



November 8, 2013

Submitted electronically via <http://www.regulations.gov>

Internal Revenue Service
CC:PA:LPD:PR (REG-132455-11; REG-136630-12)
Room 5203
PO Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Information Reporting of Minimum Essential Coverage; Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans

Sir or Madam:

We write on behalf of the American Benefits Council ("Council") and the Silicon Valley Employers Forum ("SVEF") to provide comment in connection with two notices of proposed rulemaking ("NPRM") published in the Federal Register on September 9, 2013 by the Department of the Treasury and the Internal Revenue Service (collectively, the "Department").

The first NPRM provides guidance regarding the information reporting requirements under Section 6055 of the Internal Revenue Code of 1986, as amended ("Code"), with respect to minimum essential coverage. The second NPRM provides guidance regarding the information reporting requirements under Code Section 6056 with respect to applicable large employers (collectively with the Code Section 6055 NPRM, the "Proposed Rules").

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.

Silicon Valley Employers Forum is a coalition of high-tech employers who collaborate to benchmark benefit designs and optimize benefit offerings. The group recognizes the value of providing high quality healthcare coverage that promotes prevention, treatment, and well-being as a means of attracting and retaining their valued employee populations.

Code sections 6055 and 6056 were added as part of the Patient Protection and Affordable Care Act ("ACA"). 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 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 and SVEF appreciate the opportunity to provide comment with respect to the Proposed Rules. The reporting requirements that will be imposed upon employers under Code sections 6055 and 6056 are very significant. In many instances, they will require employers and third party providers to modify existing benefit and payroll information technology systems and to coordinate with third party record keepers and tax return preparers. They will also require significant training of human resources and benefits personnel and a likely change in recordkeeping practice and procedure (for example, in connection with classifications of "full-time" employees).

In light of the above, we welcomed the Department's decision to delay mandatory reporting for 2014 with respect to Code sections 6055 and 6056. The one-year delay was an important step in providing employers with sufficient time to come into full compliance with any final reporting requirements.

Additional relief, however, is needed for 2015. Following the issuance of final rules, many employers, in conjunction with their third party record keepers and tax return preparers, will need to modify and coordinate payroll and benefit systems. This will likely require significant time and energy on the part of 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 respects with Code sections 6055 and 6056 in time for 2015 reporting. While we recognize that current Department rules provide for certain reasonable cause exceptions that may be available with respect to Code reporting under Code sections 6055 and 6056, we are concerned that these are too limited in scope to provide adequate protections for employers in all instances.

Accordingly, we request that the Department 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.

With respect to the rules themselves, we appreciate the Department's stated intent and efforts to simplify the reporting obligations under Code sections 6055 and 6056. The Proposed Rules evidence the Department's efforts in this regard, and we encourage the Department to include these and other simplifications in any final rulemaking with regard to Code sections 6055 and 6056, subject to our comments below.¹ We note, however, that the general methods of reporting that are described under the Proposed Rules remain burdensome to both large and small employers.

We encourage the Department to continue to identify ways to simplify the obligations for large and small employers alike. Additionally, as discussed in greater detail below, we request that future rulemaking address the following:

- A rule allowing for optional combined reporting for entities subject to the reporting requirements of both Code sections 6055 and 6056. Such a rule would help eliminate unnecessary paperwork and filings, reduce the extent of individual taxpayer/employee confusion by limiting the number of statements received, and eliminate the potential for inconsistent or conflicting Code Section 6055 and 6056 returns and statements.
- An expanded Form W-2 simplified reporting method that is available to employers without regard to whether full-time employees are enrolled for the full year and without regard to whether the number of dependents enrolled during the year changes.
- A rule permitting an employer to use an employee's birth date or "0" where necessary in lieu of a Social Security number in satisfaction of the employer's reporting obligations.
- An exception from the proposed requirement to report the specific employee share of self-only coverage where an employee's cost of self-only coverage falls below a certain dollar threshold such that, in nearly all instances, the coverage would have to be affordable for the employee within the meaning of

¹ The Council previously submitted comments encouraging simplification of the reporting requirements. See Council Letter dated June 11, 2012, available at http://www.americanbenefitscouncil.org/documents2012/hcr_irs-n2012-32-33_council-comments061112.pdf.

Code Section 36B. As discussed below, we propose that such threshold be set at \$1,000.

- An exception from the proposed requirement to report the specific employee share of self-only coverage where an employee's wages exceed a certain threshold such that the employee will, in nearly all instances, be ineligible for premium tax credits and cost-sharing reductions as provided for, in part, by Code Section 36B. As discussed below, we propose that this threshold be set at \$150,000 of taxable wages.
- An expanded reasonable cause exception that would not require reporting entities to file amended returns and/or distribute amended statements as a result of new information learned by an employer following the date the initial return and/or statement is filed or provided, as applicable.
- Given the importance of these Proposed Rules, as well as the fact that numerous potential provisions – such as the simplified reporting methodologies – have yet to be set forth in actual proposed regulatory text, we request that any future rules be issued in proposed form and that parties be permitted to rely on such re-proposed rules unless and until final rules are issued. This approach will help provide necessary certainty for employers and other reporting entities, while ensuring that any final rule is the product of full and meaningful comment.
- As part of the rulemaking and comment process, we request that the Department issue draft forms for comment by stakeholders, including the Council and SVEF. This approach will ensure that any final regulations are the product of robust public comment and, as such, should facilitate increased compliance by reporting entities.
- We request clarification regarding the information that would be required to be reported in the event the Department adopts the safe harbor described in the preamble to the Code Section 6056 NPRM whereby employers would not be required to determine the number of full-time employees if minimum value coverage is offered to all potentially full-time employees.

Several of our comments pertain to both Code Section 6055 and Code Section 6056. Those comments are set forth first below. We then follow with a discussion of comments specific to each Code section.

Combined Reporting

The preambles to each of the Proposed Rules state that the Department is considering a rule that would permit the furnishing of a combined statement to

participants in fulfillment of both Code sections 6055 and 6056. We support this concept. Applicable large employers that sponsor self-insured plans are subject to reporting and disclosure obligations under both Code Section 6055 and Code Section 6056. The ability to use a single, combined return and statement would help reduce some of the reporting burdens for these employers. Additionally, combined reporting should reduce the possibility for the issuance of inconsistent returns and help reduce participant confusion.

With respect to the above, we urge the Department to permit optional combined reporting with respect to any size or type of employer. Additionally, we request that future rulemaking clarify that combined reporting could be used by an employer with respect to some employees and not others, depending on the circumstances, and at the employer's election.

Overall, we support giving as much flexibility to employers as possible in fulfilling the reporting obligations under Code sections 6055 and 6056. Making available a combined form for use by an employer at its election would go a long way toward providing such flexibility.

Reduced Burden of Obtaining Social Security Numbers

The Proposed Rules incorporate preexisting rules regarding the extent to which an employer must attempt to obtain Social Security numbers for spouses and dependents. These rules would, in some instances, require that an employer or issuer make multiple requests potentially over a multi-year period. These rules are unduly burdensome and, in many instances, may be wholly inapplicable – for example, with respect to employees that cease to be employed or dependents that lose dependent status. Accordingly, we urge the Department to allow a filer to use, in lieu of a Social Security number, an employee's birth date, or "0" where necessary, in satisfaction of its reporting obligations.

Reasonable Cause Exception to Penalties

We appreciate that the rules under Code Section 6724, including abatement of information return penalties for reasonable cause, apply to Code Section 6055 and Code Section 6056 reporting. However, we encourage the Department to establish that filers will not be required to file amended returns under Code Section 6055 or Code Section 6056 in the event that the filer learns of new information following filing of the returns (*e.g.*, in the case of permitted rescissions of coverage, which may change the information required to be reported on the return). We note, however, that, to the extent employers seek to file amended returns in this instance, they should be free to do so at their election.

Use of Electronic Delivery

The Proposed Rules would permit the use of the Department's electronic delivery rules to furnish required statements to covered individuals. A majority of companies rely on electronic delivery to furnish workplace-related materials and notices, including annual employee tax statements (such as the Form W-2). Accordingly, we recommend that any final rulemaking include an express rule permitting the use of electronic delivery.

We note that many of our members have found helpful (and successful) the expanded electronic delivery rule that is permitted for use in distributing the Summary of Benefits and Coverage ("SBC").² We believe this rule appropriately balances the interests of ensuring actual notice of important information to intended recipients (*e.g.*, the SBC) with the need for more efficient delivery methods and reduced employer costs (*e.g.*, by permitting electronic posting of the information and providing paper copies upon request). Accordingly, we encourage the Department to use its regulatory authority to consider a broader electronic delivery rule – such as that currently permitted with respect to SBCs – for implementation of Code sections 6055 and 6056 reporting.

Nonduplication of Required Statements

The Proposed Rules clarify that only one statement needs to be delivered to an address instead of requiring that statements be delivered to the principal covered individual and his or her spouse and dependents. We support this clarification as it will help reduce costs and burdens to employees by reducing the number of statements that will need to be provided. Additionally, such a rule is helpful because in many instances an employer will not have the current address for an enrollee's beneficiary (such as an adult child that does not share a domicile with the employee parent).

Continued Consideration of Stakeholder Interests and Additional Comment Period

We encourage the Department to issue any future rulemaking in proposed form and subject to public comment. Additionally, we urge the Department to issue the forms to be used for purposes of fulfilling obligations under Code sections 6055 and 6056 in proposed format so that stakeholders may provide comment prior to finalization of the

² See Treas. Reg. § 54.9815-2715(a)(4).

forms. Many of the potential rules – including, for example, the potential simplified reporting methods – have yet to be proposed in formal regulatory text for review and public comment; rather, these potential rules are discussed only in general terms in the preambles to the Proposed Rules. Accordingly, it is important that these and other provisions be set forth in greater detail in proposed regulatory text for public comment and that unless and until final rules are issued, that employers and other reporting entities be permitted to rely on such re-proposed rules. The continued use of proposed rulemaking with respect to these reporting obligations will help ensure that any final rules are the product of robust and meaningful public comment and should assist the Department in promulgating a final rule that is administratively workable for employers.

COMMENTS SPECIFIC TO PROPOSED CODE SECTION 6055 RULE

Simplification of Entities Responsible for Reporting

The Code Section 6055 NPRM clarifies that health insurance issuers would generally be responsible for Code Section 6055 reporting with respect to insured group coverage. We believe this proposal is appropriate because it will reduce enrollee confusion by eliminating the possibility for multiple or inconsistent statements that could result under a contrary rule.

In addition, the Code Section 6055 NPRM provides that a group of related employers may elect to have one member of the group fulfill the reporting and disclosure requirements of Code Section 6055 on behalf of the entire group. Many employer groups utilize a centralized system for purposes of payroll and benefits administration. Additionally, the costs associated with aggregating, reporting, and noticing the return data to enrollees are significant. We support this much-needed flexibility that will allow groups of related employers to determine the manner best suited to the group (or each individual employer) for satisfying the Code Section 6055 reporting requirements.

The Code Section 6055 NPRM provides that reporting entities may use third parties to facilitate filing returns and furnishing participant statements. The NPRM also indicates that the use of a third party would not relieve the applicable employer from liability for ensuring that the returns and statements have been filed and furnished. We believe the added flexibility for employers of being permitted to utilize the services of a third party for reporting purposes should help reduce the administrative burden involved in preparation of the required returns and statements.

Finally, the Code Section 6055 NPRM clarifies that, with respect to multiemployer plans, an employer that participates in such a plan is not responsible for reporting with regard to such plan; rather, the board of trustees of the multiemployer plan is

responsible for the Code Section 6055 filing. Multiemployer plans are in the best position to perform the reporting because they, not the contributing employer, possess the relevant information. Accordingly, we request that this proposed rule be retained in any final rulemaking.

Simplification of Information Required to Be Reported

Although Code Section 6055 would, by its terms, require the reporting of “the amount ... of any advance payment ... of any cost-sharing reduction ... or any premium tax credit,” the NPRM provides that the return will not require reporting of any cost-sharing reductions, nor will it require reporting of the amount of advance payments or coverage in a qualified health plan in the individual market enrolled through an Exchange. We agree with this implementation approach, since this information would be difficult for employers to obtain, is required to be reported by the Exchanges, and is not required to be reported in fulfillment of any obligations under Code Section 6055. We recommend that such a provision be retained in the final rule.

Similarly, the Proposed Rules clarify that employers do not have to report the amount of any employer premium subsidies for purposes of Code Section 6055 reporting. We agree that this information is not relevant to the stated purposes of Code Section 6055 reporting and should not be required to be included on a Code Section 6055 return or statement.

Code Section 6055 contemplates the reporting of the “dates” during which an individual is covered by minimum essential coverage during a calendar year. We believe the Department has correctly concluded that only the months during which an individual had minimum essential coverage should be reported, since the individual mandate liability is based on months without minimum essential coverage, rather than specific dates. This proposed change should help reduce the burdens and complexities for employers in complying with the Code Section 6055 obligation.

COMMENTS SPECIFIC TO PROPOSED CODE SECTION 6056 RULE

Simplification with Regard to Entities Responsible for Reporting

The Code Section 6056 NPRM provides that each member of an applicable large employer group is responsible for fulfilling the information reporting requirements under Code Section 6056. Additionally, the NPRM would permit an applicable large employer group to contract with a third party to file returns and furnish statements under Code Section 6056 (although the group would retain liability). For the reasons discussed above with respect to the simplification of entities responsible for reporting for purposes of Code Section 6055, we appreciate the simplifications set forth in Code

Section 6056.

With respect to applicable large employers that participate in a multiemployer plan, a “bifurcated” manner of fulfilling Code Section 6056 reporting requirements is contemplated by the Code Section 6056 NPRM. Pursuant to such approach, one return may be filed for participants in the multiemployer plan, and another return may be filed for other employees that do not participate in the multiemployer plan. The board of trustees of the multiemployer plan may file the former return on behalf of the employer (although the employer retains ultimate liability). We appreciate the flexibility provided to an employer that participates in a multiemployer plan by permitting an employer to make its own decision as to the least burdensome manner of complying with the Code Section 6056 requirements.

Simplification of Information Required to Be Reported

Code Section 6056 requires that an applicable large employer report “the monthly premium for the lowest cost option in each of the enrollment categories under the plan.” The Code Section 6056 NPRM helpfully interprets this requirement to mean that the applicable large employer must only report the lowest cost option, since such data point is the only one that is relevant to the administration of the premium tax credit and employer shared responsibility provisions. We support this interpretation and recommend that it be reflected in any final rulemaking.

Expand Availability of Form W-2 Reporting Method

The preamble to the Code Section 6056 NPRM sets forth several possible methods of simplifying reporting, including a method that would allow employers to use an existing box on the Form W-2 to fulfill the requirement under Code Section 6056 to furnish participants with a statement. This proposed method would be available with respect to a full-time employee only if the full-time employee is employed by the employer for the entire calendar year when the coverage is made, and only if the individuals to whom the offer is made and the employee contribution for the lowest-cost self-only coverage option all remained the same for the full calendar year.

We support the Department’s efforts to identify simplified methods of fulfilling the reporting obligations, including a Form W-2 simplified reporting method. Many of our members see potential value in this method. However, we are concerned that, as contemplated, the limitations imposed on the use of the Form W-2 method would make the Form W-2 method unavailable to many employers and/or with respect to many employee populations. This is because many full-time employees may not be employed or have the same number of dependents covered for the entire tax year. Accordingly, we urge the Department to expand the availability of the Form W-2 method to allow

employers to use it with respect to full-time employees who are employed for less than a full year so long as such employees are offered coverage for all months during which they were employed by the employer, subject to any permitted waiting period. We also request that the Department allow employers to use the Form W-2 method even where premium contributions or the number of covered individuals vary during the year.

Reduced Reporting for Affordable Coverage

We support the provision in the preamble to the Code Section 6056 NPRM that would permit an employer to report the employee cost as \$0 where the annual employee cost of self-only coverage is an amount less than 9.5% of the federal poverty line for a single individual. We would propose to use a threshold equal to \$1,000 for this purpose. This would permit employers to not track data for individuals where the coverage is almost by definition affordable.

In addition, we encourage the Department to implement a similar approach where employee wages are so high that coverage will, except in very rare instances, always be affordable. We believe that an appropriate threshold for this purpose is \$150,000 in wages for an employee. We note that this encompasses four times the federal poverty line for a family of seven, which is well in excess of the size of the average American household (2.58 people per household, according to 2010 census documents).³ We propose that an employer would be subject to reduced reporting requirements where the employee earns at least \$150,000 except where it has actual knowledge that the coverage would be unaffordable for the employee's family.

No Need to Determine Full-Time Employees if Minimum Value Coverage Is Offered to All Potentially Full-Time Employees

The preamble to the Code Section 6056 NPRM states that the Department is considering providing a safe harbor for employers that are able to accurately represent that the only employees not offered coverage are not full-time employees but that have not determined whether every employee to whom coverage is offered is or is not a full-time employee. The safe harbor under consideration would provide that such employers may provide Section 6056 reporting that does not identify the number of full-time employees and that does not specify whether a particular employee offered

³ See U.S. Census Bureau, C2010BR-14, Households and Families: 2010 (Apr. 2012), *available at* <http://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf>.

coverage is a full-time employee, provided that the employer provides a certification that all of its employees to whom it did not offer coverage during the calendar year were not full-time employees (or were otherwise ineligible for coverage). The employer would be required to confirm at a later date whether an employee is a full-time employee if such an employee claims a premium tax credit.

The contemplated safe harbor would be helpful to employers who utilize their own full-time employee definition that differs from the definition provided in Code Section 4980H but provide minimum value, affordable coverage broadly across their employee populations (including with respect to employees that work less than 30 hours per week on average). We recommend that such safe harbor be included in final rulemaking. Our members have asked for clarification regarding the information that would still be required to be reported in order to fulfill their Code Section 6056 reporting obligations, and we believe clarification in this regard would be helpful.

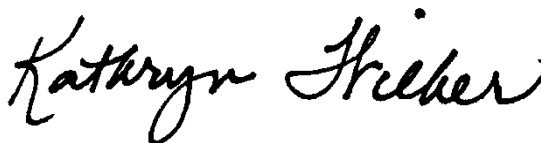
* * *

Thank you for considering these comments submitted in response to the Proposed Rules issued with regard to the information reporting requirements of Code sections 6055 and 6056. If you have any questions or would like to discuss these comments further, please contact Kathryn Wilber at (202) 289-6700.

Sincerely,



Lauren Vela
Executive Director, Domestic and
International Forums for Benefit
Management
Silicon Valley Employers Forum



Kathryn Wilber
Senior Counsel, Health Policy
American Benefits Council