

**\*\*\*TESTIMONY IS EMBARGOED UNTIL THE START OF  
THE HEARING AT 2:00 PM APRIL 8, 2014\*\*\***

**Written Testimony of  
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Before the House Committee on Ways and Means Subcommittee on Health**

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Chairman Brady, Ranking Member McDermott, and Members of the Subcommittee, I appreciate the opportunity to testify on the recently issued final regulations on the employer responsibility provisions and the information reporting provisions of the Affordable Care Act. The employer responsibility provisions are contained in section 4980H of the Internal Revenue Code (“Code”). Final regulations under section 4980H were published on February 12, 2014. The information reporting provisions relating to employers are contained in section 6056 of the Code, and those relating to entities that provide minimum essential coverage are contained in Code section 6055. Final regulations relating to information reporting under sections 6055 and 6056 were published on March 10, 2014.

**Background**

Section 4980H of the Code was added by section 1513 of the Affordable Care Act. Section 4980H(a) imposes an assessable payment on an applicable large employer (generally, an employer with 50 or more full-time employees, including full-time equivalents, in the prior year) that fails to offer minimum essential coverage to its full-time employees (and their dependents) under an eligible employer-sponsored plan if at least one full-time employee enrolls in a qualified health plan for which a premium tax credit is paid with respect to the employee. Section 4980H(b) imposes an assessable payment on an applicable large employer that offers minimum essential coverage to its full-time employees (and their dependents) under an eligible employer-sponsored plan but has one or more full-time employees who enroll in a qualified health plan for which a premium tax credit is paid with respect to the employee (for example, if the coverage offered either does not provide minimum value or is not affordable to that full-time employee).

Section 6056 of the Code was added by section 1514(a) of the Affordable Care Act. Section 6056 directs each applicable large employer to file an annual return with the Internal Revenue Service (“IRS”). The return is required to include certain information with respect to each employee who was a full-time employee of the employer for one or more months during the calendar year (in addition to information about the employer offering coverage, including contact information and the number of full-time employees). The information, described in section 6056(b), relates to the health care coverage the employer offered to each full-time employee (or, if applicable, that the employer did not offer coverage to that employee), by month, including the lowest employee cost of self-only coverage offered. Section 6056 also requires these employers to furnish, by January 31 of the calendar year following the calendar year for which the return

must be filed, a related statement described in section 6056(c) to each full-time employee for whom information is required to be included on the return.

This information reporting will be used to help administer the employer shared responsibility provisions of section 4980H. It also will be used by employees to determine whether, for each month of the calendar year, they may claim on their individual tax returns a premium tax credit under section 36B. The regulations provide for a general reporting method and alternative reporting methods designed to simplify and reduce the cost of reporting for employers subject to the information reporting requirements under section 6056.

The law (section 1502(a)) also added section 6055 to the Code. Section 6055 requires information reporting by any entity that provides minimum essential coverage to an individual during a calendar year, which could include insurance companies, self-insuring employers, and certain other entities that provide coverage. The information reported under section 6055 will be used to help administer the individual shared responsibility provisions under Code section 5000A. This includes information about the entity providing coverage (including contact information) and which individuals are enrolled in coverage (with identifying information and the months for which they were covered). Section 6055 also requires the reporting entity to furnish the information, by January 31 of the calendar year following the calendar year for which the return must be filed, in a related statement to each covered individual.

### **Final Regulations on Employer Responsibility Provisions**

The comprehensive final regulations on employer shared responsibility provide employers with the guidance they need to comply with the employer responsibility provisions and with flexible and practical means for doing so. Even before releasing proposed regulations on the employer responsibility provisions in December 2012, Treasury and the IRS issued four notices that described potential approaches to implementing the employer responsibility provisions and invited public comments on each of the notices. Those comments, from a wide range of stakeholders, including Members of Congress, were carefully considered in formulating the proposed regulations. Further comments were received regarding the proposed regulations and were taken into account in developing the recently issued final regulations.

By and large, the final regulations follow the proposed regulations, with key improvements in response to comments. Like the proposed regulations, the final rules allow employers to use an optional look-back measurement method to make it easier to determine whether employees whose hours vary between part-time and full-time and seasonal employees are full-time. The look-back measurement method for determining employees' full-time status, including reasonable administrative periods, was designed based on existing employer health plan practices to be workable and administrable. Responding to comments, the final regulations also clarify the application of this method and the alternative monthly method of determining full-time status.

Also like the proposed regulations, the final rules provide three optional, alternative design-based safe harbors that make it easy for employers to determine whether the coverage they offer is affordable to employees. Because employers do not know employees' household income (which generally determines eligibility for the premium tax credits that can trigger an employer's

responsibility for an assessable payment), these safe harbors permit employers to use 9.5% of the wages they pay as reported on Form W-2, 9.5% of employees' rate of pay (each employee's rate of pay or the employer's lowest rate of pay for all employees), or 9.5% of the Federal poverty line for the year.

In addition, the final regulations provide guidance – largely prompted by comments on the proposed regulations – on whether employees of certain types or in certain occupations are considered full-time, including:

- **Volunteers:** Hours contributed by bona fide volunteers for a government or tax-exempt entity, such as volunteer firefighters and emergency responders, will not be counted as hours of service that could cause them to be considered full-time employees. For this purpose, bona fide volunteers include any volunteer who is an employee of a government entity or tax-exempt organization whose only compensation from that entity or organization is in the form of (i) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.
- **Seasonal employees:** Those in seasonal positions for which the customary annual employment is six months or less generally will not be considered full-time employees. The final regulations provide that a seasonal employee means an employee in a position for which the customary annual employment is not more than six months. The reference to customary means that, by the nature of the position, an employee in this position typically works for a period of up to six months beginning each year in approximately the same part of the year, such as summer or winter.
- **Educational employees:** Teachers and other educational employees will not be treated as part-time for the year simply because their school is closed or operating on a limited schedule during the summer.
- **Adjunct faculty:** The final regulations provide as a general rule that, until further guidance is issued, employers of adjunct faculty are to use a method of crediting hours of service for those employees that is reasonable under the circumstances and consistent with the employer responsibility provisions. However, to respond to comments stressing the need for predictability and ease of administration, and requesting a “bright line” approach, the final regulations expressly allow crediting an adjunct faculty member with 2 ¼ hours of service for each hour of teaching or classroom time as a reasonable method for this purpose.

### **Limited Transition Relief for 2015 in Final Regulations**

Approximately 96 percent of U.S. employers are small businesses that have fewer than 50 workers. These employers are exempt from the employer shared responsibility provisions. To ensure a gradual phase-in for the employers to whom the employer shared responsibility provisions do apply, the final rules include transition relief for 2015. The rules provide that:

- The employer responsibility provisions generally will apply to larger firms with 100 or more full-time employees starting in 2015. The provisions generally will apply to the smaller businesses that are subject to the provisions -- employers with at least 50 but fewer than 100 full-time employees -- starting in 2016. The overwhelming majority of the firms with 100 or more employees already offer quality coverage. Small businesses with between 50 and 100 employees that do not yet provide quality, affordable health insurance to their full-time workers will have an additional year to adjust to the new employer responsibility provisions.
- To avoid a payment for failing to offer health coverage, employers will need to offer coverage to 70 percent of their full-time employees in 2015 and 95 percent in 2016 and beyond. This phase-in approach will be of assistance to employers that offer coverage to most of their full-time employees, but not yet to 95 percent (for example, they offer coverage to employees who work an average of 35 or more hours per week, but not yet to that fraction of their employees who work 30 to 34 hours per week).

This transition relief does not affect employees' or other individuals' access to the premium tax credits available under the law. Individuals will continue to be eligible for a premium tax credit by enrolling in a qualified health plan through the Marketplaces if their household income is within a specified range and they are not eligible for other minimum essential coverage, including an eligible employer-sponsored plan that is affordable and provides minimum value.

### **Other Specific 2015 Employer Responsibility Provisions**

The final regulations also generally extend to 2015 a package of specific provisions that the proposed regulations would have applied to 2014.<sup>1</sup> In particular, an employer with a plan year that does not start on January 1 will be able to begin compliance with employer responsibility at the start of its plan year in 2015 rather than incurring the disruption of having to begin compliance on January 1 (in the middle of that plan year). In addition, employers will be able to count the number of full-time or full-time equivalent employees they had in 2014 by reference to a period of at least six consecutive months, instead of a full year, to help facilitate compliance for smaller businesses that are uncertain whether they will be subject to the employer shared responsibility provisions. Employers that are not currently offering coverage to dependents but that are taking steps in 2015 to arrange for offers of coverage to their full-time employees' dependents will be able to begin offering that coverage in 2016. Also on a one-time basis, in 2014 preparing for 2015, most plans may use a measurement period of six months even with respect to a stability period – the time during which an employee with variable hours who works full-time during a measurement period must be offered coverage – of up to 12 months. (The ongoing rule is that the measurement period generally cannot be shorter than the stability period.)

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<sup>1</sup> Notice 2013-45 (2013-31 IRB 116) provided one-year transition relief from the section 6055 and section 6056 information reporting requirements so that reporting is not required with respect to 2014. Because it is impractical to determine which employers are subject to and in compliance with the employer shared responsibility provision of section 4980H without section 6056 reporting, the Notice also provided one-year transition relief from section 4980H.

## **Final Regulations on Employer Information Reporting**

In September 2013, Treasury and the IRS issued proposed regulations on the information reporting requirements that apply to applicable large employers under section 6056 of the Code (and on the information reporting requirements under section 6055 of the Code for self-insuring employers, insurance companies, and certain other entities that provide minimum essential health coverage to individuals). The proposed section 6056 regulations specified a method of reporting (referred to as the general method), and discussed a variety of potential simplified reporting methods. Public comments were requested and received on the proposed regulations.

Many of the comments urged that final rules provide streamlined ways to comply with employer information reporting -- especially for employers that offer highly affordable coverage to all or virtually all of their full-time employees. Other comments requested that the regulations permit the use of a single form for self-insuring employers who are reporting under both section 6056 and section 6055.

After consideration of the comments, including those previously submitted in response to an earlier request (Notice 2012-33 (2012-20 IRB 912)), final information reporting regulations were issued with a view to substantially simplifying and streamlining the proposed employer reporting rules to make them as practical and workable as possible, consistent with effective implementation of the law. In developing these regulations, we were mindful of the importance of (1) minimizing cost and administrative tasks for reporting by entities and individuals, (2) providing individuals the information to complete their tax returns accurately, including with respect to the individual shared responsibility provisions and potential eligibility for the premium tax credit, and (3) providing the IRS with information needed for effective and efficient tax administration.

The final rules include the following key simplifications:

### Single, Combined Form for Information Reporting

- Employers that “self-insure” will have a streamlined way to report under both the employer and insurer reporting provisions. Responding to widespread requests, the final rules provide for a single, consolidated form that applicable large employers will use to report to the IRS and employees under both sections 6055 and 6056, thereby simplifying the process and avoiding duplicative reporting. The combined form will have two sections: the top half will include the information needed for section 6056 reporting, while the bottom half will include the information needed for section 6055.
  - Employers that have fewer than 50 full-time employees are exempt from the ACA employer shared responsibility provisions and therefore from the section 6056 reporting requirements.
  - Employers that are large enough to be subject to the employer responsibility provisions and that “self-insure” will complete both parts of the combined form for information reporting.

- Employers that are subject to employer responsibility but do not “self-insure” will complete only the top section of the combined form (reporting for section 6056).
- Insurers and other providers of health coverage not subject to employer information reporting under 6056 will report only under section 6055, using a separate form for that purpose. Insurers do not have to report on enrollees in the Health Insurance Marketplace, since the Marketplace will already be providing information on those individuals’ coverage.

### Simplified Option for Employer Reporting

- For employers that provide a “qualifying offer” to any of their full time employees, the final rules provide a simplified alternative to reporting monthly, employee-specific information on those employees.
  - A qualifying offer is an offer of minimum value coverage that provides employee-only coverage at a cost to the employee of no more than about \$1,100 in 2015 (9.5 percent of the Federal Poverty Level), combined with an offer of coverage for the employee’s family.
  - For employees who receive qualifying offers for all 12 months of the year, employers will need to report only the names, addresses, and taxpayer identification numbers (TINs) of those employees and the fact that they received a full-year qualifying offer. Employers will also give the employees a copy of that simplified report or a standard statement indicating that the employee received a full-year qualifying offer.
  - For employees who receive a qualifying offer for fewer than all 12 months of the year, employers will be able to simplify reporting to the IRS and to employees for each of those months by simply entering a code indicating that the qualifying offer was made.
  - To provide for a phase-in of the simplified option, employers certifying that they have made a qualifying offer to at least 95% of their full-time employees (plus an offer to their families) will be able to use an even simpler alternative reporting method for 2015. Those employers will be able to use the simplified, streamlined reporting method for their entire workforce, including for any employees who do not receive a qualifying offer for the full year. Those employers will provide employees with standard statements relating to their possible eligibility for premium tax credits.
- The final regulations also give employers the option to avoid identifying in the report which of their employees are full-time, and instead to simply include in the report those employees who are or may be full-time. To take advantage of this option, the employer must certify that it offered affordable, minimum value coverage to at least 98 percent of the employees on whom it is reporting.

## **Conclusion**

As you know, the Affordable Care Act is designed to provide affordable, quality health coverage for millions of American families. Together with the Department of Health and Human Services, the Department of Labor, and other agencies in the Executive Branch, we are implementing the Affordable Care Act to sustain the progress made toward better and more affordable coverage. We welcome the opportunity to continue our work with the Committee to achieve these objectives. Thank you, and I look forward to answering your questions.