



March 18, 2013

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Internal Revenue Service  
Room 5203  
P.O.B. 7604  
Ben Franklin Station  
Washington, DC 20044

Attention: Shared Responsibility for Employers Regarding Health Coverage

***Submitted online at [www.regulations.gov](http://www.regulations.gov)***

To Whom it May Concern:

The National Business Coalition on Health (NBCH) appreciates the opportunity to provide comments on the proposed rule, Shared Responsibility for Employers Regarding Health Coverage. We appreciate the important policy goal of the ACA in extending health insurance coverage as broadly as possible; employers have always played a leadership role in offering affordable health insurance to their employees and families and hope to continue to provide this valuable benefit.

The National Business Coalition on Health (NBCH) is a national non-profit membership organization of purchaser-led health care coalitions. NBCH and its members are dedicated to value-based purchasing of health care services through the collective action of public and private purchasers. NBCH seeks to accelerate the nation's progress towards safe, efficient, high-quality health care and the improved health status of the American population. NBCH has a membership of 54 coalitions across the United States representing over 7,000 employers and approximately 25 million employees and their dependents. These business coalitions are comprised of mostly mid- and large-sized employers in both the private and public sectors in a particular city, county, or region. NBCH member coalitions are committed to community health reform, including an improvement in the value of health care provided through employer-sponsored health plans and to the entire community.

NBCH and its members fully recognize the importance of health insurance coverage as an employee benefit; the vast majority of larger employers have voluntarily provided it for decades. Expanding participation in the health insurance market generally will, we believe, help address current dysfunctional elements of that market, particularly in the individual and small group markets. However,

employers are concerned that these new ACA requirements will be overly burdensome and complex, causing them to consider alternatives to offering traditional employer-sponsored health insurance. Such alternatives may include dropping coverage altogether, or seeking options that provide greater cost controls for employers, such as private health insurance exchanges. President Obama's messaging on the ACA during the congressional debates was, "If you like the health insurance coverage you have, you get to keep it." There is a growing concern that this promise will not bear out under these shared responsibility proposed regulations. We urge that an important litmus test for the final regulations be "do no harm" to the current system of employer-sponsored health insurance.

#### Regulatory Impact Analysis

The proposed rule indicates that the regulations on the employer shared responsibility provision of the ACA do not constitute a major rule having an economic impact of \$100 million or more in any one year, and therefore does not include a regulatory impact analysis. We urge the Department to re-examine this determination because we believe this regulation carries with it significant resource implications for a very large number of employers, and, taking into consideration all of the hours of labor required to comply with these mandates, could easily reach \$100 million in the aggregate. It would greatly assist employers in preparing to meet these requirements to have some estimated parameters around the time that will be spent collecting and tracking this information.

#### Controlled Group and Subsidiaries

NBCH and its member coalitions appreciate the clarity provided in the proposed rule regarding treatment of subsidiary companies under one control group. We agree with the policy goal of discouraging employers from breaking up their businesses into smaller subsidiaries solely to avoid being subject to the requirements of this provision. We believe this will help encourage employers to continue offering health insurance coverage to employees and dependents, thereby furthering the goal of the ACA generally to expand coverage.

#### Full-Time Employees versus Full-Time Equivalents

The proposed rule defines full-time employees and full-time equivalents (FTE) differently and requires these two very similar concepts to be used differently in different situations. Using FTEs for purpose of determining whether the shared responsibility provision applies to an employer, and then using full-time employees, with a fairly significant employee disregard number, for the purpose of determining the amount of any penalty does not seem to serve any policy purpose or provide any operational efficiency. We urge the Department to at least clarify its decision on this, or choose one definition and purpose for use throughout the regulation. We suggest use of full time employees throughout; use of full time equivalents across the board would result in additional penalties for employers.

#### Employer Exchange Notification Requirements

The ACA anticipates employers having a fairly large role to play in educating their employees about the public health insurance exchanges in their states. To that end, section 1512 requires employers to provide a written communication to all employees informing them of: 1) the existence of the state exchange and its website, 2) whether their current employer-sponsored plan meets the 60% actuarial value test, and 3) that purchasing coverage through an exchange may disqualify the employee from the employer plan. This section's effective date was March 1, 2013, but without any guidance or

information from the Department on how to do this, employers did nothing. If the shared responsibility provisions are to function properly, employers need guidance on this required communication. We urge the Department to issue guidance as quickly as possible, and most certainly in advance of exchange open enrollment starting October 1 of this year. It is important that employers be given model language and ample time to comply.

#### Affordability and Dependent Coverage

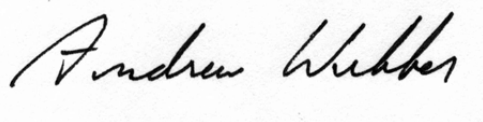
We appreciate the clarity provided in the proposed rule about to whom, exactly, an employer must offer minimum essential coverage. However, we are concerned about the potential for confusion among both employers and employees regarding the requirement to offer affordable coverage to an employee and how that requirement will interplay with the state exchange requirements for receiving premium tax credits. Employers will appreciate the safe harbors described in the law that do not require an employer to know household income to determine health plan affordability. Employers fully support these safe harbors because they will reduce administrative burden. However, employees will be confused when an employer tells them that their health insurance is affordable on a self-only coverage basis, when the dependent coverage is not, in fact affordable. And because employees are offered “affordable” coverage by their employer, they are not eligible for a tax credit on an exchange. This sets up a situation in which employees may have no option for obtaining coverage for dependents. This does not seem to align with the overall policy goals of the ACA of increasing access to coverage, which, on the whole, employers support.

#### Non-Traditional Work Schedules

The proposed rule does provide some initial guidance on how to treat employees who do not work traditional “9-to-5” work days. However, additional clarifications are needed for employers such as school systems on academic schedules, and for other employees who work non-traditional schedules like nurses, doctors, and airline pilots. Many large employers across the country fall into this category, and they need this additional detailed information to understand how to comply with these mandates.

NBCH and its members appreciate your thoughtful consideration of these comments on the proposed regulations. If you have any questions about these comments or wish to discuss anything further, please contact Colleen Bruce, Director of Value-Based Purchasing and Public Policy at (202) 775-9300 or [cbruce@nbch.org](mailto:cbruce@nbch.org).

Sincerely,

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

Andrew Webber  
President and CEO