October 3, 2016

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

RE: IRS REG-103058-16 - Submitted Electronically via www.regulations.gov

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 employers nationwide implement changes to their group health insurance plans related to the Patient Protection and Affordable Care Act (ACA). Over the past 12 months, thousands of our members have helped employers meet their related IRC §§ 6055 and 6056 information reporting requirement obligations. As such, we truly appreciate the opportunity to provide comments on the proposed rule titled "Information Reporting of Catastrophic Health Coverage and Other Issues under Section 6055."

Our comments have been divided by topic and presented in the order they are addressed in the proposed rule. In developing them, NAHU consulted with a wide scope of member brokers and consultants who assist employers with information reporting nationwide, so please note that these recommendations reflect the direct thoughts of many experts in the field.

Required Reporting
NAHU supports the proposed changes to require issuers of catastrophic coverage to report on such coverage, including the recognition that coverage issuers need time to implement these requirements and therefore the specification that such information reporting requirements will be effective for the 2017 coverage year with related reporting to occur in 2018. NAHU also appreciates the specification that any voluntary reporting done in 2017 for the 2016 coverage year will not be subject to penalties. Similarly, NAHU agrees with the proposed requirement that state agencies be required to report coverage provided under the Basic Heath Program under IRC §6055.

Truncated Taxpayer Identification Numbers
Providing clarity about when a taxpayer identification number (TIN) may be truncated on information reporting statements to coverage recipients (as permitted by state law), as well as the specification that reporting documents submitted to the Internal Revenue Service may not contain truncated TINs is very helpful, as sometimes employers offering group self-funded plans to employees and dependents did have questions about this issue during the 2015-2016 reporting cycle. Furthermore, NAHU appreciates the specification that employers, as well as health

insurance issuers, may choose to truncate their employer identifying number (EIN) on statements furnished to taxpayers, as permitted by state law, which was another point of confusion during the past year.

Plans for Which Reporting Is Not Required

NAHU appreciates the clarification in the proposed rule of Notice 2015-68 provisions outlining instances where reporting under IRC §6055 is not required. Specifically, if an individual is covered under more than one plan providing minimum essential coverage (MEC) by the same reporting entity, then reporting is only required for the primary coverage program. Additionally, reporting of MEC is not required to the extent that the individual is eligible for the coverage only if the individual is covered by other MEC for which reporting under IRC §6055 is also required. Particularly helpful are the detailed examples provided in the preamble to the proposed rule, which outlines when employers offering self-insured Health Reimbursement Arrangement (HRA) coverage to employees and their dependents are required to report such coverage under IRC §6055. NAHU hopes that these specific examples will be incorporated into guidance and FAQs for employers' use and reference on www.irs.gov, as well as incorporated into the instruction forms for 1094 and 1095 B and C, as this will be extremely important information for employers and issuers to have for the 2016-2017 reporting cycle, which is just about to begin.

Solicitation Process for TINs

The need established by IRC §6055 for employers and issuers to gather TINs from not only employees but also all covered dependents for information-reporting purposes represented a significant change in both issuer and employer group benefit practices for the 2015 plan year. Employers and issuers expended significant effort in 2015 to collect the needed TINs from dependents in order to avoid penalty liability under IRC §§ 6721 and 6722. Despite these exhaustive efforts, sometimes TINs could not be obtained for all dependents in time to meet the reporting deadlines. Further complicating the matter, unfortunately, was that, when the employers and issuers transmitted their form 1094 B or C to the IRS this spring, errors in employee and/or dependent TINs caused these forms to be "Accepted with Errors" by the IRS. Employers and issuers were very confused about whether they needed to re-solicit TINs from those employees and dependents covered on the plan in order to resolve transmission issues, correct TIN errors and/or omissions and avoid penalty liability. As NAHU noted in our September 16, 2016, comment letter to you concerning the draft 2016 Forms 1094 and 1095 B and C and their draft instructions, clear examples of what actually triggers the TIN solicitation process and what that process should be are desperately needed for the reporting cycles to come.

Accordingly, NAHU does appreciate the specific TIN-solicitation instructions this proposed rule provides to employers and issuers that are subject to §6055. However, our membership has significant concerns about the practicality of compliance with the TIN-solicitation timeline outlined in this rule for 2016, which employers and issuers are directed to use until the promulgation of final rules on the matter. According to the directives and timeline in this proposed rule, the vast majority of self-funded employer plans and other health coverage issuers will need to complete their second round of TIN solicitations by October 13, 2016, in order to avoid penalty liability. Based on our membership's widespread national experience working with self-funded employer-sponsored group benefit plans, NAHU is certain that most employers subject to this new requirement have no idea of the rapidly looming compliance deadline. Even if all issuers and self-funded plans were made immediately aware of the new requirement, completing an acceptable TIN-solicitation process by the deadline would be next to impossible in such a short timeframe. As such, NAHU urges the IRS to instead utilize a good-faith compliance standard relative to TIN solicitation required by §6055 for the 2016 plan year. Then any finalized TIN-solicitation requirements, processes and timelines could be applied for the 2017 plan year, reported on in 2018.

Employer TIN-Solicitation Requirements Regarding IRC §6056

NAHU recognizes that the scope of this proposed rule merely concerns required information reporting of MEC according to IRC §6055. However, we must point out that the concerns and confusion about TIN-solicitation requirements also apply to employers subject to the IRC §6056 information reporting requirements relative to the employer shared responsibility provisions of IRC §4980H. One of the biggest surprises employers subject to IRC §6056 experienced during the 2015 information reporting cycle was how often their authoritative transmissions of the Form 1094C to the IRS resulted in the receipt of an "Accepted with Errors" AIRTN500 message due to heretofore unknown issues with employee TINs. Complicating matters was a lack of concrete information from the IRS regarding if and when an employer was required to solicit TINs in the case of known errors to avoid penalties. The instructions to the 2015 Forms 1094 and 1095 B and C relative to both the IRC §6055 and §6056 reporting requirements 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.

This proposed rule outlines a much more exhaustive standard regarding TIN solicitation from covered individuals and directs issuers and employers operating self-funded group plans to follow it for the 2016 plan year (reporting in 2017) relative to IRC §6055. Employers need to know if a similar process will apply for TIN solicitation relative to IRC §6056 as soon as possible. For employers subject to both IRC §§ 6055 and 6056, linking the TIN-solicitation requirements would seem to be sensible. However, given the much wider range of employers subject to IRC §6056 and the looming deadlines for IRC §6055 TIN solicitation outlined in this proposed rule, we note that linking potential requirements for the 2016 plan year for both types of information reporting would be impossible for many, if not all, employers subject to just IRC §6056. Accordingly, we urge the issuance of clear guidance declaring the use of a good-faith compliance standard for all TIN solicitation needed for both IRC §§ 6055 and 6056 information reporting for the 2016 plan year, as well as guidance issuing clear procedures and deadlines applicable to those subject to either one or both information reporting code sections plan years 2017 on forward.

NAHU sincerely appreciates the opportunity to provide comments on the proposed rule. If you have any questions or need more information, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

Janet Trautwein

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