



October 7, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20224

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20220

Dear Secretary Mnuchin and Commissioner Rettig:

As members of the Partnership for Employer-Sponsored Coverage, we write to follow up on our letter dated May 11, 2020, regarding the request for COVID-related compliance safe harbor relief under the Affordable Care Act's (ACA) reporting requirements (Sections 6055 and 6056) and employer shared responsibility (Section 4980H). While we greatly appreciate the economic relief provided to businesses thus far, we believe more can be done to provide regulatory compliance relief.

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 American workers and their families who rely on employer-sponsored 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 Internal Revenue Service's (IRS) ACA compliance requirements have always been complex and administratively burdensome on employers. With the current pandemic, the compliance complexities and tracking requirements are further exacerbated because employers are managing closures, decreased demand, work from home policies, furloughs, reduced hours, temporary layoffs and more. Employers of all sizes and their employees are continuing to face an unprecedented amount of uncertainty as a result of the COVID-19 pandemic and will do so for months and years to come.

With regards to compliance with the ACA reporting requirements (Sections 6055 and 6056) and employer shared responsibility (Section 4980H), we respectfully request that you:

- 1) Grant employers safe harbors and flexibility during this crisis and do not penalize businesses for unforeseen closures or rapid staffing changes and transitions that are out of their control. The affordability test is particularly complicated during the pandemic with many businesses experiencing unstable workforces and economic volatility. A workforce is likely to look dramatically different throughout the year than in the first two months of 2020 and thus, we ask that affordability safe harbor compliance measures be implemented to account for these unprecedented times;
- 2) Require the IRS to review an employer's reported filings to data match against an individual's tax return before issuing a 226-J letter;
- 3) Provide employers with 90 days, rather than 30 days, to appeal a 226-J tax penalty letter for any tax compliance year; and
- 4) Provide employers that have to pay a tax penalty with a deferral similar to that offered for other tax-related payments and filings to help with liquidity burdens.



Six months into the COVID-19 pandemic, many businesses are slowly reopening and are restructuring business operations to balance health care and economic impacts. In the meantime, employers are working diligently to comply with new government mandates in response to the pandemic and existing health care compliance requirements under the reporting requirements and employer shared responsibility.

According to a Society for Human Resource Management and Oxford Economics business index examining COVID-19's impact on U.S. business operations and workforce decisions¹, 52 percent of employers have either changed employee hours, or furloughed or laid off workers to reduce costs. These unforeseen changes in business operations will impact the ability of employers to accurately determine when offers of health care coverage need to be made to qualifying employees. Classifying employees incorrectly can lead to inaccurate information being submitted to the IRS in annual information filings. To add, these errors can result in overcounting or undercounting of full-time employees, which will result in significant financial penalties from the IRS. Employers are already experiencing a decrease in revenue by 10-30 percent and unanticipated IRS tax penalties will impede business, workforce and economic recovery efforts. As such, ACA compliance safe harbor relief is merited.

Again, thank you for the efforts by the Treasury Department and IRS to provide economic and regulatory relief to businesses during the COVID-19 pandemic. COVID-related compliance safe harbor relief under the ACA employer requirements is justified and necessary in the current climate. Thank you for your attention to this request and we welcome the opportunity to discuss in further detail.

Sincerely,

American Health Policy Institute
American Hotel & Lodging Association
American Rental Association
American Staffing Association
Associated Builders and Contractors, Inc.
Associated General Contractors of America
Auto Care Association
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
National Restaurant Association
National Retail Federation
Retail Industry Leaders Association
Society for Human Resource Management

¹ <https://www.shrm.org/about-shrm/press-room/press-releases/pages/shrm-releases-covid-19-us-business-index.aspx>