



WASHINGTON REPORT

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Subject: **IRS Issues Regulations on COLI Reporting**

Major References: [*IRS Temporary and Proposed Regulations under Code section 6039I - 1.6039I-1T*](#)

Prior AALU Washington Reports: 07-61; 07-17; 06-132; 06-121; 06-50

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THE CONCLUSION OF THIS WASHINGTON REPORT.**

The Internal Revenue Service has issued proposed and temporary regulations under Revenue Code section 6039I, which requires employers who maintain COLI contracts subject to section 101(j) to file annually a report with the Service. The regulations are non-substantive and essentially provide the authority for the IRS to issue new Form 8925 - Report of Employer-Owned Life Insurance Contracts, which employers with COLI contracts will most likely have to file beginning with the 2007 tax year.

Background

The policyholder of an "employer-owned life insurance contract" (as defined in Code section 101(j)) issued after the date of PPA enactment (August 17, 2006), is required to file a return with the IRS (at such time and in such manner as the Secretary of the Treasury shall, by regulations, prescribe).

The information required under Code section 6039I includes:

(1) the number of employees of the employer (or other applicable policyholder) at the end of the year;

- (2) the number of employees insured under the contracts at the end of the year;
- (3) the total amount of insurance in force at the end of the year under the contracts;
- (4) the name, address and taxpayer identification number of the employer (or other applicable policyholder) and the type of business in which the policyholder is engaged; and
- (5) that the employer (or other applicable policyholder) has a valid consent for each insured employee (or, if not, the number of insured employees for whom such consent was not obtained).

Section 6039I also requires that each applicable policyholder keep such records as may be necessary for purposes of determining whether the requirements of Code sections 6039I and 101(j) are met.

Regulations and New IRS Form 8925

The temporary regulations are non-substantive and only provide that "the Commissioner may prescribe the form and manner of satisfying the reporting requirements imposed by section 6039I on applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006." The temporary regulations are applicable for tax years ending after November 13, 2007 and also serve as the text of the proposed regulations. It appears that these regulations were procedurally required under the statutory language of Code section 6039I ("at such time and in such manner as the Secretary shall, by regulations, prescribe") to authorize the IRS to issue new IRS Form 8925, which employers will likely have to file to report their COLI contracts beginning with their 2007 tax year.

As reported in our *Washington Report* No. 07-61, the Revenue Service released on its website (www.irs.gov) a draft Form 8925 this summer. The IRS website indicates that the draft form is targeted for release in final form on January 7, 2008. The draft Form 8925 is a short form that only asks for the information required by Code section 6039I and is currently designed to be attached to the employer's tax return. However, as indicated in *Washington Report* No. 07-61, the IRS has indicated informally that it may be reconsidering this format and may revise the Form 8925 to be a stand-alone form that would be filed separately by the employer. If the new form is converted to a stand-alone filing, it is not known when it would have to be filed after the end of each employer's tax year. Note that the temporary regulations do not reference the draft Form 8925 and the IRS website does not include any other information regarding the new form, including the instructions to the form.

Accordingly, it appears that the Service has now completed the procedural steps necessary to issue a final Form 8925 and affected employers should expect that they will have to begin filing the new form with respect to the 2007 tax year.

Any AALU member who wishes to obtain a copy of the temporary and proposed regulations under Coded section 6039I or the draft IRS Form 8925 may do so through the following means: (1) use hyperlink above next to "Major References," (2) log onto the AALU website at www.aalu.org and enter the *Member Portal* and select *Current Washington Report* for linkage to source material or (3) email Erik Ruselowski at ruselowski@aalu.org and include a reference to this *Washington Report*.

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