# Statement of the U.S. Chamber of Commerce

**ON:** **The Reporting Requirements Necessary to Verify Income and Insurance Information under the Affordable Care Act**

**TO:** **The House Ways and Means Subcommittees on Oversight and Health**

**BY:** **Katie Mahoney**
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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 business people participate in this process.

**Statement on**
**"The Reporting Requirements Necessary to**
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**Submitted to**
**THE HOUSE WAYS AND MEANS COMMITTEE'S**
**SUBCOMMITTEES ON OVERSIGHT AND HEALTH**
**By**
**Katie Mahoney**
**Executive Director, Health Policy**
**U.S. Chamber of Commerce**
**on behalf of the**
**U.S. CHAMBER OF COMMERCE**
**June 10, 2014**

The U.S. Chamber of Commerce would like to thank Chairmen Boustany and Brady and Ranking Members Lewis and McDermott, and other members of the subcommittees for the opportunity to participate in today's hearing. We appreciate this hearing's focus on the challenges in verifying income and insurance information given the delay of the reporting requirements under the health reform law. Indeed, it is critical that we understand how the law's interrelated provisions were intended to work and the challenges that remain for businesses and individuals as they struggle to comply with the complex and intricate reporting requirements.

My name is Katie Mahoney and I am the Executive Director of Health Policy at the U.S. Chamber of Commerce. I have more than 16 years of health care experience in hospital and health plan operations, as well as health policy. At the Chamber, I am responsible for developing and advocating the organization's policy on health and working with members of Congress, the administration, and regulatory agencies to promote the Chamber's health policy priorities.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size, sector and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

## BACKGROUND

During the legislative process, the Chamber opposed the Patient Protection and Affordable Care Act ("ACA") because it would: do very little to control the rise of unnecessary health care spending; impose benefit mandates, requirements, taxes and penalties increasing the cost of coverage, and; limit the flexibility that employers and employees alike need in choosing coverage options that they can afford. Before the law was enacted, the Chamber testified before both the House Committee on Ways and Means and the Senate Health, Education, Labor and Pensions Committee as to our significant concerns.[1, 2] Since the law's enactment, we have brought nine member companies to testify on the impact that the law will have on their businesses and employees. Most recently, I testified a year ago this month before the House Energy and Commerce's Subcommittee on Oversight on the implementation of employer mandate – urging members to pass legislation to restore the long-standing definition of full-time

[1] Randel Johnson, Senior Vice President of Labor, Immigration and Employee Benefits for the U.S. Chamber of Commerce, "Health Reform in the 21st Century: Proposals to Reform the Health System," The House Committee on Ways and Means, June 24, 2009.
[2] Randel Johnson, Senior Vice President of Labor, Immigration and Employee Benefits for the U.S. Chamber of Commerce, "Roundtable Discussion – Health Care Reform Legislative Options," The Senate Health, Education, Labor and Pensions Committee, June 11, 2009.

employment to 40 hours and articulating the need for the Administration to allow flexibility, safe harbors and transition relief in enforcement. Even though we have seen some progress, we will continue to work with Congress and the regulators to ease the burdens on businesses.

As the law's implementation continues, so do the challenges. While we appreciate the importance of monitoring and highlighting the effects the law is having on businesses and employees, we also believe it is critical to the extent possible to search for and act on opportunities to provide relief. Our country must continue to focus on improving the ability of all Americans to: access affordable health care coverage; receive innovative and high-quality care; and realize better health.

Our view continues to be that reform does not end here. As we continue to struggle with the implementation of the ACA, we must examine ways to further advance and strengthen our health care system. To this end, the Chamber released a report in June of last year with proposals to advance access to affordable coverage and to improve health care value.[3] While we continue to pursue legislative action to further reform and strengthen our health care system in accordance with the proposals in the report, we also remain focused on ameliorating the burdens of the current requirements by working with the regulators to identify ways to simplify, streamline and ease compliance. Since the law was enacted, the Chamber has submitted 77 comment letters in response to 8 Interim Final Regulations (IFRs), 3 Final Rules, 20 Requests for Comments (RFCs), 34 Proposed Rules, 1 Information Collection Request (ICR), 2 Amendments to the IFRs, 6 Requests for Information (RFIs), 1 FAQ, 1 Draft Letter, and 1 Draft Guidance Notice.

[3] "Health Care Solutions from America's Business Community: The Path Forward for U.S. Health Reform," A Report from the U.S. Chamber of Commerce's Health Care Solutions Council, June 2013.

Many of the comments that we filed were in response to items issued that are directly or indirectly necessary to implement the employer mandate. Beyond the complex language in the employer mandate provision (4980H), there are at least three other critical provisions that interrelate to this direct requirement for employers: the premium tax credit provision (Section 36B), the reporting requirement for employers subject to the employer mandate (Section 6056), and the reporting requirements for issuers, including self-insured employers (Section 6055). While today's hearing is on the verification of income and insurance information under the ACA, I have been asked to testify specifically on the two reporting requirements contained in Sections 6055 and 6056 of the ACA. My testimony will offer: a brief and simplified overview of what these reporting requirement provisions were intended to do; our view of the Administration's efforts to promulgate regulations to implement these provisions; the unfortunate consequences that the statutory requirements will have on employers and employees; and possible solutions moving forward.

## THE REPORTING REQUIREMENTS: AN OVERVIEW

As enacted, the reporting requirements contained in Sections 6055 and 6056 were designed to provide the data and information necessary for the Internal Revenue Service (IRS) and the U.S. Department of the Treasury (Treasury) to implement at least three other major provisions in the law: the employer mandate (Section 4980H), the premium tax credit provision (Section 36B) and the individual mandate (Section 5000A). These two reporting provisions, while short in

statutory text (each are 3 pages in length), have broad-reaching ramifications and are intricately connected to other significant provisions.

Section 6056: Reporting Requirement for Applicable Large Employers

Under Section 6056, an employer that is required to offer health coverage under the employer mandate (an applicable large employer with 50 or more full-time equivalent employees) must report information to the IRS and to the employees to facilitate the enforcement of the employer mandate. The information provided by the applicable large employer (ALE) under Section 6056 is designed to inform the IRS as to which full-time employees (and their dependents) receive an offer of employer-sponsored coverage. Extensive information must be reported to enable the IRS to determine whether an employer may be subject to a penalty for either failing to "offer coverage to all full-time employees and their dependents" under the Section 4980H(a) requirements, or may be subject to a penalty because the coverage offered to the full-time employees fails to satisfy the minimum value and/or affordable coverage requirement under Section 4980H(b). Under Section 6056, information is also reported to individuals to provide them with the documentation necessary to show whether he/she and his/her dependents may be eligible for a premium tax credit because they do not have an offering of employer-sponsored coverage.

Section 6055: Reporting Requirements on Minimum Essential Coverage

Section 6055 requires those entities that insure individuals (i.e. self-insured employers, health insurers, governmental entities, etc.) with minimum essential coverage to report information necessary to document to the IRS which individuals satisfy the individual mandate requirement. This information is necessary for the IRS to know which individuals have met the requirement to obtain minimum essential coverage under the individual mandate (5000A) and which individuals may be subject to a penalty. It also provides documentation to the individual so that he/she can demonstrate compliance with the individual mandate.

## THE EFFORT TO PROMULGATE REGULATIONS

Even when the interwoven provisions of the statute are described as simply as possible, the complexities are striking. Clearly the challenge of drafting, much less finalizing, regulations to implement these two reporting provisions is immense. It is also a challenge that we have found that the Treasury in particular takes very seriously and approaches very thoughtfully. Not only is this evident in some of the reporting alternatives offered in the Final Rules, but also in the numerous solicitations for input and proposals, as well as the measured evaluation of the feedback provided. Efforts to promulgate regulations to implement Sections 6056 and 6055 specifically began in 2012, but were intertwined with efforts to promulgate regulations to implement Section 4980H (the employer mandate) which began in 2011. We were involved in many exchanges with the Treasury and IRS during this process and filed numerous comments on these provisions specifically.

Further, during the throws of this regulatory process, I had the pleasure of testifying before the House Energy and Commerce Oversight Subcommittee on June 26, 2013. At that hearing, I shared with the Subcommittee the tremendous confusion among businesses. While we in Washington were exploring safe harbors for affordability, many owners were still confused as to how to determine whether they were an "applicable large employer" and therefore subject to the employer mandate. As I shared with the Subcommittee on that day, businesses needed additional time not only to meet the employer mandate requirements, but also to demonstrate compliance with the mandate. While Treasury and IRS had invested time and energy in issuing numerous notices and requests for information, by June of 2013, they still had not issued a proposed rule on the reporting requirements which were to be imposed on employers in less than 6 months' time.

On July 2, 2013, the IRS and the Treasury announced that because the regulations for the reporting requirements were not ready, they would delay enforcement of section 6056 and 6055 and therefore, also have to delay enforcement of section 4980H, the employer mandate. Without the information that the reporting requirements would collect, it would be impossible to enforce the employer mandate provision.

Following that announcement, the Treasury and IRS continued to work on the regulations and solicit feedback. Less than 2 months later, the NPRMs were issued on 6055 and 6056. Here is a detailed chronological list of the items issued by Treasury and the IRS as they gathered feedback and worked to promulgate regulations implementing the reporting requirements and the employer mandate. The Chamber filed comments on nearly every item.

- May 23, 2011, the Treasury & IRS issued a request for comments on methods for determining the number of full-time employees (comments due June17, 2011)
    - Notice 2011-36 for 4980H
- October 3, 2011, the Treasury & IRS issued a request for comments on an affordability safe harbor for employers (comments due December 13, 2011)
    - Notice 2011-73 for 4980H
- February 9, 2012, the Treasury & IRS issued request for comment on employer shared responsibility (comments due April 9, 2012)
    - Notice 2012-17 for 4980H
- April 27, 2012, the Treasury & IRS issued a request for comments on minimum value (comments due June 11, 2012)
    - Notice 2012-31 for 4980H
- May 14, 2012, the Treasury & IRS issued two requests for comments on "how to coordinate and minimize duplication between the data employers must report" (comments due on June 11, 2012)
    - Notice 2012-33 for 6056
    - Notice 2012-32 for 6055
- August 31, 2012, the Treasury & IRS issued a request for comments on determination of full-time status (comments were due on September 30, 2012)
    - Notice 2012-58 for 4980H
- December 28, 2012, the Treasury & IRS issued a series of FAQs on 4980H

- January 2, 2013, the Treasury & IRS issued an Notice of Proposed Rulemaking on 4980H (comments due on March 18, 2013)
- April 23, 2013, the Treasury & IRS held a hearing on the proposals in the NPRM for 4980H
- July 2, 2013, the Treasury & IRS announced delay of enforcement of 4980H, 6056 and 6055
- July 9, 2013, the Treasury & IRS issued Notice 2013-45 formalizing transition relief 2014 from requirements in Sections 4980H, 6056, and 6055
- September 9, 2013, the Treasury & IRS published two NPRMs on 6056 & 6055 (comments due November 8, 2013)
- November 19, 2013, the Treasury & IRS held a public hearing on the proposals in the NPRMs on 6056 and 6055
- February 12, 2014, the Treasury & IRS published a Final Rule on 4980H
- March 10, 2014, the Treasury & IRS published two Final Rules on 6056 & 6055

## COMMENDABLE EFFORTS

We have worked with officials at the Treasury for over three years during their efforts to promulgate regulations to implement these requirements. We have found their commitment to promulgating regulations that minimize the cost and burden to business while implementing the law as intended to be commendable. As they espoused in the Final Rule, we believe that Treasury truly has "sought to develop final information reporting rules that will be as streamlined, simple, and workable as possible, consistent with effective implementation of the

law. This has reflected a considered balancing of the importance of (1) minimizing cost and administrative tasks for reporting by entities and individuals, (2) providing individuals the information to complete their tax returns accurately, including with respect to the individual shared responsibility provisions and potential eligibility for the premium tax credit, and (3) providing the IRS with information needed for effective and efficient tax administration."[4] As proof of this commitment, we cite a number of simplifications and alternatives provided for in the Final Rules which we understand from our members may help some employers comply somewhat more easily with the reporting requirements of Section 6056. Many of the comments, concerns and recommendations that we raised given the feedback we received from our member companies were explored, adopted and sometimes incorporated into the Final Rule. Further, Treasury has identified data points that are not relevant to individual taxpayers or the IRS for purposes of administering the premium tax credit and section 4980H, or that is already provided at the same time through other means. While we applaud the officials at Treasury for their efforts, the extensive burdens of cost and time to comply with these reporting requirements continues for the majority of employers.

## HARMFUL AND EXPENSIVE CONSEQUENCES REMAIN

Despite the commendable efforts of the officials at the Treasury, exceedingly high administrative burdens and expenses remain as businesses grapple with how to comply with the reporting requirements contained in the statute. First and foremost, the greatest complaint we hear from our members is about the extraordinary expense of complying with the reporting requirements.

[4] Information Reporting by Applicable Large Employer on Health Insurance Coverage Offered Under Employer-Sponsored Plans, Final Rule, 79 Fed. Reg. at 13232 (available at: http://www.gpo.gov/fdsys/pkg/FR-2014-03-10/pdf/2014-05050.pdf ).

This includes challenges with identifying which employees are full-time during which months as well as, for those employers that self-insure, challenges with collecting social security numbers for dependents.

Many of our larger member companies have long offered exceptional benefits for which employees pay only a small portion of the premium. These businesses – like many – are committed to improving the health of their employees and offering coverage that is highly valued. It is unfortunate that because of the way the statute is written, these businesses must redirect resources to report on the coverage they offer, rather than use those resources to pay for a greater portion of the cost of that coverage. Even more unfortunate is that the extreme expense of these reporting requirements and the challenges in identifying precisely which months coverage is offered to which employees may incent employers to stop offering coverage all together. Clearly, this is not what was intended and is not what is best for employers or employees.

## CONCLUSION

Clearly these reporting requirements as prescribed by the statute and efforts to promulgate regulations to implement them are very complicated. Despite laudable efforts by the dedicated and pragmatic officials at the Treasury and the IRS, the significant challenges and tremendous costs to comply remain exceedingly burdensome for business. Many of the efforts to streamline reporting and offer alternative or simplified methods will be helpful to some employers, but we will continue to explore additional ways to ease the burden of compliance. Proposing a solution

for the regulators to adopt is difficult given the statutory requirements and the need for this data to enforce and verify many other provisions and elements. However, enacting the legislation passed by the House earlier this year restoring the longstanding definition of full-time employment to 40 hours a week would be an important first step.

Therefore, we urge you to consider additional legislative ways to offer businesses greater flexibility and protection and work with stakeholders such as those here today to identify possible ways to provide relief to businesses. We also urge the regulators to continue to identify ways to streamline and simplify reporting requirements as new scenarios and fact patterns present different challenges and additional opportunities. Permitting a compliance assistance approach as opposed to strict enforcement is critical.