Finally, we recognize that the safe harbor would be based prospectively on estimated or expected employee wages. Consequently, special consideration will be needed for employees with variable pay, such as tipped and commission -based employees.

Estimates for the Affordability Safe Harbor

The members of our Coalition have been undertaking analyses of the practical implications of the Y^^gj\YZadalq kY^] `YjZgj hjghgkYd lg ]klaeYl] o`]l`]j l`]q [Yf e]]l l`] l]kl ZY [mjj]fl oY_]k& =ehdgq]jkl YZad affordability test and continue to offer affordable coverage will depend heavily on the standard used to determine minimum value under PPACA, as well as the effect on plan costs of the additional benefit requirements under the law

It is important to note that employers Ìestimates are

especially methodologies that are administratively simple, will be particularly important for small and mid-size employers who will be required to complete the minimum value calculations. Under PPACA, employers with as few as 51 full-time equivalents are required to manage these complex evaluations. See IRC §

assistance tax credit or a cost - k ` Y j a f _ k m Z k a \ q Y f \ l `] j] ^ g j] a f] p l j a [Y Z d q d a f c] \ l g Y f]

Employer Reporting Requirements

The EFHC Coalition has been undertaking a comprehensive analysis of the major employer requirements under the law to try to understand the flow and timing of required information and the interaction between em ployers, insurance E xchanges, and the federal agencies in conjunction with the substantive coverage requirements and imposition of penalties under the law. As you draft upcoming PPACA regulations affecting employers, we urge you to use the regulatory process to create rules that allow for practical and workable administration of employee benefits, predictability of penalties, and uniform and consistent annual reporting requirements. Failure to develop a wor kable reporting and verification system will increase the administrative burden and costs for employer -sponsored plans without creating any benefit for employees or the quality of their health care.

In its August 17 proposed rule (CMS-9974 -P), HHS focuses on the information that state insurance Exchanges will need to determine individual eligibility for tax credits, including information about employer -sponsored health plans. As you continue to develop regulations in this area we strongly urge you to co nsider the following criteria:

- The reporting processes should be simple, minimize redundant reporting, and focus on reducing the administrative burden and associated costs for employers that offer health coverage;
- The reporting process should contemplate the numerous PPACA provisions that require new employer reporting and consolidate reporting obligations to the greatest extent possible on an annual basis, utilizing existing reporting mechanisms where possible;
- The reporting process for employers should be centralized within the Department of Treasury as the Department , along with the IRS, is ultimately responsible for administering the appeals process for employers and the imposition of penalty assessments; and
- The reporting process should recognize that the determination of individual eligibility for premium tax credits by state insurance Exchanges and the assessment of employer tax penalties by the IRS are two distinct and separate processes.

We understand tha t Treasury and the IRS intend to request comments on the employer information reporting required under IRC §6056. The Coalition urges the Administration to build upon the employer reporting requirements to Treasury under IRC §6056 to create a clear and administratively workable reporting process to verify individual eligibility for premium tax credits and ultimately to assess employer tax penalties. We believe that IRC §6056 could be used to facilitate the use of a single, annual report from employers to Tr easury that could include prospective general plan and wage information for the affordability test safe harbor, as well as retrospective individual full -time employee information for the look -back safe harbor.

The diagram below represents a basic schema of the major employer requirements and depicts the
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The coalition proposes that a single annual report under IRC §6056 could include both prospective and retrospective

A major challenge to the annual reporting process under IRC §6056 is the statutory deadline of January 31 for those employers who do not utilize a January plan year start date. Employers utilize a variety of enrollment periods and plan year start dates that work best for their workforce. For example, many retailers hold their open enrollment period in February or May with their plan year beginning in April or July in order to have all employees focused on retail sales during their busiest months of September through December. While a January reporting deadline may be workable for end-of-year reporting on full-time employee status and their coverage under the employer plan for the previous year, it poses challenges for prospective reporting on general plan information for the affordability safe harbor. Reporting processes may need to be set up that allow for rolling reporting deadlines for employer plan level information to utilize the affordability safe harbor, rather than one calendar year report in January for these employers.

Exchange Eligibility Determinations

In its August 17 proposed rule, HHS makes clear your n a] o l ` Y l l `] d Y o [a]]Y]akrÉe for

a premium tax credit to purchase Exchange coverage. The employer must also notify the employee that , if the employee purchases Exchange coverage , the employee will lose their employer contribution to health benefits and the corres ponding tax exclusion for those benefits. This notice may help provide employees with the necessary information needed regarding their employer plan if they choose to seek Exchange coverage. However, we would note that the effective date under the law for employers to provide this notification is March 1, 2013, and we strongly urge the Departments of Labor, HHS, and Treasury to re -examine this requirement date considering that state insurance Exchanges will not be fully operational until 2014.

Exchange

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As stated in our June 17 letter responding to Treasury Notice 2011-36, the definition of full-time employee is of paramount concern to the EFHC Coalition Z][Y mk] g^ gmj af\mklja]kÌ mfaim] j]da on large numbers of part-time, temporary, and seasonal workers with fluctuating and unpredictable work hours, as well as unpredictable lengths of service. Treasury Notice 2011-73 requests additional comments on the proposed affordability safe harbor, including its interaction with the hjghgk]\ É-back/stability pe jag\ kY^] `YjZgj e]l`g\Ê mk]\ ^gj \]l]jea-fmf_ o`g ak Y ^m employee.

In general, and as described above, we believe the affordability and look-back safe harbors are compatible and can be coordinated. However, Treasury and the IRS would need to establish reporting structures under IRC §6056 that allow for prospective reporting based on general plan information for the affordability safe harbor and for retrospective reporting that includes employees determined by the employer to be full time based on the look-back safe harbor. The reporting of both prospective and retrospective information could potentially be harmonized by 2015 to be included in a single annual reporting process, thereby avoiding unnecessary administrative complications for employers (with potential modifications for employers with varying plan year start dates) and providing Treasury with necessary information regarding employer-sponsored coverage for their full-time employees. The EFHC believes that both of these safe harbors are critical to the preservation of the current system of employer-provided coverage.

The EFHC Coalition would like to reiterate our support for l`] hjghgk]\ É-back/stability period

In closing, we would like to thank you again for the opportunity to share our comments with the Administration on provisions of PPACA that affect employers, and we appreciate that the Administration has been receptive to the comments from the employer community in developing regulatory guidance. Because the industries represented in the EFHC Coalition employ large, fluctuating workforces and often sell low-margin consumer goods and services, even small increases

For questions related to this letter, please contact Anne Phelps, Principal, Washington Council Ernst & Young, Ernst & Young LLP, at 202-467-8416 , on behalf of the Employers for Flexibility in Health Care Coalition .

Respectfully submitted,

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American Hotel and Lodging Association
American Staffing Association
Associated Builders and Contractors, Inc.