

VIA ELECTRONIC SUBMISSION AT REGULATIONS.GOV (1jx-88ml-das9)

November 8, 2013

CC:PA:LPD:PR (REG-132455-11)
Room 5203
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 Commission Maloy:

Georgetown University’s Center for Children and Families (CCF) is an independent, nonpartisan policy and research center whose mission is to expand and improve health coverage for America's children and families. CCF submits the following comments in response to the notice of proposed rulemaking concerning information reporting by large employers on health insurance coverage offered under employer-sponsored plans (78 Fed. Reg. 54996 (Sept. 9, 2013)), pursuant to §1514 of the Patient Protection and Affordable Care Act (ACA).

These comments note the benefits of the proposed regulations in limiting data collection and suggest further guidance for employers on efficient and appropriate collection of data.

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

We support the agency’s efforts to minimize the reporting requirements pursuant to ACA §1514, codified at 26 U.S.C. §6056, by limiting requirements to information that is relevant to the purposes served by the reporting. These limitations reduce cost and administrative burden. We specifically support the discussion in the preamble and the proposal to omit from §301.6056-1 the requirement for reporting the months during which dependents were covered under an employer-sponsored insurance plan. This proposal aligns with other statute and rules limiting collection of information from the insured to only that which is “strictly necessary” to determine eligibility[[1]](#footnote-1) and protecting confidentiality of personally identifiable information (PII) collected as part of an eligibility determination.[[2]](#footnote-2) The proposal helps to eliminate unnecessary data collection that may discourage use of employer-sponsored health care in situations where employers have otherwise elected to offer coverage for dependents. CCF is concerned, however, that employers may misunderstand what is necessary in order to meet this reporting requirement and the employer mandate in general, and recommend strengthening the final regulation to enhance clarity.

Since the advent of enrollment October 1, we have heard of immigrant families being discriminated against in access to health care insurance. The reports include stories of employers whose apparent confusion about what information they must collect leads them to require unnecessary information, such re-collecting Social Security numbers (SSNs) for employees as well as for covered dependents. As HHS has recognized in other health care programs, requests for information that are not carefully tailored to that which is strictly necessary and that fail to provide assurances of confidentiality may discourage individuals from accessing health care coverage because of fear of immigration enforcement for them or their family members.[[3]](#footnote-3)

Stronger guidance from IRS on the §6056 reporting requirements would lessen the burden for employers for complying with the mandates and avoiding fines under §§6721 and 6722. Although the regulatory language and the preamble are helpful, the proposal’s modification of statutory standards and departure from prior practice of some employers may lead to confusion and unintentional over-reaching into unnecessary data requirements that harm mixed-status immigrant families. In addition to the recommendations below, we strongly encourage IRS to prepare sample forms and other outreach material to make the process easier for employers and employees alike.

* **We support the discussion in Section XI of the preamble concerning simplified methods for §6056 information reporting. We encourage IRS to continue pursuing alternate ways to alleviate burden on employers and their covered employees. Such alternatives make the process more efficient, reduce collection of inappropriate data, and encourage employers to offer health care insurance to their employees and dependents.**
* **Recommendation: Amend §301.6056-1 to clarify what information an employer must collect and report, such as by including an example that would suggest what a company must collect from its employees, or the following chart recommended by the National Immigration Law Center, thereby facilitating the ability of employers to streamline their data collection and to limit the collection of data to what is strictly necessary.**

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| **For coverage provided to…** | **You must collect and report…** |
| (1) A full-time employee only | The name, address, and taxpayer identification number of each employee during that year and the months, if any, during which the employee was covered. Also should include 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. |
| (2) Dependents | No collection or reporting is necessary. |

* **Recommendation:** **Amend §301.6056-1 to add language consistent with HHS regulations at 45 C.F.R. §155.260, making explicit reference to confidentiality and disclosure protections found in IRC §6103; and include language consistent with 45 C.F.R. §155.715 prohibiting the use of information collected from employees or employers from being used for re-verification of immigration status, in the case of SHOP exchanges.**

Thank you for your consideration of these comments. For additional information, please contact Dinah Wiley at dw688@georgetown.edu.

Sincerely,

Georgetown University Center for Children and Families

1. 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.” [↑](#footnote-ref-1)
2. *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.”) [↑](#footnote-ref-2)
3. 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. [↑](#footnote-ref-3)