



PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

June 17, 2021

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, D.C. 20044

RE: 86 FR 20610 - Request for Comments on 1094-C, 1095-C, 4423

Mailed to: Kinna Brewington, IRS, Room 6526, 1111 Constitution Ave, NW, Washington, D.C. 20224

Dear Secretary Yellen and Commissioner Rettig:

The Partnership for Employer-Sponsored Coverage welcomes the opportunity to provide comments under the Notice and Request for Comments entitled *Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans*, regarding section 6056 reporting through Forms 1094-C and 1095-C. We are eager to work collaboratively with you to evaluate and amend the compliance requirements under the Affordable Care Act's (ACA) employer shared responsibility, Code section 4980H, and information-reporting requirements, Code sections 6055 and 6056, to provide individual consumers with information, employers with compliance relief, and state and federal Exchanges with an additional tool to verify tax credit and subsidy eligibility.

The Partnership for Employer-Sponsored Coverage (P4ESC) is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and millions of Americans who rely on employer-sponsored health coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

The ACA compliance requirements have always been complex and administratively burdensome on employers. The compliance complexities and tracking requirements have been further exacerbated during the COVID-19 pandemic because employers have had to managing closures, decreased demand, work from home policies, furloughs, reduced hours, temporary layoffs and more. The following is an outline of information-reporting requirement reform policies P4ESC would like implemented. These reform ideas were developed from employer compliance and operational feedback.

- ***Revise the list of data requirements under sections 6055 and 6056 to be relevant and practical.*** The data lists were developed in 2009 during the legislative process and are stipulated in the ACA statute. For example, the statute included the requirement that employers collect and retain Social Security numbers indefinitely for all current and prior employees' spouses and dependents which creates a data security and identity theft risk for employers, employees, and their families. There has not been a comprehensive reevaluation of the relevance of the data being reported by employers. We are now in the eighth year of Exchange coverage and seventh year of the employer-shared responsibility and have a new Administration which supports preserving the ACA. The time is ripe to evaluate the necessity and practicality of data items reported annually against the cost and administrative compliance burdens on employers.
- ***Decouple information reporting for sections 6055 and 6056 from Form 1095-C.*** At the time that the IRS was designing Form 1095-C, self-insured employers requested one form be used to report



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overlapping information required under 6055 and 6056. We appreciated the original intent of streamlining Form 1095-C but now it is the reason why self-insured employers are not being afforded the same compliance relief provided to insurance carriers through elimination of Form 1095-B. As Notice 2020-76 states “[b]ecause the individual shared responsibility payment is zero in 2020, an individual does not need the information on Form 1095-B to compute his or her federal tax liability or file an income tax return with the IRS.” The same rationale applies to individuals receiving coverage from a self-insured employer – a Form 1095-C is not needed either.

- **Enable applicable large employers (ALEs) to prospectively report to the IRS relevant data items about the type of coverage offered to their workforce of full-time employees prior to open enrollment season in the Exchanges.** The most pertinent information about the type of coverage an ALE offers to its workforce, including a list of all Employer Identification Numbers (EINs), should be available for use by the federal facilitated and state-based Exchanges during open enrollment for employment verification and determination of an individual’s eligibility for federally subsidized coverage. The existing data hub will house this information and no new IT system will need to be created. Prospective reporting will enable an ALE to comply with its employer-shared responsibility reporting requirement and provide a more consumer-friendly system to determine an individual’s eligibility for Exchange coverage. We strongly believe sufficient flexibility exists to enable this change to be made administratively. We have supported legislation to make this change because of prior Administrations’ reluctance to act administratively.
- **Eliminate the requirement that self-insured employers send an individual Form 1095-C to all enrolled employees.** As noted above, there is no reason why an individual needs a Form 1095-B or 1095-C since the individual shared responsibility payment is zero and there is no relevance of the form in filing an income tax return. The compliance burdens of consolidating data from multiple systems and costs of printing and mailing Form 1095-C to all individual employees is huge for employers. The same compliance relief provided to insurance carriers for Form 1095-B should be provided to self-insured employers.
- **Require review of ALE-filed data before a 226-J penalty notification letter is sent.** We have heard from numerous employers who have received a 226-J tax penalty letter despite complying with the 6055 and 6056 reporting requirements. It seems as though the practice has been: the IRS will issue a 226-J letter when notified of an individual who has received an Exchange tax credit but before data matching the information reported by the employer to the IRS. This sets up a process in which an employer must formally appeal a 226-J letter, within the strict 30-day appeals process no matter how long the letter takes to get to the employer in the mail, then spend time and resources to resend information to the IRS it has already filed. The current system, in which a 4980H “A” penalty is assessed rather than a thorough reconciliation of data on an individual’s tax credit information and an employer’s 6055 and 6056 reporting to assess a 4980H “B” penalty, assumes an employer is guilty and requires the employer to prove their innocence.
- **Provide employers with 90 days, rather than 30 days, to appeal a 226-J tax penalty letter for any tax compliance year.** A 226-J penalty letter is mailed to an employer listed on an individual’s Exchange application when the IRS identifies that an individual received a premium tax credit but is believed to be a full-time employee and thus ineligible for a tax credit. When the IRS puts the 226-J letter in the mail it starts a 30-day appeals process, no matter how slow the mail is to be received. The 226-J letter could also be mailed to the address an individual puts on his or her application, which could be, for example, a store address and not the business headquarters where the letter should be mailed.
- **Work directly with HHS and state-based Exchanges to verify employer information during open enrollment to determine individual premium tax credit eligibility.** Premium tax credit eligibility is



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being assessed by HHS and state-based Exchanges based the information an individual puts on his or her application and is not cross referenced with real-time data that could be reported by an employer and housed in the data hub. Healthcare.gov and state-based enrollment websites ask an enrollee if he or she received an affordable offer of coverage from an employer. Most enrollees do not understand that the term “affordable” is a legal definition that refers to the ALE’s affordability text under 4980H. As noted above, data reported by an employer prior to open enrollment through a prospective reporting process would provide HHS and state-based Exchanges with better tools to verify employer information and tax credit eligibility.

- ***Seek Employer Feedback on Estimated for Time to Complete Forms 1094-C and 1095-C.*** As noted in this Request for Comments, the IRS estimates that the average time necessary to complete Form 1094-C is four hours and Form 1095-C is 12 minutes. It has been the experience of employers that these estimations grossly underestimate the time needed to collect the required information and complete the forms. The IRS should have its Tax Products Coordinating Committee interview tax preparers, accountants, insurance agents and brokers, human resources professionals, third party administrators, and employers of various sizes to produce a more accurate representation of the actual average time needed to complete and file these forms. A more accurate representation of the average completion time of Forms 1094-C and 1095-C will help better inform regulatory and legislative policy making to reduce the significant compliance burden on employers that these forms presently pose.

Employers want the information-reporting requirements under sections 6055 and 6056 and the Exchange eligibility verification process to run efficiently and effectively so their employees are not subject to the costly repayment of premium tax credits and the business is not subject to possible violations under the employer shared responsibility. A comprehensive evaluation and revision of the compliance requirements and information-sharing under the ACA is long overdue.

Sincerely,

American Hotel & Lodging Association
American Rental Association
Associated Builders and Contractors, Inc.
Associated General Contractors of America
Auto Care Association
Business Group on Health
The Council of Insurance Agents & Brokers
The ERISA Industry Committee (ERIC)
FMI – The Food Industry Association
HR Policy Association
National Association of Health Underwriters
National Association of Wholesaler-Distributors
NFIB – National Federation of Independent Business
National Restaurant Association
National Retail Federation
Retail Industry Leaders Association
Society for Human Resource Management