

**Oregon Educators Benefit Board
Affordable Care Act (ACA) Bulletin #6**

July 2014

**Spotlight on Health Care Reform
Prepared for Educational Entities and Local Governments Participating in the OEBB Benefits Program**

In this sixth ACA Bulletin for OEBB-participating entities, we will review the IRS reporting requirements intended to enforce the individual and employer mandates and support the determination of subsidy eligibility.

The ACA has created a pair of IRS reporting requirements associated with 1) enforcing the individual mandate (requiring individuals to maintain insurance coverage) and the employer mandate (requiring large employers to offer coverage to full time employees to avoid penalties under the ACA) and 2) assisting the IRS' determination of whether individuals are eligible for tax subsidies toward coverage purchased in the public insurance exchanges. These IRS reporting requirements will be addressed within this bulletin. This and other OEBB bulletins may be found on the OEBB website:

www.oregon.gov/oha/oebb for your reference.

An overview of the two IRS reporting requirements:

- **[New] Internal Revenue Code Section 6055 (Individual Mandate Reporting)** — Insurance carriers and plan sponsors of self-insured group health plans will be required to report whether an individual and/or their covered dependents had Minimum Essential Coverage (MEC) and for how many months during a particular reporting year. This information must be provided in a standardized statement to the individual (i.e., subscriber). A separate statement for each covered dependent (i.e., member) is not required. The individual statements must also be consolidated and reported on a single transmittal form to the IRS.

Similar to W-2 reporting, the individual will use this information to complete their personal income tax return for the purposes of satisfying the individual mandate to maintain MEC (or partially satisfying if MEC was maintained for only part of the year and no exception applies). The individual may also be required to include this statement with their personal income tax return – also similar to W-2 reporting – although this is not clear at this time. In that event, it's also not clear what a covered dependent who otherwise files their own personal income tax return would do (i.e., they may have the relevant information but no copy to attach). An individual may receive more than one statement based upon their circumstances. For example, an individual who was employed at a school district and covered under an OEBB plan for part of the year but was employed elsewhere for the remainder of the year would receive two separate statements and use both to complete their personal income tax return. Another example would be if the employee is covered for part of the year by Kaiser and then switches to a Moda plan at open enrollment, or vice versa.

For fully-insured coverage (i.e., the OEBB plans), this **Section 6055 reporting is the insurance carrier's responsibility and not the entity's**. For self-insured coverage, the reporting obligation belongs to the plan sponsor but note that the entities are not required to complete Section 6055 reporting for their health reimbursement arrangement, HSA contributions or health care flexible spending account plans.

- **[New] Internal Revenue Code Section 6056 (Employer Mandate Reporting and Subsidy Eligibility)** — Applicable large employers* will be required to furnish a standardized statement to each full time employee describing information about the employer, including the employer's number of full time employees per month and whether they were offered coverage, the employee's monthly contribution toward the lowest cost plan available and information specific to the full time employee including whether coverage was offered to the employee and his/her dependents.

Similar to Section 6055 reporting, a consolidated report must be filed with the IRS on a single transmittal form. It appears this standardized statement will reflect information about all of the employer's employees and will not be limited to those who are merely full time.

***Note:** For reporting purposes, an applicable large employer is an employer with at least *50 full time equivalent employees*. For penalty purposes under the Employer Shared Responsibility Provision for 2015 (only), an applicable large employer has at least *100 full time equivalent employees*. The temporary relief offered for penalty purposes does not apply to this Section 6056 reporting. An employer with at least 50 but fewer than 100 full time equivalent employees in 2015 will still be required to complete Section 6056 reporting.

The calculation method for determining whether an employer is an applicable large employer is identical to the method outlined in OEBB bulletin #2. Employers within a control group are aggregated together for this purpose. We believe the schools within a district will be considered a control group meaning an individual school may be considered a large employer based upon the number of full time equivalent employees within an entire district. Please see OEBB bulletin #2 for more information.

How is this information reported?

- **Single Combined Form for Reporting** — The IRS will create two pairs of forms for this reporting. The IRS forms described have not yet been developed. We will revise this bulletin once the actual forms are available.
 - Forms for use by the entities
 - Form 1095-C — This is the form provided by the entities to individuals and will consist of two parts. Part A will be used for the Section 6056 reporting. Part B will be used for the Section 6055 reporting for self-insured MEC sponsored by the entities. As the group medical coverage provided by the entities to their employees through OEBB is fully-insured coverage, entities participating in OEBB for all of their employees will leave Part B blank (see Form 1095-B below). If an entity has employee groups that are outside of OEBB, the entity should check with its legal advisor to determine whether Part B is a requirement. Based upon existing guidance, it appears this form may be a single page.
 - Form 1094-C — This is the consolidated transmittal form provided to the IRS. It seems likely this will be in Excel or some comparable format with unique individuals represented by row.
 - Forms for use by the insurance carriers
 - Form 1095-B — Similar to Form 1095-C, this form will be used by an insurance carrier to provide the Section 6055 reporting statement to subscribers under its insured coverage (i.e., the OEBB plans). In essence, this will be the missing Part B information from Form 1095-C for a large employer who provided fully-insured coverage to its employees.
 - Form 1094-B — This is the consolidated transmittal form provided to the IRS by the insurance carrier.

Note: Given that 1) entities will only be responsible for the Section 6056 reporting, and 2) entities distribute Part A forms to full time employees only, it appears part-time employees, retirees and non-employee COBRA participants who participate in OEBB plan coverage will receive a Form 1095-B from the insurance carrier but nothing from the entity itself.

When is this reporting due?

These reporting requirements become mandatory for 2015. **Please note that these reporting requirements are based upon the calendar year**, and an entity's plan year is irrelevant. Entities with 2015 plan years beginning on October 1, 2015 will still be required to complete this IRS reporting for the entire 2015 calendar year. The entities will be able to designate on the forms those months in which the entities were not subject to the penalties under the Employer Shared Responsibility Provisions due to their October 1st plan year (i.e., January through September).

Form 1095-C's timing requirement is consistent with Form W-2 reporting and will generally be due to individuals by January 31st of the year following the reporting year or the next business day if January 31st is a weekend. In other words, for the 2015 reporting year, Form 1095-C will be due to individuals by February 1, 2016 (January 31, 2016 is a Sunday). Due to the overlapping timing requirements, the entities may wish to coordinate this with Form W-2 distribution.

Form 1094-C is due by March 31st of the year following the reporting year or the next business day if March 31st is a weekend. In other words, for the 2015 reporting year, Form 1094-C will be due to the IRS by March 31, 2016.

There are significant IRS penalties for failing to comply with these reporting requirements. In general, there is a \$100 penalty for failing to provide a return. Each Form 1095-C is considered a separate return for penalty purposes. The penalty limit is \$1.5M per applicable large employer for a given reporting year and these may be waived by the IRS if the failure was due to reasonable cause and not willful neglect. Penalties may be assessed for faulty returns but may also be waived by the IRS due to reasonable cause (e.g., reasonable mistake).

Who does this reporting?

Both sets of reporting permit delegation to third parties. Section 6055 reporting, applicable to the coverage provided by the entities, will be the responsibility of the insurance carriers (Moda Health and Kaiser for entities participating in OEBB). Section 6056 reporting is the employer's responsibility, but can be delegated to a third party; however, the liability remains with the employer. Entities will need to determine how this reporting might best be accomplished. In general, separate applicable large employers cannot consolidate their information with other applicable large employers for reporting purposes.

Again, the Section 6056 reporting duty falls to the actual employer. If the district is considered the employer, then it appears that a single individual working for multiple schools will be reflected in one Form 1094-C transmittal to the IRS by the district. The same would hold true for the Form 1095-C and the individual would receive one Form 1095-C reflecting information for all work with the district. If, however, each school is considered a separate and distinct employer and an individual works for more than one school, then each school would reflect that individual in the Form 1094-C transmittal to the IRS. The individual will also receive a Form 1095-C from any school for whom s/he was a full time employee for that year

Additional detail about the reporting requirements and the potential for simplified reporting

We know the general content requirements for Section 6055 and 6056 reporting from the final regulations. Since the forms to be used for reporting are not currently available, we will provide a summary of the general content requirements below. We will update this bulletin when the actual forms become available.

The final regulations describe three circumstances in which simplified reporting will be available for the Section 6056 reporting with respect to the data elements for some or all employees (one applies only to 2015). We will provide a brief summary of these options below and update this bulletin when further guidance is available.

- **Section 6055 (Individual Mandate Reporting) detail**

- IRS reporting (Form 1094) — Generally, this reporting must indicate that Minimum Essential Coverage (MEC) was provided, the months it was provided and who received this coverage. To identify the individuals who received MEC, the following information must be included:
 - Name, address and SSN of the covered employee
 - Name and SSN for each covered dependent; SSNs must be reported for each dependent unless four efforts to procure this information fail in which case date of birth can be used instead (presumably, four attempts are not required each year but the final regulations do not specify)
 - Months of coverage for each covered individual (one day of coverage in a month = one month).
- Employee Reporting (Form 1095) — The data elements are the same as the IRS reporting, although the reporting provided to the individual (i.e., subscriber) must also include contact information for the party responsible to provide the report.

- **Section 6056 (Employer Mandate Reporting and Subsidy Eligibility) detail** — The IRS and Employee Reporting requirements (Forms 1094-C and 1095-C) are similar except that the employer will only issue Form 1095-C to full time employees whereas Form 1094-C appears to require information about all employees. The data elements of Section 6056 reporting include:

- Employer name, address and employee identification number (EIN)
- Name and telephone number of a contact person at the employer for questions regarding the 6056 reporting
- Certification that the entity offered MEC to its full time employees (and their dependents)
- Number of full time employees by month and the months for which coverage was available
- Monthly employee contribution toward employee-only coverage for the lowest cost plan option
- Name, address and SSN of each full time employee and the months (if any) that the employee was covered under an OEBC plan.

A number of other items will be required using indicator codes, including:

- Whether OEBC's coverage meets the MV standard (it does)
- Whether the employee could enroll his or her spouse
- Total number of employees by calendar month
- Whether the employee's effective date of coverage was affected by a waiting period
- Whether the employer is a member of a controlled group (e.g., a district) and, if so, the name and EIN of each other member of the group on any day in that reporting year
- Whether MEC was offered to just the employee, just the employee and dependents, just the employee and spouse or all

- When coverage was not offered to an employee, whether this was because the employee was in a waiting period or was not a full time employee
- Whether coverage was offered to an employee who was not a full time employee
- Whether the employer met one of the affordability safe harbors with respect to the employee (please see OEGB bulletin #4 for more information)

- **The *potential* for simplified reporting**

- “Qualifying Offer” — The final regulations include simplified reporting options for employers that provide a ‘qualifying offer’ to any of their full time employees for all 12 months of the year.

A qualifying offer is an offer of coverage that meets both the minimum value and affordability standards, with affordability based on the Federal Poverty Limit method. This means the cost of coverage cannot exceed 9.5% of the FPL. Using the 2014 FPL as an example (the 2015 FPL is not available yet), the lowest single premium contribution could not exceed about \$92 per month.

For the full time employees who receive qualifying offers, the employer would only need to report employee name, address and SSN along with an indicator code indicating that a qualifying offer was made on Forms 1094-C and 1095-C. Given that many employers will also have employees for whom qualifying offers were not made and have to do the more detailed reporting for others anyway, it's not clear if this simplified reporting will be a significant benefit.

- “Qualifying Offer – 95% of FTEs” (2015 only) — If the employer has made a qualifying offer to at least 95% of its full time employees and to their spouses and dependents, the employer can utilize simplified reporting for its entire workforce including the less than 5% who may not have received a qualifying offer. Instead of providing Form 1095-C, the employer can provide a “standard statement” instead. The IRS will issue model language that may be used as this standard statement at a later date.
- “98% Offers” — If an employer offers MEC that meets both the minimum value (all OEGB plans meet minimum value) and affordability requirements (please see OEGB bulletin #4), the employer will not be required to identify whether an employee was full time for the purposes of Forms 1094-C and 1095-C. It's clear that an employer might meet this simplified reporting option without also qualifying for one of the “qualifying offer” options above meaning an employer might be able to avoid designating who was full time but still have to provide most of the other information required under Section 6056. While the final regulations do not actually confirm this, it also seems reasonable to believe that an employer could qualify for more than one simplified reporting option.

Next Steps

1. Determine whether you are subject to these reporting requirements and begin identifying who will actually do the reporting.
2. Review your process for measuring employee hours of service to determine full time status.
3. Determine whether the coverage you offer is affordable to your full time employee workforce.
4. Review the required data elements and begin determining how the necessary information will be collected.

This bulletin was prepared by Towers Watson for OEGB and its member entities.