



## BENEFIT NEWS BRIEFS

### ***IRS Publishes Proposed Regulations Addressing “Missing” SSNs on Form 1095-B and Form 1095-C, Part III***

The IRS released [proposed regulations](#) relating to information reporting of minimum essential coverage (MEC) under [Section 6055](#) of the Internal Revenue Code (Code). Health insurance issuers, certain employers and others (*such as trustees of multiemployer group health plans*) that provide MEC to individuals must report information about the type and period of coverage to the IRS and furnish related statements to covered individuals. In general, under Section 6055, the “reporting entity” for coverage that is through a multiemployer group health plan is done by the plan sponsor, generally the joint board of trustees. We will be focusing on reporting by Trustees of multiemployer group health plans (“Plan”). These proposed regulations do not affect information reporting under Section 6056 Applicable Large Employers (ALEs) on Form 1095-C, Parts I and II.

These regulations are generally proposed to apply for taxable years ending after December 31, 2015, and *may be relied on* for calendar years ending after December 31, 2013. Until final regulations are released, Plans may also rely on previously issued [Notice 2015-68](#). We will only concentrate on the section concerning the solicitation of the tax identification number (TIN) of a covered individual, which is usually the Social Security Number (SSN). There are more details in the proposed regulations than we discuss, individuals responsible for this function should review the regulation and *Preamble* closely.

#### **General Background**

Under the *Affordable Care Act (ACA)*, individuals must have MEC, qualify for a health coverage exemption, or make an individual shared responsibility payment with their income tax returns. Section 6055 provides that all persons who provide MEC to an individual must report certain information to the IRS that identifies covered individuals and the period of coverage, and must furnish a statement to the covered individuals containing the same information.

Information returns under Section 6055 generally are filed using Form 1095-B. Separate and distinct health coverage-related reporting requirements under [Section 6056](#) apply to ALEs ( $\geq$  50 Full Time Employees which report information on Form 1095-C. ALEs must separately report information on their employees that are not covered by the multiemployer plan.

Under Section 6055(b), such providers of MEC, like the Plan, must report the following information to the IRS:

- the name, address, and employer identification number (EIN) of the Plan required to file the return;
- the name, address, and SSN, or date of birth if a SSN is not available, of the responsible individual;
- the name and SSN, or date of birth if a SSN is not available, of each individual who is covered under the Plan; and
- the months of coverage for each covered individual.

A Plan that fails to comply with the filing and statement furnishing requirements of Section 6055 may be subject to penalties for *failure to file timely a correct information return* ([Section 6721](#)) **or** *failure to furnish timely a correct statement* ([Section 6722](#)). These penalties may be waived if the failure is due to reasonable cause and not due to willful neglect; that is, if a Plan demonstrates that it acted in a “responsible manner” and that the failure is due to significant mitigating factors or events beyond the Plan’s control.

The *Preamble* explains that a person (the Plan) will be treated as acting in a “responsible manner” if the Plan properly solicits a SSN but does not receive it. For this purpose, “proper solicitation” of a SSN involves:

- an initial solicitation (usually at initial enrollment) and
- two subsequent annual solicitations.

In general, an initial solicitation (first attempt) for a SSN is made by a Plan when an individual first seeks coverage under the Plan. If the Plan does not receive the SSN at the time of initial coverage under the Plan, the *first annual solicitation* (second attempt) is generally required by December 31 of the year in which the individual becomes covered under the Plan (January 31 of the following year if the relationship begins in December). Generally, if the SSN is still not provided, a second annual solicitation (third attempt) is required by December 31 of the following year. Similar rules apply to Plans who file or furnish information reports with incorrect SSNs. See [Benefit News Briefs 2014-30](#) for discussion of the SSN rules prior to these proposed rules.

### SSN Solicitation for New Enrollments on or after July 29, 2016

The *Preamble* discusses how IRS regulation Section 301.6724–1(e)(1)(i) , which sets out the SSN solicitation process, provides that an initial SSN solicitation (first attempt to obtain the SSN) must occur when an “account” is “opened”. The proposed regulations provide that for health care plan purposes an “account” is considered “opened” on the date the Plan receives a substantially complete application for new coverage or request to add an individual to existing coverage. Accordingly, Plans may generally satisfy the requirement for the *initial solicitation* (first attempt) by requesting SSNs as part of the application for coverage (enrollment form).

The proposed regulations also change the timing of the *first annual solicitation* (second attempt) with respect to missing SSNs and require that the *first annual solicitation (second attempt)* be made no later than 75 days after the date on which the account was “opened”. The deadline for the *second annual solicitation (third attempt)* remains December 31 of the year *following the year* the account is opened. The proposed regulations do not modify the required timing for *incorrect* SSNs (as opposed to missing SSNs discussed above). The following textbox illustrates this rule for new enrollments after July 29, 2016:

NEW ENROLLMENT AFTER JULY 29, 2016		
Enrollment Date (First Attempt)	First Annual Solicitation (Second Attempt)	Second Annual Solicitation (Third Attempt)
1/1/2017	No later than 3/17/2017  (75 days after enrollment)	No later than 12/31/2018  (December 31 of year after first attempt)

The *Preamble* to the proposed regulations expressly provide that SSN solicitations (first, second and third attempts) made to the covered person *are treated as SSN solicitations of every covered individual (spouse/dependents) under the Plan* for purposes of Section 301.6724–1(e)(1) and (f)(1). Thus, the Trustees do not need to make separate attempts to the covered person for the SSN of the spouse and each dependent nor do they need to attempt to contact each such covered individual directly.

### SSN Reporting Relief for Covered Individuals Enrolled Prior to July 29, 2016

In order to provide additional relief and ensure that the SSN solicitation requirements are satisfied with respect to covered individuals already enrolled in the Plan, an additional rule is proposed. Under this proposed rule, if an individual was enrolled in coverage on any day prior to July 29, 2016, the “account” is considered “opened” on July 29, 2016.

According to the *Preamble*, Plans have satisfied the requirement for the *initial solicitation* (first attempt) with respect to already enrolled individuals **IF** they

requested enrollee SSNs either as *part of the application for coverage* **or** at any other point prior to July 29, 2016. As noted earlier, the deadlines for the first and second annual SSN solicitations (second and third attempts) are tied to the date the account is "opened." In order to provide more time for annual solicitations (second and third attempts) for Plans that may not have made them, the proposed regulation treats all "accounts" for covered individuals for which a SSN has not been provided as "opened" on July 29, 2016.

The *Preamble* explains that **if** a Plan made its initial solicitation (first attempt) at enrollment prior to July 29, 2016, the first annual solicitation (second attempt) should be made no later than 75 days after July 29, 2016. If a Plan makes the first annual solicitation (second attempt) *within such time frame* will be treated as having made the attempt *within a reasonable time*. *The second annual solicitation (third attempt) would need to be made by December 31 of the following calendar year*. The following textbox illustrates this rule using the example of an individual who submits a substantially complete application on January 1, 2016.

<b>ENROLLMENT PRIOR TO JULY 29, 2016</b> (Initial Solicitation (First Attempt) Prior to July 29, 2016)			
<b>Enrollment Date (First Attempt)</b>	<b>Deemed "Opened" Date</b>	<b>First Annual Solicitation (Second Attempt)</b> No later than 10/12/2016 (75 days after enrollment)	<b>Second Annual Solicitation (Third Attempt)</b> No later than 12/31/2017 (December 31 of year after first attempt)
1/1/2016	7/29/2016		

Plans that have **not** made the *initial solicitation (first attempt)* for currently enrolled covered individuals prior to July 29, 2016 should comply with the *first annual solicitation requirement (second attempt)* and make the solicitation (second attempt) within 75 days from the deemed "opened" date of July 29, 2016. For example:

<b>ENROLLMENT PRIOR TO JULY 29, 2016</b> (No Initial Solicitation)			
<b>Enrollment Date (First Attempt)</b>	<b>Deemed "Opened" Date</b>	<b>First Annual Solicitation (Second Attempt)</b> No later than 10/12/2016 (75 days after enrollment)	<b>Second Annual Solicitation (Third Attempt)</b> No later than 12/31/2017 (December 31 of year after first attempt)
No First Attempt at Enrollment	7/29/2016		

For individuals whose coverage was terminated prior to September 17, 2015, the *Preamble* notes that under Notice 2015–68 multiemployer plan trustees are deemed to have satisfied the requirements for SSN solicitations.

### **Conclusion**

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Going forward, Plans should diligently make efforts to obtain SSNs at the time of initial enrollment and make the subsequent solicitations in a timely manner, as required. The SSN reporting relief gives trustees of multiemployer plans an opportunity to make up for any possible past deficiencies in SSN solicitation.

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