



November 8, 2013

CC:PA:LPD:PR (REG-136630-12)
Internal Revenue Service
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

CA:PA:LPD:PR (REG-132455-11)
Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Attention:

- 1) Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans (REG-136630-12)
- 2) Information Reporting of Minimum Essential Coverage (REG-132455-11)

Submitted online at www.regulations.gov

To Whom it May Concern:

The National Business Coalition on Health (NBCH) appreciates the opportunity to provide comments on these two proposed rules, Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans, and Information Reporting of Minimum Essential Coverage. We appreciate the important policy goal of the ACA in extending health insurance coverage as broadly as possible; employers have always played an important 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 53 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 offered 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 in the employer-sponsored health care arena under these 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. If the burdens associated with providing health insurance to employees outweigh the benefit in providing the coverage, employers will have no choice but to stop offering health insurance coverage to employees.

Reduce administrative burden for employers as much as possible

Our main concern regarding this reporting is the cost and administrative burden associated with complying with these requirements. The proposed rule specifically asks for comments on the burden of compliance, including costs of operation to an employer. We strongly encourage IRS to streamline the reporting required under sections 6055 and 6056.

Regarding the information required to be reported, both to the IRS and to employees, we appreciate that the IRS is proposing to limit the data elements to be included in the reporting to only those that are absolutely necessary to determine compliance with the employer shared responsibility requirements and the individual mandate. We understand the importance of providing information to employees regarding their coverage offerings because they will need it to complete their tax returns. Alignment with the tax information reporting employers already do is appreciated because it will help to decrease administrative burden. As stated above, we urge the IRS to put forth a proposal for streamlined reporting to employees of sections 6055 and 6056 information. While we understand that for some employers, not every employee will be included in both information returns, the vast majority of self-insured employers with traditional health insurance benefit offerings would appreciate the ability to report all relevant information once to employees. Reporting all required information once also has the strong potential to reduce confusion among employees, which is something employers are concerned about regarding these new requirements.

Along the same lines, we are encouraged by the proposal to eliminate section 6056 reporting in favor of W-2 reporting in certain instances, and encourage the IRS to expand this option to include employees who may not be employed for a full calendar year. This alternative reporting technique, which would allow employers that offer affordable minimum value coverage to simply report the monthly dollar amount of the required employee contribution for the lowest-cost minimum value self-only coverage to the employee along with a letter code to describe the offer, would be very welcomed by self-insured employers. We urge the IRS to adopt this proposal and include an option for its use in non-calendar year situations, because it has the potential to reduce administrative burden on employers and reduce potential confusion among employees. At this point, employees are starting to get used to seeing employer-sponsored health coverage information on their W-2s, so it makes sense to find alignments like this wherever possible, but caution against the IRS setting up a reporting scheme where employers are forced to treat full-year employees differently than part-year employees for administrative tracking and reporting purposes.

Many employers offer coverage to all of their full-time employees, and are able to accurately represent to the IRS that the only employees not offered coverage are not full-time employees. Therefore, employers would greatly appreciate an opportunity to not expend resources making a determination of whether each and every employee to whom coverage is offered is or is not a full-time employee within the meaning of the statute, and whether coverage is offered. We are encouraged that the IRS is considering allowing such employers to certify that all of its employees to whom coverage was not offered are not full-time employees. These employers then would not have to identify the number of full-time employees on their section 6056 return, and would not have to specify whether a particular covered employee is a full-time employee.

We are very interested in exploring options for these employers to minimize burden and streamline reporting. For example, employers that impose a premium cost share, but that cost share is below a certain threshold amount such that it is affordable to all employees, would appreciate the ability to provide only a section 6055 report without having to provide an additional section 6056 report that would essentially contain the same information. Similarly, if an employer knows that none of its employees will be eligible for a tax credit on the exchange (i.e. none of the employees' W-2 earnings is less than 400% of the Federal Poverty Level), providing only a section 6055 return noting who was covered and for which months would provide enough information to know that the employer was complying with all requirements.

We strongly urge the IRS to consider ways for employers to report this information through certifications or affidavits on entire categories of employees, instead of reporting separate information for each individual employee. Using a certification or affidavit approach would greatly reduce the administrative burden on employers, and not compromise IRS' ability to enforce the individual mandate. We offer the following table as a suggestion for how this reporting could be done on a categorized basis:

	Full-time employee is eligible for employers' minimum essential coverage (meets actuarial value and affordability tests)	Part-time employee is NOT eligible for employer's minimum essential coverage because regular work schedule is 30 hrs/week or less	Unclear whether employee is full-time or part-time because of variable work schedule
Employee's income too high to qualify for exchange subsidy	Certification for this category of employees	Certification for this category of employees	Certification for this category of employees
Employee's income may qualify for exchange subsidy	Certification for this category of employees	Certification for this category of employees	Report on individual employee basis

As shown in the table, there is really only one category of employees where the IRS would need information at the level of the individual employee – if the employee works a variable hour schedule such that it is not clear whether he or she is a full-time employee and therefore eligible for the employer's plan, and that employee's income may qualify him or her for a tax credit on the exchange. All other categories of employees can be reported on at the category level.

Apart from the concerns employers have regarding the overall burden, we want to provide comments and suggestions on some specific and discrete topics in the proposed rules:

Provide the option to report at the ALE level

While we appreciate the clarity provided in the proposed rule regarding application of this requirement to groups of companies that may be separate employers but are under one controlled group (the applicable large employer, or ALE), we disagree with the proposed application requiring separate reporting by each component entity of the ALE. If benefits are administered at the ALE level, it only makes sense for the reporting to occur at the ALE level. We urge the IRS to adopt a final rule that allows employers that are ALEs comprised of separate employers the option of reporting at the ALE level. Such an option would reduce the administrative burden on these ALEs, and also cut down on potential confusion among employees.

Adopt the proposal regarding collection of TINs

We appreciate the clarity provided in the proposed rule regarding employers' collection of Tax Identification Numbers (TINs). Employers appreciate the reasons for collecting employees' and dependents' TINs, but are concerned about their ability to collect this information in certain limited circumstances (i.e. individual is foreign-born). We urge the IRS to adopt the proposed scheme of not enforcing a penalty against an employer that makes three consecutive unsuccessful attempts to collect a TIN, and instead provides a date of birth.

Remove barriers to electronic reporting

While the proposed regulations seem to favor electronic reporting, which employers overwhelmingly support, IRS indicates that electronic distribution of these statements to employees will require affirmative consent from the employees. The burden of acquiring affirmative consent from every employee (and dependent) is overly burdensome, and will result in many employers having to resort to paper distribution. Paper distribution will be much more costly than electronic distribution. One employer member of an NBCH member coalition estimates that paper distribution (printing and postage) of these statements for its population will be approximately \$50,000 per year. Electronic delivery would be a fraction of that cost. We urge the IRS to remove the affirmative consent barrier to electronic distribution of the 6055 and 6056 notices. Employees need this information to file their annual tax returns so they have an incentive to actively seek out this information from their employers; this is not just another legal notice that employees will ignore.

Include a regulatory impact analysis

As NBCH has mentioned in previous comment letters on ACA regulations, we are concerned that this proposed rule, like many others, has not been classified as a major rule having an aggregate economic impact of \$100 million or more in any one year, and therefore does not include a regulatory impact analysis. We urge IRS 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 – and commenters in providing comments on administrative burden – to have some estimated parameters around the time and resources that will be spent collecting and tracking this information, beyond their own uncertain internal estimates.

Provide a good faith safe harbor for 2015

The employer community was pleased that the IRS chose to delay these reporting requirements for one year. However, additional relief is still needed for 2015. Following the issuance of final rules, many employers, in conjunction with their third party record keepers and tax preparers, will need to modify and coordinate payroll and benefit systems. This will likely require significant time and energy on the part of the employers and third party service providers. As a result, it should be expected that many employers may not be able to ensure compliance in all material aspects with sections 6055 and 6056 in time for 2015 reporting. While we recognize that current IRS rules provide for certain reasonable cause exceptions that may be available with respect to these requirements, we are concerned that these are too limited in scope to provide adequate protections for employers in all instances. We therefore urge the IRS to consider issuing a specific non-enforcement safe harbor for 2015 for employers that, in good faith, take steps to comply with the reporting requirements for 2015.

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.

Sincerely,
Colleen Bruce