03-10-2014, *T.D. 9660*] Proposed Rules (Final regulations 11-26-2013, *T.D. 9644*)

DEPARTMENT OF THE TREASURY  
Internal Revenue Service (IRS) DEPARTMENT OF THE TREASURY  
Internal Revenue Service (IRS)

**26 CFR Parts 1 and 301 26 CFR Part 1**

78 *FR* 54986; [REG-132455-11]; RIN 1545-BL31 77 *FR* 72612; [REG-130507-11]; RIN 1545-BK44

**Information Reporting of Minimum Essential Coverage Net Investment Income Tax**

Prop. Treas. Reg. Preamble 12-5-2012

*Prop. Treas. Reg. Preamble 9-9-2013 Prop. Treas. Reg. 1.469-0*

**DATE:** Monday, September 9, 2013 Wednesday, December 5, 2012

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations providing guidance to providers of minimum essential health coverage that are subject to the information reporting requirements of *section 6055 of the Internal Revenue Code* (Code), enacted by the Affordable Care Act. Health insurance issuers, certain employers, and others that provide minimum essential coverage to individuals must report to the IRS information about the type and period of coverage and furnish related statements to covered individuals. These proposed regulations affect health insurance issuers, employers, governments, and other persons that provide minimum essential coverage to individuals.

**EFFECTIVE DATE:** Written or electronic comments must be received by November 8, 2013. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 19, 2013, at 10 a.m., must be received by November 8, 2013.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-132455-11), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-132455-11), Courier's Desk, Internal Revenue

Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-132455-11).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Andrew Braden, (202) 622-4960; concerning the submission of comments and/or to be placed on the building access list to attend the public hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622-7180 (not toll-free calls).

**SUPPLEMENTARY INFORMATION:** The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (*44 U.S.C. 3507(d)*). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 8, 2013. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §§ 1.6055-1 and 1.6055-2. The collection of information will be used to determine whether an individual has minimum essential coverage under section 1501(b) of the Patient Protection and Affordable Care Act (*26 U.S.C. 5000A(f)*). The collection of information is required to comply with the provisions of section 6055 of the Code. The likely respondents are health insurers, self-insured employers or other sponsors of self-insured health plans, and governments that provide minimum essential coverage.

The burden for the collection of information contained in these proposed regulations will be reflected in the burden on Form 1095-B or another form that the IRS designates, which will request the information in the proposed regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

## **Background**

Beginning in 2014, under the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act), nonexempt individuals have the choice of maintaining minimum essential coverage (as defined in section 5000A(f)) or paying an individual shared responsibility payment with their income tax returns. Minimum essential coverage may be health insurance coverage offered in the individual market (such as a qualified health plan offered through an Affordable Insurance Exchange (Exchange, also known as a Marketplace)), an employer-sponsored plan, or a government-sponsored program. Section 5000A(f)(1)(A) specifies that Medicare Part A, Medicaid, the Children's Health Insurance Program established under title XXI of the Social Security Act (*42 U.S.C. 1397aa et seq.*) (CHIP), TRICARE, certain health care programs for veterans and other individuals under chapter 17 or 18 of Title 38 U.S.C., coverage for Peace Corps volunteers under *22 USC 2504(e)*, and coverage under the Nonappropriated Fund Health Benefits Program under section 349 of Public Law 103-337, are government-sponsored programs that qualify as minimum essential coverage.

Section 1401 of the Affordable Care Act enacted section 36B, allowing certain taxpayers a refundable premium tax credit that will make minimum essential coverage in qualified health plans offered in the individual market through an Exchange more affordable.

Section 1502 of the Affordable Care Act enacted section 6055 regarding information reporting by any person that provides minimum essential coverage to an individual. Section 6055(b)(1)(B) requires providers of minimum essential coverage to report (1) the name, address, and taxpayer identification number (TIN) of the primary insured, (2) the name, dates of coverage, and TIN of each individual covered under a policy, (3) whether health insurance coverage is a qualified health plan offered through an Exchange, (4) for a qualified health plan, the amount of any advance payments of the premium tax credit under section 1412 of the Affordable Care Act and cost-sharing reductions under section 1402 of the Affordable Care Act, and (5) other information the Secretary requires.

Section 6055(b)(2) requires, for coverage through an employer's group health plan, reporting (1) the name, address, and employer identification number (EIN) of the employer maintaining the plan, (2) the portion of the premium (if any) paid by the employer, and (3) any other information that the Secretary requires for administering the credit under section 45R (the tax credit for employee health insurance expenses of small employers).

Section 6055(c) directs a person filing an information return under section 6055 to provide a written statement to each individual listed on the return that shows the name, address, and contact phone number of the reporting entity and information reported to the IRS for that individual. The statement must be furnished to the individual by January 31 of the year following the coverage year.

The information reported under section 6055 will allow taxpayers to establish and the IRS to verify that the taxpayers were covered by minimum essential coverage and their months of enrollment during a calendar year.

Under section 6724(d), as amended by the Affordable Care Act, a reporting entity that fails to comply with the filing and statement furnishing requirements of section 6055 may be subject to penalties for failure to file a correct information return (section 6721) and failure to furnish correct payee statements (section 6722). However, these penalties may be waived if the failure was due to reasonable cause and not to willful neglect (section 6724(a)).

Section 1514 of the Affordable Care Act enacted section 6056, which requires applicable large employers (generally employers with 50 or more full-time employees) to report to the IRS information about the coverage that they offer to their full-time employees and requires them to furnish related statements to employees.

Notice 2012-32 (2012-20 IRB 910) requested public comments on issues to be addressed in regulations under section 6055. In addition, Notice 2012-33 (2012-20 IRB 912) requested public comments on issues to be addressed in regulations under section 6056. As described later in this preamble, the written comments in response to Notice 2012-32 and other written comments have been considered in connection with the development of these proposed regulations.

As discussed in Notice 2013-45 (2013-31 IRB 116), Treasury and the IRS have engaged in dialogue with stakeholders in an effort to simplify section 6055 (and section 6056) reporting consistent with effective implementation of the law. This process has included discussions with stakeholders representing a wide range of interests to assist in the consideration of effective information reporting rules that will be as streamlined, simple, and workable as possible. The effort to develop these proposed information reporting rules has reflected a considered balancing of the importance of (1) providing individuals the information to complete their tax returns accurately, including with respect to the individual responsibility provisions and eligibility for the premium tax credit, (2) minimizing cost and administrative tasks for the reporting entities and individuals, and (3) providing the IRS with information needed for effective and efficient tax administration. As noted elsewhere in this preamble, the proposed regulations will be the subject of public comments, including comments that are specifically invited regarding particular issues identified in the preamble.

Notice 2013-45 provides as transition relief that section 6055 information reporting will be optional for 2014. The IRS will not impose penalties for failure to timely and accurately report under section 6055 for coverage in 2014. As

stated in *Notice 2013-45*, the IRS encourages voluntary section 6055 reporting for coverage in 2014.

## **Explanation of Provisions and Summary of Comments**

### *1. Persons Subject to Information Reporting Requirement*

#### a. Plans in the individual market

Under section 36B(f)(3) and § 1.36B-5, an Exchange must report information relating to enrollment in qualified health plans in the individual market to the IRS and taxpayers. This information includes the period coverage was in effect, the names and TINs of each individual covered, the amount of advance credit payments relating to the coverage, and the amount of premiums for the coverage. This reporting facilitates compliance with and administration of the premium tax credit under section 36B. A commenter suggested that issuers of qualified health plans should not be required to report under section 6055 regarding minimum essential coverage that they provide in the individual market through the Exchange because the Exchange reporting provides the IRS and taxpayers with the necessary information about this coverage.

In response to this comment and to reduce the burden associated with reporting under section 6055, the proposed regulations provide that issuers are not required to submit section 6055 information returns for coverage under a qualified health plan in the individual market enrolled in through an Exchange. For individuals enrolled in this coverage, the IRS and individuals will receive information necessary to administer or comply with the individual shared responsibility provision through information reporting by Exchanges under section 36B(f)(3). Issuers must report, however, on qualified health plans in the small group market enrolled in through the Small Business Health Options Program (SHOP), because annual information reporting by Exchanges under section 36B(f)(3) does not include these plans.

#### b. Employer-sponsored Insured Group Health Plans

Commenters recommended that the proposed regulations require employers rather than health insurance issuers to report under section 6055 for insured coverage under an employer-sponsored group health plan. The commenters suggested that employers have more direct access to information required to be reported for an employee enrolled in a group health plan.

Because section 6055(a) requires reporting by the entities providing the coverage, which for insured coverage is the issuer, the proposed regulations provide that health insurance issuers are responsible for reporting under section 6055 for all insured coverage, except coverage under certain government-sponsored programs (such as Medicaid and Medicare) that provide coverage through a health insurance issuer and coverage under qualified health plans in the individual market enrolled in through an Exchange.

Reporting entities are permitted to use third parties to facilitate filing returns and furnishing statements to comply with reporting requirements, including those under section 6055. These arrangements do not, however, transfer the potential liability for failure of the reporting entity to report and furnish under the regulations.

A party preparing returns or statements required under section 6055 that is a tax return preparer will be subject to the requirements that generally apply to return preparers.

#### c. Self-insured Group Health Plans

The proposed regulations provide that sponsors of self-insured health coverage are responsible for reporting under section 6055. The proposed regulations identify the employer as the plan sponsor and reporting entity for a self-insured group health plan established or maintained by a single employer. This rule is consistent with section 3(16)(B)(i) of the

Employee Retirement Income Security Act of 1974 (ERISA), which states that the term "plan sponsor" means the employer in the case of an employee benefit plan established or maintained by a single employer.

Commenters noted that individuals may be covered under a self-insured arrangement that is a multiemployer plan and offered suggestions for identifying the entity responsible for reporting. Some commenters stated that employers that participate in a multiemployer plan do not have access to the information required to be reported under section 6055 and that the multiemployer plan or its administrator, for example, the joint board of trustees, should report for the participating employers. Another commenter suggested that labor unions report for multiemployer plans. Other commenters asserted that a plan's administrator or trustees generally are in the best position to report minimum essential coverage funded under a collective bargaining agreement unless the plan is funded by a single employer. A commenter asserted that each participating employer should be responsible for reporting under section 6055 for a multiple employer welfare arrangement (MEWA) under section 3(40) of ERISA (29 U.S.C. 1002(40)).

In response to these comments, the proposed regulations identify the sponsor and reporting entity for various types of self-insured arrangements (for example, the joint board of trustees for a multiemployer plan). For these purposes, the section 414 employer aggregation rules do not apply. Accordingly, a self-insured group health plan or arrangement covering employees of related corporations is treated as sponsored by more than one employer and each employer must report for its employees. However, one member of the group may assist the other members by filing returns and furnishing statements on behalf of all members.

Section 6055(d) provides that an appropriately designated person may report under section 6055 on behalf of a government employer. Accordingly, the proposed regulations allow a government employer providing self-insured coverage for its employees to report under section 6055 on its own behalf or to designate as the reporting entity another governmental unit or agency or instrumentality of a governmental unit that is part of or related to the same governmental unit as the government employer. If the designation is made before the filing deadline and the designee accepts it, the designated governmental unit, agency, or instrumentality is the sponsor responsible for section 6055 reporting. Comments are requested on issues specific to government employer plans and arrangements.

As noted, section 6056 requires applicable large employers to report information about the coverage that they offer to their full-time employees and to furnish related statements to employees. Commenters suggested that applicable large employers with self-insured health plans that must report under both sections 6055 and 6056 should be allowed to combine that reporting.

The general rules described in the proposed regulations assume separate reporting, but include other rules that reduce duplicative reporting and otherwise simplify reporting. For example, the proposed regulations allow the use of substitute forms and statements to individuals, which may permit self-insured health plans to furnish a single substitute statement to covered individuals for both sections 6055 and 6056.

In addition, the preamble to proposed regulations under section 6056 advises that the IRS and the Treasury Department are considering permitting applicable large employers with self-insured plans that provide mandatory, minimum value coverage to employees, and offer that coverage to spouses and dependents, all with no employee contribution, to forgo providing section 6056 statements to those covered employees. Because the section 6055 return would provide the individual taxpayers information to accurately file the taxpayers' income tax returns, and would provide the IRS the information concerning those employees to administer the premium tax credit and employer shared responsibility provisions, Treasury and the IRS are considering whether for those employees the employer could file and furnish only the return required under section 6055 and include a code on the employees' Forms W-2.

Comments are requested on other ways to simplify and combine reporting.

#### d. Foreign Employers That Provide Minimum Essential Coverage

Section 6055(b)(2)(A) requires that reporting for coverage under a group health plan include the employer's EIN. A commenter noted that a foreign employer may provide minimum essential coverage but may not have an EIN. Comments are requested on rules for reporting by foreign employers without EINs that sponsor self-insured plans and on any other issues specific to reporting coverage provided by foreign employers.

#### e. Government-Sponsored Programs

The proposed regulations provide that the executive department or agency of a governmental unit that provides coverage under a government-sponsored program (within the meaning of section 5000A(f)(1)(A)) is responsible for reporting under section 6055. For example, the Department of Defense is responsible for reporting coverage under the TRICARE program. The proposed regulations identify the State agency that administers the Medicaid or CHIP program, rather than the Department of Health and Human Services, as the reporting entity for these programs. Additionally, under the proposed regulations, the responsible government department or agency, and not the issuer, is the reporting entity for coverage under a government-sponsored program provided through a health insurance issuer (such as some Medicaid, CHIP, and Medicare programs). Comments are requested on issues specific to reporting coverage under government-sponsored programs.

#### f. Other Arrangements Designated as Minimum Essential Coverage

Section 5000A(f)(1)(E) provides that the Secretary of Health and Human Services (HHS), in coordination with the Secretary of the Treasury, may recognize other health benefits coverage as minimum essential coverage. On July 1, 2013, HHS published final regulations designating certain coverage as minimum essential coverage and outlining substantive and procedural requirements that other types of coverage must fulfill to be recognized as minimum essential coverage. Patient Protection and Affordable Care Act: Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions, 78 *FR* 39494 (HHS MEC regulations). These regulations designate as minimum essential coverage (1) self-funded student health coverage for plan or policy years beginning on or before December 31, 2014, (2) Refugee Medical Assistance supported by the Administration for Children and Families, (3) Medicare Advantage plans, and (4) State high risk pools for plan or policy years beginning on or before December 31, 2014.

The proposed rule that designates the government department or agency as the reporting entity for coverage under a government-sponsored program provided through a health insurance issuer applies to Medicare Advantage plans. Comments are requested on appropriate rules for identifying the reporting entity for other arrangements recognized as minimum essential coverage under section 5000A(f)(1)(E).

## 2. Information Required To Be Reported

### a. In General

The proposed regulations provide that the section 6055 information return must include the name of each individual enrolled in minimum essential coverage and the name and address of the primary insured or other related person (for example, a parent or spouse) who submits the application for coverage (the responsible individual). The proposed regulations use the term *responsible individual* rather than the term *primary insured* because minimum essential coverage may not be insured coverage (for example, health coverage provided by the Department of Veterans Affairs). The return also must report the TIN and months of coverage for each individual who is covered under the policy or program and other information specified in forms, instructions, or published guidance, see §§ 601.601(d) and 601.602. For employer-provided coverage, the proposed regulations require reporting the name, address, and EIN of the employer maintaining the plan and whether coverage was enrolled in through the SHOP.

As part of the effort to minimize the cost and administrative steps associated with the reporting requirements, the proposed regulations do not require reporting information that would not be needed by individual taxpayers or the IRS

for purposes of administering the individual shared responsibility provisions or the credit for small employers. Accordingly, the proposed regulations do not require reporting the portion of the premium paid by an employer, which the IRS does not need to determine if an individual is covered by minimum essential coverage. The proposed regulations require reporting the months of coverage rather than the specific dates of coverage, because minimum essential coverage applies month by month. The proposed regulations do not require reporting the amount of any cost-sharing reductions, which are not administered by the IRS. Finally, the proposed regulations do not require reporting the amount of advance payments or on coverage in a qualified health plan in the individual market enrolled in through an Exchange, since in both cases this information is reported to the IRS and provided to individuals by the Exchanges under section 36B(f)(3).

#### b. Identifying Information

Health insurance issuers and employers with self-funded plans expressed concern that they do not typically collect TINs from dependents covered under their policies and that they may have difficulty obtaining TINs for some covered individuals. Other commenters suggested allowing alternative means of identifying individuals, such as unique enrollee identification numbers similar to the method used by the Massachusetts Health Connector (the State-based exchange), or allowing reporting without TINs for individuals who enroll in coverage but decline to provide a TIN. Some commenters suggested simplifying reporting requirements for dependents or providing alternatives in reporting TINs for new beneficiaries and others who may not provide TINs at the time of enrollment.

The proposed regulations adopt TIN reporting, consistent with the statute. Section 6055 reporting allows individuals to confirm their coverage and the IRS to verify that coverage without the need to contact the individuals. The use of TINs to cross-check individuals against coverage months is the most efficient way for individuals and the IRS to avoid the need for follow-up. Accordingly, covered individuals have an interest in providing TINs to reporting entities.

Federal tax records for individuals for all purposes are maintained by TIN and individual taxpayers identify themselves on their returns by TIN. Establishing another method of identifying individuals for sections 5000A and 6055 purposes would require the IRS to create, and taxpayers to adapt to, an entire parallel identification system solely for this purpose.

While section 6055 and the proposed regulations require TINs for administering section 5000A, reporting entities that make reasonable efforts to collect TINs but do not receive them will not be subject to penalties under sections 6721 and 6722 for failure to timely and accurately report. In particular, section 6055 reporting is governed by the same procedures, limitations, and protections as other information reporting that requires obtaining and reporting TINs. Section 6724 and the regulations under that section waive penalties on reporting entities for a reasonable failure to include correct TIN information on a return or statement, including those required under section 6055. Penalties are waived if the reporting entity demonstrates that it acted in a responsible manner both before and after the failure occurred, and that the failure was due to significant mitigating factors or events beyond the reporting entity's control. In general, a reporting entity acts responsibly in attempting to solicit a TIN if after an initial, unsuccessful request for a TIN (for example, at the time of enrollment), the reporting entity makes two consecutive annual TIN solicitations. No section 6724 penalty is imposed unless the reporting entity fails to make the two additional solicitations. Accordingly, section 6055 reporting entities will not be unduly penalized for failing to report a TIN.

As a backstop to reporting a TIN, the proposed regulations allow reporting entities to report date of birth if a TIN is not available. This alternative should not be used, however, unless the reporting entity has made reasonable efforts to obtain the information by requesting that a covered individual provide the TIN.

A commenter requested that the proposed regulations provide rules authorizing reporting entities to request TINs. This authority exists under section 6109(a)(2) and § 301.6109-1(b)(1) of the Procedure and Administration Regulations, which require individuals to furnish TINs to persons that must file information returns.

A commenter noted that issuers and employers may have difficulty obtaining overseas addresses for individuals living abroad. The proposed regulations provide that only the last known address for the responsible individual must be reported.

#### c. Coverage Dates

For purposes of section 5000A, an individual who has coverage on any day in a month is treated as having minimum essential coverage for the entire month. See proposed § 1.5000A-1(b) (78 FR 7314). As a result, the specific coverage dates are not necessary for administering and complying with rules relating to minimum essential coverage. Accordingly, the proposed regulations do not require reporting of the specific dates of coverage. Instead, the proposed regulations generally require reporting of the months during which an individual is treated as having minimum essential coverage.

A commenter noted that coverage dates may be inaccurate because coverage may be terminated or reinstated after the reporting date for periods occurring before the reporting date. Under section 6724 and the regulations under that section, the IRS may waive penalties if there is reasonable cause for the failure to correct an information return for retroactive terminations or reinstatements that are determined after the calendar year in which coverage was terminated or reinstated.

A commenter recommended permitting separate returns or creating special forms to report coverage for individuals who change their coverage during the year to a different health plan with the same issuer. Although the proposed regulations do not adopt a rule addressing this situation, additional procedures that are responsive to this comment may be provided in IRS forms and instructions, see § 601.602.

A commenter noted that employers face challenges in determining coverage dates for employees and dependents, including seasonal and temporary workers whose term of employment changes during the year. The commenter recommended that the rules allow reporting an individual's enrollment in minimum essential coverage as of a fixed date each year to accommodate an employer's administrative, payroll, and recordkeeping procedures. The individual responsibility payment under section 5000A applies to individuals on a monthly basis, so reporting based on one day during the year would not be sufficient. Additionally, varying reporting dates would be difficult to administer and would produce information less useful to taxpayers, who generally file their tax returns and must determine their coverage based on a calendar year. Accordingly, the proposed regulations do not adopt this suggestion. Comments are welcome on potential alternative ways to address the challenges associated with determining coverage dates when employment changes.

#### d. Supplemental Coverage Arrangements

A commenter asked whether an employer and an issuer must coordinate section 6055 reporting for an employer-sponsored group health plan that consists of an insured high-deductible health plan (HDHP) and additional health benefits provided through a contribution to a health savings account. Health savings accounts are not minimum essential coverage, and therefore section 6055 reporting is not required for them. Additionally, the proposed regulations provide that reporting is not required for arrangements such as health reimbursement arrangements that supplement minimum essential coverage.

### 3. Time and Manner of Filing

#### a. Form of Return

The proposed regulations provide that the return under section 6055 may be made on Form 1095-B or another form the IRS designates, or on a substitute form. A substitute form must comply with revenue procedures or other published guidance, see § 601.601(d)(2), that apply to substitute forms. The proposed regulations require that information returns



be submitted to the IRS with a transmittal form, Form 1094-B. In accordance with usual procedure, these forms will be made available in draft form at a later date.

#### b. Time for Filing Returns

The proposed regulations provide for reporting entities to file the return and transmittal form on or before February 28 (or March 31 if filed electronically) of the year following the calendar year in which they provided minimum essential coverage. Commenters suggested that the proposed regulations provide different reporting deadlines for fiscal year health plans to avoid calendar year reporting of data from multiple plan years. Since most individuals file calendar year returns, permitting fiscal year reporting would interfere with return preparation and processing for individuals potentially subject to the section 5000A individual shared responsibility payment. Therefore, the proposed regulations do not adopt this comment.

#### c. Electronic Reporting

Commenters recommended permitting electronic reporting under section 6055. Section 6011(e) and § 301.6011-2 require high-volume filers (those who file 250 or more returns during the calendar year) to file electronically. The proposed regulations provide that these electronic filing requirements apply to information returns under section 6055, but do not limit electronic filing to high-volume filers. Accordingly, any reporting entity may file electronically under section 6055.

#### 4. Combined Reporting

As discussed earlier in this preamble, applicable large employers that provide minimum essential coverage on a self-insured basis are subject to the reporting requirements of sections 6055 and 6056, as well as the requirement under section 6051 to file Form W-2, Wage and Tax Statement, showing wages paid to employees and taxes withheld. *Notices 2012-32 and 2012-33* requested comments on how to minimize duplication in reporting under these provisions.

Several commenters recommended that the regulations allow combined information reporting under sections 6055 and 6056 for applicable large employers that sponsor self-insured group health plans and must report under both sections. Other commenters recommended that employers be permitted to use a single information return to report under sections 6051 and 6055, for example by adding the information required under section 6055 to Form W-2.

As discussed elsewhere in this preamble, these proposed regulations seek to simplify reporting and reduce duplication through a number of approaches. In particular, the proposed regulations provide that issuers need not report under section 6055 for individual market qualified health plans enrolled in through an Exchange. The proposed regulations also provide relief from the requirement to report several items of information that are unnecessary for tax administration or are available from other reporting, and they allow the use of substitute forms and statements to individuals, which, under future guidance, may include furnishing a single substitute statement to covered individuals for both sections 6055 and 6056.

Accordingly, while the rules for section 6055 reporting in the proposed regulations do not assume full combined reporting under sections 6055, 6056 and 6051, they reflect other means of avoiding duplication and simplifying reporting. We continue to seek comments on other ways to streamline the reporting methods that would be permissible under the statute.

#### 5. Statements Furnished to Individuals

The proposed regulations provide that a reporting entity must furnish a statement to the covered individual providing the policy number and the name, address, and a contact number for the reporting entity, and the information required to be reported to the IRS. The proposed regulations permit substitute statements that include the information

required to be shown on the return filed with the IRS and comply with applicable requirements in published guidance relating to substitute statements. See § 601.601(d)(2) of this chapter. A substitute statement that includes the information required by both sections 6055 and 6056 in a single statement may be permitted by future guidance.

Commenters recommended permitting electronic delivery of statements to individuals. A commenter suggested that the regulations provide rules for electronic delivery of statements to individuals that are similar to the rules under section 2715 of the Public Health Service Act for providing a summary of benefits and coverage. The commenter suggested that these reporting regulations permit the furnishing of one electronic statement per home address rather than multiple statements per household. Another commenter requested guidance on procedures when an email notice is returned due to an incorrect address.

The proposed regulations permit electronic delivery of statements to individuals if the recipient consents. In response to concerns about the need to furnish a statement to each individual, the proposed regulations also permit furnishing only one statement per address. Comments are requested on whether and under what circumstances the regulations should direct reporting entities to provide a statement to another individual (who may, for example, need the statement to determine his or her tax liability).

Commenters expressed concern about protecting the privacy of individuals who provide TINs and about disclosure of the TINs to other parties. The regulations provide that section 6055 information reporting will be included in the IRS truncated TIN program. Accordingly, to protect the privacy of covered individuals, statements furnished to individuals under section 6055 are not required to disclose their complete TINs.

A commenter recommended that the statement to individuals should explain minimum essential coverage and advise taxpayers that they may be subject to a penalty for months in which they do not have minimum essential coverage. The proposed regulations do not include rules addressing educational content in the statement. However, information on the section 5000A individual shared responsibility payment may be included in IRS forms, instructions, and publications.

## *6. Penalties*

Commenters recommended providing procedures for correcting errors in reporting and a safe harbor from penalties for an issuer that fails to report information that another entity fails to provide to the issuer. The proposed regulations provide that the provisions of section 6724(a) providing relief for a failure due to reasonable cause apply to reporting under section 6055. Because the procedures described in § 301.6721-1(b), which provide for reduced penalties for reporting errors that are timely corrected, will apply to corrections of errors in reporting under section 6055 that are not due to reasonable cause, the proposed regulations do not prescribe separate rules for correcting errors.

## **Proposed Effective/Applicability Date**

These regulations are proposed to apply for calendar years beginning after December 31, 2014. Consistent with *Notice 2013-45*, reporting entities will not be subject to penalties for failure to comply with the section 6055 reporting requirements for coverage in 2014, which would have resulted in reporting in 2015 and furnishing statements to covered individuals in 2015. Accordingly, a reporting entity will not be subject to penalties if it first reports beginning in 2016 for 2015, including the furnishing of statements to covered individuals in 2016 with respect to 2015. Taxpayers are encouraged, however, to voluntarily comply with section 6055 information reporting for minimum essential coverage provided in 2014 by applying these regulations once finalized.

## **Special Analyses**

It has been determined that this notice of proposed rulemaking is 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.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the information collection required under these regulations is imposed under section 6055. Consistent with the statute, the proposed regulations require a person that provides minimum essential coverage to an individual to file a return with the IRS reporting certain information and to furnish a statement to the responsible individual who enrolled an individual or family in the coverage. These regulations primarily provide the method of filing and furnishing returns and statements under section 6055. Moreover, the proposed regulations attempt to minimize the burden associated with this collection of information by limiting reporting to the information that the IRS will use to verify minimum essential coverage and administer tax credits.

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (*5 U.S.C. chapter 6*) is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The IRS and Treasury Department request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing has been scheduled for November 19, 2013, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of *26 CFR 601.601(a)(3)* apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by November 8, 2013, an outline of topics to be discussed and the time to be devoted to each topic by (signed original and eight (8) copies by November 8, 2013. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### **Drafting Information**

The principal authors of these proposed regulations are Andrew Braden and Frank W. Dunham III of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

#### **List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**PART 1--INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** *26 U.S.C. 7805* \* \* \*

**Par 2.** Section 1.469-0 is amended by adding the following entries to the table of contents:

**§ 1.469-0 Table of contents.**

\* \* \* \* \*

*§ 1.469-11 Effective date and transition rules.*

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iv) Regrouping for taxpayers subject to section 1411.

(A) In general.

(B) Effective/applicability date.