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March 18, 2013

CC:PA:LPD:PR (REG-138006-12)
Internal Revenue Service
Room 5203
PO Box 7604 – Ben Franklin Station
Washington, DC 20044

Submitted via website:
http://www.regulations.gov

The Retail Industry Leaders Association (RILA) welcomes the opportunity to provide comments to the Internal Revenue Service, and Departments of the Treasury, Labor, and Health and Human Services in regards to the Notice of Proposed Rulemaking (NPRM) on Shared Responsibility for Employers Regarding Health Coverage.

Retailers are committed to continuing to offer quality, affordable coverage to their employees and families. RILA, the trade association of the world's largest and most innovative retail companies, product manufacturers, and service suppliers, promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad. RILA members offer health coverage to millions of American workers and their families, and are leaders in benefits design by customizing plans to meet their workforces' specific needs.

RILA continues to appreciate the White House's and Departments' willingness to engage in discussions about the employer requirements under the Patient Protection and Affordable Care Act (ACA) with us and our member companies as the regulatory process unfolds. Specifically, we appreciate the time that regulators have spent with RILA and our members on the telephone and in-person regarding various operational issues and policy ideas that directly impact employers, especially retailers who have large variable hour workforces.

Our comment letter addresses issues raised in the NPRM as well as issues discussed with the White House and Departments during a meeting with RILA member companies in late February. In addition, RILA formed and leads the Employers for Flexibility in Health Care (E-Flex) Coalition. The E-Flex Coalition's letter on the NPRM, filed separately and attached, includes comprehensive comments developed with extensive input from RILA member companies. RILA supports and incorporates herein the E-Flex Coalition comments urging the Administration to consider carefully these comments as the regulatory development process continues.

Definition of a Full-time Employee, Affordability Test, Wellness

Since the beginning of the regulatory development process, RILA and its member companies have continued to stress to the Administration the need for providing flexibility in the definition of a full-time employee, especially for industries such as retail where there is a large variable hour workforce comprised of part-time, seasonal and temporary employees. The NPRM recognizes the need for flexibility and RILA appreciates the inclusion of look-back measurement and stability periods proposal to determine the status of a full-time employee. In addition, RILA appreciates the inclusion of four options in the NPRM – the statutory rule and three safe harbor methods – for an employer to use to calculate the law's affordability test. Employers do not know and legally should not know an employee's household income, so the inclusion of three safe harbor methods that are not based on household income is welcome.

However, RILA remains concerned about the lack of rules and guidance on how an employer wellness program will be applied to the affordability test calculation. Retailers have embraced the idea that investing in a healthy workforce today not only lays the foundation for a healthier society but also ensures the development of a more productive workforce which is able to enjoy a higher quality of life. We appreciate the recent discussion the White House and Departments had with our member companies on this important issue. We also understand there is a substantial amount of deliberation among regulators in the Administration on this aspect of the calculation. As noted in our January 24, 2013 letter to the Labor Department regarding the ACA wellness initiative, we believe there are protections in the law to safeguard individuals from being discriminated against with respect to wellness programs.

Employers must invest a significant amount of resources into meeting the affordability test. RILA is concerned about the potential issuance of inflexible rules that may stifle employers' ability to create innovative plan designs and willingness to incorporate wellness programs into their coverage structures. We believe the application of the lowest cost plan available to employees is the cost of the plan *after* the application of wellness discounts or *before* the application of wellness surcharges. For example, one of our member employers currently offers a comprehensive PPO for $20 per week for employee self-only coverage. Tobacco users who go through a voluntary on-line cessation program are eligible for the $20 per week premium, which adheres to HIPAA regulations. Tobacco users who choose not to participate in the wellness program pay a 15 percent surcharge, for a total premium of $23 per week. Our interpretation of the statute is that the $20 per week cost is the lowest cost plan, and the one on which the affordability test should be based.

Transition Relief, Compliance Time

Due to the nature of the retail industry where busy business seasons often occur during the fall and end of the year, many retailers utilize a non-calendar year plan year so employee focus and company resources are not taken away from the business of selling goods and services in order to make benefits selections and implement a new plan year. The NPRM recognizes the challenges employers with non-calendar (fiscal) year plans would face having to comply with the requirements during the plan year that straddles 2013-2014, as the statutory effective date of

January 1, 2014, would require these employers to make benefits changes mid-plan year or risk being subject to possible tax penalties. RILA appreciates the recognition of these challenges and welcomes the limited transition relief for non-calendar plans included in the NPRM. However, RILA remains extremely concerned that all employers, regardless of plan year, do not have ample time to plan, budget, and implement changes in order to comply with the ACA. RILA is also concerned that while the NPRM is what employers should utilize now to comply with the law in 2014, once final rules are released there may not be ample time for employers to comply for plan years in 2015, that straddle 2014-2015, and beyond. Employers cannot plan and make concrete business decisions for the future on a very short notice.

Further, RILA is concerned that the transition relief for non-calendar plans would not be applicable to all employers that have such plan years. Under the NPRM, the transition relief is only available to employers if at least one-fourth of all employees are covered, or at least one-third of all employees were offered coverage under the plan year which included December 27, 2012. RILA strongly urges the transition relief rules be modified to not be conditional or at a minimum, not require the counting of all employees – only those that are subject under the employer responsibility. RILA would welcome the opportunity to discuss this in further detail with Treasury officials.

Break-in-Service/Re-Hire Rules

RILA recognizes the need to eliminate potential employer abuse of terminating an employee at the end of his/her initial measurement period and rehiring the employee with the intent to defer offering health coverage. However, RILA and its member companies are gravely concerned about the proposed rules regarding break-in-service and rehiring of employees, as they are very confusing and would cause significant administrative burdens. It is important to note that employers invest significant time and resources in employee development and training, often at an expense much greater than the cost of health coverage and the decision to be a "bad actor" and abuse the system is one that the majority of employers would not take.

RILA member companies have significant workforce turnover rates and the volume of terminated employees who later rehire within a 26-week period is substantial. Capturing this volume of employees and assessing their break in service by looking back 26 weeks in historical records will cause a tremendous administrative burden and require significant IT resources. For example, one retailer has identified more than 12 different scenarios for which a tracking system would have to be coded to handle the turnover and rehire situations should the policy in the NPRM be implemented.

While we also appreciate the spirit of the alternative rule of parity option, this adds a layer of programming complexity and will require even greater IT resources to systemically calculate the individual's employment tenure in comparison with the service break duration. RILA recommends: 1) providing sufficient time for employers to deploy needed system programming; and 2) reduce the time period an employer must treat the individual as a rehire from 26 weeks and allow an employer flexibility to establish break in service rules based on the rehire policies or patterns of their company.

In addition, the NPRM couples a break in service due to employment termination and an unpaid leave of absence under one category. Many employers treat employees on an approved company leave of absence, in addition to "special unpaid leaves," as a continuing employee. Only upon the employee's failure to return to work at the end of the approved leave period is the employee terminated from employment. Allowing the employer to count weeks of an unpaid leave as zero hours, versus a break in service, is consistent with treating the individual as an employee of the company during the approved leave of absence. For example, an individual may be placed on an approved Workers' Compensation leave for a consecutive period greater than 26 weeks. Such employees have not terminated employment and to treat them as terminated for benefits eligibility purposes will likely require additional programming, new HR status codes, etc. RILA recommends that an unpaid leave of absence may be counted as zero hours for the duration of the approved leave and while the individual is counted as an "employee" of the employer. Alternatively, the rules could expand the category of "special unpaid leave" to include all company approved leave of absence programs.

We understand that the Administration initially viewed the NPRM as similar to rules used in the pension and retirement arena but it is important to note that the counting of hours worked is not used as is the case with these proposed rules for health coverage. Additionally, we are very concerned that this will result in inconsistent eligibility rules for employees – resulting in confusion as to enrollment options under employer-sponsored coverage or insurance Exchanges.

Reporting Requirements

RILA eagerly awaits the proposed rules on the collection and remittance of data required under IRS Code Sections 6055 and 6056. As we noted in a previous comment letter, the collection and remittance of this data will prove to be an extremely daunting task for retailers. There is no uniformity in the way employers track this data, or whether the tracking is done in-house or through a third-party vendor. The requirements under Sections 6055 and 6056 will require employers to gather data from multiple IT systems and vendors. As the Administration develops the reporting regulations, RILA urges that regulations take into consideration: the need to streamline the reporting process as to lessen compliance and cost burdens on retailers in an economically-challenging environment; the significant amount of time it will take for employers to comply with regulations and build new or modify existing IT systems; and the security of uploading sensitive, personally identifiable information onto federal or state databases. RILA is very concerned that employers may be required to provide the same data to employees and plan enrollees. The administration complexities of being required to do so is mindboggling to employers.

In addition, RILA eagerly awaits the proposed rules under section 18B of the Fair Labor Standards Act (FLSA). RILA appreciates the constructive conversation the White House and Departments had with its member companies recently about communications with employees and employer reporting requirements. We welcome the opportunity to follow up with additional information and details in the coming weeks and months. We would, however, like to note a concept discussed that we feel may enable a smoother transition to ACA enactment for employers, employees, Exchanges, and the Departments. We believe there should be a federal government website/portal established in which an employer can pre-certify at the beginning of

its plan year that at least one of its plans complies with the employer shared responsibility requirements – meets the affordability and minimum value tests. This data can be shared with and utilized by Exchanges when individuals apply for coverage, and could significantly reduce the "pinging" of employers by Exchanges when individuals apply for coverage. The same pre-certification information can be provided to an employee upon request in a simple one-page form or on an internal company webpage that contains information to satisfy the section 18B requirement.

Communications with Employees and Employers

As previously noted, RILA members recently engaged in a robust conversation with regulators from the White House, and Labor, Treasury, and Health and Human Services Departments about the lack of information available to individuals and employers about the insurance Exchanges or Marketplaces, and the challenges employers will face in the coming months in answering employees' questions regarding Exchange coverage and other aspects of the ACA. The human resources (HR) department of a business is the first place an employee is going to go to with questions about health coverage – whether employer-sponsored coverage or insurance products in the Exchanges. In the case of retail businesses, a store manager will likely be the one fielding questions from employees about coverage options in the Exchanges.

Our retailer HR departments are experts in developing and distributing communications to employees about benefits elections and coverage options. Due to the nature of our business, where the vast majority of employees are located in individual stores and distribution centers, and not in headquarters where the HR departments are housed, our HR professionals understand the complexities of providing information to a large population of employees and their families across the country. RILA welcomes the opportunity to provide the Administration with additional input on the development of information tools employers and employees can utilize as we near the Exchange open-enrollment season. We stress, however, that the dissemination of information to employees must be done in a manner that recognizes an employer holds no legal authority or responsibility to advise or counsel individual employees on the election of coverage options in an Exchange.

In addition, RILA continues to stress to the Administration the importance of providing employers with clear, easy to understand information about implementing the employer requirements under the ACA. There are many consulting businesses and law firms that are providing inaccurate and confusing information to employers about requirements under the ACA. RILA strongly urges the Departments and agencies to produce and post on a public website additional information on specific steps businesses should be taking to comply with the law. The lack of real-world implementation information from the Administration is creating an environment where employers are being exposed to misinformation and advice that may lead to employers not complying with requirements under the law.

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Employer-sponsored coverage is the crown jewel of the American healthcare system. RILA is committed to ensuring employer-sponsored health coverage remains a viable option for the 170 million Americans receiving coverage today. RILA and the E-Flex Coalition look forward to continuing to provide constructive business operations information and policy recommendations to the White House and the Departments as the ACA regulatory development and implementation process proceeds.

Please direct questions or requests for further information about this comment letter to Christine Pollack, Vice President of Government Affairs, with the Retail Industry Leaders Association (RILA) at Christine.pollack@rila.org or 703-600-2021.

Attachment:
Employers for Flexibility in Health Care Coalition letter

Employers for Flexibility in Health Care Coalition

March 15, 2013

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

CC:PA:LPD:PR (REG-138006-12)

Internal Revenue Service, Room 5203
POB 7604, Ben Franklin Station
Washington, DC 20044

Re: Shared Responsibility for Employers Regarding Health Coverage, Internal Revenue Service, Department of the Treasury (REG-138006-12)

We are writing in response to the above proposed rule on behalf of the Employers for Flexibility in Health Care ("E-FLEX"), a coalition of leading trade associations and businesses in the retail, restaurant, hospitality, supermarket, construction, temporary staffing and other service-related industries, as well as employer-sponsored health plans insuring millions of American workers. Members of the E-FLEX Coalition are strong supporters of employer-sponsored coverage and have been working with the Administration as you implement the Affordable Care Act ("ACA") to help ensure that employer-sponsored coverage – the backbone of the US health care system – remains a competitive option for all full-time, part-time, temporary and seasonal employees.

We very much appreciate the constructive dialogue the Department of Treasury has maintained over the course of the past two years with the employer community and the issuance of proposed regulations that reflect the extensive discussions that the E-FLEX Coalition and Treasury officials have had on the basic definitions of an applicable large employer, determination of full-time employee status, and the rules for determining assessable payments under IRC §4980H.

In particular, the E-FLEX Coalition appreciates the flexibility provided for the large number of employers in the US with diverse workforces including variable hour and seasonal workers. The constructive approach adopted in the rule is critical for employers to maintain the ability to offer coverage to their full-time workers. Allowing employers to use a measuring period to determine a seasonal or variable hour employee's full-time status will create a more stable source of coverage for employees and provide employers with workable options to administer and offer health coverage to their employees.

I. Transition Relief

As 2014 rapidly approaches, employers of all sizes remain concerned about implementing the employer requirements under the Affordable Care Act and about how to communicate the changes to their employees. The proposed regulation under IRC §4980H, issued December 28, 2012, provided key details to employers, but also gave employers very little time to bring their plans and administrative systems into compliance before open enrollment begins in the health insurance Exchanges. Employers are still in the process of attempting to understand and apply the new rules. This requires them to undertake analysis of their workforce, reset and negotiate their plan designs for 2014, and overhaul their payroll and administrative systems to come into compliance with the statute. Much of this adaptation will take more than 12 months to implement.

We sincerely appreciate the limited transition relief provided in the proposed rule, but we urge the Administration to recognize that transition time is in order in 2014 for all employers who offer health benefits to adjust to the significant changes required under the ACA. To date, employers are still missing key pieces of guidance needed to construct their systems, make plan design changes and communicate with their employees. Given the late date, we respectfully suggest using 2014 as a transition period under IRC §4980H for all employers offering health coverage.

Below we highlight two areas of concern for the E-FLEX Coalition regarding transition relief for 2014 provided in the proposed rules.

Transition for non-calendar year plans. We appreciate that the Administration has recognized the very real need for transition relief for penalties under IRC §4980H for employers with non-calendar year plans. However, employers in the E-FLEX Coalition who need the transition relief are concerned they will not be able to utilize it due to the eligibility conditions in the regulations.

Under the rule, transition relief is only available to an applicable large employer member who has at least one-quarter of its employees covered under one or more non-calendar year plans that have the same plan year as of December 27, 2012, or who offered coverage under those plans to one-third or more of its employees during the most recent open enrollment period before December 27, 2012. The regulations appear to require employers to include all employees in the calculation, including seasonal and part-time employees and individuals still within the permitted wait period who might not have been eligible for the plan on December 27, 2012. As such, these eligibility conditions will preclude employers with large numbers of part-time and seasonal employees from taking advantage of much needed transition relief.

Employers with large numbers of seasonal and part-time workers need the transition relief not just to design plans that meet the affordability and minimum value rules, but also to

implement the IT systems needed to track hours to determine full time status. We believe transition relief for non-calendar year plans should be provided without preconditions.

Smaller employers. Greater consideration needs to be given to smaller employers who must perform the required calculation each year to determine if they are above the 50 "full-time equivalents" definition to determine if they are an applicable large employer. We appreciate that smaller employers may utilize a period of six consecutive calendar months in 2013 to determine their large employer status, but this gives them inadequate time to take all the necessary steps to be able to set up and offer plans by January 1, 2014. This is particularly true for those who may be offering coverage to their employees for the first time. Moreover, this will remain a problem for employers moving forward beyond 2013 when the calculation is based on the preceding 12 calendar months. When an employer determines that they have reached large employer status at the end of the calendar year, it is unclear how much time they are permitted to come into compliance with the IRC §4980H requirements.

As we approach open enrollment, adequate transition time is needed for all employers. Additional guidance and transition relief for smaller employers is also of great importance as the definitions and deadlines are having a strong detrimental effect on their ability to hire, manage their workforce, and prepare to offer coverage.

II. Shared Responsibility for Employers Regarding Health Coverage

Many of the E-FLEX Coalition members are submitting individual letters commenting on the application of the rules under IRC §4980H specific to their companies or association members. We will take this opportunity to highlight key areas of concern for the E-FLEX Coalition regarding the rules for determining full-time employee status and some outstanding issues with respect to plan design for 2014.

Seasonal employees. Many of the members of the E-FLEX Coalition employ seasonal employees to meet a diverse set of workforce needs. The definition of seasonal employee in IRC §4980H needs to be broad enough and flexible enough to capture the variety of seasonal employees utilized in the workforce today. The E-FLEX Coalition encourages the Administration to adopt a permanent good-faith standard that recognizes that the seasonality of work regularly extends beyond 120 days.

Members of the E-FLEX Coalition employ seasonal workers for everything from agricultural growing seasons to holiday season retail peaks to seasonal beach restaurants. All of these workers are bona fide seasonal employees who work varying seasons, most of which exceed 120 days. We agree with the proposed rule that the 120 day limitation only identifies who is a seasonal worker for purposes of determining who is an applicable large employer under IRC §4980H(c)(2)(B)(ii), and we note other federal guidelines that recognize that a seasonal worker may work for significantly longer periods. As such, we encourage the Administration to adopt the definition that is currently used in the non-

discrimination rules, which includes seasonal employment of less than seven months. See Treas. Reg. §1.105-11(c)(2)(iii)(C).

Re-hire rules. The proposed regulation contains a rule that requires an employer to treat a former employee or an employee with a continuous period of unpaid leave as a new hire for purposes of IRC §4980H in certain circumstances. Under the proposed regulation, if the period for which no hours of service is credited is at least 26 consecutive weeks, an employer may treat an employee who has an hour of service after that period, for purposes of determining the employee's status as a full-time employee, as having terminated employment and having been rehired as a new employee of the employer. The employer may also choose to apply a rule of parity for periods of less than 26 weeks. Under the rule of parity, an employee may be treated as having terminated employment and having been rehired if the period with no credited hours is at least four weeks long and is longer than the employee's period of employment immediately preceding that period with no credited hours of services. Additional rules apply for employees out on Family Medical Leave Act unpaid leave and military leave.

The members of the E-FLEX Coalition represent industries where rehiring workers is common practice. Some members rehire tens of thousands of former employees annually. The members of the E-FLEX Coalition have analyzed this rule and find it very difficult to track, automate, administer and communicate to employees. This rule would require employers to track for the first time not just new employees based on start date and employees generally, but also non-employees for an extended period of time. Layering the rehire rules on top of the already complex lookback rules is difficult to automate and communicate to employees for large employers with a significant number of rehires. While we recognize the purpose of the rule, we continue to explore alternatives that are more easily implemented and executed.

Affordability. The E-FLEX Coalition appreciates the affordability safe harbors provided in the proposed regulations in recognition that employers do not know an employees' household income as the statute sets forth for the basis of the affordability test. Allowing employers to assess the affordability of their lowest-cost, self-only plan based on employees' W-2 wages, employees' rate of pay, or the federal poverty line (FPL) will help employers offer health benefits that meet the law's affordability standard. In addition, the E-FLEX Coalition would welcome the opportunity to meet with the Administration to verify estimates for the affordability safe harbor based on the 2013 FPL guidelines published by the Department of Health and Human Services in the January 24, 2013 *Federal Register*. For example, we would like the Administration to confirm that a self-only plan with a $91 monthly employee premium share would satisfy the FPL safe harbor and that a plan with a $364 monthly premium share would satisfy the rate of pay safe harbor for an employee with wages amounting to 400% of the FPL ($45,960 for a single person in the 48 contiguous states and the District of Columbia in 2013). The table below summarizes the

E-FLEX Coalition's basic estimates for the affordability safe harbor, including the corresponding hourly wages of employees at 100% and 400% of FPL.

Estimates for Affordability Safe Harbors[1]				
Scenario	Percent of federal poverty level	Annual income	Hourly wage[2]	Estimated employee premium share for self-only coverage for affordability test safe harbor[3]
Federal poverty line safe harbor	100%	$11,490	$7.37	$91
Upper limit for eligibility for tax credits	400%	$45,960	$29.46	$364

1. This is based on the 2013 HHS Federal Poverty Guidelines for the 48 contiguous states and the District of Columbia for a single person ($11,490). All numbers are estimates and have been rounded to the nearest dollar.
2. This is based on the ACA threshold for classification as a full-time employee (average 30 hours per week) multiplied by 52 weeks.
3. This is 9.5% of current wages divided by 12 months

Wellness programs. The affordability safe harbors are helpful to employers, but questions still remain about how employer spending on employee wellness programs will be treated under the affordability test. Employers have invested significant resources in tailoring these programs to their employee populations. The E-FLEX Coalition urges the Administration to issue regulations that take into account these important health initiatives and base the affordability test on the employee's premium share after taking into account wellness incentives allowed under federal law.

For example, in the case of an employer who offers wellness incentives to smokers to participate in smoking cessation programs that reduce smokers' premiums for self-only coverage in the lowest-cost plan from $115 per month to $90 per month, we would encourage the Administration to base the affordability safe harbors on the $90 monthly premium for all employees.

Minimum Value. HHS recently issued final regulations addressing the minimum value calculation required under IRC §4980H(b). The regulations permit employers to use a minimum value calculator or design-based safe harbors to determine whether their plans meet the minimum value standard, but only allow plans with non-standard features to obtain an actuarial certification. We encourage the Administration to provide more flexibility by permitting employers to obtain an actuarial certification if they prefer to utilize this methodology. Some plans currently use this methodology and would like to continue to do so regardless of whether the plans have non-standard features.

Non-discrimination. The ACA applies new non-discrimination requirements to insured health plans that prevent plans from benefitting higher compensated employees in certain circumstances. The Administration has yet to issue guidance in this complex area. Insured products are frequently utilized by smaller employers to provide affordable coverage to their longer-term workforce or by larger employers who are unable to meet insurer participation rules without limiting the pool of eligible participants. Employers will need a

sufficient transition period of no less than a year before any guidance is effective, as employers no longer have sufficient time to adjust prior to 2014 and we expect the regulations will cause upheaval for plans and employers.

Additionally, using a method to test compliance identical to IRC §105(h) is not required by the ACA, nor is it desirable for testing fully insured plans, which tend to be smaller with fewer covered employees. We believe that the IRC §105(h) rules would be unworkable for smaller groups and that they would serve as a disincentive for these employers to continue offering coverage. We encourage the Administration to explore solutions that help employers maintain coverage, such as basing the test on a non-discriminatory employer offer of coverage without regard to employee enrollment and solutions for large employers unable to meet insurer participation rules.

III. Employer Communications with Employees, Exchanges, and the IRS

As we are only months away from open enrollment in the Exchanges, an area of growing importance and urgency for employers is how they communicate the new changes under the ACA to their employees in a manner consistent with the law. Further, employers need to understand how they will interact with the Exchanges and what data they will be required to capture and report to the IRS. Employers are anticipating guidance on required communications to employees under the Fair Labor Standards Act from the Department of Labor, the notices and appeals processes with Exchanges from the Department of Health and Human Services, and the required information reporting under IRC §§6055 and 6056 to the IRS. All of these elements are critical to ensuring the system works when the ACA is launched this year and are not only significant administrative considerations for employers, but also to ensure they are able to assist with their employees with their coverage options.

Notice and Reporting. As outlined in our October 31, 2011, and June 11, 2012, letters and in meetings with the Administration, E-FLEX Coalition members continue to be concerned about the flow and timing of required notices and reporting, and the interaction between employers, health insurance Exchanges, and the federal agencies in conjunction with the coverage requirements and imposition of penalties under the law.

We understand that Treasury and the IRS intend to issue guidance on the employer information reporting required under IRC §§6055 and 6056. The E-FLEX Coalition urges the Administration to consider the utility and burden of collecting the requested information, and to build upon the employer reporting requirements in IRC §6056 to create a clear and administratively workable reporting process to verify individual eligibility for premium tax credits and ultimately to assess employer tax penalties. After 2015, IRC §6056 could be used to facilitate the use of a single, annual report from employers to Treasury that could include prospective general plan and wage information for the affordability test safe harbors, as well as retrospective individual full-time employee information for the look-back safe harbor.

As employers consider how to build systems to manage the calculations needed to comply with the law's employer provisions, the delay in issuing the regulations pertaining to the notice and reporting requirements is becoming increasingly untenable for employers if employer systems are going to track and maintain data needed to comply with the reporting requirements. We reiterate our recommendation from our October 31, 2011 and June 11, 2012 letters that the Administration consider alternative reporting processes at least for 2014 and 2015. In addition, the E-FLEX Coalition urges the Administration to consider an exception-based reporting process that would substantially ease reporting requirements for employers who can demonstrate over time that only a minimal percentage of their employees go to Exchanges and are determined eligible for tax credits.

IV. Outreach to Employers

The E-FLEX Coalition appreciates the comprehensive guidance laid out in the proposed rule, but we urge the Administration to recognize that the ACA represents a fundamental shift in how employers provide coverage to their employees and interact with multiple agencies at both the federal and state levels. A significant outreach effort to the employer community is needed to mitigate any unintended consequences as implementation of the law continues.

The ACA's amendments to the Internal Revenue Code, the Public Health Service Act (PHSA), and the Employee Retirement Income Security Act (ERISA) have necessitated the issuance of tri-agency regulations from Treasury, HHS and DOL that has left employers without a single source of actionable guidance. For example, many employers remain confused about the use of full-time equivalents versus full-time employees, the methodologies to measure employees as full-time at 30 hours and how to design their plans to meet the new coverage standards. We encourage the Administration to acknowledge the need for employer education and make every effort to help employers understand the employer mandate and their obligations under the law.

We would like to thank you again for the opportunity to share our comments with the Administration on provisions of the ACA that affect employers, and we appreciate that the Administration has been receptive to the comments from the employer community in developing regulatory guidance. The E-FLEX Coalition looks forward to working with the Administration and with Congress to address issues that preserve employer-sponsored coverage and smooth the implementation process for employers and their employees.

For questions related to this letter, please contact Anne Phelps, Principal, Washington Council Ernst & Young, Ernst & Young LLP, at 202-467-8416, on behalf of the Employers for Flexibility in Health Care Coalition.

Respectfully submitted by the Employers for Flexibility in Health Care Coalition and the following signatories,

7-Eleven
Aetna
Allegis Group
American Staffing Association
Associated Builders and Contractors, Inc.
Associated General Contractors of America
Food Marketing Institute
International Franchise Association
Kelly Services
ManpowerGroup
National Association of Convenience Stores
National Association of Health Underwriters
National Grocers Association
National Restaurant Association
National Retail Federation
Randstad US
Regis Corporation
Retail Industry Leaders Association
Society of American Florists
Visiting Angels