



September 12, 2016

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Koskinen:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefit specialists nationally. The members of NAHU work on a daily basis to help individuals and employers purchase, administer and utilize health insurance coverage. Over the past several years NAHU members have helped employer-clients nationwide prepare for the implementation of the employer shared responsibility requirements outlined in IRC § 4980H. Over the past twelve months, thousands of them have spent a considerable amount of time helping employers meet their related IRC §§ 6055 and 6056 information reporting requirement obligations. As such, we truly appreciate the opportunity to provide feedback on the proposed draft Forms 1094 and 1095 B & C and their accompanying instructions.

In developing these comments, NAHU consulted with a wide scope of member brokers and consultants assisting employers with information reporting nationwide, so these recommendations reflect the direct thoughts of many experts in the field. After some deliberation we elected not to send you a "redline" version of the drafts pointing out every possible instance where we felt the forms and instructions could be made clearer. Instead we have focused our comments on high priority items that we feel that if changed or expanded upon will make a real difference for employers, coverage providers and individual insurance consumers as they complete and use these forms and their instructions in the year ahead. If you would like additional and very detailed feedback about the draft forms and instructions, we would be happy to offer you access to a wide range of NAHU members who work on IRC §§ 6055 and 6056 information reporting issues every day. These individuals not only assist hundreds of thousands of employers and coverage providers with information reporting, but they also handle the reporting for their own organizations and would be glad to provide you with "focus group" assistance and other feedback that might be helpful. We extend this offer not only for right now, as you work to finalize the forms and instructions for reporting on the 2016 tax year, but also for the future, as you work to improve the reporting processes for the years ahead.

In general, NAHU appreciates the IRS's attempt to simplify the 2016 forms series and we are grateful for the wide range of specific examples in the new draft forms. In particular we noticed great improvement with regard to keeping similar information together, referencing supplemental publications, the examples relative to authoritative transmissions and when to issue a 1094 B versus 1095 C. We also really appreciate the addition of many new "tips" sections, including the specification that Line 14 may never be left blank, which will benefit many filers. Furthermore, NAHU is truly grateful for the if/then examples that were provided to employers about how to transmit forms and handle form corrections. However, given the nature of these forms and their complex topic, we



have a number of specific suggestions intended to further improve employer understanding and compliance for the 2016/2017 reporting cycle.

Definitions

The overview of the Forms 1094 and 1095 instructions refers filers to the definitions section for more information on each topic. NAHU suggests that this reference on page one of the instructions be updated to reflect the page number where the definitions start and note that the definitions appear at the end of the instructions. Also, we urge you to consider bolding or italicizing the terms that are later defined in the document and stating upfront that this is how the document denotes defined terms. That way, a filer can easily cross-reference those terms and read their comprehensive definitions in the moment.

Cross-References and Links to Supplementary Materials

NAHU hopes that further revisions to these forms will group even more similar information together and provide clear cross-references including page numbers as needed. Providing active web links to **all** referenced documents, regulations, guidance and publications noted in the instructions would be of great help to employers, vendors and advisors. There are many live links to cross-referenced sources of additional information, but the use of live links is not always consistent.

Transition Relief

Given the limited existence of transition relief in 2016, NAHU members believe if it would be helpful if all information about transition relief was grouped together under one subheading in the initial section of the forms 1094/1095 instructions and if the instructions could include explicit conditions for the applicability of each type of relief in 2016 and examples in each category for employers to follow, similar to the if/then examples provided for authoritative transmissions and corrected filings.

This need includes information about multi-employer plan transition relief. The new instructions indicate that the existence of a safe harbor for employers that exercise multi-employer plan transition relief will continue for 2016. Will this safe harbor be on the same terms as the 2015 safe harbor? Or will employers need to obtain more information from the multi-employer plans that they may contribute to on behalf of employees? Additional clarification of this important topic is needed.

Electronic Statements

The provision of additional information about when it is acceptable to transmit a form 1095C to an employee electronically is helpful, but the language used about how consent may be obtained in writing but then needs to be confirmed electronically is confusing. Many employers simply do not understand the electronic distributions rules, especially in today's world of mobile devices, so NAHU suggests the use of specific examples about acceptable means of obtaining employee consent. In addition, more guidance about how employers may effectively document consent for electronic transmissions in revised form instructions would be very helpful for employers.

1094 C Question 22

Question 22, which identified if an employer was eligible for certain kinds of transition relief and/or simplified reporting methods was an extremely problematic question for employers and information reporting vendors alike during the 2015-2016 reporting cycle. We can see that in the draft forms this question is in the process of being



altered, as choice B is now blank, and we have some specific suggestions for improvement for 2016. First of all, combining two topics (transition relief and reporting method) in one question is too much. We strongly suggest that these two issues be separated into different questions and reporting lines for the 2016 form. Second, we note that how this line addressed qualification for only certain kinds of transition relief and not others caused issues. For 2016, we suggest one question to document eligibility for all of the different types of transition relief grouped together and another separate question/line to address simplified reporting.

Simplified Reporting

Last year, NAHU members noted that employers found the qualification standards for the various types of offer methods/simplified reporting hard to follow. It was not clear to many that qualification was, in part, contingent on the use of the 100% of the federal poverty level affordability safe harbor and it was also very hard for employers to understand that the 98% offer method was not a practical option for most group health plans. There was a clear effort made to improve the information on simplified reporting in the initial 2016 draft form instructions, but NAHU members still believe that employers will continue to be confused by its placement and wording. We would strongly suggest that all information about simplified reporting be grouped together in the 2016 instructions under a clear heading. NAHU believes that this section should appear in the first part of the instructions and that clear qualification examples, as well as examples about how and when such methods would be used in practicable terms should be included.

Columns B and C of Form 1094 C

The objective of columns B and C on Form 1094C is confusing to NAHU members and filers generally. These columns do not appear to correlate with other requested data, and since filers are asked for current year employee numbers rather than data that represents the tax year for which they are filing, confusion is often created. Additional clarifying guidance on the information required for these columns and its purpose would be appreciated for 2016.

1095C Code 1G

Employers also really struggled with the instructions regarding 1095C code 1G, which applies to offers of coverage to people who were not full-time employees. During the 2015 reporting year filers found the instructions for this code hard to follow and needed many examples to explain its potential applicability. In the new forms, NAHU notes that there is more information about the use of this code, but it is located in multiple places, including the specific line 14 instructions and the instructions for self-funded plans. NAHU suggests grouping this information together and concentrating it in the specific 1G coding instruction section.

1095C Line 16

NAHU members believe that filers would greatly benefit from enhanced instructions for form 1095C, line 16. We suggest the inclusion of a tip section, or more explicit instruction noting that failure to complete line 16 on 1095C means the employer could be subject to a penalty. This tip could direct filers to complete line 16 for every month of the calendar year. The instructions already specify that line 14 should never be left blank, but perhaps these instructions should be expanded to address all parts of Part II of Form 1095C?

Treatment of Employees Covered by Military Coverage



The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 clearly established that an employee should not be counted toward the 50-employee applicable large employer threshold for a month in which the employee has medical care through the military, including Tricare or Veterans' coverage. However, some employers really struggled with how to count and then report on such employees if they were still offered coverage. It is NAHU's belief that if these individuals did receive and/or accept an offer of coverage from a non-military employer than this coverage should be reported; however, we note in 2015 there was some confusion about this matter. Additional guidance and a clear section in the 2016 1094/1095 form instructions on this topic would be appreciated.

Limited Non-Assessment Period

This was a term that many employers had a hard time grasping and oftentimes confused with the terminology associated with the allowable methods for tracking variable hour employees. NAHU believes it would be very helpful if the term was renamed and/or even better defined. Perhaps the form could include a subheading to help employers easily and clearly understand that it only applies to months in which an employer will not be subject to IRC §4980H penalties and has very limited applicability. Particularly helpful would be a tip explaining that limited non-assessment period relief only applies if it is followed by a timely and minimum value offer of coverage. Most filers simply do not understand that use of a limited non-assessment period is contingent upon the employer offering minimum essential coverage to the employee by the first day of the first month following the end of the period, and to apply a limited non-assessment period under Code 4980H(a), or under Code 4980H(b), the employer must make an offer of minimum value coverage. This must be explained in simpler terms.

A related issue is the need for guidance for filers who may have made an inadvertent mistake with regard to the limited non-assessment period relief in 2015 and are just realizing their errors now. For example, if an employee was in an initial measurement period under the look-back measurement method during 2015 and into 2016, and the employee was determined to be full-time by April 1, 2016, but the employer failed to make an offer of minimum essential or minimum value coverage by April 1st to that employee, it appears clear that the employer should not have been able to rely upon the Limited Non-Assessment Period for any of 2015 or 2016. What is unclear is how an employer should correct this going forward. Should the employer re-file the 2015 1095C for this employee? Do they need to indicate that "no offer" was made for 2016 until the employer actually caught the mistake and made an offer?

A simple way to correct this for the 2016 might be the creation of a new indicator code to use where an employer self-insured plan sponsor could indicate that the employer mistakenly relied upon the Limited Non-Assessment Period relief for a prior plan year, which did not actually apply due to a failure to offer coverage on a timely basis. Alternatively, guidance specific to Limited Non-Assessment Periods that lets employers know if corrected forms need to be filed for a prior year would be appreciated.

How to Report Individuals Who Waived A Coverage Offer

One of the most common questions employers had during the 2015 information reporting process was how to report on employees who waived an offer of coverage by the employer. A separate and clearly labeled section in the instructions that includes examples, explaining exactly how the IRS would like filers to report on waivers of coverage would be very helpful for employers, since we have noticed a clear disconnect amongst employers in this area. Many simply do not understand that even though coverage may have been waived by the employee, the



reporting is merely to document what, if any, type of coverage offer was made, and that penalty liability is covered through the use of the appropriate affordability safe harbor codes.

COBRA

How to report on coverage for COBRA and COBRA-eligible employees and beneficiaries was perhaps the most frequent source of filer questions NAHU members helped address during the 2015 reporting cycle. NAHU members truly appreciate the separation of most COBRA information in the draft instructions into one section and the inclusion of reporting examples relative to COBRA. To make things even easier on employers for 2016, we suggest that all the COBRA information be even more prominently grouped together and that the reference included in the form to additional guidance on IRS.gov be a full, rather than truncated live link, so that employers have a quick and reliable reference to consult for reporting in the year ahead.

Conditional Offers

The information on the new codes to report conditional offers of coverage is limited and fairly confusing. NAHU assumes that this portion of the guidance will be more robustly defined in later drafts of the forms, given that the Premium Tax Notice of Proposed Rulemaking IV which will provide the needed regulatory framework for this reporting is not finalized. However, as it stands now, these instructions are insufficient. NAHU also requests that the treatment of unconditioned opt-out bonuses also be reflected in any new reporting guidance, instructions and forms for 2016.

Solicitation Process for Taxpayer Identification Numbers (TINs)

Another point of confusion during the 2015 reporting year was when an employer was required to solicit TINs in the case of known errors. Some IRS guidance appears to indicate that the receipt of an "Accepted with Errors" (AIRTN500 message) does not trigger a Notice 972CG, Notice of Proposed Civil Penalty, so it is not a requirement that an employer begin the solicitation process if they receive this error code as part of the electronic filing process. The instructions to the Forms 1094 and 1095 B and C also state, "If you fail to file correct information returns or fail to furnish a correct recipient statement, you may be subject to a penalty. Regulations section 301.6724-1 (relating to information return penalties) does not require you to file corrected returns for missing or incorrect TINs if you meet the reasonable cause standard." This statement on its face appears to be confirming that employers are not required to begin the solicitation process if they used information provided to them by employees originally. However, the details of the 301.6724-1 regulations make the statement in instructions to the Form 1094-C/1095-C extremely confusing. NAHU suggests that the 2016 Form 1094 and 1095 instructions include clear examples of what actually triggers the solicitation process and what that process should be.

Mergers and Acquisitions

Corporate mergers and acquisitions have become increasingly common and how to address employee counts and calculations in these cases is not always clear. Further, reporting responsibilities in these situations could stand to be clarified. For example, if a corporation ceases to exist because it was wholly acquired, does it need to report on its coverage offerings distinctly for the prior tax year? NAHU suggests that prior to the start of the 2016 information reporting season, that the IRS issue clarifying guidance addressing concerns created by mergers and acquisitions and providing information about where responsibilities may lie. Given that the types of merger and acquisition scenarios are so vast and oftentimes so complicated, NAHU urges that the guidance issued be as simple as possible and geared to cover a wide range of ownership transitional situations. Generally we believe the focus



should be on ensuring that companies going through ownership transitions have clear timeframes as to when responsibilities stop and start amongst entities. This guidance needs to extend to the counting and tracking of employees, coverage offers, and reporting of what is offered and who is actually covered as applicable. Duplicative reporting needs to be avoided, but employers also need to have time to merge plans. Transition relief for companies that have different plan years should be provided. Furthermore, in the case of an applicable large employer (ALE) acquiring or merging with a non-ALE, we urge guidance that will allow for transitional relief to the acquiring employer to bring the non-ALE into compliance. In the case of an acquisition of a company that did not previously offer coverage, time needs to be provided to assess the newly acquired workforce and bring the new company into the existing group benefits plan. In the case of a non-ALE offering coverage that did not meet either the affordability and/or the minimum value standard, again the acquiring company will need time to make changes to the offerings and align the two benefit plans, so transitional relief should be provided. Reporting forms and instructions will likely need to be altered to accommodate these situations, and as that is done, NAHU urges the inclusion of examples and if/then scenarios for employers to follow.

Leaves of Absence

How to report on individuals who are on extended leaves of absence but are not exercising their rights under the Family Medical Leave Act, such as professors on a sabbatical or full-time employee on a non-medical leave of absence is also an area where more information would be appreciated.

Health Flex Arrangement and Health Reimbursement Arrangement Reporting

The reporting for health flex arrangements that possess both a health flex and a non-health flex component have been identified as areas where more guidance is needed by our membership. In many states employers offer very generous flex allowances to their union employees that include a cash component as prescribed by Cafeteria Plan regulations, and also allow for the purchase of other non-health benefits (dental, vision, dependent care spending accounts and others). In many cases the flex allowance is a substantial amount such as \$1,500 per month, the lowest cost minimum value plan offered has a monthly employee-only premium of a much lower amount. It is not clear from the current guidance if an employer must report on line 15 of the Form 1095-C, the total amount of the contribution, as it is a non-health flex contribution, or just the amount of the self-only premium for the lowest cost minimum value plan offered. NAHU recommends that forthcoming guidance should address this confusion and clarify that even if the flex allowance is a non-health flex allowance that only the portion representing the cost of employee-only coverage should be reported on line 15 of the Form 1095-C, not the full value of the flex allowance. Similarly, if an employer provided employees who opted out of group health coverage with a health reimbursement arrangement or health flexible spending account in excess of \$500 per year (integrated with another employer's group health insurance coverage), previously issued guidance indicates that these are group health plans. Therefore, NAHU requests clarification in the final form if it is proper for the employer to report that the employee enrolled "2C" on line 16 in these situations. Or, is this not considered group health coverage for reporting purposes?

2016 Reporting Timeline

NAHU members have expressed significant concerns about the transition to an abbreviated information reporting timeline for the 2016 tax year. Not only do we have concerns about the practical aspect of employers, coverage providers and vendors in meeting the new deadline, given the enormous amount of human capital required to complete the process this year, we also have concerns about how the January 31, 2017 deadline for providing



employees with Form 1095 C will impact the use of the W-2 affordability safe harbor. Given that the deadline for providing Form W-2s to employees in January 31st as well, a real challenge exists for the many employers intending to use this affordability safe harbor for their 2016 information reporting. Most employers do not have W2 data fully calculated and available until at least January 15th of each year. To expect that this information could then be applied to the form 1095 C and transmissions made of both forms to applicable employees by January 31st is not practical. However, hundreds of thousands of employers are planning to rely of the W2 safe harbor standard, which is a particularly appropriate for employers with many employees that are commission-based, receive tips and/or overtime pay. To both address practical timing concerns and render the W2 affordability safe harbor usable for 2016 and future tax years, NAHU suggests that the information reporting timeline be advanced by one month moving forward.

NAHU sincerely appreciates the opportunity to provide comments on the draft 2016 information reporting forms and their instructions. If you have any questions or need more information, or if you would like to speak or meet with NAHU members who work on these issues daily for additional details and suggestions, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink, which reads "Janet Trautwein". The signature is written in a cursive style with a large, stylized initial "J".

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters