



# AMERICAN BENEFITS COUNCIL

February 7, 2017

*Submitted via e-mail*

Mr. Andrew Bremberg  
Assistant to the President and  
Director of the Domestic Policy Council  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

**Re: Employer Reporting Under the Patient Protection and Affordable Care Act**

Dear Mr. Bremberg:

The American Benefits Council (“Council”) looks forward to working with you in your vitally important role in the Trump Administration. 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. We especially look forward to working with you to protect the employer-sponsored health coverage of over 177 million Americans.<sup>1</sup>

We write to thank you for the flexibility outlined in the Executive Order President Trump issued on January 20, 2017, and to bring to your attention certain requirements prescribed by the Patient Protection and Affordable Care Act (“ACA”) as you work to reduce the regulatory burdens associated with the law.

Specifically, we urge the administration to take immediate steps to minimize certain ACA requirements that impose significant costs and complexity on purchasers of health insurance, including employers who provide health benefits to their workforce using self-insured plans. Such arrangements are principally sponsored by large employers. One purpose of self-insuring is to enable companies to provide consistent benefits to

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<sup>1</sup> U.S. Department of the Census, [Health Insurance Coverage in the United States: 2015 – Current Population Reports](#) (September 2016), *Table 1: Coverage Numbers and Rates by Type of Health Insurance: 2013 to 2015*.

their employees who are living and working in multiple states across the country.

## **BACKGROUND**

The ACA imposes a host of requirements on employers, including sections 6055 and 6056 of the Internal Revenue Code (“Code”), as added by the ACA, which require certain annual Internal Revenue Service (IRS) information reporting by employers relating to the health coverage the employer offers (or does not offer). To the extent that an employer is an “applicable large employer” for purposes of the employer shared responsibility provisions of Code Section 4980H (i.e., “employer mandate”), Code Section 6056 prescribes reporting requirements, including details regarding whether the coverage meets the standards of “minimum essential coverage,” “affordability,” and “minimum value.” Code Section 6055 requires all providers of “minimum essential coverage,” including employer sponsors of self-insured health plans, to create reports describing the coverage provided to individuals. The purpose of Code Section 6055 is to help enforce the ACA’s “individual mandate.”

The employer mandate provisions set forth in Section 4980H impose a penalty on applicable large employers that fail to offer coverage to their full-time employees (and their dependents) under an eligible employer-sponsored plan. Section 5000A, the individual mandate, provides for a different penalty on certain individuals who do not maintain health coverage. Notably, to the extent an employee is enrolled in employer-sponsored coverage that qualifies as “minimum essential coverage” or is otherwise offered certain Code Section 4980H-qualifying coverage by his/her employer, this makes them ineligible for federal premium tax credits and cost-sharing reductions.

## **ACA REPORTING REQUIREMENTS ARE SIGNIFICANTLY BURDENSOME**

The IRS published Forms 1094-B, 1095-B, 1094-C, and 1095-C to collect the information related to sections 6055 and 6066, to enforce the individual and employer mandates, and to assist in making sure that ineligible individuals do not receive a premium tax credit (as defined in Code Section 36B) to help pay for individual health insurance coverage. These reporting requirements generally went into effect for most employers for the 2015 tax year.

The stringent requirements of the employer mandate, and the compliance associated with reporting obligations implemented and enforced by the IRS, have been difficult and costly for employers. Today, employers continue to incur substantial expense in meeting their reporting obligations. This is, in part, due to the complexity of the forms that need to be provided to employees and filed with the IRS, as well as the need to modify benefit and payroll systems and to coordinate with third party record keepers and tax return preparers. Employers have also had to engage in significant training of human resources, benefits, and tax personnel and to implement changes to existing

recordkeeping practice and procedures for no reason other than to meet the information reporting obligations.

#### **ADMINISTRATIVE RELIEF IS NEEDED TO REDUCE REGULATORY BURDENS**

It is imperative that Congress either fully repeal the employer mandate or reduce to zero dollars any penalties associated with the employer mandate. The Council is also urging the repeal of all associated employer reporting obligations.

To the extent employer reporting requirements are not repealed simultaneously with repeal of the employer mandate, it is vital that Congress ensure that any reporting requirements that continue are as minimally burdensome as possible. Simply put, in the absence of the ACA framework, there is no reason to retain complex and costly requirements that are specifically designed to implement that law.

In the interim, and in light of anticipated legislative “repeal and replace” of the ACA, the Council requests the Domestic Policy Council, and all appropriate executive branch agencies, use their authority and all the tools at their disposal, including those outlined in the Executive Order, to minimize the current burdens of ACA employer reporting. Specifically, we request relief (including, for example, through the issuance of a limited non-enforcement safe harbor) from any obligations or penalties related to tax years 2015-2017 (and, as applicable, later tax years), including:

- (1) The employer shared responsibility provisions under Code Section 4980H;
- (2) The information reporting requirements applicable to insurers, self-insuring employers, and certain other providers of health coverage under Code Section 6055; and
- (3) The information reporting requirements applicable to large employers under Code Section 6056.

The Council notes there is established and recent precedent for such relief, which was provided by the IRS for calendar year 2014. See IRS Notice 2013- 45 (announcing delay in enforcement of Code Section 4980H and allowing for voluntary information reporting under Code sections 6055 and 6056 for 2014 to allow stakeholders adequate time to adjust to new law).

To the extent the administration believes it is necessary to continue with some form of information reporting during this interim period, insurers, employers, and other providers of health coverage should be permitted to voluntarily comply with the information reporting provisions. (We note that this also would be consistent with the approach set forth in Notice 2013-45 with regard to the year 2014.) **However, under no**

**circumstances should any penalties be applied for failure to comply with the information reporting provisions with respect to calendar years 2015, 2016 and 2017.**

Very importantly, reducing the reporting burden on employers will not have a negative impact on individual taxpayers. It seems likely that eligibility for the tax credit (both the existing tax credit and any potential new tax credit) will depend in part on an individual's access to employer-sponsored health coverage. In the past, the IRS has permitted individuals to rely on information provided to them by their employers to determine their eligibility for a premium tax credit without necessarily requiring a Form 1095-C. See, for example, IRS Notice 2016-4 ("[I]ndividuals who rely upon other information received from employers about their offers of coverage for purposes of determining eligibility for the premium tax credit when filing their income tax returns need not amend their returns..."). Such relief could be applied for calendar years 2016 and 2017 as well.

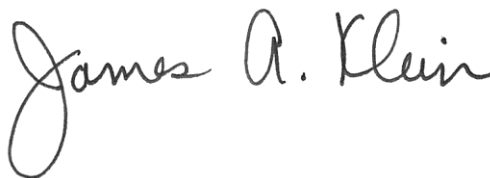
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Employers have worked diligently since the 2010 enactment of the ACA to comply with the myriad of new taxes, fees, mandates, and reporting requirements imposed upon them and the employee health benefit plans they sponsor. In doing so, many employers have expended substantial resources in hours and dollars. **This administration has the opportunity to take action to help reduce the excess burdens imposed by the ACA's reporting requirements (Code sections 6055 and 6056) and the employer mandate (Code Section 4980H).**

We urge you to take action as soon as possible, thus allowing employers to reallocate resources to providing benefits to their employees and operating their businesses.

Thank you for considering our views. If you have any questions or would like to discuss these comments further, please contact us.

Sincerely,



James A. Klein  
President

CC: Acting Secretary Szubin, Department of the Treasury  
John A. Koskinen, Commissioner, Internal Revenue Service