

BDO KNOWS:

COMPENSATION AND BENEFITS



SUBJECT

ACTION PLAN TO AVOID PENALTIES FOR MISSING OR ERRONEOUS TAXPAYER IDENTIFICATION NUMBERS ON FORM 1095 REPORTING

SUMMARY

Employers and insurance providers who issue Form 1095 with missing or erroneous taxpayer identification numbers (TIN) will not be penalized under the information reporting rules, provided “reasonable efforts” are made to obtain missing or correct TINs. Proposed regulations under Internal Revenue Code Section 6055 issued on July 29, 2016, specify the steps to be taken that satisfy the “reasonable efforts” requirement.

IMMEDIATE ACTION PLAN

Employers should adopt procedures that satisfy the initial solicitation by incorporating a request for TINs for all individuals enrolling in health care coverage after July 29, 2016, and ensure the request is a part of any future open enrollment process in order to satisfy the initial solicitation requirements. A second solicitation should be made 75 days after the application, and a third solicitation by December 31 of the next year, if necessary.

A search of all current enrollees without a TIN should be conducted. If an individual was enrolled as of July 29, 2016, a solicitation should be sent prior to October 12, 2016. For anyone who enrolled after July 29, 2016, for which an initial solicitation has not been made, a request for the TINs should be made as soon as possible with a second solicitation 75 days after the enrollment date.

For any IRS error messages indicating that a TIN and name provided on the 2015 return do not match IRS records, employers should verify the filing is consistent with their data and request the employee send the correct information within the 90-day window provided by the IRS to re-file the 2015 return.

CONTACT:

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To help motivate employees into action, inform employees of potential contact by the IRS if unable to confirm coverage for the dependents and a \$50 failure to comply penalty assessable to them under Section 6723.

DETAILS

The information reported under Section 6055 allows individuals to establish, and the IRS to confirm, that said individuals maintained the requisite healthcare coverage during the year and are not subject to penalties under the Affordable Care Act.

All employers offering health care benefits through a self-insured plan must furnish to employees and file with the IRS information on Forms 1095 (1095-B for small employers or 1095-C, Part III for large employers), which lists the name, taxpayer identification number ("TIN"), and the months of coverage for each employee and their dependents covered under the plan.

The final regulations under Section 6055 direct employers to report TINs for all covered individuals (employees and their dependents) and to provide a date of birth only if a TIN is not available after the employer makes reasonable efforts to obtain it, pursuant to previously existing TIN solicitation rules. The proposed regulations establish TIN solicitation rules tailored for health care coverage. Accordingly, the following procedures constitute reasonable efforts to obtain missing or correct TINs for purposes of Section 6055 reporting.

	MISSING TIN	INCORRECT TIN
Description	Employer does not obtain a TIN for a covered individual.	Employer obtains an incorrect TIN for a covered individual. IRS notifies employer of an incorrect TIN through a Form 972-CG or penalty notice under Section 6721. [*]
Initial solicitation	The date the employer receives a substantially complete application for new coverage (or to add an individual to existing coverage).	
Second solicitation	Within 75 days of the initial solicitation. For all individuals enrolled in coverage prior to July 29, 2016, for which a TIN has not been obtained as of such date, the 75-day period ends October 12, 2016.	By December 31 of the year in which the employer is notified of the incorrect TIN (or by January 31 of the following year if notified in the preceding December).
Third solicitation	December 31 of the year following the year of the initial solicitation.	The employer must undertake another solicitation if notified in any year following the year of the notification described above.

^{*} A Form 1095 filing error message received from the IRS indicating that a TIN and name provided on the return do not match IRS records does not constitute notification that would require the filer to solicit a TIN.

Forms of Solicitation

TIN requests may be made in a number of different formats: (i) the provision of a renewal application that requests TINs for all covered individuals if sent by the applicable deadlines; (ii) subsequent solicitations may be delivered to the covered individuals with a return envelope; and (iii) by electronic means in accordance with IRS rules.

Penalties

Failure to report the TIN of each covered individual on the Form 1095-B (or 1095-C, Part III) filed with the IRS and furnished to the employee may constitute an incorrect information return subject to penalties. The combined penalties for failure to file a correct information return with the IRS (Section 6721) and failure to furnish a correct information return to an employee (Section 6722) are up to \$500 per incorrect statement (\$6 million annual cap). See our prior alert [LINK: <https://www.bdo.com/insights/tax/compensation-benefits/compensation-benefits-alert-august-2015>].

However, employers will not be subject to penalties for failure to report a correct TIN if they demonstrate reasonable efforts to obtain the TIN by complying with the solicitation rules. The initial and second solicitations relate to failures on returns required to be filed for the year that includes the effective date of coverage for a newly covered individuals. The third solicitation relates to failures on returns filed for the year immediately following the year to which the second solicitation relates, and succeeding calendar year.

Example: Employer ABC, a small employer, maintains a self-insured healthcare plan. Employee Z was hired on November 1, 2016. Employee Z and his dependents entered ABC's healthcare plan on November 1, 2016, although ABC had not received TINs for Z's dependents. Provided ABC (i) requests the TINs on the application for coverage (the initial solicitation), (ii) submits another request for TINs no later than January 15, 2017 (the second solicitation), and (iii) reports the dates of birth of the dependents on the 2016 Form 1095-B upon failing to receive the TINs after both solicitations, then ABC is able to demonstrate reasonable efforts to obtain the TINs and avoid penalties with respect to Z's 2016 Form 1095-B. ABC may similarly avoid penalties with respect to Z's 2017 Form 1095-B (reporting date of births for Z's dependents in lieu of their TINs), provided ABC submits another request for the TINs not later than December 31, 2017.

The penalties are imposed on the employers sponsoring the self-insured plans. In the case of fully-insured health plans, the penalty is imposed on the health insurance issuer (the filer of the Form 1094-B) and actions taken by the sponsoring employer may satisfy the TIN solicitation requirements. However, the health insurance issuer remains responsible for the penalties.

Penalty Relief for 2015

The IRS will not impose penalties for returns and statements filed and furnished in 2016 to report coverage in 2015 reporting incorrect or incomplete information on the return or statement, including TINs. However, no relief is provided to employers that do not make a good faith effort to comply with the reporting requirements. Although the IRS fails to specify what constitutes a "good faith effort" employers can show that they have made good faith efforts to comply with the information reporting requirements. This relief applies to incorrect or incomplete information, including the omission of TINs to be reported on a 1095.

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