

# Employers for Flexibility in Health Care Coalition

November 6, 2013

*Submitted electronically via*



each year through 2023. The E-FLEX Coalition believes a less expansive approach to information reporting can achieve the same ends with fewer burdens to the IRS and employers who voluntarily provide health coverage without giving rise to any adverse effects for individuals.

## II. Simplifying Reporting Through Certification

The E-FLEX Coalition strongly supports the Administration's proposal permitting simplified reporting for employers who can certify that they offer minimum value coverage to all or substantially all full-time employees and their dependents. Utilizing a certification method is a reasonable approach that could be used as the basis for a simplified reporting process that could benefit employers of all sizes and structures.

We ask the Administration to consider including a certification process paired with more targeted information reporting under section 6056 to administer the employer shared responsibility provisions under section 4980H and the premium tax credits under section 36B. Under this option, employers could file a transmittal form with the IRS to certify that they offer coverage that meets the standards under the ACA. Employers could provide information regarding coverage offered (e.g., minimum essential coverage, minimum value, premium contributions) that could be used to administer any excise tax on employers under section 4980H. Such a certification process could be paired with a more targeted approach that would eliminate the need to distribute information returns under section 6056 to all full-time employees and instead provide information returns only to those

communicate to employees that such coverage is available to full-time employees and their dependents. Employer A receives a notice from an Exchange that Employees Y and Z have been deemed eligible for a premium tax credit based on household income. As part of its end-of-year tax filings, Employer A provides an individual information return under section 6056 to Employees Y and Z and submits to the IRS a transmittal form with information on Employees Y and Z. This information can be used to facilitate administration of the premium tax credits under section 36B and the employer shared responsibility requirement under section 4980H. Information on Employer A's remaining 998 full-time employees is not included in the transmittal form submitted to the IRS, and individual information returns are not furnished to those full-time employees. However, individual information returns under section 6055 would be furnished to the employees who enrolled in coverage, facilitating administration of the individual shared responsibility provisions under section 5000A.

### III. Using Prospective Reporting To Improve Accuracy of Eligibility Determinations

The E-FLEX Coalition also urges the Administration to give employers the option of prospectively reporting to the IRS information about coverage they offer to employees. Under a prospective reporting system, employers could provide to the IRS information about coverage offered to employees electronically at the employer's open enrollment period or by the January 31 statutory deadline at the employer's election. In light of the absence of a single data source on the availability of employer-sponsored coverage, Treasury could modify its data sharing agreement with CMS (RIN 1545-BK87) and make this information available to Exchanges via the data hub to improve the accuracy of initial eligibility determinations for advanced premium assistance tax credits and reduce the risk of employees having to repay tax credits that are granted improperly. Exchanges could use a data matching process to verify whether individuals have access to employer-sponsored coverage that meets the law's minimum value standard and an affordability safe harbor.

Although the E-FLEX Coalition believes that more expansive reporting under section 6056 is unnecessary, the potential benefits of having information about coverage available to

section 6055 reporting combined with their Form W-2s to accurately complete their Form 1040. Making the Form W-2 method broadly available may also reduce the cost for employers if payroll vendors adapt their systems to accommodate the change.

An additional proposed alternative reporting method that allows employers to avoid section 6056 reporting by requiring employees to enroll in no-cost or low-cost coverage also raises some concerns. Encouraging employers to avoid reporting by requiring employees to be mandatorily enrolled in coverage rather than giving them the option of enrolling in coverage of their choice creates incentives that could be harmful to employees. Mandatory enrollment could disqualify an individual from making otherwise qualified HSA contributions, result in unnecessary duplicative coverage, or trap employees in undesired coverage, among other concerns.

#### V. Streamlining Delivery of Notices

As the Administration considers additional ways to reduce the reporting burden, the E-FLEX Coalition encourages the Administration to ease the requirements for electronic delivery of employee notifications. For example, utilizing existing Department of Labor rules for the delivery of benefit materials would protect employees, while allowing employers to use established methods of delivering benefits materials. The Coalition also supports giving employers the option to include the employee reports in the same mailing as the Form W-2.

The privacy of employee information is very important to the members of the E-FLEX Coalition. Employers in the E-FLEX Coalition do not uniformly collect Social Security numbers of dependents. The Coalition urges the Administration to reconsider requiring employers to collect and provide dependent Social Security numbers. Collecting dependent Social Security numbers should be unnecessary as spouses that receive tax credits are required to file joint returns and individuals are required to include tax dependent Social

## VI. Making the Proposed General Reporting Method More Workable

The default reporting method outlined by the Administration in the proposed rules would result in an unprecedented collection of data from employers and a particularly onerous compliance process. The E-FLEX Coalition does not see the collection of data on every employee and their dependents covered in an employer-sponsored plan as intrinsically improving the administration of the ACA's premium tax credits and employer tax penalties.

An area of particular concern for employers is the burden of tabulating data on a monthly basis. Employers' payroll and HR systems generally do not break out employee information on a monthly basis, but instead focus on effective dates or specific dates in time. For example, employers in our Coalition have indicated that requests such as the total number of employees by calendar month are more difficult to collect than for example the number of employees on the 1<sup>st</sup> of the month because many of their payroll systems are built on a two week payroll timeframe that does not match with calendar months. Consequently, for some employers it is also more difficult to list the months of coverage rather than the start date and end date of coverage.

Several E-FLEX Coalition members commented that it is more difficult to report an employee's level of coverage on a monthly basis and the cost of that coverage than to provide a report that uses coverage effective dates. Some employers do not "own" this data and are required to rely on third-party vendors or in some cases multiemployer plans to report accurate information. Other employers noted that substantial time will be dedicated to matching up pay periods to the monthly reporting time frame in order to report who was full-time on a monthly basis. Overall, Coalition members prefer certifying to the IRS that they offer coverage to their full-time employees, rather than tabulating their employees' full-time status and coverage options on a monthly basis.

The Coalition notes that the proposed indicator codes may be insufficient to describe the reasons why an individual may not be enrolled in employer-sponsored coverage. Examples of additional indicator codes that would be needed under the general reporting method include:

- Coverage canceled due to nonpayment of premiums
- Employee declines offer of employer-sponsored coverage meeting the minimum value standard
- Employee missed enrollment window for employer coverage
- Employee is currently in a safe harbor measurement period under proposed rules to implement section 4980H.

The Coalition also requests that the final rules confirm that, within a controlled group, an applicable large employer member with no employees is not required to file under section

6056 and that an applicable large employer may provide a consolidated report for its members.

## VII. Weighing the Cost of Compliance to Employers

In addition to our reservations about the volume of data that the Administration is considering requiring employers to report, the E-FLEX Coalition harbors significant concerns about the cost of such an expansive undertaking. Because employers do not track all of the data elements under consideration for reporting under section 6056 in a single system, substantial systems build outs will be needed in many cases. This project could be further complicated for larger companies that use different payroll, human resources and other systems across different divisions and locations. In addition, tabulating information on a monthly basis will require further modifications to employers' systems, which generally organize information by pay period or by year.

Beyond the systems build, employers will face ongoing costs as a result of the information reporting requirements. For example, some employers expect to have to add administrative personnel to track the necessary information and process notices from Exchanges about employees being deemed eligible for premium tax credits. Employers also will face ongoing costs for data storage as employers will be required to maintain data about employees' eligibility and enrollment – tabulated on a monthly basis – to support appeals of potential tax penalties.

Employers' costs will vary widely depending on their size, availability of data required to be reported, current configuration of reporting systems, and whether a simplified reporting method will be a viable option for them. Reflecting such variables, some smaller members of the E-FLEX Coalition with less complicated systems estimate that compliance with the information reporting requirements will cost approximately \$50,000 annually while some larger coalition members project that information reporting could cost up to \$1 million



We would like to thank you again for the opportunity to share our comments with the Administration on provisions of the ACA that affect employers, and we appreciate that the Administration has been receptive to the comments from the employer community in developing regulatory guidance. The E-FLEX Coalition looks forward to working with the Administration and with Congress to address issues that preserve employer-sponsored coverage and smooth the implementation process for employers and their employees.

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.