



American Payroll Association

Government Relations • Washington, DC

May 2, 2017

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Democratic Leader Nancy Pelosi
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Re: Employer Reporting Requirements in the American Health Care Act of 2017

Dear House and Senate Leadership:

As you continue to work on a repeal and replacement measure for the Affordable Care Act (ACA), the American Payroll Association (APA) is asking that you reconsider a proposed requirement in the American Health Care Act (AHCA) to use the Form W-2 for employer reporting of health care coverage information. This is a change from current ACA reporting requirements on Forms 1094-C and 1095-C.

About the American Payroll Association

Established in 1982, the APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals in the United States. The APA's primary mission is to educate members and the payroll industry about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws. The APA's Government Relations Task Force (GRTF) works with legislative and executive branches at the federal and state levels to assist employers with understanding their legal obligations with significant emphasis on minimizing the administrative burden on government, employers, and individual workers.

With 68.5 percent of total Internal Revenue Service (IRS) collections for fiscal 2016 (\$2.28 trillion of the total \$3.33 trillion) coming from employers and payroll administration, APA is particularly concerned about effective and efficient functioning of tax and information filing laws, regulations, forms, and instructions.

Administrative Burden Would Increase With AHCA Form W-2 Reporting

We appreciate the concern expressed for the administrative burden on employers, however, over the course of many years, APA has fought hard to keep Form W-2 unencumbered with non-income-related information. In practice, eliminating Forms 1094-C and 1095-C in favor of Form W-2 for health care coverage information reporting would not simplify reporting for employers, but may instead actually add significantly to the administrative burden.

In changing the Form W-2 to accommodate health care coverage reporting, every employer and payroll service provider would be required to change their wage reporting system at significant expense. This could directly affect U.S. employees who did not previously receive Forms 1095-C (i.e., non-full-time employees and those working for small businesses), and employers that were not previously subject to the ACA Employer Shared Responsibility provisions (i.e., those with less than 50 full-time employee equivalents). This approach also would be difficult to accept when employers already spent substantial resources to accommodate reporting using the ACA forms and to file Forms W-2 under the accelerated deadlines mandated under the Protecting Americans from Tax Hikes (PATH) Act.

Because employers have already invested significantly to comply with the separate Form 1095-C reporting requirements, making any dramatic change to shift all such reporting to Form W-2 would certainly mean very significant reprogramming costs. The cost of this shift is unclear because the proposed legislation does not provide details explaining how such a system might work, how it should simplify employer reporting, and yet still provide the IRS with sufficient information to appropriately administer the substantial tax credits envisioned, and without having to actually reach out to employers to verify eligibility for such credits. For example, part of the eligibility determination is based on availability of employer health coverage each month to employees and their spouses and dependents. Forms 1095-C included such information. The AHCA is not clear on how all of this type of information would fit on a Form W-2.

In addition, Forms W-2 are filed first with the Social Security Administration (SSA), which then transfers the information to the IRS. This will require the SSA to rework its electronic filing system to accept the information provided by employers directly through the agency's employer interface as well as manually by SSA employees for employers that file on paper. The transfer system to the IRS will require revision as will the IRS's acceptance system, not to mention the change required in the Form W-2 and related instructions, followed by taxpayer outreach. APA is concerned about the lack of resources available to these agencies to accommodate the changes. These agencies are already struggling with antiquated systems, reduced budgets, and fewer employees.

Unique Issues for Multiemployers and Statutory Employers

A key requirement of ACA reporting is the indicator of an "offer of coverage." Companies that report Form W-2 earnings for statutory employees and employees covered by multiemployer plans do not have access to "offer of coverage" information and are treated differently for purposes of reporting (e.g., an employer is treated as having offered coverage if a collective bargaining agreement or related participation agreement requires contributions to a plan). Therefore, these employers will not have access to health care coverage information to place on Forms W-2 for their employees.

Maintaining Low Risk of Breaches

A critical issue for employers is compliance with the Sarbanes-Oxley Act and ensuring that only a limited number of authorized individuals have access to sensitive employee information (such as income). The change to reporting health care coverage information on Forms W-2 could breach the operational guardrails employers built for this purpose. The individuals responsible for

management of health care information will now have greater access to income information. Separate from Sarbanes-Oxley, increased access to employee information in turn increases the risk of stolen personal information and tax fraud.

Conclusion

APA understands that changes to the ACA in favor of the AHCA will require changes to information reporting. However, making adjustments to these existing forms would be far less costly and risky than combining the information on Forms W-2. APA asks that Congress amend the AHCA to remove Form W-2 reporting requirements.

Sincerely,

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