

June 6, 2022

CC:PA:LPD:PR (REG-114339-21), Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Comments on Affordability of Employer Coverage for Family Members of Employees
(RIN 1545-BQ16)

Dear Clara Raymond,

The HR Policy Association and the American Health Policy Institute welcomes the opportunity to provide comments to the Internal Revenue Service (IRS) on the Affordability of Employer Coverage for Family Members of Employees that was published in the Federal Register on April 7, 2022.¹

The HR Policy Association is the leading organization representing the chief human resource officers of over 400 of the largest employers in the United States. Collectively, their companies provide health care coverage to over 21 million employees and dependents in the United States. The American Health Policy Institute, which was created by the Association, serves to examine the challenges employers face in providing health care to their employees and recommends policy solutions to promote the provision of affordable, high-quality, employer-based health care. The proposed rule may significantly impact the reporting and recordkeeping requirements of every one of the Association's member companies.

The Proposed Rule Appears to Create Costly New Reporting Requirements for Employers That Were Not Included in the Economic Analysis

According to the proposed rule (NPRM), “whenever a family applies for Exchange coverage and one or more family members has an offer of employer coverage, the Exchange will perform the following affordability determinations: One determination for the employee based on the cost of self-only coverage, *one determination for the related individuals based on the cost of family coverage*, and additional determinations for any related individuals who have an offer of coverage from another employer.”² The NPRM also notes “[t]he IRS’s PTC infrastructure will require one-time changes to certain processes, forms, and instructions to be implemented in time

¹ 87 Fed. Reg. 20354.

² 87 Fed. Reg. 20360. Emphasis added.

for the 2023 tax year,”³ and the “[e]xchanges will incur one-time costs to update Exchange eligibility systems to account for *the new treatment of family contribution amounts for employer coverage for purposes of determining eligibility for APTC.*”⁴

This language in the NPRM appears to create a new reporting obligation for employers to the exchanges and/or the IRS that was not identified in the proposal nor included in the cost section of the economic analysis. Specifically, it appears the family contribution amounts for employer coverage, including self-plus one coverage, will now have to be reported for every employee who has a “related individual.”

IRS Should Immediately Publish a Clarification On-line and in the Federal Register

To rectify this oversight and fully comply with the Administrative Procedures Act, the IRS should immediately clarify that either: 1) the NPRM creates no additional reporting requirements for employers; or 2) the NPRM does create new reporting requirements for employers and provide an estimate of the costs for this new reporting requirement. If the Treasury Department and the IRS are unable to estimate the size of the population affected by the proposed regulations because contribution amounts for family coverage are not observed in the tax data, it should develop a cost estimate from other studies, reports, and data sources, and ask for public comment on its estimate before proceeding to the next phase of rulemaking.

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We urge the IRS to consider this clarification request and we look forward to working with you on this important issue.

Sincerely,



D. Mark Wilson
President and CEO, American Health Policy Institute
Vice President, Health & Employment Policy
HR Policy Association



Margaret Faso
Director, Health Care Research and Policy
HR Policy Association, American Health Policy Institute

³ 87 Fed. Reg. 20361.

⁴ Id. Emphasis added.