



June 3, 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 nine months, thousands of NAHU members have spent a considerable amount of time helping employers meet their related information-reporting requirements.

Recently, several members of our association's volunteer leadership and I had the opportunity to meet with members of your staff regarding our members' experience with helping employers through the process of information reporting to the IRS required under IRC §§ 6055 and 6056 for the 2015 tax year. This letter is intended as a follow-up to the impressions and current concerns about the employer and health coverage provider reporting experience expressed during that meeting, and it identifies some issues and questions we hope you and your agency will address as you ready the information-reporting forms, procedures and instructions for the 2016 tax year. Please note that in addition to working with the participants in the April 28, 2016, meeting to develop the content of the recommendations in this letter, NAHU is consulting 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. We have provided both an overview of our recommendations and background for each, broken down by topic.

Overview of NAHU's Recommendations

For the 2015 tax year, NAHU suggests:

1. An IRS extension of compliance relief for all employers and coverage providers that can demonstrate a good-faith effort to transmit their authoritative 1094 forms by June 30, 2016. If their electronic transmission was rejected or accepted with errors that cannot be corrected by the



June 30, 2016, deadline, we suggest that these entities be given 120 days of penalty relief to complete their transmission and/or correct errors provided they can document a good-faith effort to comply.

2. Entities that are required to electronically file for the 2015 tax year should be given an extension in the timeframe to file Form 8508 to allow for a paper submission of their 1094C, and entities that request a waiver should be allowed to submit their paper 1094C by June 30 as well. Further, we suggest that the requirement to provide two cost estimates for e-filing be waived in the event that the employer has previously requested a waiver from e-filing for other tax forms.

For 2016 and future tax years, NAHU suggests that:

1. The IRS should extend the good-faith enforcement standard in any tax year to any employer and/or coverage provider subject to IRC §§ 6055 and/or 6056 information-reporting requirements for the first time.
2. The information reporting timeline be advanced by one month moving forward. This would mean that 1095 forms would need to be submitted to employees and covered individuals by February 28, and 1094 and 1095 forms would need to be submitted to the IRS by either March 31 or April 30, as appropriate. Without such a change, very few employers will be able to utilize the preexisting W2 affordability safe harbor.
3. Revised 1094/1095 series forms for the 2016 tax year should be released for public review and comment as soon as possible.
4. Simpler Form 1094/1095 instructions with more examples, clearer headings and a focus on grouping all similar information together with clear cross-references, including page numbers and active web links if required, would be of great help to employers, vendors and advisors.
5. Given the limited applicability of simplified reporting methods and the confusion the existence of such methods caused in 2015, simplified reporting in its current form should either be eliminated for 2016 on forward or there should be a reworking of the instructions and reporting of qualification for these methods.
6. Explicit and prominent instructions with regard to all types of transition relief and applicability in 2016, including multiemployer plan relief, are needed. In particular, our members believe it would be helpful if all information about the continued limited existence of transition relief were grouped together in the new instructions, if the instructions could include explicit conditions for



the applicability of each type of relief in 2016 and there were examples in each category for employers to follow.

7. A focus being placed on clearing up areas of common confusion from 2015 when creating 2016 forms and instructions would also be very helpful. While NAHU members understand that there already is a wide range of guidance available, we note that many employers really seem to be struggling with the topics and/or form components listed below. We are concerned that general confusion may lead to errors and note that clearer instructions are needed for:
 - Authoritative transmittals and why an employer might transmit the 1094C multiple times other than the authoritative transmittal
 - Limited non-assessment periods and their applicability to other terms and requirements
 - Form 1094 Question 22, which covers both transition relief and reporting methods in one question, was overwhelming. We strongly suggest that these two issues be separated into different questions and reporting lines for 2016.
 - How to report on individuals who waived a group coverage offer
 - Counting and reporting of employees enrolled in military coverage
 - The proper use of 1095C Code 1G
 - When a self-funded employer plan could and might want to issue a 1094/1095 B versus 1094/1095 C
 - The reporting of COBRA-eligible individuals
8. Employers are eagerly anticipating additional detailed guidance from the IRS on these topics:
 - Mergers and acquisitions
 - Reporting of employees on leaves of absence or sabbaticals outside of the realm of FMLA
 - Affordability safe harbors and the treatment of opt-out bonuses
 - Reporting for health flex arrangements
 - Reporting of people receiving disability coverage

Detailed Information about NAHU's Recommendations

2015 Information-Reporting and Enforcement Requirements

NAHU members' most immediate concern with regard to the information reporting is helping employers meet their obligations and complete the new process for the first time. Currently, health insurance agents and brokers are assisting their employer clients with the process of submitting their Forms 1094-B/C and Forms 1095-B/C to the IRS. As they work through the submission process with the newly created ACA Information Return (AIR) system, several common problems have arisen that we hope the IRS could quickly address.



Many employers and ACA reporting vendors are experiencing problems in successfully submitting or having their submission be accepted without errors. Most employers are relying on vendors, who have been working for a few years with the IRS in ensuring that their systems can effectively transmit information via AIR. Although employers and vendors are making good-faith efforts to comply with the e-filing deadlines on a timely basis, some employers and vendors will be unable to correct all of the error codes associated with their submissions by June 30, 2016. Some vendors, though acting in good faith, are having problems with their 1094 submissions being accepted by the AIR system overall and are having extreme difficulties with AIR system problem resolution. Other employers and coverage providers have been successful in completing their transmissions generally but have seen those transmissions accepted with errors noted. The most common error being reported concerns Social Security Numbers of both employees and dependents. Employers that have received these error reports are working diligently with their vendors, employees and, in some cases, beneficiaries to resolve the issues. However, particularly in certain cases involving Social Security Number name mismatches, action is required on the part of both the employee/and or beneficiary and the Social Security Administration before an error can be corrected. This process takes a great deal of time and its expediency is often well beyond the employer's control, as the Social Security mismatch is associated with a former employee, a dependent of a former employee or a former dependent of an existing employee (divorce or legal separation).

NAHU is also concerned that many employers and coverage providers have not yet begun the process of 1094 transmission because they do not understand that the process may not be a simple one. We believe that there may be many ALEs and coverage providers who are planning to transmit much closer to the electronic filing deadline and will be very surprised to find that their 1094 transmission could be rejected or need to be corrected in short order.

To address these issues, NAHU suggests an IRS extension of compliance relief for all employers and coverage providers that can demonstrate a good-faith effort to transmit their authoritative 1094 form by June 30, 2016. If their transmission was rejected or accepted with errors that cannot be corrected by the June 30, 2016, deadline, we suggest that these entities be given 120 days of penalty relief to complete their transmission and/or correct errors provided they can document a good-faith effort to comply.

Entities that are required to electronically file this year should be given an extension in the timeframe to file Form 8508 to allow for a paper submission of their 1094C, and entities that request a waiver should be allowed to submit their paper 1094C by June 30 as well. Entities that are required to file electronically must have requested a waiver to that requirement by May 16, 2016. Unfortunately, many employers are just learning that vendors they have hired to complete their transmissions may not be capable of transmitting through the AIR system in time and have notified employers that they will have to e-file themselves. We anticipate that even more employers may have unanticipated difficulties as the June 30, 2016 deadline grows closer. Therefore, NAHU suggests that the timeline to file form 8508 be extended to



June 30, and that the requirement to provide two cost estimates for e-filing be waived in the event that the employer has previously requested a waiver from e-filing for other tax forms.

Finally, the IRS should extend the good-faith enforcement standard to any tax year during which an entity becomes an ALE or coverage provider for the first time. NAHU members note that for this first year of compliance, employers, advisors and vendors alike were comforted by the good-faith compliance standard in place for 2015. Given that this process is completely new and complicated, it should be expected that even those trying their best might make mistakes while acting in good faith. While NAHU understands that ultimately the good-faith standard must end for experienced employers, we note that there are many employers that will become subject to IRC §4980H and/or the IRC §§ 6055 and 6056 information-reporting requirements in years later than 2015.

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 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 is January 31 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 15 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 31 is not practical. However, hundreds of thousands of employers are planning to rely of the W2 safe-harbor standard, which is particularly appropriate for employers with many employees who are commission-based, receive tips and/or overtime pay. To 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.

2016 Forms Release and Information about Coding Changes

Employers, coverage providers and information-reporting vendors all need to begin readying themselves for the reporting year ahead, particularly with regard to any changes to the one and two series codes that will be used to report 2016 coverage information. Reporting vendors will need to make changes to their software to accommodate changes to the codes, form lines and templates and this process takes time. Furthermore, employers and coverage providers will need to learn any new reporting methodologies and code changes and absorb when and how they should be applied. Given the much shorter reporting timeframe currently in place for 2016, it is imperative that as much information as practicable about the 2016 reporting forms and their instruction be released to the public as soon as possible.



Transitional Relief in the 2016 Tax Year

Given the anticipated changes to transitional relief with regard to coverage offers for the 2016 reporting year, NAHU believes our members and their clients would benefit from more information about these changes and how they will be applied and reported as soon as possible. For example, guidance on how non-calendar-year plan relief, transition relief for ALEs with 50-99 employees, and 70 percent offer transition relief will be reported in 2016 and who qualifies for such relief would be welcome. On the surface, to many it might seem like providing information about these topics should be a non-issue, as relief for qualified ALEs with 50-99 employees, standards of coverage offers and non-calendar-year plan relief for qualified plans are all being phased out for 2016. However, employers with qualified non-calendar-year plans could still need to report some months of non-calendar-year plan coverage in 2016, and qualified employers with 50-99 employee transition relief and/or 70 percent offer transition relief that also have a qualified non-calendar-year plans will not be subject to penalties for the portions of a 2015 plan that falls in 2016. Based on our 2015 experience, determining if this transition relief applies in 2016 will likely be a common source of employer confusion.

More information is also needed about the planned treatment of multi-employer plans for the 2016 tax year and what the guidelines will be for any coverage and information-reporting relief. Employers and coverage providers need to understand if they can continue to rely on the interim guidance issued on offers of coverage and coverage responsibilities with multiemployer plans that was issued by the IRS in 2015. Further, employers need to know if the 2015 practice, whereby employers that contributed to employee coverage through a qualified multiemployer plan were allowed to treat such employees as being offered minimum essential coverage for penalty purposes without having to determine if such employees were actually eligible for such coverage, will continue. Further, transitional guidance for 2015 provided under certain circumstances that employers that were required to contribute to a multiemployer plan did not have to verify if such coverage met the affordability and minimum value standards. However, such guidance was very clear that, for 2016 and future years, reporting for offers of coverage made through a multiemployer plan may be modified. Employers need to know what modifications, if any, are being planned for 2016 and out-years as soon as possible.

Common Areas of Confusion with 2015 Reporting

As agents and brokers worked with employers and vendors on the information-reporting process this past year, they noticed a number of very common areas of confusion. We bring these to your attention now with the hopes that our observations will be helpful to you as you develop the forms, instructions and guidance for the 2016 tax year. In addition, we urge you to carefully review the 2015 submissions you have received to date to identify recurring problems. That way, if possible, you can design the 2016 forms and instructions to help reduce areas of trouble, or at least address the most frequent stumbling blocks in any new guidance and instructions being prepared.



On a global level, NAHU members noticed that employers had trouble with the 17 pages of instructions issued for the 2015 forms and would likely appreciate a simplification of the instructions for 2016. One common issue was that, in the 2015 instructions and related guidance and FAQs issued on IRS.gov, different bits of information about the same reporting scenario were frequently spread over multiple and non-contiguous pages of the instructions, or only addressed via an FAQ. Often, an employer would miss one or more pieces of information and/or tips about a topic, which would then impact reporting decisions and lead to confusion and errors. Therefore, for 2016 NAHU strongly suggests that the IRS make every effort to group information together in one document by topic and to use prominent headings for different topics. If cross-referencing of topics is required, we suggest that prominent labels be used and that page numbers and active links be given every time so that employers will know exactly where to go for additional information about a topic.

NAHU also believes that clear examples are helpful to employers and hope that examples provided in IRS FAQs released this winter will be included and consolidated in the 2016 forms, instructions and guidance. Furthermore, we believe that many employers would respond well to scenario-based instructions that outline conditions and then provide clear instructions, such as: "If A and B are true, then do X. If just A is true, then do Y. If just B is true, then do Z, etc."

Specifically, it was the observation of NAHU's members that the following topics and parts of the 1094/1095 forms and instructions generated much employer and coverage provider confusion concerning 2015:

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 extremely problematic for employers and information-reporting vendors alike. First, combining two topics (transition relief and reporting method) in one question was too much. We strongly suggest that these two issues be separated into different questions and reporting lines for 2016. Second, we note that the fact that that 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.

Simplified Reporting

Related to the confusion generated by 1094 C Question 22 were issues raised by simplified reporting generally. Overall, employers found the qualification standards for the various types of offer methods 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 very hard for employers to understand that the 98% offer method was not, in practical terms, applicable to fully insured plans. Given the massive confusion surrounding the applicability of these methods, some employer reporting vendors refused to accommodate their use in 2015. NAHU is concerned that many employers in 2015, while



acting in good faith, may have inappropriately claimed eligibility for these reporting methods simply because they could not comprehend the instructions. Furthermore, we note that very few employers, whether they claimed qualification or not, actually took advantage of simplified reporting but instead did use the full 1095C template for their employees. On a practical basis, we do not see how using the alternate template would benefit many employers and we would be very interested in any data on its aggregated use in 2015 that you could provide. Given the limited applicability of simplified reporting methods and the confusion the existence of such methods caused in 2015, NAHU would recommend either the elimination of simplified reporting for 2016 on forward, or a reworking of the instructions and reporting of qualification for these methods. We would strongly suggest that all information about simplified reporting be grouped together in the 2016 instructions under a clear heading and that clear qualification examples and examples about how and when such methods would be used in practicable terms be included.

Authoritative Transmittal of the 1094 Forms

The idea of the authoritative transmission of the 1094C form has been tough for employers to understand. We believe the instructions for this topic need to be clarified, with explicit examples. Employers have been very confused about how multiple 1094C forms can be filed and why that may be an option, but which transmittal must be marked authoritative and why. While NAHU members understand that the guidance on how/when/why to do this is available, we note that employers seem to be struggling with this concept and are concerned that this general confusion may lead to errors, particularly when combined with the overall transmission struggles identified above. We hope that you will address this confusion in 2016 documents.

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. They found the instructions for this code hard to follow and needed many examples to explain its potential applicability. Furthermore, it was unclear to many if this code could or should be applied for all 12 months or just for some months, if applicable.

When to Issue a 1094/1095 B or 1094/1095 C

Related to the questions with 1095 C code 1G were questions about when a self-funded employer may want to issue and submit 1094/1095 B forms rather than 1094/1095 C forms for certain non-employees, such as when dealing with self-funded retiree-only plans or self-funded plans that included a mix of retirees, other non-employees and also full-time employees. Additional guidance for employers, including examples, would be appreciated for the year ahead.

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 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. 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 often confused with the terminology associated with the allowable methods for tracking variable-hour employees. It would be helpful if it was renamed or better defined so that employers can 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 in tax years in 2017 and beyond.

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. An in-depth review of the instructions makes it clear that in such a cases the ALE is to report the coverage offered using the applicable one series code on line 14 and then note the applicable affordability safe harbor using the three series code on line 16 of the 1095C. However, in an IRS webinar about the AIR system in April of 2016, it was noted that employers could just leave the two series code blank for employers that continually requested information on what code to use to denote that coverage was offered and waived, creating some compliance confusion. To address this issue moving forward, NAHU suggests that the IRS consider a code for coverage waivers for 2016. An alternative, and perhaps more practical, solution would be a separate and clearly labeled section in the instructions that includes examples explaining exactly how the IRS would like employers to report on waivers of coverage.

COBRA

Perhaps the group of questions NAHU members were asked with the greatest frequency involved reporting of coverage for COBRA and COBRA-eligible employees and beneficiaries. NAHU members truly appreciated the guidance and examples issued by the IRS in March of 2016 on reporting relative to COBRA. To make things easier on employers for 2016, we strongly suggest that all COBRA-related guidance and examples be grouped together prominently on the 2016 form instructions so that employers have a quick and reliable reference to consult for reporting in the year ahead.

Need for Additional Guidance

NAHU appreciates the great volume of FAQs, instructions and guidance the IRS has already issued on the employer shared responsibility requirements and the related information-reporting requirements. However, the process of working with employers this year has made it clear to NAHU members that additional guidance is warranted in several areas. Corporate mergers and acquisitions have become increasingly common; 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? How to report on individuals who are on an 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. Additionally, employers are eagerly awaiting more guidance on the treatment of conditional vs. unconditional waiver incentives or opt-out cash incentives with regard to coverage affordability calculations for the 2016 and later plan years. Clear information on this topic will impact employer contribution rates, plan eligibility documentation and affordability safe harbor selection for the years ahead, so NAHU would appreciate the release of guidance on this topic as soon as possible. The guidance the IRS issued in January of 2016 with regard to the treatment of unconditioned opt-out bonuses also needs to be reflected in new reporting guidance, instructions and forms for 2016.

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 members. 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 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, while 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.

Another critical issue that must be addressed on a timely basis is reporting the hours of service of employees receiving disability coverage under an employer short-term or long-term disability plan if the employer provides for the gross-up of premiums to employees at the end of the year, allowing for the payment of the disability benefit to be tax-free. In this scenario, the period during which the employee receives disability benefits from a short-term or long-term disability plan should not be counted as an hour of service, as it has the same tax treatment as if the employee paid for disability coverage with after-tax dollars. Additional guidance is requested on this topic as well as on the effective date of IRS Notice 2015-87 as it pertains to the clarifications pertaining to counting hours of service. We suggest that the new provisions governing hours of service become effective for measurement periods commencing on or after December 16, 2015, the date the notice was issued.



NAHU sincerely appreciates the opportunity to provide comments on our members' experience with helping employers through the process of information reporting to the IRS required under IRC §§ 6055 and 6056 for the 2015 tax year. In addition, we would like to offer you access to our members if you would like to focus-test draft 2016 information-reporting documents with employers subject to the requirements and/or their licensed advisors. 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,

A handwritten signature in black ink, reading "Janet Stokes Trautwein". The signature is written in a cursive style with a large, looping initial "J".

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