



THE VOICE OF FOOD RETAIL

Feeding Families  Enriching Lives

November 8, 2013

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

Attn: CC:PA:LPD:PR (REG-132455-11)
Room 5203, Internal Revenue Service
PO Box 7604, Ben Franklin Station
Washington, DC 20044

Submitted electronically via <http://www.regulations.gov>

RE: Notice of Proposed Rulemaking for

- Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans (REG-136630-12)
- Information Reporting of Minimum Essential Coverage (REG-132455-11)

Dear Sir or Madam:

On September 9, 2013, the Internal Revenue Service (IRS) published a Notice of Proposed Rulemaking for Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans (REG-136630-12) and for Information Reporting of Minimum Essential Coverage. As representatives of the supermarket industry, the Food Marketing Institute (FMI) appreciates the opportunity to provide comments on these proposed reporting requirements for employers under Internal Revenue Code sections 6055 and 6056 as enacted by the Affordable Care Act (ACA).

Food Marketing Institute (FMI) proudly advocates on behalf of the food retail and wholesaler industry. FMI's U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost \$770 billion. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains, mixed retail stores, and food wholesalers. Food retailers and wholesalers employ 3.5 million full-time, part-time and seasonal workers—many operating under fluctuating work schedules in order to meet employee needs and varying consumer demand.

FMI is an Executive Committee member of the Employers for Flexibility in Health Care ("E-FLEX") Coalition. The E-FLEX Coalition has submitted comments to the Proposed Rulemaking which FMI provided input, signed on to and supports. These comments serve to supplement the E-FLEX Coalition's comments.

FMI has been continually seeking flexibility to minimize new burdens in the health care law's implementing regulations, in order for food retailers and wholesalers to continue providing health coverage that is affordable and of value to both the employee and the employer. To that end, FMI supports a streamlined approach or certification method of prospective information reporting for employers who have a history of offering coverage; viable, simplified options for businesses with fluctuating workforces; and a reporting and verification system that focuses on

individuals who are actually determined eligible for an advanced premium assistance tax credit. Such an approach would minimize employer burdens but also reduce the likelihood of errors or repayments by individuals due to incorrect agency or Exchange tax credit determinations. More detailed comments, information and proposed alternatives to address each of these concerns are addressed in the attached E-Flex comments.

In addition to the points and reporting processes outlined in the attached E-FLEX letter, FMI seeks to elaborate regarding specific concerns of some employers that do not “own” the data that the agency is seeking under the proposed General Method¹ and are required to rely on third-party vendors or in some cases multiemployer plans to report accurate information. The proposed regulations should take into account the fact that some employers – including some in the retail food industry -- provide health benefits to employees through multiemployer plans that are outside the control of any individual employer. While the Notice of Proposed Rulemaking (NPRM) acknowledges the contributions of employers to multiemployer plans, as well as the need to identify administrators of multiemployer plans, the NPRM still holds employers liable for reporting information that is beyond their control.

We urge the Administration to apply liability for these reporting requirements to the entities who own and manage the data—the third-party vendor or multiemployer plan administrator. Potential alternative solutions include allowing employers who contribute to multiemployer plans to identify the administrator of the plan and identify the employees subject under a collective bargaining agreement to the eligibility requirements of the multiemployer plan and allowing this identification to satisfy the employer’s reporting obligation for those employees under Internal Revenue Code sections 6055 and 6056 as enacted by the ACA. The multiemployer plan then would be responsible and liable for reporting the specific data elements for those employees as mandated by the reporting requirements under Internal Revenue Code sections 6055 and 6056 as enacted by the ACA.

The proposed regulations on Code Section 6056 prove particularly problematic for applicable large employers contributing to multiemployer plans. Specifically, the regulations require aggregation of information that is “split” between employers contributing to multiemployer plans and the plans themselves. For instance, employers typically only have data on hours worked for employees covered by multiemployer plans. The employer may have data on contributions paid on behalf of an employee but the amount paid does not always equate to eligibility for coverage and/or coverage under the plan for that employee. The amount and timing of the employer contribution is subject to the terms of the current collective bargaining agreement and may be simply based on a function employee headcount at specified intervals. The multiemployer plans maintain and control the data on plan coverage, minimum value, eligibility requirements, enrollment, etc. Employers generally do not have access to this information nor any control or input over how the plan is administered.

At present, the obligation to submit the reports rests with the employer, but there is no mechanism mandating that the multiemployer plan provide the employer with the necessary information to complete the report. If the Administration determines that the obligation should remain with the employer, then we request that final regulations implement a requirement that multiemployer plans transfer the necessary information to contributing employers in a timely

¹ FR. Vol. 78; No. 174; 55001.

manner and form that would allow employers adequate additional time to process the information and issue reports to participants. We further request the obligation and liability for timely, accurate information should remain with the multiemployer plan since the plan is responsible for actually administering the plan and maintaining the accuracy of the information. In such cases, the employer would only be acting as the conduit for the information, not the source. The employer would not have the ability to verify the accuracy or completeness of the information provided by the plan.

FMI appreciates the opportunity to provide comments regarding the Internal Revenue Service (IRS) published a Notice of Proposed Rulemaking for Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans (REG-136630-12) and for Information Reporting of Minimum Essential Coverage. Operating under the context that the supermarket industry is seeking flexibility to minimize new burdens in order for employers to continue providing health coverage that is affordable and of value to both the employee and the employer, consideration of comments by the E-FLEX Coalition and FMI and adoption of the proposed alternatives will allow for a more streamlined process for employers, individuals and the Exchanges and agencies responsible for administering the ACA's shared responsibility provisions and premium tax credits.

We hope to maintain a constructive dialogue as your agencies finalize these rules to implement the Affordable Care Act. Please contact me at (202) 220-0642 or rrosado@fmi.org for further discussion on any of these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Rosado". The signature is fluid and cursive, with a large initial "R" and "R".

Robert Rosado
Director, Government Relations
Food Marketing Institute

Attachment:

Employers for Flexibility in Health Care Coalition letter, REG-136630-12 and REG-132455-11 – Nov. 6, 2013