



AMERICAN BENEFITS
COUNCIL

April 28, 2014

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

CC:PA:LPD:PR (REG – 141036 – 13)
Room 5205
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Minimum Essential Coverage and Other Rules Regarding the Shared Responsibility Payment for Individuals

Sir or Madam:

I write on behalf of the American Benefits Council (“Council”) to provide comment on the notice of proposed rulemaking (“NPRM”) relating to the requirement to maintain minimum essential coverage pursuant to Section 5000A of the Internal Revenue Code of 1986 (“Code”). The NPRM was published in the Federal Register on January 27, 2014, by the Department of the Treasury (the “Department”).

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.

Section 5000A was added to the Code by the Patient Protection and Affordable Care Act and has since been amended. Code Section 5000A provides that, for months beginning after December 31, 2013, a nonexempt individual must maintain minimum essential coverage or make a shared responsibility payment.

The NPRM specifically addresses the treatment of contributions to a cafeteria plan and potential wellness program incentives for purposes of determining affordability of coverage under Code Section 5000A. The Council appreciates the opportunity to provide the following comments with respect to these two important topics.

TREATMENT OF CONTRIBUTIONS TO A CAFETERIA PLAN

The Department requests comments regarding the treatment of employer contributions under a Code Section 125 cafeteria plan for purposes of Code Section 5000A to the extent employees may not opt to receive the employer contributions as a taxable benefit, such as cash.

The Council recommends that the Department adopt a rule providing that any contributions made to a cafeteria plan by an employer on behalf of a cafeteria plan participant are taken into account in determining the affordability of the minimum essential coverage, so long as the cafeteria plan participant has the choice to use such contributions towards the purchase of the minimum essential coverage. This should be the case even if the cafeteria plan participant uses the contributions to purchase other permitted benefits offered via the cafeteria plan (including taxable benefits, such as cash).

The Council believes that such a rule makes good policy sense because it most accurately reflects the affordability of the employer-sponsored coverage. Additionally, a contrary rule would likely cause many employers to limit employee choice to only the minimum essential coverage offering(s) in order to ensure that the employer contributions get counted for purposes of determining the “affordability” of the coverage. Limiting employee choice in this manner would have adverse effects on employees and should be avoided.

TREATMENT OF WELLNESS PROGRAM INCENTIVES

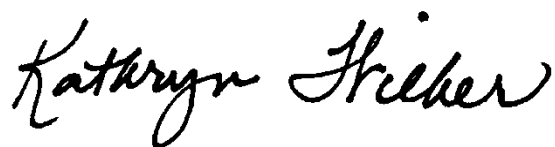
The NPRM provides that, for purposes of determining an individual’s required contribution for coverage under an employer-sponsored plan for purposes of Code Section 5000A, wellness program incentives are treated as earned only if the incentives relate to tobacco use.

As we stated in a prior comment letter,¹ the Council believes that final rulemaking should allow plans to take into account potential wellness program rewards in determining minimum value and affordability, regardless of whether the rewards are related to cessation of tobacco use. This is in part because individuals who have the potential to earn a wellness program incentive are adequately protected under the final wellness program regulations issued June 3, 2013,² such that it should be within their ability to attain wellness program incentives (*e.g.*, through use of an attainable reasonable alternative standard in the case of a health-contingent wellness program). Accordingly, the Council reiterates its request that plans be permitted to take into account potential wellness program rewards in determining minimum value and affordability, regardless of whether the rewards are related to cessation of tobacco use.

* * *

Thank you for considering these comments submitted in response to the NPRM issued with regard to Code Section 5000A. If you have any questions or would like to discuss these comments further, please contact me at (202) 289-6700.

Sincerely,

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

Kathryn Wilber
Senior Counsel, Health Policy

¹ See Council Letter dated July 2, 2013, available at http://www.americanbenefitscouncil.org/documents2013/hcr_min-value_irs_comments070213.pdf.

² Incentives for Nondiscriminatory Wellness Programs in Group Health Plans, 78 Fed. Reg. 33,157 (June 3, 2013).