



July 30, 2018

The Honorable David J. Kautter
Acting Commissioner, Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Proposed Rule on Filing Requirements for Information Returns Required on Magnetic Media (Electronically)

Submitted Electronically via www.regulations.gov

Dear Acting Commissioner Kautter:

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 benefits specialists, regarding the proposed regulation on Filing Requirements for Information Returns Required on Magnetic Media (Electronically) that was published in the *Federal Register* on May 30, 2018.

The members of NAHU work on a daily basis to help individuals and employers purchase, administer and utilize health insurance coverage and make the most of the services available to them. One of our areas of expertise lies in the technicalities of health-plan purchasing and administration and the real-world challenges employers face regarding health benefit plan compliance.

This proposal would amend the rule for determining whether or not information returns must be filed using magnetic media (electronically). The proposed regulations would require that all information returns, regardless of type, be taken into account when determining if an entity meets the 250-return threshold and, therefore, must file the information returns electronically. The proposed regulations also would require any person required to file information returns electronically to file corrected information returns electronically, regardless of the number of corrected information returns being filed.

While we understand that your goal is to increase the number of electronic filers and bring greater efficiency to the information-reporting process, NAHU is concerned that this proposal would place a compliance burden on small and midsize business owners. Furthermore, we are not convinced it will inspire much more electronic filing, but would instead result in many smaller entities inadvertently committing filing violations, as they would not realize that they had reached the new aggregated 250-return threshold.



NAHU members represent many small and midsize businesses, and our members routinely help clients of all sizes with health coverage information reporting requirements via Forms W-2, and Forms 1094 & 1095 B and C. Employers often use different vendors for these two requirements (if they are even subject to both currently) and, in some cases, handle the information reporting and return preparation themselves. These entities could quickly fall into mandated electronic filing territory and not realize it since there would be no common vendor to aggregate their totals. Small-business owners are already struggling with the complexity of health coverage information reporting requirements generally, and may not understand that they need to aggregate return totals themselves or face violations and penalty liability.

The types of businesses that NAHU predicts would be particularly susceptible to inadvertent violations include smaller companies that fall into the scope of the IRC §4980(h) employer shared responsibility requirements and the related IRC §§6055 and 6056 information reporting requirements because they are part of a controlled group. Other entities in this category are smaller businesses that hire many variable-hour and part-time employees. These employees do not work enough hours to warrant being offered health insurance coverage, but their employment is enough to tip the employer into applicable large employer status for the Affordable Care Act's employer shared responsibility provisions. Since these companies often have quite small health plans, they frequently elect to handle their Forms 1094 and 1095 internally and through paper filings, possibly taking advantage of simplified reporting. However, under the new requirements, they could become subject to electronic filing requirements and not know it.

Larger entities and those that use streamlined vendors for all of their information-reporting needs are likely already filing electronically, so the proposed rule would not impact them at all or increase their propensity to electronically file. Smaller entities that cannot afford to use vendors, or use multiple vendors and/or software for different types of reporting, are the ones most affected by both the actual dollar costs and the human capital costs associated with federal health coverage information reporting requirements. Our organization is very concerned about the growing number of national endeavors that increase a small employer's compliance burden, and we warn that all of these small mandates and requirements are stacking up to be significant burdens that have a negative impact on economic growth and the scope of employee benefits.

NAHU understands that the proposed rule stipulates that information filers may request a waiver of the electronic filing requirement if they lack the necessary data-processing capabilities or access to return preparers and third-party service providers at a reasonable cost and that the IRS routinely grants meritorious hardship waiver requests. However, our concern is focused more on the fact that smaller information filers will not realize that they have met the 250-return filing threshold and had a need to request a waiver.



Instead of mandating that the electronic filing threshold apply to more business owners by aggregating the return filing count and forcing employers to keep track of their aggregated number of various types of information returns, NAHU suggests that you focus on market-based incentives for electronic filing. We also encourage you to continue to direct resources toward improvements to internal filing systems, including the ACA Information Return system, to reduce transmission errors and entice more businesses to file electronically.

As you noted in the preamble to the proposed rule, the number of voluntary electronic filers has grown exponentially in recent years, leading us to believe that it will only continue to grow as you improve software and the transmission process. NAHU feels that market-based improvements and incentives will do far more to help you close the electronic reporting gap than placing mandates on those entities that still feel more comfortable reporting on paper.

We sincerely appreciate the opportunity to respond to the proposed rule and your commitment to gathering the viewpoints of all stakeholders. If you have any questions about our comments, or if NAHU can be of assistance as you move forward, please do not hesitate to contact me at (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink, which appears to read "Janet Stokes Trautwein".

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