



AMERICAN BENEFITS
COUNCIL

June 11, 2012

Submitted electronically via Notice.Comments@irsounsel.treas.gov

Internal Revenue Service
CC:PA:LPD:PR (Notice 2012-32)
CC:PA:LPD:RU (Notice 2012-33)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice 2012-32 (Request for Comments on Reporting of Health Insurance Coverage); Notice 2012-33 (Request for Comments on Reporting by Applicable Large Employers on Health Insurance Coverage Under Employer-Sponsored Plans)

Sir or Madam:

We write on behalf of the American Benefits Council (“Council”) to provide comment on Notice 2012-32 (Request for Comments on Reporting of Health Insurance Coverage) and Notice 2012-33 (Request for Comments on Reporting by Applicable Large Employers on Health Insurance Coverage Under Employer-Sponsored Plans) (“Notices”). The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to health and retirement plans that cover more than 100 million Americans.

Internal Revenue Code (“Code”) sections 6055 and 6056 were added as part of the Patient Protection and Affordable Care Act (“Affordable Care Act”). Code section 6055 requires every health insurance issuer, sponsor of a self-insured health plan,

government agency that administers government-sponsored health insurance programs and other entities that provide minimum essential coverage to file annual returns reporting certain specified information for each individual for whom minimum essential coverage is provided. Written statements must be furnished to the individuals listed on the annual return. Code section 6056 requires applicable large employers that must meet the shared employer responsibility requirements of Code section 4980H to file a return that reports the terms and conditions of the health care coverage provided to the employer's full-time employees for the year. Written statements must be furnished to each full-time employee whose information is required to be reported under Code section 6056.

The Council appreciates the opportunity to provide comment with respect to the new reporting and disclosure requirements imposed by Code sections 6055 and 6056. In general, we are supportive of guidance that would minimize duplicative reporting and disclosure issues. In addition, we believe it is imperative to provide for a period of good-faith compliance that would give parties subject to the reporting obligations time to bring their processes into compliance with the requirements.

MINIMIZATION OF DUPLICATION AND BURDEN ON ISSUERS, SPONSORS AND COVERED INDIVIDUALS

The Council strongly supports the Service's statement in Notice 2012-32 that it intends to propose regulations that include guidance intended to minimize administrative burden and duplicative reporting. Although Code sections 6055 and 6056 provide for two separate reporting and disclosure obligations, much of the information required to be reported on the annual returns is duplicative. As a result, the requirements could result in increased cost and administrative burden for employers, as well as confusion for plan participants. Below are several recommendations intended to ensure that the burdens on employers are no greater than necessary and that any plan participant confusion is minimized.

Avoid Requiring Duplicative Returns and Information

The Council encourages the Service to undertake all appropriate actions to minimize the requirement that entities submit duplicative annual returns and issue redundant participant statements. As described above, the annual return and participant statement requirements under Code section 6055 apply to sponsors of self-insured health plans, among others. Applicable large employers are subject to similar annual return and participant statement requirements under Code section 6056. Thus, applicable large employers that are subject to the employer shared responsibility requirements of Code section 4980H and that self-insure their health plans would appear to be required to file quite duplicative (but not identical) annual returns under

both Code section 6055 and 6056. Given the cost and administrative burdens of preparing two similar annual returns and participant statements (and the additional complexity of ensuring that the proper information is included on the appropriate return), the Council encourages the Service to adopt a rule that would allow employers subject to Code sections 6055 and 6056 to file a single return that satisfies both provisions. In addition, even where an applicable large employer's plan is fully insured, the employer will find itself having to undertake burdensome processes in order to provide necessary information to the insurer so that the insurer can fulfill the requirements of Code section 6055. Accordingly, we also urge the Service to adopt a rule that would minimize the burdens of employers that are subject to Code section 6056 but that also must provide information to issuers for purposes of Code section 6055.

With respect to plan participants, the written statements required to be provided to individuals under Code sections 6055 and 6056 would contain much of the same information. Thus, to the extent that an employee is covered by a health plan that subjects the insurer and the employer to reporting obligations under Code sections 6055 and 6056, the employee could be inundated with significant amounts of duplicative information by reason of the requirements in both Code section 6055 and 6056 to issue written statements to individuals. This could result in confusion for plan participants regarding their health plan coverage.

In light of the foregoing, we reiterate our request that any proposed regulations expressly allow information required to be reported and disclosed under Code section 6056 to be reported and disclosed as part of the return and statement required by Code section 6055 to the extent possible. This would operate to significantly reduce the burden on issuers, employers, and individuals, and we encourage the Service to issue guidance to this effect. Such a rule would be in accordance with Code section 6056(d), which permits the Service to provide, to the maximum extent feasible, that any return or statement required under Code section 6056 may be provided as part of a return or statement under Code section 6055 or Code section 6051 (relating to Form W-2 reporting). Moreover, it would significantly reduce the burden on employers to comply with the new annual reporting requirements and help to minimize employee confusion.

Allow Issuers and Employers to Contract for Submission and Shared Information

Code section 6055 provides that “[e]very person who provides minimum essential coverage to an individual during a calendar year” must file a return under Code section 6055. In this regard, Notice 2012-32 states that “[i]f health insurance coverage is provided by a health insurance issuer and consists of coverage provided through a group health plan of an employer, it is anticipated that the regulations would make the health insurance issuer responsible for the reporting.” The Council appreciates this clarification.

Given that neither an issuer nor an employer is likely to have all of the information necessary to comply with the new reporting obligations on their own, the Council recommends that issuers and employers be permitted to contract among themselves (and with third parties as necessary) in order to effectuate full compliance with the reporting requirements of Code sections 6055 and 6056.

Allow for Electronic Reporting and Disclosure

Notice 2012-32 requests comment regarding the possibility of permitting electronic filing of returns. Specifically, the Notice requests comment on “[w]hether there are any specific concerns that should be taken into account . . . in the case of electronic information reporting and delivery of statements to individuals and the Service.” The Council strongly supports a rule that permits electronic filing of the annual returns required to be submitted under Code sections 6055 and 6056. We note that the electronic filing procedures already used for other annual return requirements could be used, or modified appropriately, for such electronic submissions. In addition, we urge the Service to permit electronic delivery of statements to covered individuals. Given that the reporting requirements are within the sole jurisdiction of the Service, it appears that the Service’s electronic delivery rules would apply to any electronic statements transmitted to individuals. We request confirmation that this is indeed the case.

PENALTIES AND NEED FOR GOOD FAITH TRANSITION RELIEF

It appears that a failure to file correct returns and/or to issue correct payee statements as required under Code sections 6055 and 6056 would trigger penalties. Because of the significant amount of information required to be reported on the annual returns and to individuals, it is inevitable that mistakes will be made as entities subject to the reporting and disclosure requirements update their procedures to reflect the new requirements. Accordingly, we strongly urge the Service to provide for a period of good faith compliance to enable parties subject to the new requirements to develop procedures.

TREATMENT OF VEBAS

Notice 2012-32 specifically requests comments regarding who should be required to fulfill the Code section 6055 reporting requirements when minimum essential coverage is provided through a voluntary employees’ beneficiary association (“VEBA”) or other type of welfare benefit fund. The Council believes that where an employer is simply providing funding to a VEBA or other welfare benefit fund as a result of being party to a collective bargaining agreement or otherwise is obligated to do so by law, then the

employer should not be responsible for the reporting. However, if the VEBA was established and is actively sponsored by the employer for purposes of funding its (non-collectively bargained) plans, then we think it makes sense to require the employer (or other party as decided by contract) to take the VEBA into account in fulfilling its reporting requirements under Code section 6055.

CLARIFICATION OF INFORMATION REQUIRED TO BE REPORTED

With respect to Code section 6056, Notice 2012-33 and the statute are unclear as to the information that must be provided in order to adequately certify “the employer’s share of the total allowed costs of benefits provided under the plan.” The Council requests confirmation as to whether this requires certification regarding the employer’s share of premiums, whether the plan provides for minimum value, or both.

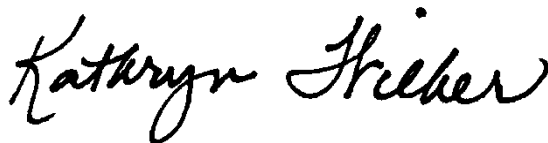
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We thank the Service for its consideration of our comments regarding Notice 2012-32 (Request for Comments on Reporting of Health Insurance Coverage) and Notice 2012-33 (Request for Comments on Reporting by Applicable Large Employers on Health Insurance Coverage Under Employer-Sponsored Plans). If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,



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