



**BlueCross BlueShield
Association**

An Association of Independent
Blue Cross and Blue Shield Plans

October 31, 2014

Stacey Becker
Director, Tax Forms and Publications Division
Internal Revenue Service
Room 6526
1111 Constitution Avenue, N.W.
Washington, DC 20224

Submitted via e-mail to Christie.A.Preston@irs.gov

**RE: Draft of Form 1095-B, Health Coverage, and Instructions
Draft of Form 1095-C, Employer Provided Health Insurance Offer and Coverage,
and Instructions**

Dear Ms. Becker:

The Blue Cross and Blue Shield Association ("BCBSA") appreciates the opportunity to respond to the Internal Revenue Service ("IRS") on the notices published at 79 Fed. Reg. 52117 and 52118 (September 2, 2014) seeking comment on the drafts of Form 1095-B, Health Coverage, and Form 1095-C, Employer Provided Health Insurance Offer and Coverage, with accompanying instructions, which will be used by health insurance issuers and certain other providers of minimum essential coverage ("MEC"), as well as "applicable large employers," to report MEC and other coverage information to the IRS.

BCBSA is a national federation of 37 independent, community-based, and locally-operated Blue Cross and Blue Shield Plans ("Plans") that collectively provide health care coverage for 105 million – one in three – Americans. Blue Cross and Blue Shield Plans offer coverage in every market and every ZIP Code in America. Plans also partner with the Government in Medicare, Medicaid, the Children's Health Insurance Program, and the Federal Employees Health Benefits Program.

Reporting of coverage information is important to IRS administration of the individual and employer shared responsibility provisions as well as premium tax credits. We believe that forms and instructions for coverage information reporting should assist filers through efficient procedures for reporting.

Key Recommendations

As described in the detailed recommendations that follow, BCBSA's comments on draft Forms 1095-B and 1095-C are as follows:

Recommendation # 1:

Multiple Form 1095-B reports for an individual should not be required, but may be used.

Recommendation # 2:

The IRS should expand the TIN Matching Program to filers of information returns required under Code section 6055 consistent with its existing legal authority to do so.

Recommendation # 3:

The IRS should do additional outreach to individuals to explain why their Social Security Numbers are being used and the consequences of failure to provide a Social Security Number.

Recommendation # 4:

De minimis relief for missing taxpayer identification numbers (“TINs”) in Form 1095-B should be available for error rates of up to 10 percent of the total number of all information returns a filer is required to file during the year.

Recommendation # 5:

There should be an additional period of transition relief from TIN solicitation, especially if there is no *de minimis* relief for missing TINs on Form 1095-B.

Recommendation # 6:

Instructions should clarify that “SSN” in Form 1095-B refers to the use of a TIN and explain what to do when an individual must use an adoption TIN or individual TIN.

Recommendation # 7:

There should be additional explanation and outreach as to the requirement of an “authoritative transmittal” for applicable large employer members.

Recommendation # 8:

Clarify that the employers that must file Form 1095-B include self-insured employers that are not applicable large employers.

Recommendation # 9:

The instructions for Form 1095-B should make it clear whether an individual who gets a child covered by a child-only policy is a “responsible individual” for purposes of Form 1095-B.

Recommendation # 10:

Specifications for substitute forms and statements should be issued as soon as possible.

Our detailed comments are attached.

We appreciate the opportunity to provide comments regarding the draft Forms 1095-B and 1095-C and their instructions for coverage reporting and look forward to continuing to work with

the Treasury and the IRS as they issue guidance on implementing coverage reporting. We ask that the IRS and Treasury issue final forms and final instructions as soon as possible. If you have any questions, please contact Richard White at Richard.White@bcbsa.com or 202.626.8613.

Sincerely,

A handwritten signature in black ink that reads "Justine Handelman". The signature is written in a cursive, flowing style.

Justine Handelman
Vice President, Legislative and Regulatory Policy
Blue Cross Blue Shield Association

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BCBSA Detailed Comments and Recommendations on Draft Forms 1095-B, Health Coverage, and 1095-C, Employer Provided Health Insurance Offer and Coverage

I. Multiple Reports for an Individual

Issue:

Multiple Forms 1095-B may be required for the same individual because coverage changes during a year may result in an individual being covered by the same health insurance issuer under different policies or within different market segments.

Recommendation:

Health insurance issuers should be permitted to issue a Form 1095-B for each policy under which an individual was covered or to issue a single Form 1095-B that reflects all coverage for an individual during the calendar year.

Rationale:

Flexibility will be important due to differing capabilities among issuers. While some health insurance issuers may have systems that can combine all of the ways in which it covers an individual into one Form-1095-B, other issuers' systems may not be able to do this.

Individuals often make coverage changes during the year. For example, an individual may go from group coverage to individual market coverage (off-exchange) or vice versa, always covered by the same health insurance issuer. Another example is if an individual switches employers, both of which have employer-based coverage with the same issuer.

In these and similar situations, an issuer should be able to combine all coverage in a single report. If an individual is covered through more than one employer's group health plan or by an employer plan followed by individual market coverage (off-exchange) and the coverage is offered by the same issuer, a single report combining information on all methods of coverage should be permitted.

Health insurance issuers with this capability will avoid the expense of producing multiple reports for the same individual. Form 1095-B and its instructions should allow reporting in a manner that is efficient.

However, some health insurance issuers may not have systems that can provide a combined Form 1095-B. These issuers need to provide separate reports for each way in which they cover an individual. Over time they can decide whether developing a system that allows for a combined report is efficient for the issuer and its members.

The draft version of Form 1095-B would have to be changed in Part I, Line 8 to reflect the possibility of more than one origin of a policy. Page 3 of the draft instructions would also have to be amended to explain a health insurance issuer's option to combine all coverage during the year into a single report.

If this is not addressed in the standard Form 1095-B, the IRS should permit reporting of different types of insured coverage on the same form through a substitute form. This should provide needed flexibility in reporting coverage to the IRS.

By making this change, the IRS will help health insurance issuers make appropriate decisions as to the most efficient way to comply with coverage reporting requirements and that best serves their members.

II. The IRS Should Expand the TIN Matching Program to Filers of Information Returns Required Under Code Section 6055

Issue:

The IRS currently provides an e-service, the TIN Matching Program (the “Program”), for payors of payments potentially subject to backup withholding under Code section 3406. The Program permits those payors to identify name/TIN mismatches after TIN solicitation and substantially in advance of filing erroneous information returns with the IRS. Unfortunately, the scope of the Program precludes participation by those who file information returns that are not related to backup withholding. This places a disproportionate and unfair burden on those information reporting filers that are excluded from this means of early identification of payee name/TIN mismatches. It appears that filers required to report under Code section 6055 will similarly be denied the right to participate in the Program. As a result of their exclusion, those filers do not become aware of the errors until they receive an IRS Notice 972CG showing proposed penalties under Code sections 6721 and 6722 for having filed returns containing incorrect TINs. Further, individuals whose TINs were not correctly identified due to inability of issuers to use the TIN matching system will receive penalty assessments for not having MEC even if they have coverage, causing confusion among individuals.

Recommendation:

The IRS should expand the TIN Matching Program to filers of information returns required under Code section 6055 consistent with its existing legal authority to do so.

Rationale:

The IRS apparently believes that it lacks authority to expand the use of the TIN Matching Program to health insurance issuers making filings under Code section 6055. However, as set forth in a recent article, the IRS has authority to expand the TIN Matching Program. Michael M. Lloyd and S. Michael Chittenden, *Expand TIN Matching Program To Avert Another ACA Debacle*, Tax Notes, January 27, 2014, at 424.

Not expanding the TIN Matching Program is particularly worrisome because it is a lost opportunity to stop public confusion, unnecessary alarm, and the resulting effort from receiving and correcting the penalty assessment notices. It does not serve the interests of the public or the Government when there are errors in TIN reporting and individuals who have coverage receive penalty notices from the IRS erroneously stating that they are in violation of the individual shared responsibility requirement.

III. Additional Outreach by IRS on Use of TINs

Issue:

Individuals may not understand why their health insurance issuer is requesting their Social Security Number, how it will be used, or the consequences of failure to provide a Social Security Number to their health insurance issuer.

Recommendation:

The IRS should do additional outreach to individuals to explain why their Social Security Numbers are being used and the consequences of failure to provide a Social Security Number.

Rationale:

Individuals are not used to health insurance issuers asking for their Social Security Numbers because health insurance issuers operated for years under state laws that prohibited the use of Social Security Numbers for some purposes (e.g., on an identification card or to access a website) or imposed conditions (e.g., consent requirements) on the use of Social Security Numbers that discouraged issuers from making any use of Social Security Numbers. Health insurance issuers anticipate that some individuals may not want to provide their Social Security Numbers to their health insurance issuers because they do not understand the purpose of providing this information. If individuals do not provide their Social Security Numbers to their health insurance issuers, they may be notified of tax penalties for violation of the individual shared responsibility requirement when, in fact, they are not in violation.

The IRS could alleviate this situation by making additional outreach to individuals. This could take the form of questions and answers on this topic on the IRS website, outreach to tax preparers to include an explanation of the use of Social Security Numbers in tax preparation software, etc.

IV. *De Minimis* Relief for Missing TINs

Issue:

De minimis relief currently it is set at a rather low percentage based on soliciting TINs for 1099s, but the percentage of missing TINs is likely to be higher for the individual shared responsibility requirement.

Recommendation:

De minimis relief for missing TINs in Form 1095-B should be available for error rates of up to 10 percent of the total number of all information returns a filer is required to file during the year.

Rationale:

Treas. Reg. § 301.6721-1(d) provides that penalties for incorrect information returns do not apply for a *de minimis* number of returns corrected by August 1. The *de minimis* level is set at the greater of 10 or one-half of one percent of the total number of all information returns the filer is required to file during the year. Treas. Reg. § 301.6721-1(d)(2).

How this would apply to Forms 1094-B and 1095-B is unclear because the draft Instructions for Forms 1094-B and 1095-B (p. 3) reserve setting forth a correction process for a later date. Unanswered questions include:

- The criteria for determining when a form is voided or corrected.
- The timing of corrections, how correction should be made, and the tolerance for errors.
- The number of corrections that must be made on a single form.

Treas. Reg. § 301.6721-1(d) was written for Forms 1099 under which individuals must provide TINs or be subject to backup withholding. However, as described in Part III above, individuals are not used to providing TINs to their health insurance issuers. Further, Form 1095-B is used in a different scenario from Forms 1099: Individuals are not providing TINs to avoid backup withholding, but to avoid a tax penalty.

Because of the different circumstances in which Form 1095-B is used, a higher level of *de minimis* relief is justified. We suggest that *de minimis* relief be available for error rates of up to 10 percent of the total number of all Form 1095-B returns a filer is required to file during the year. After the coverage reporting requirement has been in effect for a number of years, if the IRS decides level of *de minimis* relief is too high, the level may be adjusted downward, but until that time a higher level of *de minimis* relief is justified.

V. Additional Transition Relief for TIN Solicitation

Issue:

There are several unknowns relating to TIN solicitation for coverage reporting purposes.

Recommendation:

There should be additional transition relief from TIN solicitation for coverage reporting.

Rationale:

If the IRS decides not to grant *de minimis* relief for missing TINs as described in Part IV, it should provide an additional period of transition relief. Aside from the fact that individuals are not used to providing TINs to their health insurance issuers (see Parts III and IV, above), there are also a number of unknowns relating to TIN solicitation, such as:

- The error correction process for Form 1095-B is not yet set (see Part IV, above).

- Information technology systems cannot be put in place in the time allowed.
- There is no time for voluntary testing on any scale because the forms are still drafts.
- Additional investments of time and money are required for implementation.
- Vendors are not ready at this date.
- No specific regulations issued on TIN solicitations for health coverage reporting.
- No formal response given to the request to expand the TIN Matching System (see Part II, above).

An additional period of transition relief of at least two years will allow implementation of TIN solicitation for coverage reporting to be done in an orderly fashion.

VI. Use of “SSN” in Form 1095-B

Issue:

Draft Form 1095-B, Part I, Box 2, and draft instructions (page 3) refer to an individual’s SSN, but regulations actually require the use of a TIN.

Recommendation:

Instructions should clarify that “SSN” refers to the use of a TIN and explain what to do when an individual must use an adoption TIN or individual TIN.

Rationale:

The final regulations implementing section 6055 require a provider of MEC to report the TINs of the responsible individual (policyholder) and covered individuals. See Treas. Reg. § 1.6055-1(e)(1)(ii)-(iii). Draft Form 1095-B (Part I, Box 2) asks for an SSN instead of a TIN. We do not have a concern about using “SSN” in the form, but the instructions for Form 1095-B should explain that the SSN serves as an individual’s TIN.

Further, the instructions for Form 1095-B or other IRS guidance should clarify whether a date of birth may be used where an individual has an [Individual Taxpayer Identification Number \(ITIN\)](#) or [Adoption Taxpayer Identification Number \(ATIN\)](#) because they cannot get an SSN.

VII. “Authoritative Transmittal”

Issue:

The need for an “authoritative transmittal” relating to Forms 1094-C and 1095-C is unclear.

Recommendation:

There should be additional explanation and outreach as to the requirement of an “authoritative transmittal” for applicable large employer members (“ALE members”).

Rationale:

The IRS wants to know about all the ALE members reporting in a group of employers. However, it is not clear on page 2 of the draft instructions for Forms 1094-C and 1095-C which entity has to report all the ALE members.

Is it the holding company? Or does each ALE member indicate all other ALE members in the group? The example (page 2 of draft instructions), which uses a “division” (which may or may not be a separate legal entity), is not helpful.

VIII. Clarify who Must File Form 1095-B

Issue:

The draft instructions for Form 1095-B are not consistently clear on when an employer or other entity required to report must complete Form 1095-B, Part III.

Recommendation:

Clarify that Form 1095-B, Part III, is completed by self-insured employers that are not applicable large employers (“ALEs”).

Rationale:

Page 1 of the draft instructions states “[h]owever, employers (including government employers) subject to the employer shared responsibility provisions sponsoring self-insured group health plans will report information about the coverage in Part III of Form 1095-C.” On the Form 1095-B draft instructions, page 3, Part 2, the “Tip” refers to employers reporting self-insured for Part III (lines 16-22). However, it seems that these employers would not be ALEs with self-funded plans. The instructions should clarify this. Otherwise, employers with self-funded plans will be confused as to whether they should complete Form 1095-B, Part III.

The instructions should also be clear that other types of entities must complete this portion of Form 1095-B. These entities include trusts, multiple employer welfare arrangements (including associations), and multi-employer plans.

IX. “Responsible Individual” for Child-Only Policies

Issue:

How to report coverage for child-only policies for purposes of Form 1095-B.

Recommendation:

The instructions for Form 1095-B should make it clear whether an individual who gets a child covered under a child-only policy may be considered a “responsible individual” for purposes of Form 1095-B.

Rationale:

Form 1095-B (Part I, Line 1) and instructions (page 3) require naming the “responsible individual” for a child-only policy. The instructions state that “[a] responsible individual may be a primary insured employee, former employee, parent, uniformed services sponsor, or other person enrolling individuals in coverage. Do not enter the name of a business or business owner that is the policy holder for its employees.”

Under a child-only policy, the child may be the contract holder under the policy, although most children will be enrolled with assistance from a parent or legal guardian.

The instructions should make clear whether an individual who gets a child covered under a child-only policy may be considered a “responsible individual” so that health insurance issuers will know how to complete Form 1095-B properly.

Additionally, please note the discrepancy between the instructions on “responsible individual” and the definition of “responsible individual” found in the regulations (Treas. Reg. § 1.6055-1(b)(11)) – specifically the comma missing after “primary insured” in the instructions and the discrepancy between “other persons enrolling individuals in coverage” in the instructions compared to “other related person named on an application who enrolls one or more individuals, including him or herself in minimum essential coverage” as written in the regulations.

X. Substitute Forms and Statements

Issue:

Specifications for substitute forms are not available.

Recommendation:

Specifications for substitute forms and statements should be issued as soon as possible.

Rationale:

Regulations specifically permit the use of substitute forms for reporting MEC to the IRS and for providing statements to individuals. Treas. Reg. §§ 1.6055-1(f)(2)(iii), (g)(2); 301.6056-1(d)(2), (f)(2). Specifications for the substitute forms and statements are needed well in advance of deadlines for reporting and for providing statements because of the systems work needed to create and implement substitute forms and statements. Thus, specifications for substitute forms and statements should be made available as soon as possible to allow time for the appropriate creation and testing of systems utilizing substitute forms and statements.