



January 2, 2018

L. Brimmer
Internal Revenue Service
Room 6526
1111 Constitution Avenue, NW
Washington, DC 20224

***RE: Proposed Extension of Information Collection Request Submitted for Public Comment;
Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered
Under Employer-Sponsored Plans***

To Whom It May Concern:

The U.S. Chamber of Commerce (the "Chamber") submits these comments in response to the Proposed Extension of Information Collection Request Submitted for Public Comment; Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans ("Notice and request for comments"), as published in the Federal Register on November 1, 2017.¹ The Notice and request for comments contains regulations providing guidance to employers that are subject to the information reporting requirements under section 6056 of the Internal Revenue Code, enacted by the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively referred to as "PPACA").² With this Notice, which was published by the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS"), the IRS is soliciting comments concerning requirements relating to the information reporting by applicable large employers on health insurance coverage offered under employer-sponsored health plans.

The Chamber is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region, with substantial membership in all 50 states. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. Therefore, we are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing,

¹ Proposed Extension of Information Collection Request Submitted for Public Comment; Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans, 82 Fed. Reg. 50,732-3. (November 1, 2017) [hereinafter referred to as the "Notice and request for comment"] <https://www.gpo.gov/fdsys/pkg/FR-2017-11-01/pdf/2017-23714.pdf>

² The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010).

services, construction, wholesaling, and finance – is represented. These comments have been developed with the input of member companies with an interest in improving the health care system.

OVERVIEW

We urge the Treasury and IRS to consider the following general and specific concerns. While many employers have invested significantly in the past to comply with the requirement, efforts to simplify and streamline the requirements moving forward would reduce future costs and burdens. Although these comments are written to respond specifically to the IRS' information request was with respect to 1095-C, we would like to point out that many of the comments that follow apply equally to reporting on the 1095-B form which is used by self-funded Chamber members that are not ALEs, especially the need to eliminate the collection of unnecessary information. We urge Treasury and IRS to permit employers to satisfy the reporting requirements of IRC section 6056 by certifying that they offer minimum essential coverage to all full-time employees. If the Treasury and IRS chose to continue to impose additional costly and burdensome reporting requirements, we outline several specific concerns in response to the Notice and request for comments.

GENERAL CONCERNS

We continue to urge the Treasury and IRS to allow employers that offer minimum essential coverage to all full-time employees (and dependents) to simply certify that this coverage is offered. Placing the burden on employers who offer coverage to affirmatively document that they are doing the right thing is counter-productive to improving our health care system, when, instead, it would be more cost effective and appropriate to require those who do not offer all full-time employees minimum essential coverage to report the necessary information. We believe that the requirements placed on applicable large employers (and those who choose to offer employer sponsored health care coverage to their employees) under the ACA to demonstrate compliance with the employer shared responsibility provisions of IRC section 4980H should be tailored and limited in scope to capture only the information necessary for the IRS to enforce the law. We encourage Treasury and the IRS to limit the reporting burden to the extent practicable in order to reduce the overall cost and complexity of employers offering high-quality coverage.

SPECIFIC CONCERNS AND RECOMMENDATIONS

The Chamber is hopeful that the Treasury and IRS will consider several specific concerns and recommendations detailed in this comment letter. We suggest that you: address narrow reporting challenges with certain employee populations; re-evaluate the information that is required to be reported by applicable large employers and other employers, as well as the process by which information is filed. Finally, we urge you to correct the inaccurate economic estimates to better fulfill the obligations of the Paperwork Reduction Act.

Challenges with Specific Employee Populations

As implementation progresses with this new information reporting process, we ask the IRS to fine tune the information reporting regulations to account for previously unforeseen challenges.

A reexamination of reporting processes for certain special populations of employees is needed to reduce the unnecessary burdens of reporting. For example, some applicable large employers may need special rules to help account for coverage provided to “in-pat” populations or employees serving in Puerto Rico. In addition, streamlining rules for the mailing of forms, managing the filing requirements triggered by the controlled group rules, and revisiting the requirements for verifying compliance with the individual mandate have potential to meaningfully reduce the applicable large employer reporting burden.

The reporting regulations are especially challenging to implement for employers with employees that serve on rotational and short-term assignments, including instances when an employee works as an “in-pat” in the US. Employers often offer in-pats and their families health care coverage in the U.S, even though many also maintain coverage in their home country. However, tabulating the information reporting data manually on a monthly basis is difficult for this population, as in-pat and their dependents’ information is often maintained in a separate payroll system. As a result, systems are not integrated in a way that is automated to capture the data. The difficulty of manually measuring and integrating the information is an administrative burden that outweighs the benefits offered to this already insured population. It is similarly challenging to track and report on coverage offered to employees residing in Puerto Rico. To address these issues, we recommend adding an additional indicator code that would allow a company to indicate that it provided either family or individual coverage that meets the minimum value and affordability requirements to its US in-pats and employees residing in Puerto Rico.

Unnecessary Information Collected

With enactment of the *Tax Cuts and Jobs Act* on December 22, 2017, the penalty associated with not obtaining adequate health care coverage under the PPACA’s individual shared responsibility provision was zeroed-out applicable to tax years beginning after December 31, 2017. Given that the purposes of IRC §6055 and §6056 is to enforce the employer and individual shared responsibility provisions and administer the premium tax credit, with one of these pillars now gone, the IRS should reexamine the information required on Forms 1095-C and 1094-C and eliminate the collection and transmission of data points that are no longer necessary.

We encourage the IRS and Treasury to carefully review the data points that Section 6056 requires and balance the administrative burden, privacy concerns and futility of efforts to collect the social security numbers of employee’s dependents. Many employers have expressed strong concerns about the challenges in collecting social security numbers for the dependents of employees and with the individual shared responsibility requirement significantly weakened, we urge reconsideration of the necessity of this data point.

In addition to re-examining the form data points, the IRS should re-examine the regulatory processes that are laid out to collect the data – for example, the process for soliciting social security numbers (SSNs) or other tax identification numbers (TINs) is onerous with regard to repeatedly inquiring about dependents’ numbers. The rules require three instances of outreach at certain intervals. Tracking those intervals is complicated and many vendors and employers have simply gone to requests at regular intervals which result in solicitations with no end date.

Employers should be permitted to provide only the social security number of the employee subscriber and not the social security number of every relevant family member. With this information, Treasury and the IRS would be able to identify and determine the proper social security numbers of covered dependents listed based on income tax returns and, alternatively with the assistance of the Social Security Administration based on other the information provided by employers, such as the name and date of birth of the covered family members.

Administrative Cost of Mailing Requirements

Current regulations require that all forms be sent by mail unless an employee expressly elects to receive the forms electronically. This process is costly and burdensome and does not benefit employees. Given the frequency with which electronic delivery is used to provide employees compensation, tax and benefit information, we request more flexibility. If an employee has consented on the record to receive other employment related tax or benefit information via electronic delivery, an employer should be permitted to rely on that consent and provide the Form 1095-C statement to that employee via electronic delivery. In fact, we encourage the IRS and Treasury to permit employers and insurers to presume consent to electronic delivery and only mandate that paper notification be mailed when an individual specifically requests and chooses against electronic delivery. Given the widespread use and access to electronic communications, coupled with consumer's preference to reduce paper and communications via ordinary mail, issuers and employers should be able to assume that individuals can access the Internet.

Permit Consolidated Reporting

Many large employers have hundreds or thousands of employer identification numbers (EIN) resulting from acquisitions and growth. Their employees are offered coverage that exceeds the PPACA requirements irrespective the EIN connected to their operating unit. However, IRS rules delineate reporting requirements based on EIN, which creates redundant reporting. For example, when the IRS provided opportunities for extensions, the IRS should consider permitting a single consolidated return. Employers should be permitted to report in this manner rather be required to provide individualized statements. We encourage the IRS to look for other simpler opportunities for consolidated reporting to reduce duplicative efforts.

Inaccurate Economic Estimates

The IRS invited comments on the accuracy of the agency's estimate of the burden of information collection for applicable large employers offering health insurance coverage through employer-sponsored plans. The estimates published in the Notice state that the projected time per respondent for the Forms 1095-C and 1094-C is 12 minutes and 4 hours, respectively. We find these estimates to be inaccurate and to underestimate the actual burden our members have experienced in complying with the information reporting requirements.

The Notice's estimates appear to only reflect the time it would take to input the data into the correct fields on the Forms 1095-C or 1094-C, assuming the relevant information has already been assembled. These estimates do not take into account the hours spent tracking, collecting data from various sources, verifying the accuracy of the data, and assembling the data prior to

form completion, even electronically. Many of our members must begin the annual process for information reporting over six months before the forms are due. During this time, significant human and system resources are necessary to communicate, generate and collect data, compile the data into one source, validate it, report to recipients and the IRS, and correct the data as necessary. Anecdotal reports suggest that the actual time burdens for both forms may be significant multiples greater than the 12 minute and 4 hour parameters assumed by the IRS. The IRS should undertake a representative random survey of actual reporters of the information to estimate the time per response parameters accurately. Given that the economic burden of the information collection is nearly \$2 billion per year based on the IRS's clearly underestimated time parameters, it would be undoubtedly worth the effort for the government to undertake appropriate survey research to obtain an accurate estimate of the burden.³ An accurate estimate of the full burden of this paperwork requirement will be valuable to motivate the IRS's internal efforts to find less burdensome alternatives, and, if the IRS believes that it is constrained by the statute to continue the current excessively burdensome approach, then the publication of accurate burden information will be useful to Congress as it contemplates possible revisions to the controlling statute.

The IRS also requested estimates of cost and burden related to operation, maintenance, and purchase of services to provide the requested information. Due to the complexity of the reporting process, many members work through a vendor to assist them with tracking and reporting the necessary information. Systems built by vendors for our members typically require a client specific build-out along with annual updates to accommodate each client's specific business and benefits structure. Annual updates to plan designs, new employees and beneficiary enrollments, and adjustments to the system all require additional time. Divestitures and acquisitions also add significantly to the burden and complexity of filing information returns. Simplifying the compliance and reporting process for applicable large employers offering coverage to their workforce would benefit employers, employees and the health care system overall.

³ The IRS did not provide its own estimate of the annual cost, despite requirements of the Paperwork Reduction Act that it do so which seems improper particularly because the data could be readily found at within the Bureau of Labor Statistics' Occupational Employment Survey data which shows that "human resource specialists" (the occupational labor category likely to be tasked with processing these forms) currently have median earnings of \$28.43 per hour. (Such data is available at: <https://data.bls.gov/oes/#/occGeo/One%20occupation%20for%20multiple%20geographical%20areas>)

To this direct wage cost, the Bureau should have added an allowance for non-wage compensation costs and overhead. Multiples of two to three times the base wage are typically used to estimate the full opportunity cost of diverting labor from productive uses to regulatory paperwork compliance tasks. Using the median wage of \$28.43 per hour, the fully loaded hourly cost would be \$56.88 to \$85.29 per hour. This means that the proposed expanded information collection would impose a total annual cost of \$1.3 billion to \$1.9 billion on the economy for the 22.6 million burden hours per year that the IRS estimated. This amount is before adding additional amounts for specialized computer programming, equipment, materials and training not covered in normal operations overhead, which should be incorporated as well. The IRS should also explain why its estimate of the number of respondents to the information collection has increased by a factor of 27 times compared to the number estimated in its last extension request 12 months ago.

CONCLUSION

We urge the Treasury and IRS to continue to work carefully, pragmatically and cooperatively with the numerous stakeholders to minimize burdens placed on employers and to provide flexibility as employers work to comply with the law. We look forward to continuing to work together in the future.

Sincerely,

A handwritten signature in black ink that reads "Katie Mahoney". The script is fluid and cursive, with the first letters of each word being capitalized and larger than the rest of the letters.

Katie Mahoney
Executive Director
Health Policy
U.S. Chamber of Commerce