

July 31, 2017

**Via Electronic Submission - [www.regulations.gov](http://www.regulations.gov)**

Ms. Heidi Cohen  
Office of the General Counsel  
U.S. Department of the Treasury  
799 9<sup>th</sup> St. NW  
Washington, DC 20001

**RE: Request for Information on Review of Regulations**

Dear Ms. Cohen:

The Council of Insurance Agents and Brokers (“The Council”) appreciates this opportunity to comment on the Treasury Department’s (“Department”) request for information (“RFI”) on how regulations within its jurisdiction can be eliminated, modified, or streamlined in order to reduce burdens.<sup>1</sup> The Council urges you, consistent with President Trump’s Executive Orders on regulatory reform and minimizing unnecessary costs and burdens on U.S. businesses, to:

- (1) Waive or substantially streamline employer reporting obligations under sections 6055 and 6056 of the Affordable Care Act (“ACA”), and upon repeal of the ACA’s employer and individual mandates, immediately eliminate these obligations;
- (2) Modify existing regulations to clarify that property/casualty insurance premiums paid for insurance that does not have any cash value are excluded from those regulations promulgated pursuant to the Hiring Incentives to Restore Employment (or “HIRE”) Act and the Foreign Account Tax Compliance Act (collectively, the “FATCA Regulation”); and
- (3) To the extent the ACA’s employer mandate remains in place, simplify safe harbor methods with respect to variable hour and seasonal employees.

These suggestions are discussed in further detail below.

By way of background, The Council represents the largest and most successful property/casualty and employee benefits agencies and brokerage firms. Council member firms annually place more than \$300 billion in commercial insurance business in the United States and abroad. Council members conduct business in some 30,000 locations and employ upwards of 350,000

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<sup>1</sup> Department of the Treasury, Request for Information, *Review of Regulations*, 82 Fed. Reg. 27217 (June 14, 2017).

people worldwide. In addition, Council members specialize in a wide range of insurance products and risk management services for business, industry, government, and the public.

### ***Waive or streamline ACA employer reporting obligations***

First, eliminating or drastically simplifying ACA reporting requirements for employers has long been a top policy priority for The Council. These obligations, due to the sheer scope and complexity of reporting under the current regime, have consistently been identified by our members as one of the most problematic, burdensome, and costly aspects of the ACA. The obligations require tremendous labor resources and deployment of complex IT systems—realities that are particularly challenging to smaller or mid-sized businesses.

Employer reporting obligations to plan participants and the IRS were created to support and facilitate the ACA’s employer mandate and minimum essential coverage requirements. Given the Trump Administration’s policy goal of repealing these portions of the ACA (individual and employer) and imminent congressional action to accomplish that objective, an immediate waiver and/or delay of employer reporting obligations on Forms 1094-B/-C and 1095-B/-C is appropriate.

Notably, there is precedent for such a move by the IRS. In 2013, relying on its broad authority under section 7805(a) of the Internal Revenue Code (“IRC”),<sup>2</sup> the Obama Administration granted relief from these reporting requirements for providers of minimum essential coverage. Additionally, the text of ACA sections 6055 and 6056 (from which these obligations arise) gives the Department authority to determine when employer reporting obligations will be required.<sup>3</sup> The Council therefore urges you to waive these obligations, pending action by Congress to repeal the ACA’s mandates, and once such repeal is effectuated, to immediately eliminate all related reporting regulations.

Alternatively, at a minimum, The Council urges the Department to streamline—to the greatest extent allowable under the law—these reporting requirements. Further, the IRS should adopt a “good faith” enforcement policy under which bona fide, good faith attempts by employers to comply with these complicated obligations is sufficient to avoid penalty.

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<sup>2</sup> 26 U.S.C. § 7805(a) (“Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.”).

<sup>3</sup> 26 U.S.C. § 6055(a) (“Every person who provides minimum essential coverage to an individual during a calendar year shall, *at such time as the Secretary may prescribe*, make a return described in subsection (b).”) (emphasis supplied); 26 U.S.C. § 6056(a) (“Every applicable large employer required to meet the requirements of section 4980H with respect to its full-time employees during a calendar year shall, *at such time as the Secretary may prescribe*, make a return described in subsection (b).”) (emphasis supplied).

***Modify current regulations to clarify that property/casualty insurance premiums paid for insurance that does not have cash value are excluded from FATCA***

Second, the FATCA Regulations currently cover non-cash value property/casualty insurance and reinsurance (“P&C Insurance”), despite the fact that P&C Insurance is not a financial product and contains no investment component. In similar regulatory contexts (e.g., anti-money laundering rules under the Patriot Act), P&C Insurance has not been treated as a financial product, and to our knowledge none of the 18+ other countries’ corresponding / equivalent FATCA Regulations do so. Nevertheless, currently under FATCA, U.S.-source premiums are treated as “withholdable payments.” As a result, brokers remitting premium payments relating to U.S. risks to non-U.S. carriers are required to adopt a complicated compliance structure for tens of thousands of transactions a year in order to (1) prove that the carriers are in compliance with FATCA by collecting a W-8BEN-E form from each carrier holding a share of the policy or (2) withhold 30% of the premium payment. The Council has long argued that non-cash value P/C insurance premium payments made to overseas insurers cannot be used for the purposes of tax evasion, rendering such payments irrelevant to the purpose behind FATCA (i.e., combatting offshore tax evasion). There also is no or virtually no tax revenue or useful reporting received by the IRS from these measures.

Including P&C insurance under FATCA is a clear example of regulatory overreach and unnecessarily subjects certain insurance market participants to cumbersome and expensive (projected at \$500 million) certification and reporting burdens. Moreover, it is putting U.S. brokers at a competitive disadvantage vis-à-vis some of their overseas counterparts. To the extent foreign brokers do not have a sufficient nexus to the U.S. and therefore are not subject to enforcement of the FATCA rules, non-U.S. carriers have an incentive to work with them, rather than deal with the hefty burdens associated with the current FATCA regime. Indeed, we are seeing this scenario play out in the marketplace.

Thus, The Council encourages the Department to modify its regulations to exclude non-cash value P/C insurance from FATCA compliance obligations. One way to accomplish this is to amend current Treasury regulations, 26 CFR § 1.1473-1(a)(4), as follows (changes shown for insertions and ~~deletions~~ to current rule):

(4) **Payments not treated as withholdable payments.** The following payments are not withholdable payments under paragraph (a)(1) of this section—

...

(iii) **Excluded nonfinancial payments.** Payments for the following: services (including wages and other forms of employee compensation (such as

stock options)), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, ~~and~~ interest on outstanding accounts payable arising from the acquisition of goods or services, and premiums paid to obtain coverage under an insurance or reinsurance policy that is not a cash value insurance contract or annuity contract. Notwithstanding the preceding sentence, excluded nonfinancial payments do not include: payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; ~~premiums for insurance contracts or annuity contracts~~; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute interest described in §1.861-2(a)(7)) other than interest described in the preceding sentence; gross proceeds other than gross proceeds described in paragraph (a)(4)(iv) of this section; investment advisory fees; custodial fees; and bank or brokerage fees.

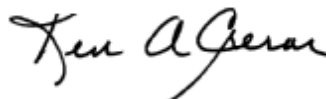
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### *Simplify Safe Harbor Methods for Variable Hour and Seasonal Employees*

Third, to the extent the ACA's employer mandate and related penalties remain in effect, The Council urges the Department to consider simplifying its current approach to variable hour and seasonal employees for purposes of IRC § 4980H. The Department's existing safe harbor methods do provide employers with tools and flexibility to determine which employees should be treated as full-time for purposes of the employer mandate, and we applaud the intent behind the framework. Some employers are experiencing administrative challenges, however, with the current methods (i.e., establishing and monitoring measurement, administrative and stability periods for each employee). We therefore request that the Department streamline and simplify—to the extent possible—these particular rules (perhaps, for instance, by allowing for a *prospective* determination of coverage eligibility based on a 1-2 month period).

The Council believes that addressing the regulatory issues discussed above will alleviate unnecessary burdens on U.S. businesses/employers without detracting from the policy objectives of the current administration. We welcome the opportunity to answer any questions you may have or discuss these or any other regulatory issues in further detail. Thank you for your consideration.

Respectfully submitted,



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