



# American Payroll Association

## Government Relations • Washington, DC

May 16, 2016

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2016-26)  
P.O. Box 7604  
Ben Franklin Station, Room 5203  
Washington, DC 20044  
[www.regulations.gov](http://www.regulations.gov) (IRS-2016-0012)

Re: Notice 2016-26: Recommendations for the 2016-2017 Priority Guidance Plan

Dear Treasury Tax Policy and IRS Staff:

Thank you for the opportunity to assist the Department of Treasury's Office of Tax Policy and the Internal Revenue Service in identifying tax priorities for the period July 1, 2016 to June 30, 2017. Your willingness to listen to payroll professionals' concerns is appreciated.

### **About the American Payroll Association**

Established in 1982, the American Payroll Association (APA) is a nonprofit professional association serving the interests of more than 20,000 payroll professionals and their employers 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 and regulations.

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. The GRTF maintains a close relationship with the IRS to ensure that APA's members receive the latest information about federal tax law changes and that the IRS receives meaningful feedback on its programs, regulations, policies, guidance, and tax forms.

### **Priority Recommendations**

The APA is recommending four priorities for consideration. In order of importance, they include:

1. Improving management of transcripts;
2. Providing a Social Security Number matching system for Affordable Care Act compliance;
3. Creating electronic capabilities for levies; and
4. Making permanent multiemployer transition guidance for the Affordable Care Act.

**Improving Management of Transcripts**

APA recommends that reestablishment of the electronic transcript system with appropriate security measures for employers be a number one priority. Employers' ability to access transcripts electronically was temporarily terminated because of a breach. However, the system has been unavailable for almost a year. This is no longer temporary and causes significant hardship for employers.

Currently, the IRS is working on a revised electronic transcript system initially focusing on individual taxpayers. The APA encourages the agency to move forward as quickly as possible on offering the employer transcript system.

In addition, when logging into e-services to request a transcript, a message is returned that says, "RAF Check Failed." This does not show that the site is down and causes unnecessary calls to the IRS. The IRS should create standard language to be displayed when any of the agency's systems are down.

**Providing a Social Security Number Matching System for Affordable Care Act Compliance**

Without a means to correct the problem, employers face significant penalties if employee, spouse, and dependent names and Social Security Numbers (SSNs) do not match the IRS's database when filing Affordable Care Act (ACA) Form 1095-C. While the Social Security Administration's (SSA) Form W-2 reporting regulations include language allowing for penalties for mismatched SSNs, enforcement has been minimal. However, when filing Form 1095-C or other information returns directly with the IRS, employer penalties may be significant. This is a concern for employers because there will be penalties resulting from SSN-name mismatches related to Form 1095-C when there is no vehicle in which to verify the information.

Payroll professionals want to ensure that their employers are complying with all applicable IRS regulations. However, they have limited tools. Some examples of these limitations are listed below.

- The SSA's SSN Verification System (SSNVS) cannot be used for ACA purposes. This system was designed for Forms W-2 only. Anyone who knowingly uses the SSNVS to obtain information for other purposes may be subject to fines, prison, or both (see SSNVS Handbook, June 2015).
- Employers cannot use the Department of Homeland Security's E-Verify System for Taxpayer Identification Number (TIN)-matching because this system was designed exclusively to determine the eligibility of employees to work in the United States.
- The IRS's TIN-matching system is not available for employers' ACA information reporting because this system was designed for Forms 1099 and only for those with a possible back-up withholding requirement.
- Employers cannot rely on employees because most ACA Forms 1095-C includes a truncated SSN such that affected employees may not notice an incorrect number.

APA understands the importance for the IRS to ensure that employee, spouse, and dependent names and identifying numbers match. However, without a process created by the IRS for employers to comply, penalizing employers is a significant hardship. As a priority, APA recommends that the IRS work to fix this problem. This may mean opening the TIN-matching system or consulting with the SSA to allow use of the SSNVS for other specific IRS information report forms such as the Form 1095-C.

**Creating Electronic Capabilities for Levies**

Currently, the IRS cannot issue levy notices or accept levy payments electronically. Employers must manually enter information into their payroll management systems and generate paper checks, which is burdensome.

In a February 2016 conference call discussion with IRS staff in the Collection Policy area, APA learned about the agency's pilot program in Texas to issue levy notices by facsimile. This pilot, although a step forward, is not conducive to transmitting significant numbers of levy notices and would not ease the burden on employers. APA recommends that the IRS prioritize development of an electronic levy notice system. For reference, other models are available for the IRS to consider, including wage garnishment notices for child support through the federal Office of Child Support Enforcement.

In addition, employers do not have electronic system capabilities to remit payments to the IRS for levy proceeds withheld from employees' pay. Employers must create paper checks and mail them to the IRS, which takes considerable time for processing and monitoring to ensure that the IRS receives the payments.

APA realizes that for the IRS to create a fully electronic program to accept payments through employers a change to the IRS's business management system is needed. This will likely require authorization from the U.S. Department of the Treasury. APA urges the IRS to move forward with its request to create electronic levy capabilities. For reference, the IRS may find it useful to review the Third-Party Tax Payments System developed by NACHA-the Electronic Payments Association. Employers are already familiar with this system and find it easy to use.

**Making Permanent Multiemployer Transition Guidance for the Affordable Care Act**

An employer that participates in a multiemployer health plan complies with the employer mandate by virtue of certain health care coverage offers made by multiemployer plans if certain conditions are satisfied. Under the multiemployer safe harbor interim guidance (MEP Transition Guidance), an employer will not be treated as failing to offer an employee the opportunity to enroll in minimum essential coverage for purposes of the employer mandate (and therefore will not be subject to an employer mandate penalty) if the employer is required by a collective bargaining agreement to contribute to the plan for the full-time employee, plan coverage is available to the employee and dependents subject to satisfaction of plan eligibility conditions, and the offered-coverage is affordable and contains adequate value. The interim employer mandate regulations originally specified that the MEP Transition Guidance applied only to 2014 (and later 2015), but the final regulations indicated that the MEP Transition Guidance is an ongoing interim rule.

The IRS should permanently adopt the MEP Transition Guidance. Employers contribute to multiemployer plans based on the applicable collective bargaining agreement. They remit contributions along with detailed reporting that generally provides the hours worked and the contribution amounts required under the collective bargaining agreement. Once the employer has transmitted the appropriate contributions and reporting to the multi-employer plan, the employer has completed its obligations under the collective bargaining agreement.

Therefore, an employer that participates in a multi-employer plan rarely has access to plan information indicating whether a worker has (a) become eligible for coverage; (b) completed the necessary qualifying period; (c) obtained health care coverage; or (d) continued to be eligible for coverage after satisfying eligibility conditions. The employer also typically will not know the type of coverage in which

the worker has enrolled (individual or family), the benefit options chosen by the employee or the value of the medical coverage. Employers participating in multiemployer plans also have no control over plan design or administration.

This barrier between the employer and the plan is heightened in mobile industries, such as entertainment and construction, where companies employ individuals on a free-lance basis, individuals work for many different employers for short periods and it is normal for a worker to be unemployed for long periods between jobs. Consequently, it is impracticable for any one employer in a multiemployer plan to know whether a worker has satisfied plan eligibility conditions or the extent to which the plan has offered coverage to the worker.

For these reasons, the APA requests that the MEP Transition Guidance be extended permanently as part of the agency's 2016-2017 priorities.

Thank you again for the opportunity to offer recommendations for Treasury/IRS tax priorities in the 2016-2017 cycle. If you have any questions, please contact Alice Jacobsohn at 202-248-3901 or [ajacobsohn@americanpayroll.org](mailto:ajacobsohn@americanpayroll.org).

Sincerely,

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