The ERISA Industry Committee

"Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans"

Testimony of Richard D. Stover, FSA, MAAA
Principal and Consulting Actuary
Buck Consultants, a Xerox Company

on behalf of **The ERISA Industry Committee**

Before the Department of the Treasury and the Internal Revenue Service

Monday, November 18, 2013
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The ERISA Industry Committee
1400 L Street, N.W., Suite 350, Washington, DC 20005-3531
Tel. (202) 789-1400 Fax (202) 789-1120 www.eric.org
Advocating the Employee Benefit and Compensation Interests of America's Major Employers

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INTRODUCTION

Good afternoon. My name is Rich Stover. I am a Principal and Consulting Actuary with Buck Consultants, and I appear before you today on behalf of the ERISA Industry Committee—also known and referred to as "ERIC". ERIC appreciates the opportunity to testify before you and share our concerns – those of very large employers - about the potential impact of the new proposed reporting regulations under the Affordable Care Act. Because of the many overlapping issues in the two sets of regulations, we chose to submit only one combined comment letter. Similarly, we will testify only today, although our comments will cover both sets of regulations.

Before I turn to specific recommendations, I would like to say on behalf of ERIC that we appreciate your efforts to simplify the onerous reporting requirements set forth in the statutory language of Code sections 6055 and 6056. This language sets out a complicated edifice of reporting and disclosure containing elements that in many cases are redundant and unnecessary to accomplish the provision's goals. The remaining structure, however, even after your proposed simplifications, entails an initial and ongoing expense, plus an administrative effort, that, according to our members, is the most burdensome they have encountered.

Simply put, the simplifications suggested in the proposed regulations are not appropriate for large employers and would entail the diversion of a not insignificant portion of their financial and administrative resources that is not commensurate with the benefit received by any party.

Furthermore, participants already receive the vast majority of the information required to be provided under Code sections 6055 and 6056, and they are often overwhelmed by all of the disclosures that must be given to them.

We suggest that instead of this elaborate, expensive, and cumbersome reporting structure, that the government shift its focus from individualized reporting to one that will permit large employers merely to certify that they have covered 95% of their full-time employees, thus satisfying their obligations under Code section 6056.

We would further recommend that an employer be given the option to satisfy the requirement for reporting under Code section 6055 by posting a notice on the company's website that employees may obtain specific coverage information upon request. If this suggested approach to reporting under Code section 6055 is not accepted, then we recommend that employers be permitted to opt to satisfy a greatly simplified reporting regime under section 6055 that would require reporting to employees and the IRS only the following:

- the name, address and employer identification number for the entity filing the information;
- the name, address and TIN of the enrolled employee;
- the name(s) of the persons (such as dependents) covered as a result of the employee's election; and
- the dates of coverage for these individuals.

Cost Implications

In addition to general comments about the proposed reporting regulations, we also asked our members to provide us with detailed estimates about the initial and ongoing costs they would incur if they were to comply with specific elements of the proposed regulations. This is what they told us:

Companies frequently have multiple systems that gather and store the data required to be reported under Code sections 6055 and 6056. Many employers use different systems to track benefits and payroll data. A recordkeeping system that houses an employee's benefit elections may not have data regarding the total number of full-time employees. Most employers do not collect dependents' taxpayer identification numbers on any system. Additionally, it is not uncommon for businesses to have multiple payroll systems as a result of mergers and acquisitions. Furthermore, information on former employees is often stored in separate systems from those used for current employees.

Coordinating the information required by the ACA will be complicated and time-consuming. Merging the data from these various systems significantly increases the complexity and cost of providing the information to the government and making disclosures to individuals. One recordkeeper has estimated that it will take 8,000 hours to build and test a system that could extract the required information from a benefits recordkeeping system and create the necessary files. Additional time will be needed to create and distribute the required disclosures as well as for establishing and testing connectivity with the IRS for reporting purposes. All of this, of course, translates into additional costs for employers.

Estimates of the substantial initial costs of creating a new system with the necessary interfaces to generate the information required by the ACA range from an initial outlay of $40,000 to $75,000 to as much as $150,000 to $200,000, depending on whether separate forms are necessary for the 6055 and 6056 reporting or whether one combined form will be used. Additional funds would be needed to report for section 6055 purposes for former employees who receive health coverage from the employer.

Our members have also estimated the cost to produce the annual report on an ongoing basis. (In all cases, though, as detailed further below, these costs will be substantially reduced if reports may be transmitted to employees electronically rather than via the mail.) Members have indicated that the cost to mail paper disclosures, including expenses for paper, envelopes, printing, labor, and postage, would approach $0.87 per individual for a one-page document. Another member has estimated that it will cost $5,000 for ongoing fulfillment, with additional mailing costs of around $1.25 per individual. Another expects the annual costs for distributing the disclosures to their employees to be around $40,000 - $50,000 once the systems have been developed.

While these costs may seem to be no more than a "rounding error" for many large corporations, let me assure you having to spend $100,000 to create a reporting system that creates no tangible benefit for that company is not something that any business can take lightly. Money that must be used to comply with these reporting requirements is money that cannot be spent on employee benefits.

ERIC'S OTHER MAJOR CONCERNS AND RECOMMENDATIONS

As noted, our primary request is that employers be able to file a simple certification to give evidence of their compliance with Code section 6056 and should be permitted to comply as well with a greatly simplified reporting regime for section 6055. In this case, as with our other simplifications, we propose that these methods be provided as options for employers who wish to choose a particular route towards compliance.

We also note here that some ERIC members have indicated that modifying the Form W-2 would be very expensive and, in some cases, not really feasible, particularly if several indicator codes are required. They indicate that changing Form W-2 would often require an upgrade to payroll systems to add new fields. They would also need to modify their online Form W-2 and printing interface. Additionally, they would need to add an interface from their healthcare eligibility / enrollment administrator to provide the necessary data to their payroll team for the information that would need to be populated in the new fields.

Further, some of the simplified methods proposed rely on the creation of two systems: one for employees who meet the conditions of a simplified approach, and one for those who do not. These dual-system methods are generally not useful to employers; they simply add to the

cost and complexity of the required reporting, including the cost of designing a system to calculate which system to use for each employee. It also creates opportunities for errors.

Our other key recommendations are as follows:

1. *The IRS should provide greater flexibility regarding electronic disclosure options.*

ERIC urges the IRS to allow plan sponsors to have the option to provide the disclosures under Code sections 6055 and 6056 in accordance with Treasury Regulation § 1.401(a)-21. Furthermore, if an individual has already provided consent to electronic delivery, the plan sponsor should not be required to obtain their consent again for Code section 6055 and 6056 purposes.

2. *The information to be reported under Code Section 6055 should be greatly simplified in two respects.*

First, companies should be permitted to report coverage by dates of coverage rather than months of coverage.

The proposed regulations require plan sponsors to report the months during which the individual was enrolled in coverage and entitled to receive benefits. Companies typically track the actual dates of coverage (i.e., month, day and year), which includes the months of coverage. These companies would need to incur additional costs to have programming done to translate the dates of coverage in their system into months of coverage and further costs if their data keeps track of coverage by payroll period and not months. Individuals should be able to easily understand what months they were covered if the dates of coverage were provided instead of just the months.

Second, companies should be required to report only the names of employees' dependents and not other identifying information.

Employees are in the best position to track their dependents' information. Many companies do not have taxpayer identification numbers for their employees' dependents and do not have systems designed to track this information. Obtaining this data is particularly problematic for foreign nationals and infants who do not have social security numbers. Additionally, some companies have determined that they do not have a legitimate business need for requesting social security numbers from non-employees and are worried about the potential liability for security breaches when they store and transmit that information.

ERIC recommends that employees – not employers – be responsible for tracking and maintaining any required information about their dependents, including their social security numbers.

3. *Companies should be given additional time to comply with the reporting and disclosure requirements.*

Companies will need significant amounts of time to create, test and implement the systems that will need to be built for reporting under Code sections 6055 and 6056. They cannot begin this process in earnest until final guidance is issued; to do otherwise would be to incur the additional time and expense of creating one system and then modifying this system to comply with the final regulations. As a result, ERIC urges the IRS to quickly issue final regulations and provide plan sponsors with at least one year after regulations are finalized to create systems before they will need to start capturing the data that needs to be reported. ERIC encourages the IRS to provide good faith compliance standards until then.

CONCLUSION

We appreciate the opportunity to appear before you today and look forward to your questions.

Thank you.