November 8, 2013

Submitted electronically via the Federal Rulemaking portal @ www.regulations.gov

CC:PA:LPD:PR (REG-136630-12)
Room 5205
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Sir or Madam,

Subject: Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans.
(RIN 1545-BL26)

Aon Hewitt appreciates the opportunity to submit comments to the Internal Revenue Service (IRS) on the proposed regulations regarding information reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans. The proposed regulations were published in the *Federal Register* on September 9, 2013. Our comment letter discusses the following:

- Obtaining and reporting the tax identification numbers (TINs) of dependents;
- Attestation by large employers regarding the use of an affordability safe harbor;
- Reporting to the government and covered individuals on the IRS tax form and safe harbor notice to full-time employees (FTEs) and covered individuals;
- The format of Code Sections 6056 and 6055 returns; and
- The accuracy of information at the time of reporting.

Who We Are

Aon Hewitt empowers organizations and individuals to secure a better future through innovative talent, retirement and health solutions. We advise, design and execute a wide range of solutions that enable clients to cultivate talent to drive organizational and personal performance and growth, navigate retirement risk while providing new levels of financial security, and redefine health solutions for greater choice, affordability and wellness. Aon Hewitt is the global leader in human resource solutions, with over 30,000 professionals in 90 countries serving more than 20,000 clients worldwide. For more information on Aon Hewitt, please visit www.aonhewitt.com.

Comments

Obtaining and Reporting TINs of Dependents

Large employers and providers of minimum essential coverage (MEC) are subject to penalties under Code Section 6721 if such companies fail to include all of the information required by Code Section 6056 or Code Section 6055. The preamble to the Code Section 6055 proposed regulations states that, pursuant to Code Section 6724 and its regulations, this penalty will not apply to companies if they make reasonable efforts to collect TINs of covered dependents. Under such regulations, a company will be deemed to have acted

reasonably if it initially requests the Social Security number, makes two consecutive annual requests, and reports the date of birth if the Social Security number is not available.

We propose that the IRS provide companies with a one-year, reasonable good faith standard before the regulations of Code Section 6724 apply to the collection of TINs of dependents for Code Section 6055 reporting purposes. This will give companies time to update their procedures to request TINs in subsequent years to satisfy the regulations under § 6724. Under such a reasonable good faith standard, so long as the company made good faith, reasonable efforts under the circumstances to obtain TINs of covered dependents, penalties under Code Section 6721 would not be assessed on companies for failing to obtain and report TINs of all covered dependents.

Attestation by Large Employer Regarding Use of Affordability Safe Harbor

Although not required by Code Section 6056, we propose that large employers satisfying one of the affordability safe harbors described by the employer shared responsibility regulations be able to attest as to the affordability of its group health plan coverage during the Code Section 6056 reporting process.

In Notice 2011-73, the IRS acknowledges that there will be circumstances in which a large employer has satisfied an affordability safe harbor, yet an employee's share of the cost of single coverage exceeds 9.5% of his or her household income. Such circumstances may include where alimony is paid, or an individual incurs losses from self-employment. Under circumstances such as these, despite a large employer having satisfied the requirement to provide affordable MEC, the employee may nevertheless be eligible for a premium tax credit.

Because such circumstances exist, permitting a large employer to attest that an affordability safe harbor has been satisfied may reduce burdens on the large employer as well as those on state or federally facilitated Exchanges under the employer appeals process of the Department of Health and Human Services' (HHS) final regulations, published August 30, 2013. Under the final regulations, Exchanges must provide a notice to large employers of their right to appeal, where an employee has been determined to be eligible for a premium tax credit. If Exchanges are aware, due to the Code Section 6056 reporting process, that an individual falls within one of these circumstances (i.e., the employer's coverage is not affordable given the individual's household income, despite the fact that the employer has attested to satisfying an affordability safe harbor), the Exchange could simply notify the employer of this fact, eliminating the need for an appeal (as there is no factual dispute). Alternatively, the HHS final regulations could be modified to permit the Exchanges to forego notifying employers of the individual's entitlement to a premium tax credit under these circumstances, due to there being no factual dispute. It would then be up to the IRS to determine whether the large employer must prove that the affordability safe harbor has indeed been satisfied, in order to avoid assessment of a penalty.

We understand that, in order for this proposal to be effective, Exchanges would need to have access to such affordability attestations before determining whether a large employer must receive a notice of right to appeal. Thus, Aon Hewitt proposes that employers be given the option to provide such an attestation to the IRS before the due date of the Code Section 6056 return to the IRS—during a timeframe that is earlier than the date that the Exchanges notices are distributed to large employers.

In addition, as Aon Hewitt proposed in our comment letter on the employer shared responsibility proposed regulations (submitted on March 18, 2013), the Form W-2 Affordability Safe Harbor for large employers should be modified to permit large employers to use last year's Form W-2 information to satisfy the affordability safe harbor for the current year. For employers using the optional look-back period and stability

period method for determining FTEs, the cost of medical coverage would then be appropriately compared to the wages earned during the time period that the individual worked enough hours to be deemed an FTE. It would be unfair to require employers to meet the affordability standard for employees who are currently working fewer than 30 hours per week, but who are deemed to be FTEs in the current period due to their hours worked in a prior look-back period.

Reporting to Government and Covered Individuals on IRS Tax Form and Safe Harbor Notice to FTEs/Covered Individuals

In the proposed regulations, the IRS draws certain comparisons between the Code Section 6055 and Code Section 6056 reporting requirements and IRS Form W-2. We agree that there are similarities, and believe that much of the Code Section 6055 and Code Section 6056 reporting requirements under the "General Reporting" method should be handled similarly to those of the Form W-2.

Aon Hewitt believes that, like the Form W-2, large employers and providers of MEC should be able to report the required Code Section 6056 and Code Section 6055 information to the IRS on a form created by the IRS, and to individuals on either the same form or by using a safe harbor notice created by the IRS. Just as employees receive a copy of their Form W-2 from their employer, employees and covered individuals could receive a similar IRS form or safe harbor notice from their large employer and provider of MEC. In fact, large employers could provide the report (with Code Section 6056 information) to employees in the same envelope as the Form W-2. If the large employer's plan is self-insured, the Code Section 6055 information could be included in that envelope as well. To the extent electronic communication is used for the Form W-2, the same electronic communication could be used to include the Code Section 6056 and possibly Code Section 6055 information as well. This would reduce cost and burdens on large employers.

Providing such information to individuals on an IRS form or safe harbor notice would also reduce confusion among individuals, as the form of the report would be uniform, and individuals switching from employer to employer or provider to provider would see the same format from year to year. In addition, creation of a uniform report would give large employers and providers comfort that such information is being furnished in a proper format to individuals.

While uniformity is important, Aon Hewitt also believes that there will be situations where flexibility is also necessary. Thus, we believe that the final regulations to Code Section 6055 and Code Section 6056 should retain the right of companies to have the option of prescribing the form used to provide the required information to individuals. We believe flexibility may be needed for certain large employers and providers, and those companies should have the option to design their own statements to individuals, rather than being required to use a form or safe harbor notice created by the IRS.

Format of Code Sections 6056 and 6055 Returns

Regarding the format of the returns used to report Code Section 6055 and Code Section 6056 information to the IRS, Aon Hewitt proposes that a form similar to Massachusetts Form 1099-HC be created by the IRS. We believe that the form provides a format that is easy to understand by employers, providers and recipients, and would not require much modification to include the data elements required by Code Section 6055 and Code Section 6056. The form could be divided into two parts—one for Code Section 6056 data elements and one for Code Section 6055 data elements. The versions of the forms provided to covered individuals could even include (perhaps on a separate page) a description to the recipient of the relevance of each data element.

Large employers should be given flexibility as to which entity may take responsibility for providing the report to the IRS and to individuals. For example, where a large employer has a fully insured health plan, the large employer should have the option to handle not only the Code Section 6056 reporting, but the Code Section 6055 reporting on behalf of the insurance carrier as well. Similarly, when a large employer maintains both fully insured and self-insured plans, the large employer should have the option to hire the health insurance carriers to handle the Code Section 6055 reporting for not only the fully insured plans, but for the self insured plan as well. In short, large employers should be able to contract with providers regarding which entity is responsible for reporting under either Code Section 6056 or Code Section 6055.

Accuracy of Information at Time of Reporting

Large employers and providers of MEC are subject to penalties under Code Section 6721 for "any failure to include all of the information required to be shown on the return or the inclusion of incorrect information." Code Section 6722 also imposes a penalty for failing to provide an accurate statement to individuals. Although Code Section 6724 provides an abatement of penalties where reasonable cause is demonstrated, we believe companies subject to the reporting requirements should not be required to depend on such relief where the reports contained information that was accurate at the time of the filing.

Requiring large employers and MEC providers to furnish completely accurate information to individuals within 31 days after the close of a calendar year poses great challenges to such entities. Coverage dates for individuals and dependents may change late in the calendar year, and may even change retroactively (e.g., due to non-payment of COBRA premiums). Such changes may not be known at the time a large employer or provider is finalizing its reporting to individuals. If such coverage changes are not yet known to the large employer or provider, Aon Hewitt believes penalties should not apply in such circumstances, and that penalties should only be triggered after a large employer or provider fails to provide updated information within a reasonable time after such information updates become known. Under the proposed regulations, very large employers or providers may have to affirmatively establish reasonable cause each year in order to avoid penalties, as it is very likely that some changes to the information will occur after January 31st.

Closing

Thank you for providing Aon Hewitt the opportunity to provide these comments. If you have any questions, please contact the undersigned a the telephone number or email address provided below.

Sincerely,

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