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VIA ELECTRONIC SUBMISSION AT REGULATIONS.GOV

November 8, 2013

CC:PA:LPD:PR (REG-136630-12)  
Room 5205  
Internal Revenue Service  
PO Box 7604, Ben Franklin Station  
Washington, DC 20044

**RE: RIN 1545-BL26**

**Comments on IRS's Notice of Proposed Rulemaking Concerning Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans 78 Fed. Reg. 54996 (Sept. 9, 2013)**

Dear Acting Deputy Commissioner Maloy:

The National Immigration Law Center (NILC) specializes in the intersection of health care and immigration laws and policies, offering technical assistance, training, and publications to government agencies, labor unions, non-profit organizations, and health care providers across the country. For over 30 years, NILC has worked to promote and ensure access to health services for low-income immigrants and their family members.

NILC submits the following comments in response to the notice of proposed rulemaking concerning information reporting (78 Fed. Reg. 54996 (Sept. 9, 2013)), pursuant to Section 1514 of the Patient Protection and Affordable Care Act, by large employers on health insurance coverage offered under employer-sponsored plans. These comments note the benefits of the proposed regulations in limiting applicable large employers' collection and reporting of employees' data and suggest further guidance for employers on efficient and appropriate collection and reporting of such information.

**Information Required by Reporting § 301.6056-1**

We support the agency's efforts to minimize the reporting requirements pursuant to ACA Section 1514, codified at 26 U.S.C. § 6056 (2012) ("Section 6056"), by limiting it to information that is relevant to the purposes served by the reporting. In addition to the minimization of cost and administrative burden, the proposed regulations are consistent with other sections of the ACA that limit collection of information to that which is

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“strictly necessary” to determine eligibility<sup>1</sup> and places confidentiality protections on any personally identifiable information collected as part of an eligibility determination.<sup>2</sup> Specifically, the discussion in the preamble and the omission from Section 201.6056-1 of reporting of the months during which dependents were covered under an employer-sponsored insurance plan are an important step in eliminating unnecessary collection of employees’ dependents’ data by employers that otherwise may discourage use of employer-sponsored health coverage.

We have strong concerns about the implications of misunderstandings on the part of employers regarding what information is needed in order to meet this reporting requirement and the employer mandate in general. Advocates from across the country have contacted us already about employers requesting unnecessary information from employees, presumably in an effort to comply with what they understand are the new IRS reporting requirements. These include stories of employers who are unclear about what information they must collect and are therefore taking unnecessary and possibly harmful steps, such as re-collecting Social Security numbers (SSNs) of employees, as well as SSNs of an employee’s covered dependents. We have also heard instances of employers requiring proof of health insurance from their employees. As HHS has recognized in other health care programs, such as Medicaid, the Children’s Health Insurance Program (CHIP), and the health insurance marketplaces created by the ACA, the request for information that is not needed to carry out the program and does not assure the confidentiality of the information collected may discourage eligible individuals from accessing health care coverage because of fear that information will be shared with immigration enforcement officials.<sup>3</sup> As shown by the examples above, we are concerned that many employers are confused about the ACA’s shared responsibility provisions for large employers, are unaware of the requirements for reporting under Section 6056, and are therefore being overly cautious to ensure they are not subject to fines under sections 6721 and 6722 of the Internal Revenue Code.

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<sup>1</sup> Pub. L. 111-148, § 1411(g), 124 Stat. 119, 230 (2010) [hereinafter ACA]. *See also* 45 C.F.R. § 155.715 (2012)(c)(3) (requiring that SHOP exchanges only collect the “minimum information necessary for verification of eligibility.”)

<sup>2</sup> *Id.* § 1414(a). *See also* 45 C.F.R. §§ 155.260, 155.270 (requiring that Exchanges and entities contracted with Exchanges follow restrictions that “Personally identifiable information should be created, collected, used, and/or disclosed only to the extent necessary to accomplish a specified purpose(s) and never to discriminate inappropriately.”)

<sup>3</sup> *See* DEPT. HEALTH AND HUMAN SERVICES AND DEPARTMENT OF AGRICULTURE, POLICY GUIDELINES REGARDING INQUIRIES INTO CITIZENSHIP, IMMIGRATION STATUS AND SOCIAL SECURITY NUMBERS IN STATE APPLICATION FOR MEDICAID, STATE CHILDREN’S INSURANCE PROGRAM (SCHIP), TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), AND FOOD STAMP BENEFITS (asserting that such deterrence in accessing federally funded health programs may constitute discrimination under Title VI of the Civil Rights Act of 1964); *see also* ACA § 1557 (extending such civil rights protections to health programs and activities created by the ACA).

Stronger guidance and notice to all employers (not only applicable large employers) from IRS on the Section 6056 reporting requirements would lessen the burden for employers of compliance with the mandates and avoidance of the Section 6721 and 6722 fines. Although the regulatory language and the preamble are helpful, we think there may be some confusion because the language of the statute may be read more broadly to include collection of data that would be both more onerous to employers and more likely to deter immigrant or mixed-status families from utilizing available employer-sponsored insurance. In addition to the recommendation below, we strongly encourage IRS to clarify such information for employers by adding instructions to the forms created under this section, preparing sample forms and other outreach material, and taking steps to notify all employers.

**RECOMMENDATION:** Include clarifying information as to what information an applicable large employer must collect and report. Our advice is to use an example that would suggest what a company must collect from its employees, or possibly what we have included below, which is a chart that clearly states what an employer must collect and report from its employees. As discussed above, this would allow employers to streamline their data collection and to limit the collection of data. We suggest including a charge similar to this under § 301.6056-1(e):

**TABLE: Reporting requirements for applicable large employers under this section**

If you insure the following individuals ...	You must report to IRS...
(1) A full-time employee only	<ul style="list-style-type: none"> <li>• The name, address, and taxpayer identification number of each employee during that year and the months, if any, during which the employee was covered.</li> <li>• Each full-time employee’s share of the lowest cost monthly premium for coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month.</li> </ul>
(2) A full-time employee’s spouse and/or dependents	No collection or reporting is necessary.

**RECOMMENDATION:** HHS has already promulgated rules that reinforce important confidentiality restrictions on any information regarding information collected as part of a health care program. We encourage IRS to add language consistent with 45 C.F.R. §§ 155.260 and 155.260. In this context, the language may take the form of making explicit reference to confidentiality and disclosure protections found in Section 6103 of the Internal Revenue Code. We would also recommend including language consistent with the intent of 45 C.F.R. 155.715, which (for SHOP exchanges) restricts the use of information collected from employees or employers to the specific purpose for which it is collected.

**RECOMMENDATION:** In order to provide further clarification for employers, we suggest IRS issue sub-regulatory guidance clarifying that employers with fewer than 50 full-time employees are not subject to reporting under Section 6056. This information should also be made clear in instructions for forms 1094-C or 1095-C or other forms IRS designates, and that all employers be notified of these requirements as soon as the rule is finalized.

**RECOMMENDATION:** We support the discussion in Section XI of the preamble concerning pursuance of simplified methods for Section 6056 information reporting. We encourage IRS to continue pursuing alternate methods that would alleviate the burden on employers and their covered employees. This would make the process more efficient, make it less likely that inappropriate data would be collected, and lessen any discouragement that employers might have in offering health care insurance to their employees and dependents.

Thank you for the opportunity to provide these comments. If you have any questions, you may contact Jenny Rejeske at [rejeske@nilc.org](mailto:rejeske@nilc.org) or 202-683-1994.

Sincerely,

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