



PARTNERSHIP FOR  
EMPLOYER-SPONSORED COVERAGE

January 28, 2021

The Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

The Honorable Charles Rettig  
Commissioner  
Internal Revenue Service  
P.O. Box 7604, Ben Franklin Station  
Washington, D.C. 20044

Attn: CC:PA:LPD:PR (Notice 2020-76) Room 5203; *Transition Relief Related to Health Coverage Reporting Required by Sections 6055 and 6056 for 2020*  
Submitted via [www.regulations.gov](http://www.regulations.gov)

Dear Secretary Yellen and Commissioner Rettig:

Madam Secretary, we commend you on your confirmation as our country's new Secretary of the Treasury. The Partnership for Employer-Sponsored Coverage welcomes the opportunity to provide policy recommendations for reforming the information-reporting requirements under sections 6055 and 6056 of the Internal Revenue Code, as requested in Notice 2020-76, *Transition Relief Related to Health Coverage Reporting Required by Sections 6055 and 6056 for 2020*. **We are eager to work with you to reform, develop and implement policies to better enable employers to continue offering employment-based health coverage to the millions of American workers and their families enrolled in these plans.**

The Partnership for Employer-Sponsored Coverage (P4ESC) is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and millions of Americans who rely on employer-sponsored health coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

Nearly ten years ago, work began on the implementing regulations under the Affordable Care Act's (ACA) employer shared responsibility, Code section 4980H, and information-reporting requirements, Code sections 6055 and 6056, by the Treasury Department, IRS, the Obama White House, in conjunction with the Health and Human Services (HHS) and Labor Departments, and numerous stakeholders including P4ESC under our predecessor organization the Employers for Flexibility in Health Care (E-Flex) Coalition. The E-Flex Coalition spent several years working collaboratively with Treasury, IRS and White House officials to develop flexible policy solutions under section 4980H. We also worked to support flexible policy solutions that would make sections 6055 and 6056 less of a compliance burden on employers, but, unfortunately to no avail.

P4ESC remains eager to work collaboratively with you and the new Administration to reassess and reform the information-reporting requirements under sections 6055 and 6056, especially during this public health and economic crisis. The ACA compliance requirements have always been complex and administratively burdensome on employers. With the current pandemic, the compliance complexities and tracking requirements are further exacerbated because employers



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are managing closures, decreased demand, work from home policies, furloughs, reduced hours, temporary layoffs and more. Employers of all sizes and their employees are continuing to face an unprecedented amount of uncertainty as a result of the COVID-19 pandemic and will do so for months and years to come.

**As the pandemic rages on we strongly urge the new Administration to: 1) provide employers with COVID-related relief under the ACA requirements in the very near term, and 2) reform the information-reporting requirements to implement a consumer-friendly process for individuals, and a less burdensome and costly compliance process for employers, the federally facilitated and state-based Exchange systems and the Internal Revenue Service (IRS) alike.** On November 19, 2020, we filed comments with the IRS (re: E.O. 13924) requesting COVID-related safe harbor relief under sections 4980H, 6055 and 6056. On December 22, 2020, we filed comments with HHS and Treasury (re: CMS-9914-P) about reforming the Exchange employment verification process which goes hand-in-hand with the sections 6055 and 6056. These letters and accompanying correspondence are attached.

**The following is an outline of information-reporting requirement reform policies we would like implemented. These reform ideas were developed from employer compliance and operational feedback.** We have conveyed these ideas to federal regulators and lawmakers on Capitol Hill over the last decade and know that the beginning of a new Administration is the perfect time to act.

- ***Revise the list of data requirements under sections 6055 and 6056 to be relevant and practical.*** The data lists were developed in 2009 during the legislative process and are stipulated in the ACA statute. For example, the statute included the requirement that employers collect and retain Social Security numbers indefinitely for all current and prior employees' spouses and dependents which creates a data security and identity theft risk for employers, employees, and their families. There has not been a comprehensive reevaluation of the relevance of the data being reported by employers. We are now in the eighth year of Exchange coverage and seventh year of the employer-shared responsibility and have a new Administration which supports preserving the ACA. The time is ripe to evaluate the necessity and practicality of data items reported annually against the cost and administrative compliance burdens on employers.
- ***Decouple information reporting for sections 6055 and 6056 from Form 1095-C.*** At the time that the IRS was designing the 1095-C form, self-insured employers requested one form be used to report overlapping information required under 6055 and 6056. We appreciated the original intent of streamlining the 1095-C form but now it is the reason why self-insured employers are not being afforded the same compliance relief provided to insurance carriers through elimination of the 1095-B form. As Notice 2020-76 states “[b]ecause the individual shared responsibility payment is zero in 2020, an individual does not need the information on Form 1095-B to compute his or her federal tax liability or file an income tax return with the IRS.” The same rationale applies to individuals receiving coverage from a self-insured employer – a 1095-C form is not needed either.
- ***Enable applicable large employers (ALEs) to prospectively report to the IRS relevant data items about the type of coverage offered to their workforce of full-time employees***



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*prior to open enrollment season in the Exchanges.* The most pertinent information about the type of coverage an ALE offers to its workforce, including a list of all Employer Identification Numbers (EINs), should be available for use by the federal facilitated and state-based Exchanges during open enrollment for employment verification and determination of an individual's eligibility for federally subsidized coverage. The existing data hub will house this information and no new IT system will need to be created. Prospective reporting will enable an ALE to comply with its employer-shared responsibility reporting requirement and provide a more consumer-friendly system to determine an individual's eligibility for Exchange coverage. We strongly believe sufficient flexibility exists to enable this change to be made administratively. We have supported legislation to make this change because of prior Administrations' reluctance to act administratively.

- ***Eliminate the requirement that self-insured employers send an individual 1095-C form to all enrolled employees.*** As noted above, there is no reason why an individual needs a 1095-B or 1095-C form since the individual shared responsibility payment is zero and there is no relevance of the form in filing an income tax return. The compliance burdens of consolidating data from multiple systems and costs of printing and mailing individual 1095-C forms is huge for employers. The same compliance relief provided to insurance carriers for 1095-B should be provided to self-insured employers.
- ***Require review of ALE-filed data before a 226-J penalty notification letter is sent.*** We have heard from numerous employers who have received a 226-J tax penalty letter despite complying with the 6055 and 6056 reporting requirements. It seems as though the practice has been: the IRS will issue a 226-J letter when notified of an individual who has received an Exchange tax credit but before data matching the information reported by the employer to the IRS. This sets up a process in which an employer must formally appeal a 226-J letter, within the strict 30-day appeals process no matter how long the letter takes to get to the employer in the mail, then spend time and resources to resend information to the IRS it has already filed. The current system, in which a 4980H "A" penalty is assessed rather than a thorough reconciliation of data on an individual's tax credit information and an employer's 6055 and 6056 reporting to assess a 4980H "B" penalty, assumes an employer is guilty and requires the employer to prove their innocence.
- ***Provide employers with 90 days, rather than 30 days, to appeal a 226-J tax penalty letter for any tax compliance year.*** A 226-J penalty letter is mailed to an employer listed on an individual's Exchange application when the IRS identifies that an individual received a premium tax credit but is believed to be a full-time employee and thus ineligible for a tax credit. When the IRS puts the 226-J letter in the mail it starts a 30-day appeals process, no matter how slow the mail is to be received. The 226-J letter could also be mailed to the address an individual puts on his or her application, which could be, for example, a store address and not the business headquarters where the letter should be mailed.
- ***Work directly with HHS and state-based Exchanges to verify employer information during open enrollment to determine individual premium tax credit eligibility.*** Premium tax credit eligibility is being assessed by HHS and state-based Exchanges based the information an individual puts on his or her application and is not cross referenced with real-time data that could be reported by an employer and housed in the data hub.



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Healthcare.gov and state-based enrollment websites ask an enrollee if he or she received an affordable offer of coverage from an employer. Most enrollees do not understand that the term “affordable” is a legal definition that refers to the ALE’s affordability text under 4980H. As noted above, data reported by an employer prior to open enrollment through a prospective reporting process would provide HHS and state-based Exchanges with better tools to verify employer information and tax credit eligibility.

**Employers want the information-reporting requirements under sections 6055 and 6056 and the Exchange eligibility verification process to run efficiently and effectively so their employees are not subject to the costly repayment of premium tax credits and the business is not subject to possible violations under the employer shared responsibility. A comprehensive reevaluation of the compliance requirements and information-sharing under the ACA is long overdue. P4ESC stands very ready and able to help the new Administration revise the processes.**

We are very eager to discuss the above reforms of sections 6055 and 6056 and the urgent need to provide COVID-related safe harbor relief to employers with Treasury, IRS and White House officials. We welcome the opportunity to schedule a virtual meeting with the appropriate professionals. Please contact our executive director, Christine Pollack, at [christine@pollackconsultingdc.com](mailto:christine@pollackconsultingdc.com) to schedule a meeting.

Sincerely,

American Hotel & Lodging Association  
American Rental Association  
Associated Builders and Contractors, Inc.  
Associated General Contractors of America  
Auto Car Association  
Business Group on Health  
The Council of Insurance Agents & Brokers  
The ERISA Industry Committee (ERIC)  
FMI – The Food Industry Association  
HR Policy Association  
National Association of Health Underwriters  
National Association of Wholesaler-Distributors  
National Restaurant Association  
National Retail Federation  
Retail Industry Leaders Association  
Society for Human Resource Management

Attachments:

P4ESC letter, re: CMS-9914-P, December 22, 2020

P4ESC letter, re: E.O. 13924, November 19, 2020



**PARTNERSHIP FOR  
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December 22, 2020

The Honorable Alex Azar  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

The Honorable Steven Mnuchin  
Secretary  
U.S. Department the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

RE: *CMS-9914-P - Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022*  
Submitted via [www.regulations.gov](http://www.regulations.gov)

Dear Secretaries Azar and Mnuchin:

The Partnership for Employer-Sponsored Coverage (P4ESC) writes with comments on the notice of proposed rulemaking (NPRM) on the Patient Protection and Affordable Care Act (ACA) and 2022 Notice of Benefit and Payment Parameters. Specifically, we are writing to provide comments on the employment verification process for Exchange coverage eligibility for advanced premium tax credits (APTCs) and your interest in replacing the current procedures.

The Partnership for Employer-Sponsored Coverage (P4ESC) is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and millions of American workers and their families who rely on employer-sponsored coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

P4ESC, its member organizations and predecessor coalition, Employers for Flexibility in Health Care (E-Flex), have worked on ACA-related employer compliance with federal regulators and lawmakers in Congress for a decade. The Exchange subsidy eligibility and verification process go hand-in-hand with the employer shared responsibility (Code section 4980H) and annual employer reporting requirements (Code sections 6055 and 6056). We have long advocated for a more consumer-friendly process for individuals, and a less burdensome and costly compliance process for employers, the federally facilitated and state-based Exchange systems and the Internal Revenue Service (IRS) alike. The ACA reporting process confuses individuals and families seeking coverage through the federally facilitated and state-based Exchanges and exposes employers complying with the ACA mandate to misguided tax penalties and compliance costs.

**The current bifurcated front-end Exchange enrollment verification system and the back-end annual employer reporting process under the IRS do not work. We want to work with you to fix it.** As a coalition representing businesses of all sizes, we have the unique ability to



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provide operational input across the full spectrum of the employer system – from the smallest family business to the largest corporation.

The following are policy improvements and comments we have provided and proposed to the Departments of Health and Human Services (HHS), the Treasury and Labor, the IRS, two White House administrations, and numerous Members of Congress since the enactment of the ACA. We are eager to improve the current compliance system and ensure that individuals are enrolled in the appropriate healthcare home, whether that is in employer-sponsored coverage or an insurance plan through the Exchange system, without adversely impacting individuals' and employers' tax liability.

- Establish a simple web-based platform or landing page for an employer to enter basic contact information (business address, email, phone number, contact name) for use by the federal facilitated and state-based Exchanges when needing to verify information on an individual's Exchange coverage application.
- Provide employers with a second, voluntary option to prospectively report information with the IRS, prior to annual open enrollment and for use by the federal facilitated and state-based Exchanges, about a plan that is offered to full-time employees that meets the employer shared responsibility (4890H) affordability and minimum value tests.

The current front-end employment verification process through the federal and state-based Exchanges, governed under HHS, relies on an individual's self-attestation of eligibility for an offer of coverage by their employer during the enrollment process. There is no real-time data at HHS to verify that the contact information for the employer listed on an individual's Exchange application is correct and/or if the employer offers at least one coverage plan to its full-time employees that meets the law's employer shared responsibility requirements.

Over the last few years, HHS and state-based Exchanges have been conducting a random sampling of applications to verify the information an individual listed on his or her application directly with an employer. The NPRM notes "*HHS's experience conducting random sampling revealed that employer response rates to HHS's request for information were low.*" The employer responses were likely low because HHS did not have the correct employer contact information and relied only on the contact information an individual listed on his or her application, which would likely be their physical place of employment and direct supervisor. For multi-location, multi-state employers, the appropriate contact for an offer of employer-sponsored coverage verification is likely a human resources professional or business operator, and not a direct supervisor at the individual's place of employment.

**We have long urged HHS to create a simple web-based platform or page on [healthcare.gov](https://www.healthcare.gov) to enable an employer to easily, and proactively, provide HHS and the Exchanges with the correct contact information for any verification or benefits-eligibility questions. This**



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information, which would include mailing address, email address, contact name and direct telephone number, could easily be accessed by Exchanges and updated as needed by an employer. Should an employer-coverage verification question arise regarding an individual's application, HHS and the state Exchanges could easily contact the appropriate employer representative in a short amount of time as not to delay the application and enrollment in Exchange coverage.

The back-end, retrospective annual reporting process, governed under the IRS, requires employers to report numerous amounts of data after the completion of a coverage year, which is over a year after the Exchange open enrollment period for that particular coverage year. During this time period, our full-time employees could apply for individual coverage, for varying reasons, and receive an APTC through healthcare.gov or a state-based Exchange – even though the employee is ineligible. Because the IRS does not permit employers to report pertinent information about the type of health coverage offered to full-time employees prior to Exchange open enrollment period, APTCs are given out without real-time data, which exposes our employees to IRS enforcement actions. Under the law, an individual is ineligible for a tax credit if he or she is a full-time employee and was made an offer of coverage by an employer that met the two-prong employer shared responsibility requirement (affordability and minimum value tests). If found ineligible for the tax credit, the individual is required to pay the full value back to the IRS.

The IRS uses employer-reported information upwards of 12- to 24-months later to reconcile with an individual's tax return to determine if the individual received an Exchange tax credit because an employer did not offer coverage that met the employer shared responsibility. The IRS then issues the employer a 226-J letter in the mail notifying it of a potential tax liability under the employer shared responsibility and the employer has 30 days to appeal the tax notification. This starts a long, burdensome, and costly appeals process for the employer, on top of the already long, burdensome, and costly annual 6055 and 6056 reporting process. The IRS is issuing 226-J tax penalty letters to that business regardless of the employer's reporting data.

**We have long urged Treasury and the IRS to provide a second, voluntary prospective reporting option to enable employers to populate the already existing Exchange datahub used by healthcare.gov and state-based Exchanges with real-time employer coverage data to help consumers navigate their appropriate coverage needs and healthcare home.** Under this proposal, pertinent plan information would be reported to the IRS prior to Exchange open enrollment and not over more than a year later at the end of the calendar coverage year as is the current process. This would not call for the federal government to create another IT reporting system but rather utilize the existing system used for retrospective reporting – just at a different time of the year. Prospective reporting will also reduce misguided 226-J tax penalty letters to employers which will provide relief and eliminate compliance costs to businesses.



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In conclusion, employers want the Exchange eligibility verification process to run efficiently and effectively so their employees are not subject to the costly repayment of premium tax credits and the business is not subject to possible violations under the employer shared responsibility. **The Partnership for Employer-Sponsored Coverage would like to discuss these ideas in further detail with the appropriate policy experts at HHS, Treasury, and the IRS.** Please contact Christine Pollack, our executive director, at [christine@pollackconsultingdc.com](mailto:christine@pollackconsultingdc.com) to schedule a discussion.

Sincerely,

American Health Policy Institute  
American Hotel & Lodging Association  
American Rental Association  
American Staffing Association  
Associated Builders and Contractors, Inc.  
Associated General Contractors of America  
Auto Car Association  
The Council of Insurance Agents & Brokers  
The ERISA Industry Committee (ERIC)  
FMI – The Food Industry Association  
HR Policy Association  
National Association of Health Underwriters  
National Association of Wholesaler-Distributors  
National Restaurant Association  
National Retail Federation  
Retail Industry Leaders Association  
Society for Human Resource Management

[www.p4esc.org](http://www.p4esc.org)



**PARTNERSHIP FOR  
EMPLOYER-SPONSORED COVERAGE**

November 19, 2020

Commissioner Charles Rettig  
Internal Revenue Service  
Attn: CC:PA: LPD:PR (IRS Review of Regulatory Relief) Room 5203  
P.O. Box 7604, Ben Franklin Station  
Washington, DC 20044

RE: IRS Review of Regulatory and Other Relief To Support Economic Recovery, E.O. 13924  
Submitted via [www.regulations.gov](http://www.regulations.gov)

Dear Commissioner Rettig:

In response to the notice printed in the *Federal Register* on November 17, 2020, entitled *IRS Review of Regulatory and Other Relief To Support Economic Recovery*, regarding the President's Executive Order 13924, please find attached two letters we sent to Treasury Secretary Mnuchin and you in October and May requesting COVID-related safe harbor compliance relief under the Affordable Care Act's employer reporting system and employer-shared responsibility.

We respectfully request the Internal Revenue Service take these safe harbor requests under strict advisement as the COVID pandemic continues to greatly impact businesses of all sizes and the millions of American families under employment-based coverage. There is an urgent economic need to provide employers with immediate compliance relief from these burdensome requirements that are being further compounded because of state and locally mandated closures and operation changes, and unforeseen workforce transitions.

Thank you for your attention to this request and we welcome the opportunity to discuss in further detail.

Sincerely,

American Health Policy Institute  
American Hotel & Lodging Association  
American Rental Association  
American Staffing Association  
Associated Builders and Contractors, Inc.  
Associated General Contractors of America  
Auto Car Association  
The Council of Insurance Agents & Brokers  
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HR Policy Association  
National Association of Health Underwriters  
National Association of Wholesaler-Distributors  
National Restaurant Association  
National Retail Federation  
Retail Industry Leaders Association  
Society for Human Resource Management



## PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

October 7, 2020

The Honorable Steven Mnuchin  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20224

The Honorable Charles Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20220

Dear Secretary Mnuchin and Commissioner Rettig:

As members of the Partnership for Employer-Sponsored Coverage, we write to follow up on our letter dated May 11, 2020, regarding the request for COVID-related compliance safe harbor relief under the Affordable Care Act's (ACA) reporting requirements (Sections 6055 and 6056) and employer shared responsibility (Section 4980H). While we greatly appreciate the economic relief provided to businesses thus far, we believe more can be done to provide regulatory compliance relief.

The Partnership for Employer-Sponsored Coverage (P4ESC) is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and millions of American workers and their families who rely on employer-sponsored coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

The Internal Revenue Service's (IRS) ACA compliance requirements have always been complex and administratively burdensome on employers. With the current pandemic, the compliance complexities and tracking requirements are further exacerbated because employers are managing closures, decreased demand, work from home policies, furloughs, reduced hours, temporary layoffs and more. Employers of all sizes and their employees are continuing to face an unprecedented amount of uncertainty as a result of the COVID-19 pandemic and will do so for months and years to come.

With regards to compliance with the ACA reporting requirements (Sections 6055 and 6056) and employer shared responsibility (Section 4980H), we respectfully request that you:

- 1) Grant employers safe harbors and flexibility during this crisis and do not penalize businesses for unforeseen closures or rapid staffing changes and transitions that are out of their control. The affordability test is particularly complicated during the pandemic with many businesses experiencing unstable workforces and economic volatility. A workforce is likely to look dramatically different throughout the year than in the first two months of 2020 and thus, we ask that affordability safe harbor compliance measures be implemented to account for these unprecedented times;
- 2) Require the IRS to review an employer's reported filings to data match against an individual's tax return before issuing a 226-J letter;
- 3) Provide employers with 90 days, rather than 30 days, to appeal a 226-J tax penalty letter for any tax compliance year; and
- 4) Provide employers that have to pay a tax penalty with a deferral similar to that offered for other tax-related payments and filings to help with liquidity burdens.



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Six months into the COVID-19 pandemic, many businesses are slowly reopening and are restructuring business operations to balance health care and economic impacts. In the meantime, employers are working diligently to comply with new government mandates in response to the pandemic and existing health care compliance requirements under the reporting requirements and employer shared responsibility.

According to a Society for Human Resource Management and Oxford Economics business index examining COVID-19's impact on U.S. business operations and workforce decisions<sup>1</sup>, 52 percent of employers have either changed employee hours, or furloughed or laid off workers to reduce costs. These unforeseen changes in business operations will impact the ability of employers to accurately determine when offers of health care coverage need to be made to qualifying employees. Classifying employees incorrectly can lead to inaccurate information being submitted to the IRS in annual information filings. To add, these errors can result in overcounting or undercounting of full-time employees, which will result in significant financial penalties from the IRS. Employers are already experiencing a decrease in revenue by 10-30 percent and unanticipated IRS tax penalties will impede business, workforce and economic recovery efforts. As such, ACA compliance safe harbor relief is merited.

Again, thank you for the efforts by the Treasury Department and IRS to provide economic and regulatory relief to businesses during the COVID-19 pandemic. COVID-related compliance safe harbor relief under the ACA employer requirements is justified and necessary in the current climate. Thank you for your attention to this request and we welcome the opportunity to discuss in further detail.

Sincerely,

American Health Policy Institute  
American Hotel & Lodging Association  
American Rental Association  
American Staffing Association  
Associated Builders and Contractors, Inc.  
Associated General Contractors of America  
Auto Car Association  
The Council of Insurance Agents & Brokers  
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HR Policy Association  
National Association of Health Underwriters  
National Association of Wholesaler-Distributors  
National Restaurant Association  
National Retail Federation  
Retail Industry Leaders Association  
Society for Human Resource Management

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<sup>1</sup> <https://www.shrm.org/about-shrm/press-room/press-releases/pages/shrm-releases-covid-19-us-business-index-.aspx>



## PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

May 11, 2020

The Honorable Steven Mnuchin  
Secretary  
U.S. Department of the Treasury

The Honorable Eugene Scalia  
Secretary  
U.S. Labor Department

The Honorable Alex Azar  
Secretary  
U.S. Department of Health & Human Services

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives

The Honorable Chuck Schumer  
Democratic Leader  
U.S. Senate

The Honorable Kevin McCarthy  
Republican Leader  
U.S. House of Representatives

Dear Secretaries Mnuchin, Scalia and Azar, Speaker Pelosi and Leaders McConnell, Schumer and McCarthy:

As members of the Partnership for Employer-Sponsored Coverage, we thank you for the actions you have taken thus far to address the immediate health and economic needs our nation is facing because of the COVID-19 global pandemic. The employer community joins you in expressing our gratitude to the dedicated health professionals, first responders, frontline employees in various industry sectors, and scientific and medical researchers who are serving ever more critically important roles during the global pandemic.

With recognition that subsequent relief measures and actions are needed to continue to address the health and economic issues stemming from the pandemic, the Partnership for Employer-Sponsored Coverage (P4ESC) respectfully requests that you consider the following benefits, compliance, and operational issues regarding employer-sponsored coverage. P4ESC is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and millions of American workers and their families who rely on employer-sponsored coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

Employers of all sizes – small, medium and large – and their employees are facing an unprecedented amount of uncertainty and will continue to do so for months and years to come. The issues raised in this letter have been compiled from initial feedback we solicited from employers regarding benefits, compliance and operations issues they are experiencing or anticipate experiencing as a result of the pandemic.

### **Coverage and Benefits Issues**

#### ***Telemedicine***

With patients, health providers and coverage plan sponsors continuing to adapt to and comply with remote working and social distancing measures, P4ESC believes the time is ripe to modernize laws to increase access to telemedicine services. We support: 1) treating telemedicine services as an excepted benefit which



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would enable employers to offer this type of coverage to part-time and variable workforces; 2) reforming licensure requirements to enable services to be offered across state lines; 3) establishing a national set of standards for telemedicine services to address state-based requirements that have not kept pace with technology, practice site and remote working advances, including eliminating originating site and prior provider relationship requirements; and 4) clarifying that CARES Act telemedicine provisions are effective for plan years on or after January 1, 2019 (employer plan years vary between non-calendar and calendar year basis).

### ***Flexible Spending Arrangements***

Because of the current crisis and suspension of non-emergency medical visits, routine appointments and procedures, funds under an employee's Flexible Spending Arrangement (FSAs) will go unused. P4ESC requests flexibility to allow employees to carry-over unused FSA funds from one plan year to the next and an increase in the available roll-over amount. As noted above, employer plan years differ between non-calendar and calendar year durations. The flexibility should be granted for plan years beginning on or after January 1, 2019 and extending through plan years ending on or after December 31, 2021.

### ***COBRA and Coverage Continuation***

As you are acutely aware, businesses, and especially those deemed non-essential, will continue to experience serious liquidity and cash flow problems because of the pandemic. Some employers who have had to furlough or lay-off employees have tried to keep workers on their coverage rolls to maintain access to employer-sponsored health insurance; other employers are contributing toward separated workers' COBRA premiums. Additionally, COBRA has always been very administratively complex and complicated for employers and is even more so during the pandemic.

As the Administration and Congress consider proposals to address coverage in these difficult times, P4ESC would like to express our thoughts on the following temporary relief proposals: 1) we would support a full federal government subsidy of separated employees' COBRA premiums for COVID-related coverage enrollment, as proposals for partial subsidies would pose complexity and adverse selection risks; 2) we support providing employers with the full tax deductibility of COBRA premium contributions for furloughed and laid-off employees as is normally allowed for health coverage expense deduction; 3) we request reconsideration of the Administration's recently announced policy to enable employees furloughed or laid-off due to COVID to enroll in COBRA 60 days after separation instead of the law's current 30 day standard; and 4) we support codifying the revised IRS policy with respect to the CARES Act employee retention credit to treat an employer's portion of the health premiums for furloughed and laid-off workers as a qualified payroll expense.

## **Compliance and Operational Issues**

### ***ACA Employer Shared Responsibility & Reporting Requirements***

The regulatory compliance requirements under the employer shared responsibility (Section 4980H) mandate are a complex set of regulations to determine: if and when an employer meets the applicable large employer status (ALE); if and when variable workforce employees meet full-time employee status; and if their coverage meets one of the affordability safe harbors based on income and wages. In the current crisis, numerous businesses are being mandated to close or considerably reduce operations for the foreseeable future. Other businesses are adapting to increased staffing needs while serving as essential businesses for the public. For any business undergoing rapid, unforeseen workforce transitions, the compliance complexities



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and tracking requirements under the employer shared responsibility are compounded. P4ESC requests that employers are granted safe harbors and flexibility during this crisis and not be penalized for unforeseen closures or rapid staffing changes and transitions that are out of their control.

Further, the IRS employer reporting requirements (Sections 6055 and 6056) loom large over employers of all sizes under normal circumstances and are compounded under the current crisis. According to a Society of Human Resource Management (SHRM) health care survey, 62 percent of HR professionals polled said reporting requirements were their biggest ACA challenge. The IRS process involves issuing a Letter 226-J to inform an employer of a tax penalty if the data is not matched to an individual's tax return, regardless of the employer's reporting of an offer of coverage to a full-time employee. An employer has only 30 days to appeal a 226-J letter, which is sent in the mail and not through email. The issuance of 226-J tax penalty letters to employers that have complied with the law's employer mandate requirement leaves the employer vulnerable to tax penalties or requires additional administrative costs and compliance burdens to appeal the letters.

P4ESC requests three safe harbor and regulatory relief measures regarding the reporting requirements: 1) provide employers with longer than 30 days to appeal a 226-J tax penalty letter; 2) provide employers that have to pay a tax penalty with a deferral similar to that offered for other tax-related payments and filings to help with liquidity burdens; and 3) require the IRS to review an employer's reported filings to data match against an individual's tax return before issuing a 226-J letter.

### ***Federal Reporting and Filings under Departments of Labor, Treasury, Health and Human Services***

Employers have numerous federal-mandated reporting and filings requirements throughout the year regarding employee benefits and plan offerings. As employers, their third-party administrators and vendors have been mandated to close or move operations to a largely work-from-home basis, annual reporting requirements and filings under various federal laws become increasingly more difficult and burdensome with limited access to traditional mail, proprietary information and human resources IT systems. P4ESC requests that the Administration continue granting or extending reporting and filing delays and safe harbors for various federal requirements throughout the duration of the pandemic.

### **Future Coverage and Compliance Considerations**

The effects of the COVID-19 global pandemic will have far reaching health and economic consequences for years and decades to come. P4ESC certainly understands the necessity of addressing immediate needs during the crisis and hopes you will seriously consider the above requests in subsequent relief measures and administration actions.

While we were surveying employers about immediate COVID-related issues, we also requested that they begin to think about the benefits and compliance issues they may face in the period 6- to 12-months from now and beyond. Initial feedback we received regarding future coverage issues, complexities, and costs include areas such as: actuarial considerations of COVID-related testing and treatments (as well as complexities related to mental health parity rules); self-funded and fully-insured premium increases in 2021 and beyond; increased cost of stop-loss insurance for self-funded employers; and risk pool changes. With the foundation of the employer-sponsored coverage system being rooted in workforce policy and business operations, the COVID pandemic will leave an indelible mark on benefits planning and operations for many years.



## PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

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Thank you again for your continued efforts in addressing our nation's public health and financial needs during this unprecedented global pandemic. We are extremely grateful for the relief measures that have been enacted and implemented in such a short amount of time. The Partnership for Employer-Sponsored Coverage welcomes the opportunity to speak with you and your colleagues in further detail about the coverage and compliance issues raised in this initial COVID-related correspondence, and look forward to continuing to work with you to ensure that employer-sponsored coverage is strengthened and preserved for generations to come.

Sincerely,

American Hotel & Lodging Association  
American Rental Association  
American Staffing Association  
Associated Builders and Contractors, Inc.  
Associated General Contractors of America  
Auto Car Association  
The Council of Insurance Agents & Brokers  
The ERISA Industry Committee (ERIC)  
FMI – The Food Industry Association  
HR Policy Association  
National Association of Health Underwriters  
National Association of Wholesaler-Distributors  
National Restaurant Association  
National Retail Federation  
Retail Industry Leaders Association  
Society for Human Resource Management

CC:

Chairman Charles Grassley, Senate Finance Committee  
Senator Ron Wyden, Senate Finance Committee  
Chairman Lamar Alexander, Senate HELP Committee  
Senator Patty Murray, Senate HELP Committee  
Chairman Richard Neal, House Ways and Means Committee  
Ranking Member Kevin Brady, House Ways and Means Committee  
Chairman Bobby Scott, House Education and Labor Committee  
Ranking Member Virginia Foxx, House Education and Labor Committee  
Chairman Frank Pallone, House Energy and Commerce Committee  
Ranking Member Greg Walden, House Energy and Commerce Committee

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