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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9663]

RIN 1545-BL42

Information Reporting for Affordable Insurance Exchanges

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to requirements for Affordable Insurance Exchanges (Exchanges) to report information relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. These final regulations apply to Exchanges that make qualified health plans available to individuals.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Dates: For dates of applicability, see §1.36B-1(o).

FOR FURTHER INFORMATION CONTACT: Shareen S. Pflanz or Arvind Ravichandran, (202) 317-4718 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the

Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2232.

The collection of information in these final regulations is in §1.36B-5 and will be reported on Form 1095-A. The collection of information is necessary to compute the premium tax credit and to reconcile the amount of the premium tax credit with advance payments of the premium tax credit (advance credit payments) made under section 1412 of the Patient Protection and Affordable Care Act (42 U.S.C. 18082). The collection of information is needed for compliance with the provisions of section 36B(f)(3) of the Internal Revenue Code (Code). The likely respondents are Exchanges established under section 1311 or 1321 of the Patient Protection and Affordable Care Act (42 U.S.C. 13031 or 42 U.S.C. 18041).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimated total annual reporting burden is 10,050 hours. The estimated annual burden per respondent is 670 hours. The estimated number of respondents is 15.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer SE:W:CAR:MP:TM:S, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

Background

This document contains final regulations that amend §1.36B-5 of the Income Tax Regulations (26 CFR part 1), providing detailed rules for information reporting by Exchanges on enrollments in qualified health plans. Section 36B(f)(3) directs Exchanges to report to the IRS and to taxpayers certain information necessary to reconcile the premium tax credit with advance credit payments and to administer the premium tax credit generally.

On July 2, 2013, a notice of proposed rulemaking (REG-140789-12) was published in the **Federal Register** (78 FR 39644). Written comments responding to the proposed regulations were received and considered. The comments are available for public inspection at www.regulations.gov or on request. No public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.

Explanation of Provisions and Summary of Comments

1. Individuals Subject to Exchange Reporting.

The proposed regulations required Exchanges to report information for all individuals who enroll in a qualified health plan. The proposed regulations used the terms taxpayer and responsible adult to describe, respectively, an individual who applies to enroll one or more members of the individual's family in a qualified health plan and who requests advance credit payments and to describe an individual who

enrolls one or more members of the individual's family and does not request advance credit payments.

A commenter suggested that these terms do not accommodate nontraditional family structures because the definitions assume that the individual who claims a dependent also enrolled the dependent in coverage. Commenters also felt the terms were confusing.

The terms taxpayer and responsible adult in the proposed regulations were intended to describe the individual who is expected to file an income tax return for the year of coverage for the enrolling family. Whether that individual is the one who completes the enrollment application is not significant. Accordingly, the final regulations clarify that these terms describe the individual who is expected to file an income tax return for the year of coverage with respect to individuals enrolling in a qualified health plan.

To avoid confusion with other uses of the term taxpayer, the final regulations instead use the term tax filer to identify individuals on behalf of whose families advance credit payments are made. This term is used in regulations at 45 CFR 155.300 to describe a taxpayer and thus is more familiar to Exchanges.

The final regulations clarify that if more than one tax family enrolls in the same qualified health plan there is a tax filer or responsible adult for each family and that the tax filer or responsible adult may or may not enroll in coverage.

The final regulations clarify the information required to be reported for qualified health plan enrollments for which advance credit payments are made or not made. Because the primary difference in the information reported relates to whether or not

advance credit payments are made on behalf of an individual, the final regulations distinguish the reporting categories based on whether or not advance credit payments are made on behalf of an individual, rather than on whether an individual requests advance credit payments.

2. Information Required to be Reported

a. Specific data elements

The proposed regulations required Exchanges to report information concerning all individuals enrolled in qualified health plans. For each plan, the information includes the name, address, and taxpayer identification numbers (TINs), or dates of birth if a TIN is not available, for each individual covered under the plan; applicable benchmark plan premiums or the amount that would be the benchmark premium that would apply to all enrolled individuals (unless that information is made available to individuals through an alternative method that they can access at tax return filing); the amount of the premium for the qualified health plan the individuals enroll in; the name of the qualified health plan issuer and the issuer's employer identification number (EIN); the qualified health plan policy number; the Exchange's unique identification number; and the unique number that identifies the family's specific account to enable data association from month to month. For individuals enrolled in a plan for which advance credit payments were requested, the proposed regulations required Exchanges to report the amount of advance credit payments, whether the individuals enrolled are the taxpayer's dependents, and certain information concerning employers.

The final regulations generally require Exchanges to report the data elements identified in the proposed regulations but make several minor changes and clarifications

in response to comments and based on what is needed to determine the premium tax credit.

Commenters requested that the final regulations omit certain data elements from the reporting requirements. A commenter expressed concern that it would not be able to report accurate information about the amount of advance credit payments. Another commenter questioned the need to report the family's specific account number. Other commenters advised that issuers often do not assign a policy number and that HHS regulations do not require issuers to report policy numbers to Exchanges.

The final regulations require Exchanges to report the policy identification number assigned by the Exchange instead of a policy number created by an issuer and clarify that the "specific account number" is the unique identifying number the Exchange uses to report data that enables the IRS to associate the data with the proper account. These data elements, including the amount of advance credit payments and the unique data association number, are available to Exchanges and essential for the IRS to properly administer the premium tax credit.

The proposed regulations required Exchanges to report whether an individual enrolled in a qualified health plan by a taxpayer is the taxpayer's dependent. A commenter suggested that Exchanges should not be required to report this information because Exchanges will obtain this information from the IRS as part of the verification of an applicant's information. The final regulations do not adopt this comment because information the IRS provides as part of the verification process is from the taxpayer's most recently filed tax return, which may be two years old. Accordingly, the final regulations retain the rule in the proposed regulations that, for plans for which advance

credit payments are made, Exchanges will report which covered individuals a tax filer represented to the Exchange that he or she would claim as a dependent for the coverage year. This information is necessary because advance credit payments are based, in part, on information concerning the individuals whom a tax filer expects to claim as dependents for the taxable year for which the advance credit payments are made.

In addition, the final regulations make several minor changes to the data elements reported based on what is needed to determine the premium tax credit. The proposed regulations provided that Exchanges must report the issuer's EIN on both the annual statement and the monthly statements. The final regulations provide that Exchanges will report the issuer's EIN on a monthly basis only, as this information is not needed on the annual report. The proposed regulations provided that Exchanges must report an address for a taxpayer's spouse. The final regulations omit this information, as it is unnecessary. Finally, the proposed regulations provided that Exchanges must report the dates of each individual's coverage under the qualified health plan. The final regulations provide that Exchanges also must report the start and end dates for the qualified health plan itself, as this information may be needed to determine the amount of the premium tax credit.

b. Information on applicable benchmark premium

The proposed regulations required Exchanges to report to the IRS information concerning the monthly premium for the applicable benchmark plan. For qualified health plans for which advance credit payments were approved, the proposed regulations provided that Exchanges must report the monthly premium for the

applicable benchmark plan used to compute advance credit payments. For plans for which advance credit payments were not requested or were not approved, the proposed regulations required Exchanges to report the premium for the applicable benchmark plan that would apply to the individuals enrolled in a qualified health plan, unless the information is made available through an alternative method. Commenters requested clarification on the distinction between the benchmark premium information reported in each case.

The proposed and final regulations require Exchanges to report the monthly premium for the applicable benchmark plan that applies to the coverage family (the members of the family enrolling and eligible for a premium tax credit subsidy) that is used to compute advance credit payments. If no advance credit payments are made, Exchanges may not determine which individuals enrolled would be part of the coverage family and the applicable benchmark premium that would apply to that coverage family. Nonetheless, the final regulations, like the proposed regulations, require reporting the benchmark premium that would apply if the coverage family included everyone covered under the plan because individuals for whom advance credit payments are not made may claim the premium tax credit on the tax return for the year of coverage and must know the premium for the applicable benchmark plan to compute the amount of the credit. In lieu of reporting this benchmark premium, however, Exchanges may provide a reasonable method for taxpayers to use to determine at the time of filing the tax return the premium for the applicable benchmark plan that applies to a coverage family.

c. Verification of employment information

For individuals enrolled in a qualified health plan for which advance credit

payments were requested, the proposed regulations required Exchanges to report information on employment, including the name, address, and EIN of each employer of each enrolled individual and whether the employer offered minimum essential coverage to the extent provided to the Exchange. A commenter requested confirmation that the requirement to report employment information does not obligate the Exchange to request or verify a taxpayer's employment information on a monthly basis or otherwise ensure the accuracy of the information supplied.

The proposed and final regulations provide that Exchanges must report employment information "to the extent this information is provided to the Exchange." Thus, Exchanges must report only employment information provided to the Exchange and are not obligated to verify the accuracy, except to the extent required by Department of Health and Human Services regulations. However, if during the year an enrollee provides updated or corrected employment information to an Exchange, the Exchange must report that information to the IRS in its next monthly report. Exchanges must submit corrected monthly reports for the coverage year by April 15th following the year of coverage.

d. Annual versus monthly reporting

The proposed regulations required Exchanges to report certain information to the IRS annually by January 31 of the year following the calendar year of coverage. Exchanges must report certain information on a monthly basis by the 15th of the month for the previous month and all previous months in that calendar year. A commenter requested that the final regulations delete the amount of the advance credit payments made on a taxpayer's behalf each month from the annual report to the IRS. The

commenter suggested that the IRS already will have this information from monthly reports.

The final regulations do not adopt this comment. The information provided on the annual report is identical to the information reported on the statement to individuals, discussed later in this preamble. It summarizes for the year the information submitted monthly that taxpayers claiming the premium tax credit must have to properly claim the credit on their returns and to reconcile the premium tax credit with advance credit payments. Accordingly, the final regulations do not omit this information from the annual report.

e. Family members with enrollments or exemptions at different exchanges

A commenter asked how Exchanges will identify the members of a tax household if the members enroll in, or receive minimum essential coverage exemptions from, different Exchanges. The final regulations clarify that an Exchange will report only information on enrollments and exemptions at that Exchange. The IRS will associate information reports from multiple Exchanges with the appropriate tax return.

f. Multiple families enrolled in one qualified health plan

Under §1.36B-3(h), if more than one tax family enrolls in a single policy, each applicable taxpayer covered by the plan may claim a premium tax credit, computed using the applicable percentage, household income, and benchmark plan that applies to that taxpayer. Under these circumstances, each applicable taxpayer must have the information specific to that tax family to claim the premium tax credit on the income tax return. Accordingly, the final regulations clarify that Exchanges will report the specified information for each family enrolled in a qualified health plan, whether receiving

advance credit payments or not, including multiple families submitting a single application or enrolled in a single qualified health plan.

3. Information Reporting on the SHOP

Commenters asked whether Exchanges must report information for taxpayers obtaining health care coverage through a Small Business Health Options Program (SHOP) Exchange. The final regulations clarify that section 36B(f)(3) and these regulations do not require the reporting of information for taxpayers enrolling in health care coverage through a SHOP Exchange. However, under regulations at 45 CFR 155.720, SHOP Exchanges will report to the IRS information concerning employer participation, employer contribution, and employee enrollment in a time and format to be determined by the Department of Health and Human Services.

4. Time for Reporting

The proposed regulations required Exchanges to report certain information to the IRS on or before the 15th day following each month of coverage (monthly reporting), commencing in February, 2014. Commenters requested that the IRS delay the initial monthly report until June or July, 2014, to allow Exchanges sufficient time to develop the systems and processes necessary to support the monthly reporting requirements. In response to these comments, the final regulations provide that the Commissioner may establish an initial monthly reporting date in other guidance, see §601.601(d), but no earlier than June 15, 2014. The report must include cumulative information for enrollments for the period January 1 through the end of the month preceding the initial monthly reporting date. For example, an initial report due June 15, 2014, must include cumulative information for the period January 1 to May 31, 2014.

5. Statements Furnished to Individuals

a. Individual receiving the statement

The proposed regulations directed Exchanges to furnish to each individual who enrolled one or more family members in a qualified health plan through the Exchange a written statement that includes the information the Exchange must report to the IRS annually. Exchanges may use Form 1095-A for the statement and must furnish the statement on or before January 31 of the year following the calendar year of coverage.

The proposed regulations required that an Exchange furnish a statement only to the individual who enrolls one or more family members through the Exchange. Several commenters indicated that Exchange regulations allow an individual applying for coverage to designate another person as an authorized representative for dealing with the Exchange on the individual's behalf. They requested that the final regulations recognize an individual's authorization of a third person as a representative for Exchange purposes as sufficient authority to allow Exchanges to provide the statement required under these regulations to the authorized representative, or that the final regulations require Exchanges to do so. Other commenters asked that the final regulations accommodate nontraditional family arrangements by allowing Exchanges to provide statements to individuals such as a grandparent or noncustodial parent who may claim a child as a dependent and would require the information on the statement to claim the premium tax credit for that dependent's coverage.

The final regulations do not prohibit Exchanges from providing statements to third parties if permitted under other law. However, section 36B(f)(3) does not authorize the IRS to require Exchanges to do so. In addition, the IRS is not able to provide

statements to third parties based on authorization to an Exchange because information obtained pursuant to section 36B(f)(3) is return information and, under section 6103, return information may be disclosed only under express authority of the Code.

Commenters recommended significantly limiting the information reported on the statement to protect victims of domestic violence and children they enroll in coverage. The final regulations require Exchanges to send statements only to the tax filer or responsible adult whom the Exchange identifies. This person is likely to be the individual enrolling the child in coverage. A person claiming an individual as a dependent who is not identified as a tax filer or responsible adult will not receive a statement reporting the dependent's coverage. Therefore, if a victim of domestic abuse enrolls, or enrolls a child, in coverage as a tax filer or responsible adult, the Exchange will send a statement only to that person, even if another taxpayer claims the child as a dependent. In addition, the statement will include an address only for the person to whom it is mailed. Accordingly, on this issue, the final regulations adopt the proposed regulations without change.

b. Electronic delivery of statements to recipients

The proposed regulations provided that statements to individuals may be sent electronically only to individuals who affirmatively consent to the electronic format. Commenters requested that the final regulations permit electronic delivery of statements, paper delivery of statements, or both. Other commenters stated that the electronic statement rules are too complex and should be simplified.

The final regulations do not prohibit an Exchange from sending both paper and electronic statements to an individual. However, the final regulations retain the

electronic statement procedures in the proposed regulations, which provide for affirmative consent to receive statements electronically, and clarify that the consent requirement is not satisfied if the recipient withdraws the consent. These procedures are the same as long-standing procedures that also apply in other information reporting contexts. The procedures are intended to ensure that all individuals, including those who do not have access to or are not fully comfortable with electronic technology, are able to access information necessary to prepare their tax returns.

The proposed regulations provided that if an Exchange furnishes a statement to an individual by mail, the statement must be sent to the individual's last known permanent address, or if no permanent address is known, to a temporary address. A commenter requested more definitive guidance on what constitutes the proper furnishing of a statement to an individual when the individual does not receive the statement, for example if the statement is returned undelivered. The commenter suggested that the final regulations adopt a rule that applies to other information reporting requirements that a first class mailing discharges the reporting entity's obligation to furnish a statement. To provide more certainty, the final regulations include this rule, which is consistent with other information reporting requirements.

Effective/Applicability Date

These regulations apply to taxable years ending after December 31, 2013.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been

determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Small Business Administration did not submit comments.

Drafting Information

The principal authors of these final regulations are Shareen S. Pflanz and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.36B-0 also issued under 26 U.S.C. 36B(g).

Section 1.36B-5 also issued under 26 U.S.C. 36B(g).

Par. 2. Section 1.36B-0 is amended by revising the entries for §1.36B-5 to read as follows:

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Par. 3. Section 1.36B-5 is revised to read as follows:

§1.36B-5 Information reporting by Exchanges.

(a) In general. An Exchange must report to the Internal Revenue Service (IRS) information required by section 36B(f)(3) and this section relating to individual market qualified health plans in which individuals enroll through the Exchange. No reporting is required under this section for enrollment in plans through the Small Business Health Options Exchange.

(b) Individual filing a return. For purposes of this section, the terms tax filer and responsible adult describe the individual who is expected to be the taxpayer filing an income tax return for the year of coverage with respect to individuals enrolling in a qualified health plan. A tax filer is an individual on behalf of whom advance payments of the premium tax credit are made. A responsible adult is an individual on behalf of whom advance payments of the premium tax credit are not made. An individual may be a tax filer or responsible adult whether or not enrolled in coverage. If more than one family (within the meaning of §1.36B-1(d)) enrolls in the same qualified health plan, there is a tax filer or responsible adult for each family.

(c) Information required to be reported--(1) Information reported annually. An Exchange must report to the IRS the following information for each qualified health plan--

(i) The name, address, and taxpayer identification number (TIN), or date of birth if a TIN is not available, of the tax filer or responsible adult;

(ii) The name and TIN, or date of birth if a TIN is not available, of a tax filer's spouse;

(iii) The amount of the advance credit payments paid for coverage under the plan each month;

(iv) For plans for which advance credit payments are made, the premium (excluding the premium allocated to benefits in excess of essential health benefits, see §1.36B-3(j)) for the applicable benchmark plan for purposes of computing advance credit payments;

(v) Except as provided in paragraph (c)(3)(ii) of this section, for plans for which advance credit payments are not made, the premium (excluding the premium allocated to benefits in excess of essential health benefits, see §1.36B-3(j)) for the applicable benchmark plan that would apply to all individuals enrolled in the qualified health plan if advance credit payments were made for the coverage;

(vi) The name and TIN, or date of birth if a TIN is not available, and dates of coverage for each individual covered under the plan;

(vii) The coverage start and end dates of the qualified health plan;

(viii) The monthly premium for the plan in which the individuals enroll, however --

(A) The premium allocated to benefits in excess of essential health benefits is excluded, see §1.36B-3(j);

(B) The premium for a stand-alone dental plan allocated to pediatric dental benefits is added, see §1.36B-3(k), but if a family (within the meaning of §1.36B-1(d)) is enrolled in more than one qualified health plan, the pediatric dental premium is added to the premium for only one qualified health plan; and

- (C) The amount is not reduced for advance credit payments;
- (ix) The name of the qualified health plan issuer;
- (x) The Exchange-assigned policy identification number;
- (xi) The Exchange's unique identifier; and
- (xii) Any other information specified by forms or instructions or in published guidance, see §601.601(d) of this chapter.

(2) Information reported monthly. For each calendar month, an Exchange must report to the IRS for each qualified health plan, the information described in paragraph (c)(1) of this section and the following information--

(i) For plans for which advance credit payments are made--

(A) The names, TINs, or dates of birth if no TIN is available, of the individuals enrolled in the qualified health plan who are expected to be the tax filer's dependent; and

(B) Information on employment (to the extent this information is provided to the Exchange) consisting of--

(1) The name, address, and EIN of each employer of the tax filer, the tax filer's spouse, and each individual covered by the plan; and

(2) An indication of whether an employer offered affordable minimum essential coverage that provided minimum value, and, if so, the amount of the employee's required contribution for self-only coverage;

(ii) The unique identifying number the Exchange uses to report data that enables the IRS to associate the data with the proper account from month to month;

(iii) The issuer's employer identification number (EIN); and

(iv) Any other information specified by forms or instructions or in published guidance, see §601.601(d) of this chapter.

(3) Special rules for information reported--(i) Multiple families enrolled in a single qualified health plan. An Exchange must report the information specified in paragraphs (c)(1) and (c)(2) of this section for each family (within the meaning of §1.36B-1(d)) enrolled in a qualified health plan, including families submitting a single application or enrolled in a single qualified health plan.

(ii) Alternative to reporting applicable benchmark plan. An Exchange satisfies the requirement in paragraph (c)(1)(v) of this section if, on or before January 1 of each year after 2014, the Exchange provides a reasonable method that a responsible adult may use to determine the premium (after adjusting for benefits in excess of essential health benefits) for the applicable benchmark plan that applies to the responsible adult's coverage family for the prior calendar year for purposes of determining the premium tax credit on the tax return.

(4) Exemptions. For each calendar month, an Exchange must report to the IRS the name and TIN, or date of birth if a TIN is not available, of each individual for whom the Exchange has granted an exemption from coverage under section 5000A(e) and the related regulations, the months for which the exemption is in effect, and the exemption certificate number.

(d) Time for reporting--(1) Annual reporting. An Exchange must submit to the IRS the annual report required under paragraph (c)(1) of this section on or before January 31 of the year following the calendar year of coverage.

(2) Monthly reporting--(i) In general. Except as provided in paragraph (d)(2)(ii) of this section, an Exchange must submit to the IRS the monthly reports required under paragraphs (c)(2) and (c)(4) of this section on or before the 15th day following each month of coverage.

(ii) Initial monthly reporting in 2014. Exchanges must submit to the IRS the initial monthly report required under paragraphs (c)(2) and (c)(4) of this section on a date that the Commissioner may establish in other guidance, see §601.601(d) of this section, but no earlier than June 15, 2014. The initial report must include cumulative information for enrollments for the period January 1, 2014, through the last day of the month preceding the month for submitting the initial monthly report.

(3) Corrections to information reported. In general, an Exchange must correct erroneous or outdated monthly-reported information in the next monthly report. If the information must be corrected after the final monthly submission on January 15 following the coverage year, corrections should be submitted by the 15th day of the month following the month in which the incorrect information is identified. However, no monthly report correction is permitted after April 15 following the year of coverage. Errors on the annual report must be corrected and reported to the IRS and to the individual recipient identified in paragraph (f) of this section as soon as possible.

(e) Electronic reporting. An Exchange must submit the reports to the IRS required under this section in electronic format. The information reported monthly will be submitted to the IRS through the Department of Health and Human Services.

(f) Annual statement to be furnished to individuals--(1) In general. An Exchange must furnish to each tax filer or responsible adult (the recipient for purposes of

paragraphs (f) and (g) of this section) a written statement showing--

(i) The name and address of the recipient and

(ii) The information described in paragraph (c)(1) of this section for the previous calendar year.

(2) Form of statements. A statement required under this paragraph (f) may be made by furnishing to the recipient identified in the annual report either a copy of the report filed with the IRS or a substitute statement. A substitute statement must include the information required to be shown on the report filed with the IRS and must comply with requirements in published guidance (see §601.601(d)(2) of this chapter) relating to substitute statements. A reporting entity may use an IRS truncated taxpayer identification number as the identification number for an individual in lieu of the identification number appearing on the corresponding information report filed with the IRS.

(3) Time and manner for furnishing statements. An Exchange must furnish the statements required under this paragraph (f) on or before January 31 of the year following the calendar year of coverage. If mailed, the statement must be sent to the recipient's last known permanent address or, if no permanent address is known, to the recipient's temporary address. For purposes of this paragraph (f)(3), an Exchange's first class mailing to the last known permanent address, or if no permanent address is known, the temporary address, discharges the Exchange's requirement to furnish the statement. An Exchange may furnish the statement electronically in accordance with paragraph (g) of this section.

(g) Electronic furnishing of statements--(1) In general. An Exchange required to

furnish a statement under paragraph (f) of this section may furnish the statement to the recipient in an electronic format in lieu of a paper format. An Exchange that meets the requirements of paragraphs (g)(2) through (g)(7) of this section is treated as furnishing the statement in a timely manner.

(2) Consent--(i) In general. A recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished. Alternatively, the consent may be made in a paper document that is confirmed electronically.

(ii) Withdrawal of consent. The consent requirement of this paragraph (g)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. An Exchange may provide that the withdrawal of consent takes effect either on the date the Exchange receives it or on another date no more than 60 days later. The Exchange may provide that a request by the recipient for a paper statement will be treated as a withdrawal of consent to receive the statement in an electronic format. If the Exchange furnishes a statement after the withdrawal of consent takes effect, the recipient has not consented to receive the statement in electronic format.

(iii) Change in hardware or software requirements. If a change in the hardware or software required to access the statement creates a material risk that a recipient will not be able to access a statement, an Exchange must, prior to changing the hardware or software, notify the recipient. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent

to receive the statement in the revised electronic format must be provided to the Exchange. After implementing the revised hardware and software, the Exchange must obtain a new consent or confirmation of consent from the recipient to receive the statement electronically.

(iv) Examples. The following examples illustrate the rules of this paragraph

(g)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive the statement required under section 36B electronically on a web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statement electronically by accessing the web site, downloading and completing the consent document, and e-mailing the completed consent to F. The consent document posted on the web site uses the same electronic format that F will use for the electronically furnished statement. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (g)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive the statement required under section 36B electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statement required under section 36B electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statement. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (g)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its web site stating that Recipient R may receive the statement required under section 36B electronically instead of in a paper format. The web site contains instructions on how R may access a secure web page and consent to receive the statements electronically. R accesses the secure web page and follows the instructions for giving consent. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (g)(2)(i) of this section.

(3) Required disclosures--(i) In general. Prior to, or at the time of, a recipient's consent, an Exchange must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (g)(3)(ii) through

(g)(3)(viii) of this section.

(ii) Paper statement. An Exchange must inform the recipient that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) Scope and duration of consent. An Exchange must inform the recipient of the scope and duration of the consent. For example, the Exchange must inform the recipient whether the consent applies to each statement required to be furnished after the consent is given until it is withdrawn or only to the first statement required to be furnished following the consent.

(iv) Post-consent request for a paper statement. An Exchange must inform the recipient of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (g)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) Withdrawal of consent. An Exchange must inform the recipient that--

(A) The recipient may withdraw consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) An Exchange will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (g) before the date on which the withdrawal of consent takes effect.

(vi) Notice of termination. An Exchange must inform the recipient of the conditions under which the Exchange will cease furnishing statements electronically to

the recipient.

(vii) Updating information. An Exchange must inform the recipient of the procedures for updating the information needed to contact the recipient and notify the recipient of any change in the Exchange's contact information.

(viii) Hardware and software requirements. An Exchange must provide the recipient with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the web site. The Exchange must advise the recipient that the statement may be required to be printed and attached to a Federal, State, or local income tax return.

(4) Format. The electronic version of the statement must contain all required information and comply with applicable published guidance (see §601.601(d) of this chapter) relating to substitute statements to recipients.

(5) Notice--(i) In general. If a statement is furnished on a web site, the Exchange must notify the recipient. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement and include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, this statement must be on the subject line of the electronic mail.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (g)(5)(i) of this section is returned as undeliverable, and the Exchange cannot obtain the correct electronic address from the Exchange's records or from the recipient, the Exchange must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected statement. An Exchange must furnish a corrected statement to the recipient electronically if the original statement was furnished electronically. If the original statement was furnished through a web site posting, the Exchange must notify the recipient that it has posted the corrected statement on the web site in the manner described in paragraph (g)(5)(i) of this section within 30 days of the posting. The corrected statement or the notice must be furnished by mail or in person if--

(A) An electronic notice of the web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) Access period. Statements furnished on a web site must be retained on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) Paper statements after withdrawal of consent. An Exchange must furnish a paper statement if a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished. A paper statement furnished under this paragraph (g)(7) after the statement due date is timely if furnished within 30 days after the date the Exchange receives the withdrawal of consent.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: May 1, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).